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D E C I S I O N
of 19 October 2000

Case Number: T 0283/97 - 3.5.1

Application Number: 89107667.1

Publication Number: 0340643

IPC: H04N 5/445

Language of the proceedings: EN

Title of invention:
Dynamic control menu for a television system or the like

Patentee:
THOMSON CONSUMER ELECTRONICS, INC.

Opponent:
Interessengemeinschaft für Rundfunkschutzrechte GmbH Schutzrechtsverwertung & Co. KG

Headword:
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Relevant legal provisions:
EPC Art. 108, 110(1)

Keyword:
"Admissibility of appeal"
"Adequate substantiation (denied)"

Decisions cited:
T 0220/83, T 0213/85, T 0432/88, T 0090/90

Catchword:
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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0283/97 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 19 October 2000

Appellant: (Opponent)
Interessengemeinschaft
für Rundfunkschutzrechte GmbH
Schutzrechtsverwertung & Co. KG
Bahnstrasse 62
D-40210 Düsseldorf (DE)

Representative:
-

Respondent: (Proprietor of the patent)
THOMSON CONSUMER ELECTRONICS, INC.
600 North Sherman Drive
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Representative:
Rossmanith, Manfred, Dr.
Deutsche Thomson-Brandt GmbH
Licensing & Intellectual Property
Karl-Wiechert-Allee 74
D-30625 Hannover (DE)

Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 24 January 1997 concerning maintenance of European patent No. 0 340 643 in amended form.**

Composition of the Board:

Chairman: P. K. J. van den Berg
Members: A. S. Clelland
C. Holtz

Summary of Facts and Submissions

I. This is an appeal against the decision of the Opposition Division to maintain patent No. 340 643 in amended form.

II. The Appellant (Opponent) filed a notice of appeal against this decision, requesting that the decision be set aside and the patent revoked. The subsequently filed statement of grounds of appeal referred to the Appellant's previous submissions and the existing citations, without naming them, and introduced the following document:

D8: Wijnen, Hans, "Computer controlled TV hardware and software aspects", IEEE Transactions on consumer electronics, vol. CE-32, No. 3, August 1986, pages 258-262.

III. Oral proceedings were held before the Board on 19 October 2000. At these proceedings the Appellant requested that the decision under appeal be set aside and the patent revoked.

IV. The Respondent (Patentee) requested that the appeal be rejected as inadmissible since the statement of grounds was insufficient. It was argued that it had not been possible to respond to the appeal precisely, since the appeal did not make clear which legal and factual aspects of the decision were being challenged.

V. The Appellant argued that the statement of grounds set out to show that the Opposition Division had based its decision on inaccurate information. The main issue at the oral proceedings before the Opposition Division had

been the common general knowledge at the priority date. The impugned decision stated in the passage bridging pages 16 and 17 that "the Opposition Division is not convinced that at the priority date of the Patent the skilled person would even have considered consulting the computer field because at the priority date the television field provided possibilities to display processing modes of a receiver and the Opposition Division shares the Proprietor's view that a skilled person would consider a complete removal of the display of a processing mode as being irritating". D8 was evidence contradicting this statement.

VI. At the end of the oral proceedings the Board announced its decision to reject the appeal as inadmissible because the statement of grounds was insufficient.

Reasons for the Decision

1.1 The primary question in this appeal is that of admissibility, namely whether the statement of grounds of appeal meets the requirement of Article 108, last sentence, that a written statement setting out the grounds of appeal must be filed within four months of the date of notification of the appealed decision.

1.2 It is therefore necessary to examine the statement of grounds in detail. The statement starts with general remarks and points out that amendment of claim 1 in the opposition was merely clarifying and not substantive. It then refers to previous submissions and documents in general terms:

"Daher nimmt die Einsprechende Bezug auf ihre

bisherigen Eingaben sowie die bisher herangezogenen Entgegenhaltungen"

1.3 In the subsequent paragraphs there follows a discussion of D8, which is apparently introduced into the appeal proceedings to answer a question raised at the oral proceedings before the Opposition Division of whether the skilled person would have applied the menu presentation techniques used in word processing programs, by which unnecessary or distracting menu items do not appear, in the field of television.

1.4 The Board notes that the original notice of opposition was based on a novelty argument starting out from one document (D6) and, following discussion of the publication date of this document, continued on the basis of an allegedly equivalent document (D7). It appears from the minutes that in the course of the oral proceedings before the Opposition Division the debate moved from an argument based on these documents to a new argument, not in any written submission and not supported by any document, based on the computer art. It appears that the citation of D8 is a continuation of the oral argument in the oral proceedings.

1.5 There is no mention in the statement of specific grounds on which the appeal is filed. In particular, the statement does not indicate what claims are attacked, whether novelty or inventive step is at issue or why the impugned decision is wrong. There is no discussion of the features of the independent claim. Nor are any of the documents discussed in the proceedings before the Opposition Division mentioned. Only after detailed study of the opposition procedure does it emerge that the argument in the sentence

bridging pages 16 to 17 of the decision is being discussed. There is no indication as to whether D8 is to be regarded alone, or to be combined with other prior art. The Board and Respondent are accordingly put in a position where the issues being raised cannot be identified without extensive reference to the opposition file, in particular the decision and the minutes of the oral proceedings.

1.6 As set forth in decision T 220/83, followed in a number of subsequent decisions, it is not sufficient for the appellants to refer in blanket terms to other documents, in the present case the submissions to the Opposition Division, in order to justify the appeal. A mere reference in a statement of grounds of appeal to the opposition proceedings does not meet the requirement of Article 108, last sentence, EPC. Reference is directed to decisions T 220/83 (OJ EPO 1986, 249), T 213/85 (OJ EPO 1987, 482), T 432/88 and T 90/90, (both unpublished). In T 432/88 the notice of appeal merely stated that the grounds of appeal were as set out in the opposition as well as set out in the opposition oral proceedings. It was held, see the Reasons at Point 4, that since the appeal only made a general reference to the submissions in the opposition proceedings it amounted to no more than a mere assertion that the contested decision was incorrect, without stating the legal or factual reasons why the decision should be set aside, and was therefore inadmissible.

1.7 The present case is thus comparable with other cases in which the appellant failed to fulfil the requirements of Article 108, last sentence, EPC. The Board accordingly concludes that the statement of grounds

does not meet the requirement of Article 108, last sentence. No other statement was filed within the four-month period set by Article 108. Since it is not sufficiently substantiated the appeal must be rejected as inadmissible under Rule 65(1) EPC.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

M. Kiehl P. K. J. van den Berg