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Aktenzeichen / Case Number / N^o du recours : T 432/88

Anmeldenummer / Filing No / N^o de la demande : 82 305 277.4

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 76 688

Bezeichnung der Erfindung: Telephone answering and message recording system
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : H04M 1/64

ENTSCHEIDUNG / DECISION

vom / of / du 15 June 1989

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Oki Electric Industry Company Ltd.

Einsprechender / Opponent / Opposant :

N.V. Philips' Gloeilampenfabrieken

Stichwort / Headword / Référence : Grounds for appeal/Oki

EPÜ/EPC/CBE Article 108 and Rule 65(1)

Schlagwort / Keyword / Mot clé :

"Admissibility of appeal" - "adequate
substantiation (denied)"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

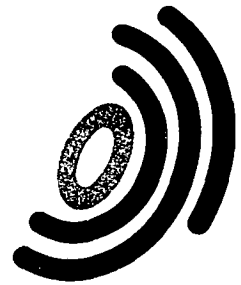
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Boards of Appeal

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Chambres de recours



Case Number : T 432/88

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 15 June 1989

Appellant : N.V. Philips' Gloeilampenfabrieken
(Opponent) Groenewoudseweg 1
5621 BA Eindhoven (NE)

Representative : Van der Kruk, Willem Leonardus

Respondent : Oki Electric Industry Company Limited
(Patentee) 7-12 Toranomom 1-chome Minato-ku
Tokyo 105 (JP)

Representative : George, Sidney, Arthur et al
Gill Jennings & Every
53-64 Chancery Lane
London WC2A 1HN (GB)

Decision under appeal : Decision of Opposition Division of
the European Patent Office dated
5 July 1988 rejecting the opposition
filed against European patent
No. 76 688 pursuant to Article 102(2)
EPC

Composition of the Board :

Chairman : E. Persson

Members : W.P.H. Riewald

W.J.L. Wheeler

Summary of Facts and Submissions

- I. European patent No. 76 688 was granted on 26 June 1985 in respect of European patent application No. 82 305 277.4 relating to a telephone answering and message recording system.
- II. On 23 January 1986 the Appellant filed a notice of opposition to the European patent granted on the ground that its subject-matter was not patentable within the terms of Articles 52 to 57 EPC (Article 100(a) EPC). It was further submitted that there was a lack of unity of invention (Article 82 EPC). The Respondent (Patentee) contested the submissions made by the Appellant in writing on 13 October 1986. The Appellant filed observations in reply to this on 22 December 1986 maintaining his views on all matters involved and further raising the question whether the invention was sufficiently disclosed (Articles 83 and 100(b) EPC).
- III. On 8 May 1987 the Opposition Division of the EPO issued a comprehensive communication in which all arguments advanced by the Appellant so far were carefully analysed but found not convincing. It was suggested that a final decision could be taken without oral proceedings as earlier requested by the Appellant. However, the Appellant maintained his request for such proceedings.
- IV. At oral proceedings held on 9 March 1988 in the presence of the representatives of both parties, the Appellant, maintaining all his previous submissions, raised the further objection that the subject-matter of the European patent extended beyond the content of the application as filed (Article 100(c) EPC). The Respondent argued against all the Appellant's contentions.

- V. In its decision given orally at the end of the oral proceedings and fully reasoned in a notification dated 5 July 1988 the Opposition Division rejected the Opposition pursuant to Article 102(2) EPC.
- VI. The Appellant filed a notice of appeal against this decision on 31 August 1988 and paid the appeal fee on the same day. It was requested that the appealed decision be set aside and that the European patent in question be revoked. In the notice of appeal it was further stated "that the grounds of appeal are as set out in the opposition as well as set out during the oral proceedings held on 09.03.1988". No further statement of the grounds of appeal was filed within the time limit prescribed by Article 108, last sentence, EPC.
- VII. In view of the fact that the Appellant had not presented any legal or factual reasons why the contested decision should be set aside, the Board, in a communication dated 7 March 1989, raised the question whether the appeal is admissible or whether it should be considered as not complying with the requirement of Article 108, last sentence, EPC for a written statement setting out the grounds of appeal and, thus, as inadmissible. Attention was in this context drawn to two previous decisions by the Technical Board of Appeal 3.3.1 in cases T 220/83 and T 213/85 (OJ EPO 1986, 249, and 1987, 482, respectively).
- VIII. In a letter filed on 21 April 1989 the Appellant argues that the appeal complies with the requirements for an admissible appeal. It is, inter alia, stated that it is clear from the notice of appeal that the Appellant considers the decision to maintain the patent in question on the basis of the conclusion that an inventive step was present, and to reject the request for revocation under Article 100(b) and (c) EPC as erroneous. It is further

said to be fully clear on what grounds the Appellant came to this conclusion, namely on all the grounds extensively discussed by him during the opposition proceedings. To repeat all this argumentation had been considered superfluous.

- IX. In a letter filed on 5 May 1989 the Respondent takes the opposite view on the matter of admissibility. It is stated, *inter alia*, that whilst it is recognised that it might be inconvenient for the Appellant to repeat his arguments, this is a minor consideration by comparison with the explicit requirements of Article 108 EPC and the need to enable the EPO and other parties to the proceedings to have a clear written statement of the grounds on which the Appellant is intending to rely in the appeal. To admit appeals which are unsubstantiated beyond an assertion that the contested decision is wrong would open the door to the filing of trivial and vexatious appeals.

Reasons for the Decision

1. The appeal complies with Articles 106 and 107 and also with the first two sentences of Article 108 EPC and with Rule 64 EPC. However, it remains to be considered whether the requirement of Article 108, last sentence, EPC for filing, within four months after the date of notification of the decision by the first instance, a written statement setting out the grounds of appeal has been duly observed in the present case.
2. As mentioned in paragraphs III to V above, the grounds of opposition, as set out by the Appellant in the written and oral proceedings, have been dealt with by the Opposition Division in a comprehensive communication and in their

final decision. The present appeal filed against that decision only makes a general reference to the Appellant's submissions in the foregoing opposition proceedings and thus amounts to no more than a mere assertion that the contested decision is incorrect, without stating the legal or factual reasons why that decision should be set aside.

3. Consequently, the Appellant has left it entirely to the Board and the Respondent to conjecture in what respect the Appellant may consider the decision under appeal to be defective. This is just what the requirement that grounds for appeal be filed is designed to prevent. Especially in a case such as the present one, where the submissions made during the opposition are voluminous, it is essential for the Appellant to set out the specific factual and/or legal reasons on which he is relying. Otherwise, the Respondent is at a loss to know how to prepare his case and the Board cannot direct the appeal proceedings in an efficient way.

4. It follows from the above considerations that the mere reference in the notice of appeal in the present case to what was set out by the Appellant in the opposition and during the oral proceedings held on 9 March 1988 does not comply with the requirement of Article 108, last sentence, EPC for a written statement setting out the grounds of appeal. Consequently, and in accordance with Rule 65(1) EPC, the appeal has to be rejected as inadmissible.

Order

For these reasons, it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

S.Fabiani

E. Persson