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001285

Aktenzeichen / Case Number / N^o du recours : T 430/87 - 3.5.1

Anmeldenummer / Filing No / N^o de la demande : 80 304 551.7

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 31 672

Bezeichnung der Erfindung: An address buffer circuit

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : G 11 C 11/40

ENTSCHEIDUNG / DECISION

vom / of / du 11 January 1988

Anmelder / Applicant / Demandeur : Fujitsu Limited

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Reimbursement/FUJITSU

EPÜ / EPC / CBE Rule 67

Kennwort / Keyword / Mot clé : "Reimbursement of appeal fee in case of withdrawal of appeal (no)"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 430/87 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 11 January 1988

Appellant : Fujitsu Limited
1015, Kamikodanaka Nakahara-ku
Kawasaki-shi Kamagawa 211 (JP)

Representative : Sunderland, James Harry et al,
Haseltine Lake & Co.
Hazlitt House
28 Southampton Buildings
Chancery Lane
London WC2A 1AT (GB)

Decision under appeal : Decision of Examining Division 2.2.01.067
of the European Patent Office
dated 30 July 1987 refusing European
patent application No. 80 304 551.7
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : P.K.J. van den Berg

Members : E. Persson

W.J.L. Wheeler

Summary of Facts and Submissions

- I. On 29 September 1987, which was in due time, the applicant filed a notice of appeal against a decision of the Examining Division dated 30 July 1987 refusing European Patent Application No. 80 304 551.7 pursuant to Article 97(1) EPC. The appeal fee was duly paid.
- II. By letter filed on 27 November 1987 the Appellant withdrew the appeal, noting that no grounds of appeal had been filed and that the term for filing a statement of the grounds of appeal had not yet expired. He therefore requested that the appeal fee be reimbursed.

Reasons for the Decision

1. The Boards of Appeal have previously dealt with the same question (see e.g. Decision of the Technical Board of Appeal 3.3.1 dated 30 March 1982 in case T 41/82, OJ EPO 1982, 256, and Decision of the Technical Board of Appeal 3.2.2 dated 2 August 1982 in case T 99/82, not published). In these decisions it is explained that:
 - (a) Reimbursement of appeal fees is possible in a case in which no notice of appeal is filed or deemed to have been filed within the time limit prescribed by Article 108 EPC, so that no appeal has ever existed.
 - (b) Reimbursement of appeal fees may be ordered, if such reimbursement is equitable by reason of a substantial procedural violation, in a case in which the department whose decision is contested considers the appeal to be well founded and rectifies its decision in accordance with Article 109(1) EPC: Rule 67 EPC.

- (c) Reimbursement of appeal fees may be ordered where a Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation: Rule 67 EPC.

The present Board considers this summing up of the circumstances under which reimbursement of the appeal fee is possible as exhaustive, as did previous Boards.

2. The circumstances mentioned under item 1(a) do not apply to the present case where a notice of appeal has been filed, which is valid within the meaning of Article 108 EPC. The present appeal, therefore, has existed, so that reimbursement of the appeal fee under possibility 1(a) is excluded.
3. The remaining possibilities for reimbursement 1(b) and 1(c) require that the appealed decision be rectified or that the appeal be allowed respectively.

The present appeal was withdrawn before either of the latter decisions was taken. Therefore, reimbursement under possibilities 1(b) and 1(c) is also excluded.

4. In his letter of 27 November 1987 the Appellant has emphasised that firstly up to that time no Statement of Grounds of Appeal had been filed and secondly that the moment at which the appeal was withdrawn was before expiry of the four months' period mentioned in Article 108.

As becomes clear from the above reasons, these two facts, either taken apart or in combination, are irrelevant for the outcome of the present decision.

5. As the appeal has been withdrawn, the present decision is given by the Board in the exercise of its inherent original jurisdiction to consider applications made to it in matters arising out of or in connection with the former appeal proceedings.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

S. Fabiani

P.K.J. Van den Berg