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**Datasheet for the decision
of 27 June 2024**

Case Number: T 2447/22 - 3.5.01

Application Number: 15836443.0

Publication Number: 3186762

IPC: G06Q20/02, G06Q20/32,
G06Q20/38, G06Q20/42

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR ELECTRONIC PAYMENTS

Applicants:

Ruan & Riana Familie Trust
Jeremiah 33 Family Trust

Headword:

Electronic payments/RUAN & RIANA

Relevant legal provisions:

EPC R. 103

Keyword:

Reimbursement of appeal fee at 75% without issuing a
communication under Rule 103(2) EPC - (no - no legal basis)

Decisions cited:

G 0008/91, G 0002/12, G 0001/18, J 0012/86, T 0041/82,
T 0853/16, T 2361/18



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Case Number: T 2447/22 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 27 June 2024

Appellant: Ruan & Riana Familie Trust
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Appellant: Jeremiah 33 Family Trust
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 28 April 2022
refusing European patent application No.
15836443.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Chandler
Members: W. Zubrzycki
D. Rogers

Summary of Facts and Submissions

- I. The appeal is against the decision to refuse European patent application No. 15836443.0.
- II. The notice of appeal and the statement setting out the grounds of appeal were filed on 28 June 2022 and 8 September 2022 respectively.
- III. On 28 February 2023 the appellant withdrew the appeal and requested a reimbursement of 75% of the appeal fee pursuant to Rule 103(2) EPC.
- IV. In a communication, the Board set out its preliminary opinion that the appellant was entitled to a refund of 50%, rather than 75%, of the appeal fee. This communication stated:

"1. With a letter dated 28 February 2023, the appellant withdrew its appeal and requested a reimbursement of 75% of the appeal fee. The board now quotes this reimbursement request in full:

'The Board of Appeal is respectfully requested to reimburse 75% of the appeal fee according to Rule 103(2) EPC, because we expect that a substantive examination of the appeal has not yet started.

We note that while Rule 103(2) EPC relates to the reimbursement in response to a communication from the Board of Appeal indicating its intention to start substantive examination of the appeal, the corresponding reimbursement obviously has to apply also to a case where such a communication has not

even been issued.'

2. The board considers that the appellant is only entitled to a refund of 50% under Rule 103(3)(c) EPC. The board considers that the appellant's argument following the word 'obviously', cited above, to be entirely lacking in merit. The appellant is referred to the decision in T 0853/16 for the approach that the board intends to take in this case. The board will now expand upon this point.

3. The appellant withdrew its appeal and at the same time filed a request for reimbursement of the appeal fee. Appeal procedures are terminated, as far as substantive issues are concerned, when the sole appellant withdraws the appeal (G 8/91, OJ EPO 1993, 346). However, the board, with its inherent power, is authorised to examine the appellant's request for reimbursement of the appeal fee and to issue a decision if the request for reimbursement cannot be granted (see e.g. decisions T 41/82, OJ EPO 1982, 256 and J 12/86, OJ EPO 1988, 83). Therefore, this issue is pending until the board has decided on the appellant's request for reimbursement of 75% of the appeal fee or until the appellant withdraws this request.

4. The question as to whether, and to what extent, the appeal fee must be reimbursed depends on whether the respective requirements of the applicable provision of Rule 103 EPC are fulfilled.

5. In the EPC, only Rule 103(2) EPC provides a legal basis for a 75% reimbursement of the appeal fee and this reads as follows:

'The appeal fee shall be reimbursed at 75% if, in response to a communication from the Board of Appeal indicating its intention to start substantive examination of the appeal, the appeal is withdrawn within two months of notification of that communication.'

6. According to the established case law of the Enlarged Board of Appeal and the boards of appeal, although the European Patent Organisation is not a party to the Vienna Convention on the Law of Treaties of 23 May 1969 ('the Vienna Convention'), the European Patent Convention (EPC) is to be interpreted in accordance with the principles set out in Articles 31 and 32 of the Vienna Convention (see G 1/18, OJ EPO 2020, A26, B. REASONS FOR THE OPINION, No.III, first paragraph, with numerous references to further case law).

7. According to Article 31 (1) of the Vienna Convention, a treaty 'shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.' In application of Article 32 of the Vienna Convention, the preparatory work ('travaux préparatoires') and the circumstances of the conclusion of the EPC serve merely as supplementary sources confirming the result of the interpretation, or they are consulted if no meaningful meaning can be determined by applying the general rule of interpretation (see, e.g., G 2/12, OJ EPO 2016, 27, No. V.(4) of the Reasons for the decision; G 1/18, supra, B. REASONS FOR THE OPINION, No. III, last paragraph) .

