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**D E C I S I O N**  
of 14 December 1993

**Case Number:** T 0603/93 - 3.4.1

**Application Number:** 86309382.9

**Publication Number:** 0231612

**IPC:** G09G 1/28

**Language of the proceedings:** EN

**Title of invention:**

A method and apparatus for accessing a memory in a colour graphics system

**Applicant:**

Advanced Micro Devices, Inc.

**Opponent:**

-

**Headword:**

*Restitutio*/ADVANCED MICRO DEVICES I

**Relevant legal norms:**

EPC Art. 122

**Keyword:**

"Re-establishment - yes"

**Decisions cited:**

J 0003/86, T 0116/87, T 0111/92

**Catchword:**

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**Case Number:** T 0603/93 - 3.4.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.4.1**  
**of 14 December 1993**

**Appellant:** Advanced Micro Devices, Inc.  
901 Thompson Place  
P.O. Box 3453  
Sunnyvale, CA 94088 (US)

**Representative:** Woodcroft, David  
Wright, Hugh Ronald  
Brookes & Martin  
52/54 High Holborn  
London WC1V 6SE (GB)

**Decision under appeal:** Decision of the Examining Division of the European Patent Office dated 25 March 1993 refusing European patent application No. 86 309 382.9 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** G.D. Paterson  
**Members:** R.K. Shukla  
U.G.O. Himmler



## Summary of Facts and Submissions

- I. European patent application No. 8 630 982.9 was refused by a decision of the Examining Division dated 25 March 1993. Notification of this decision is deemed to have taken place on 4 April 1993 (Rule 78(3) EPC). The two-month period for filing a notice of appeal therefore expired on 4 June 1993. A notice of appeal was filed on 17 May 1993, but no fee for appeal was filed on or before 4 June 1993.

On 18 June 1993 an application for *restitutio in integrum* was filed on behalf of the applicant, accompanied by a fee for *restitutio* and the fee for appeal. On 25 June 1993 a Statement of Grounds of appeal was filed.

- II. The application for *restitutio* explained that oral proceedings took place before the Examining Division on 9 February 1993, during which the Examining Division indicated that the claims then on file were not allowable, but that if the claims were to be amended the application could proceed to grant. The representative of the applicant at the oral proceedings, Mr Broome, did not have instructions from the applicant to amend the claims as indicated by the Examining Division, and accordingly the application was refused.

Subsequently the applicant instructed Mr Broome to propose amendments as indicated by the Examining Division, and Mr Broome accordingly prepared a notice of appeal. Although Mr Broome was responsible for the day-to-day prosecution of the case, the notice of

appeal was signed by Mr Wright, one of the partners with overall responsibility for the work of the applicant company. It was sent by courier to the EPO and filed there on 17 May 1993, as confirmed by Form 1037 which was received by the representative's office on 24 May 1993.

When preparing the Statement of Grounds of appeal on 16 June 1993, Mr Broome noticed for the first time that the file contained no copy fee voucher accompanying the notice of appeal. The application for *restitutio* was therefore immediately prepared and filed, and the appeal fee paid, on 18 June 1993.

The diary procedure within the representative's offices in respect of matters involving time limits was explained. Essentially the Records Department in the London office is responsible for preparing cards ("T-cards") recording dates to be met, which are kept in date order. Reminders are produced in the form of a photocopy of this card, and sent to individual representatives responsible for the various cases, for example to Mr Wright and Mr Broome in the Tunbridge Wells office. A daily courier service operates between these offices.

In the present case, in response to the adverse decision of the Examining Division a card was made by the Records Department, indicating *inter alia* a reminder date of 25 April 1993 for preparing and filing a notice of appeal (i.e. one month before the end of the two-month period for filing an appeal). In response to the photocopy reminder card, Mr Broome prepared the notice of appeal, and indicated (in accordance with the

usual system) that he should be sent a further reminder on 20 May 1993. Upon receipt of this, since he had prepared the notice of appeal and knew that this had been sent for filing on 17 May, and since he believed that the necessary fee voucher had accompanied the notice of appeal, he indicated on the photocopy reminder (in accordance with the usual system in such circumstances) that the original reminder card should be destroyed by the Records Department, and no further reminder sent.

As a further part of the procedure for keeping time limits, entries are made in a master diary book kept in the Records Department, as a final long-stop check. A photocopy of each week's entries is sent weekly in advance to the Tunbridge Wells office. In the present case, the date of 25 May 1993 for filing a notice of appeal was entered in the diary; and against this entry Mr Broome entered "done" on 26 May 1993, believing that to be the case, especially since he had by then seen the acknowledgment form 1037 which was sent to him by the EPO in acknowledgment of receipt of the notice of appeal.

