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D E C I S I O N
of 20 September 2001

Case Number: T 0227/00 - 3.2.1

Application Number: 87308999.9

Publication Number: 0285724

IPC: B60R 1/08

Language of the proceedings: EN

Title of invention:
Improved automatic rearview mirror system for automotive vehicles

Patentee:
GENTEX CORPORATION

Opponent:
MURAKAMI KAIMEDO CO., LTD

Headword:
Non-compliance with Article 102(4)/(5); revocation

Relevant legal provisions:
EPC Art. 102(4)/(5), 111

Keyword:
-

Decisions cited:
G 0001/97

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0227/00 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 20 September 2001

Appellant: (Proprietor of the patent)
GENTEX CORPORATION
10985, Chicago Drive
Zeeland
Michigan 49464 (US)

Representative:
Leeming, John Gerard
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14 South Square
Gray's Inn
London WC1R 5JJ (GB)

Respondent: (Opponent)
MURAKAMI KAIMEDO CO., LTD
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Representative:
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 21 December 1999 revoling European patent No. 0 285 724 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: F. A. Gumbel
Members: S. Crane
P. Mühlens

Summary of Facts and Submissions

I. The appeal lies against the decision of the Opposition Division revoking the European Patent No. 0 285 724 under Article 102(4)/(5) EPC. The appellant (patent proprietor) had not paid the fee for printing a new specification and not filed the translations of the (amended) claims in due time. The reason was that he disapproved the text set out in a communication under Rule 58(5) EPC and requested amendments of the claims and the specification. The communicated text was the result of an earlier appeal procedure in this case (decision of 17 February 1999 in appeal case T 0414/97 - 3.2.1). In that decision, the Board remitted the case to the first instance to maintain the patent with the amendments listed in the Board's order, which were agreed to by the appellant's then representative in the oral proceedings.

II. As the communicated text was the result of an earlier appeal procedure, the Opposition Division did not allow the appellant's request for amendments.

III. According to the appellant, the contested decision was null and void *ab initio,* because it had never approved the text on which it was based. As far as its former professional representative had agreed to this text in the oral proceedings before the Board, his actions were outside and contrary to the instructions he was given and hence *ultra vires.* As the former professional representative was included in the list maintained by the EPO, the appellant could expect that he would act competently and professionally in the proceedings before the EPO.

IV. The appellant requested that the decision under appeal be set aside and that a patent be granted with the text set out in the appellant's letter of 29 July 1999 directed to the Opposition Division.

V. In its communication of 19 December 2000, the Board drew attention to the case law of the Enlarged Board of Appeal according to which there is no possibility to overturn or amend the final decision of a Board of Appeal.

VI. The appellant withdrew his request for oral proceedings and requested that a decision on this matter be given on the basis of the written arguments already presented.

Reasons for the Decision

1. The appeal is admissible.

2. The Opposition Division had to revoke the patent under Article 102(4)/(5) EPC because the appellant did not observe the time limit for paying the printing fee and did not file translations of the claims. The facts underlying this decision are not in dispute.

3. The appellant gave no reasons to demonstrate that the contested decision was incorrect. His appeal amounts therefore to a request that the Board set aside its earlier decision. This is, however, not possible. The EPC does not provide for any possibility to overturn or amend the final decision of a Board of Appeal (see G 1/97 OJ EPO 2000, 322). As the Opposition Division

had to follow the order of the Board (Article 111(2) EPC), it was unable to allow the request of the appellant for further amendments which went beyond the Board's earlier decision.

4. Although the appeal has to be dismissed for the reasons set out above alone, the Board notes - as it already did in its communication - that it is not impressed by the arguments of the appellant concerning "legitimate expectations". The EPO fulfils its obligation to check the professional skill of those who want to be included in the list of professional representatives only by means of the European qualifying examination, there being no responsibility in respect of errors or misunderstandings occurring in the relationship between a professional representative and his mandators.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

S. Fabiani F. A. Gumbel