8. In the board's view, it follows from the clear wording of Rule 103(2) EPC that the appeal must be

withdrawn, 'in response to a communication from the Board of Appeal indicating its intention to start substantive examination of the appeal'. This communication from the board is therefore a mandatory requirement for the 75% refund of the appeal fee under Rule 103(2) EPC.

9. There is no indication in the wording of Rule 103(2) EPC that there is also the possibility of reimbursement of 75% of the appeal fee if the communication referred to in this provision has not been notified.

10. Therefore, with a literal interpretation of Rule 103(2) EPC, there is no refund of 75% of the appeal fee to an appellant where, as in the present case, no such communication has been issued.

11. This result of a literal interpretation of Rule 103(2) EPC is confirmed by document CA/80/19, which is a supplementary source pursuant to Article 32 of the Vienna Convention.

12. The title of section VII.B.a) (i) of CA/80/19 reads:

'Withdrawal of the appeal in response to a communication from the Board indicating its intention to start substantive examination of the appeal (reimbursement at 75%)'.

13. It is already clear from the wording of this title that for a 75% refund of the appeal fee, the withdrawal of the appeal must be a reaction to a communication from the board of appeal within the meaning of Rule 103(2) EPC. Thus, for reimbursement at 75%, the withdrawal of the appeal is dependent on the issue of such a communication.

14. This is also confirmed in points 66 and 67 of document CA/80/19, which read:

'66. As a specific measure to reduce the backlog, it is proposed that in long-pending appeal cases the Board of Appeal will as a rule issue a standard-form communication informing parties of the intended start of the substantive examination of the appeal and drawing attention to the time-limited possibility of withdrawing the appeal and receiving a partial reimbursement of the appeal fee of 75%. A Board of Appeal may decide to dispense with such a standard-form communication because the appeal proceedings are progressing swiftly, in particular where they have been accelerated pursuant to Article 10(3) to (5) RPBA, revised version, or where the Board intends to issue the summons to oral proceedings or a substantive communication soon'.

and

'67. In order to benefit from this enhanced rate of reimbursement, the appellant will have to withdraw the appeal within a non-extendable statutory period of two months from notification of said standard-form communication'

15. However, there is no provision in the EPC, the RPBA or elsewhere that the board of appeal must issue a communication within the meaning of Rule 103(2) EPC in each appeal case before it commences substantive examination of the appeal.

16. In the board's view, however, a board of appeal

does not have to give reasons as to why it wishes to dispense with said standard-form communication or whether an exceptional situation for omitting the standard-form communication is present. Moreover, the reasons listed as examples in point 66 are not to be considered decisive in every appeal case.

17. In Rule 103(2) EPC the reimbursement of the appeal fee at 75% is not made dependent on whether the board of appeal has already started substantive examination of the appeal, but rather on the notification of the communication from the board of appeal, 'indicating its intention to start substantive examination of the appeal'. After receiving this information, the appellant then has two months to withdraw the appeal, if it wishes to do so, to benefit from the 75% rate of reimbursement. This makes the factual situation of the case transparent and clear to the appellant.

18. In view of the above, the requirements of Rule 103(2) EPC are not met in the present case since the board has not issued a communication within the meaning of said provision before the withdrawal of the appeal in the case at hand. Therefore, the appellant's request for reimbursement of the appeal fee at 75% must be refused. However, according to Rule 103(3)(c) EPC, the appeal fee is to be reimbursed at 50%."

V. In a reply, the appellant provided arguments as to why the reimbursement of the appeal fee at 75% was justified.

VI. In a communication accompanying the summons to the oral proceedings, the Board tended to consider that the appellant's arguments were not persuasive and maintained the preliminary opinion given in the

previous communication.

VII. In a further reply, the appellant withdrew the request for oral proceedings. Furthermore, the appellant requested "*a decision on the basis of the current state of the file*". In response to this reply, the Board cancelled the oral proceedings.

VIII. The appellant argued as follows:

The *ratio legis* behind Rule 103(2) EPC suggested that the refund of 75% of the appeal fee should be possible not only in cases where the Board issued a communication indicating its intention to start substantive examination of the appeal, but also in cases where such a communication was not issued.