At all relevant times Mr Broome had acted in ignorance of the fact that the fee for appeal had not in fact been paid.

III. In response to this application for *restitutio*, a communication on behalf of the Board indicated that it was not at present satisfied that "all due care" had been exercised, since no information had been provided concerning the system for ensuring payment of the appeal fee in due time, in particular as to who was

responsible for preparing the fee voucher and ensuring that it was sent.

IV. In reply, the applicant's representative filed a Statutory Declaration by Mrs McLeod, the deputy record manager in the Records Department of the representative's offices, accompanying a further letter from Mr Broome stating that he had been responsible for the preparation of the fee voucher, and that he had believed that he had done so. Mrs McLeod explained that when a debit voucher is prepared, the procedure required that a copy be sent to the Records Department, together with a request for acknowledgment. She stated that when the photocopy reminder was received in the Records Department, indicating that no further reminder was necessary, the entry in the master diary was not deleted because no proof of payment of the appeal fee had been received (i.e. copy debit voucher). She explained that normally in such circumstances she would have instructed that a further reminder be sent to Mr Broome, but that at the time in question she had been under pressure because the records manager had been taken ill, as well as one assistant, and that she had omitted to check further with Mr Broome to ensure that the debit voucher had been sent to the EPO.

V. Oral proceedings were held on 14 December 1993, at which Mr Woodcraft presented the applicant's case, assisted by Mr Broome. Mr Woodcraft had overall responsibility for the system used in the representative's offices for ensuring compliance with time limits.



It was explained during the oral proceedings that there were two separate matters for which Mr Broome was initially responsible - namely preparation and filing of the notice of appeal, and payment of the fee for appeal. The T-card for this case should have been marked with both matters, but in fact had in error only been marked to indicate one general matter i.e. "appeal due". The failure to pay the appeal fee should have been picked up in accordance with the checking system both by the absence of a debit voucher at the Records Department and by the master diary entry, but in the particular combination of circumstances described by Mrs McLeod the checking system had failed to rectify the original mistake by Mr Broome.

At the end of the oral proceedings the decision was announced that the application for *restitutio* was granted.

### **Reasons for the Decision**

1. The sole question to be decided is whether the applicant failed to pay the fee for appeal within the time limit provided by Article 108 EPC "in spite of all due care required by the circumstances having been taken". The case for the applicant was put on the basis that the representative's office ran a satisfactory system for ensuring that all time limits for matters at the EPO and at other patent offices were properly met, and that the failure to pay the appeal fee in the present case was a result of an unfortunate coincidence of two human errors, and thus constituted an isolated procedural mistake in the sense of Decision J 3/86 (OJ

EPO 1987, 362), which should not lead to the loss of substantive rights. Reliance was also placed upon Decisions T 166/87 and T 111/92.

2. With the benefit of hindsight, and in the context that an error was in fact made within the representative's offices, it is possible to focus on what could be regarded as weak links in the system which has been outlined in paragraphs II and IV above. For example:
  - (a) The arrangement in the Tunbridge Wells office whereby Mr Wright signs the notice of appeal before it is sent to the EPO, even though all real responsibility for filing the notice of appeal and for paying the fee for appeal rests with Mr Broome would appear to be a source of confusion. Generally an act of signature corresponds to responsibility for what is being signed.
  - (b) Since the point of any cross-check system is that an "alarm" should sound if sufficient proof of what should have been done is not provided to the cross-check part of the system, one can question whether the absence of a copy debit voucher for this appeal within the Records Department really set off a sufficient "red alert" within that department, so that if for some reason Mrs McLeod did not act to check why no such copy debit voucher had been received, somebody else in that department would.
  - (c) Following on from (b) above, one can also question whether the evidence in the case really establishes that a sufficiently recognised

"system" was present within the offices of the representatives.

However, the Board accepts the point made by Mr Woodcraft that the reliability of any system of the kind under decision depends primarily upon the reliability of the persons who make up that system: and there is no doubt that the persons concerned in the present case are normally fully reliable, and that an unfortunate combination of circumstances led to the failure to pay the appeal fee remaining undetected until 15 days after the due date. Although the Board regards this case as somewhat borderline, on balance it is prepared to grant *restitutio* in accordance with the principles set out in consolidated Decisions J 2 and J 3/86 identified above.

3. Consequently, the notice of appeal is deemed to have been filed within the two-month time limit provided by Article 108 EPC.

## **Order**

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

The rights of the applicant are re-established in relation to the filing of the notice of appeal in respect of the Decision of the Examining Division dated 25 March 1993.

The Registrar:

The Chairman:

M. Beer

G.D. Paterson