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**Datasheet for the decision  
of 28 August 2019**

**Case Number:** T 0336/19 - 3.5.05

**Application Number:** 15853646.6

**Publication Number:** 3065335

**IPC:** H04L9/32, H04L29/06, G06F21/35,  
G06F1/14, G06K19/07, H04L29/08,  
G06F21/34

**Language of the proceedings:** EN

**Title of invention:**

SYSTEM AND METHOD FOR REAL-TIME VERIFICATION OF CLOCK  
SYNCHRONISATION-BASED DYNAMIC PASSWORD ANTI-COUNTERFEITING TAG  
VALIDITY

**Applicant:**

Hangzhou Wopuwulian Science&technology Co., Ltd.

**Headword:**

Reimbursement of appeal fee

**Relevant legal provisions:**

EPC Art. 109(1)  
EPC R. 103(1)(a)

**Keyword:**

Interlocutory revision - reimbursement of appeal fee (no)  
Substantial procedural violation (no)

**Decisions cited:**

T 0079/91, T 1212/01

**Catchword:**



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Case Number: T 0336/19 - 3.5.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.05**  
**of 28 August 2019**

**Appellant:** Hangzhou Wopuwulian Science&technology Co., Ltd.  
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**Representative:** Inal, Aysegul Seda  
Yalciner Patent and Consulting Ltd.  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 7 August 2018  
refusing European patent application No.  
15853646.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair** A. Ritzka  
**Members:** P. Cretaine  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

I.

This appeal decision is, after rectification of the impugned decision by the examining division, only concerned with appellant's request for reimbursement of the appeal fee.

II.

With the impugned decision, the examining division refused the application on the grounds that the subject-matter of independent claim 4 (system claim) and, for the same reasons, of independent claim 1 did not involve an inventive step having regard to prior-art document D1 in combination with D10 or D11. For independent claim 1 (method claim corresponding to independent system claim 4), the examining division acknowledged that method claim 1 comprised many more specific details related to the implementation and construction of the features disclosed by independent apparatus claim 4 but held that none of these details added anything of inventive significance to claim 1.

III.

The appellant lodged an appeal and submitted with the statement setting out the grounds of appeal an amended main request. It also requested oral proceedings on an auxiliary basis to be held in the event that the main request was not allowed. The examining division, taking into account these submissions, held the appeal allowable and well-founded and rectified its decision (Article 109 (1) EPC). However, the appellant's request for reimbursement of the appeal fee was not allowed and, for this reason, the case was referred to the boards of appeal.

IV.

The appellant based its request for reimbursement of the appeal fee on allegedly committed substantial procedural violations. The appellant submitted that the examining division did not take into consideration the appellant's arguments in its response dated 8 April 2018 to the official communication of the EPO dated 14 February 2018. According to the appellant the examining division did not perform a detailed analysis of independent claim 1 and did not properly apply the problem/solution approach but reached a "summary conclusion" without considering the appellant's arguments. It also argued that the examining division did not take into consideration the appellant's arguments in the same letter that the device as claimed in independent claim 4 solved a long-felt need and was a huge commercial success due to its extra security features.

### **Reasons for the Decision**

1.

According to Rule 103 (1) (a) EPC, the appeal fee shall be reimbursed in the event of interlocutory revision if such reimbursement is equitable by reason of a substantial procedural violation. In the case at hand, the board does not see a reason to grant the request for reimbursement of the appeal fee. The board is not convinced that a substantial procedural violation occurred.

2.

Firstly, an - allegedly - not or not correctly applied problem/solution approach cannot per se amount to a procedural violation, since the correct use of it is exclusively a substantive issue, not a procedural one.

3.

Furthermore, the objection with regard to independent claim 1 cannot be accepted on its merits either. The examining division indeed applied the problem/solution approach in detail with regard to the subject-matter of independent system (apparatus) claim 4, which had a broader scope than independent method claim 1. It appears appropriate to assess independent claim 1 with the narrower scope based on the conclusions regarding independent claim 4 with a broader scope and also consider the added features of the narrower claim.

The allegedly omitted arguments regarding independent claim 1 set out in the appellant's response dated 8 April 2018 (and received in the EPO on 26 April 2018) were also properly taken into consideration in the impugned decision. This can be taken from point 16 of the reasons where this letter is explicitly mentioned. In particular, the examining division stated that the use of a "self-destruction trigger unit" was obvious from D10 or D11 (see the second bullet of point 16) and that the use of a "random number RandomD" in the authentication procedure was considered part of the general common knowledge (see the last bullet of point 16).

4.

Also, the objection with regard to independent claim 4 cannot be accepted on its merits. The appellant argued that the device according to this claim satisfied a long-felt need and was a huge commercial success. Since this argument was submitted with its letter dated 8 April 2018, it can be assumed that the examining division took it into consideration.

However, the allegation regarding a long-felt need was not substantiated or made credible. Furthermore, commercial success arguments can only ever be secondary indicia of inventiveness in cases where doubt remains on this issue (Case Law of the Boards of Appeal, 8th edition, I.D.10.5; decision T1212/01, reasons point 6.1). In the present case the examining division

was of the opinion that apparatus claim 4 did not involve an inventive step having regard to the prior art. Thus, secondary indicia needed not to be taken into consideration in the assessment of inventive step.

5.

The appellant cited decision T79/91, point 4.2 of the reasons, where the issue of reimbursement of the appeal fee was discussed. But the appellant did not indicate the argument it wished to derive from this paragraph, which only deals with the issue of reimbursement of the appeal fee in quite general terms. No argument in favour of the appellant's case can be found there.

6.

Furthermore, the request for reimbursement of the appeal fee cannot be granted since the appellant did not further pursue the main request underlying the appealed decision but filed an amended main request with the statement setting out the grounds of appeal. Thus, it is not possible to conclude that the alleged substantial procedural violation had affected the entire proceedings before the examining division.

7.

Since the appellant's main request was allowed by the examining division, there was no need to appoint oral proceedings (see point II. above).

## **Order**

### **For these reasons it is decided that:**

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chair:



B. ter Heijden

A. Ritzka

Decision electronically authenticated