Document CA/80/19 clearly indicated at points 66 and 67, cited in the Board's communication, that the legislator's rationale was to reduce the appeal backlog by incentivising the withdrawal of an appeal before its substantive examination was started. Not applying Rule 103(2) EPC to cases where the Board of Appeal has not yet issued the aforementioned communication would force an appellant considering withdrawing an appeal to delay it until this communication was issued. This would result in an increased administrative burden for the Boards which clearly contradicted the legislator's intention.

The intention of the legislator could not have been to allow the Boards to nullify the intended effect of Rule 103(2) EPC. However, this effectively happened as, in most cases, the Boards did not issue the communication required by this Rule. It was true that the issuance of this communication made it transparent for the

appellant until which date to withdraw the appeal to benefit from the 75% reimbursement. However, this alone was not a sufficient reason to deny the reimbursement when the communication was not issued.

Furthermore, decision T 2361/18 granted a reimbursement of appeal fee under Rule 103(4)(c) EPC in a case where a communication in preparation for oral proceedings, required by this Rule, had not been issued. Although the wording of Rules 103(2) EPC and 103(4)(c) EPC was not identical, the underlying legal and factual situations were. In consequence, those Rules should be applied in the same way.

Reasons for the Decision

1. The appellant withdrew the appeal and at the same time filed a request for reimbursement of the appeal fee. Thus, the appeal proceedings are terminated, as far as substantive issues are concerned, and the sole issue to be decided is the appellant's request for reimbursement of 75% of the appeal fee.
2. Since the appellant withdrew their request for oral proceedings, the decision is taken in writing.
3. In the communication, cited at section IV above (hereinafter: cited communication), the Board took the same approach as decision T 0853/16 that concerned the identical procedural situation (see cited communication, point 3). More specifically, in line with the findings of T 0853/16, the Board considered that the issuance of a communication indicating a Board's intention to start substantive examination of the appeal was a mandatory requirement for the 75% refund of the appeal fee (points 8 to 10). Since, in

the present case, the Board did not issue such a communication, this requirement was not met and the appellant was not entitled to the reimbursement of the appeal fee at 75%. Instead, the appeal fee was to be reimbursed at 50% according to Rule 103(3)(c) EPC (point 18).

Furthermore, following the approach taken in T 0853/16, the Board considered that the clear and explicit wording of Rule 103(2) EPC left no room for contradictory interpretations (points 6 to 8).

4. The Board is not convinced by the arguments provided by the appellant in response to the cited communication (see section VIII above).
- 4.1 The clear and explicit wording of Rule 103(2) EPC precludes the application of this Rule suggested by the appellant based on its alleged *ratio legis*, as such an application would directly contradict this wording.

Moreover, contrary to the appellant's view, the Board takes from points 66 and 67 of document CA/80/19 (see cited communication, point 14) that the *ratio legis* of Rule 103(2) EPC went beyond reducing the appeal backlog by incentivising withdrawals. Additionally, the legislator intended to provide the Boards of Appeal with a tool for steering the timing of appeal withdrawals in order to reduce situations where the withdrawal of an appeal coincided with its examination by the Boards. Furthermore, the legislator's intention was to leave it up to the Boards whether to use this tool – a communication indicating the intention to start substantive examination of the appeal is not mandatory (cited communication, point 16).

- 4.2 The clear and explicit wording of Rule 103(2) EPC also rules out the possibility of applying this Rule in a manner analogous to that employed in T 2361/18 for Rule 103(4) (c) EPC. Incidentally, contrary to the appellant's view, the legal situations in T 2361/18 and the present case are different. Unlike Rule 103(2) EPC, Rule 103(4) (c) EPC does not explicitly require that the withdrawal of an appeal be "*in response to a communication from the Board of Appeal*" (cf. T 2361/18, reasons, point 3.4).
5. Hence, the appellant's request for reimbursement of the appeal fee at 75% under Rule 103(2) EPC must be refused. Under Rule 103(3) (c) EPC, the appeal fee is to be reimbursed at 50%.
6. The Board notes that the requirements for a reimbursement of the appeal fee at 25% under Rule 103(4) (c) EPC are also fulfilled. However, Rule 103(5) EPC states that the appeal fee shall be reimbursed under only one of the provisions laid down in this Rule, and where more than one rate of reimbursement applies, the reimbursement shall be at the higher rate, which in this case is 50%.

Order

For these reasons it is decided that:

1. The request for reimbursement of the appeal fee at 75% is refused.
2. Reimbursement of the appeal fee at 50% is ordered.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated