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D E C I S I O N
of 24 November 2004

Case Number: T 0981/01 - 3.4.3

Application Number: 92921310.6

Publication Number: 0608297

IPC: G07C 5/00

Language of the proceedings: EN

Title of invention:

Method and apparatus for reading tachograph charts

Patentee:

TRUTAC LIMITED

Opponent:

Mannesmann VDO AG
Micropross

Headword:

-

Relevant legal provisions:

EPC Art. 106, 107, 102(1)

Keyword:

"Parties to appeal - entitlement to appeal"
"Adversely affected (no)"

Decisions cited:

T 0473/98, T 0854/02

Catchword:

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Case Number: T 0981/01 - 3.4.3

D E C I S I O N
of the Technical Board of Appeal 3.4.3
of 24 November 2004

Appellant: TRUTAC LIMITED
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Respondent(s): Mannesmann VDO AG
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Representative: Matkowska, Franck
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted 13 July 2001
revoking European patent No. 0608297 pursuant
to Article 102(1) EPC.**

Composition of the Board:

Chairman: R. K. Shukla
Members: V. L. P. Frank
P. Mühlens

Summary of Facts and Submissions

I. European patent No. 0 608 297 was revoked by the decision of the Opposition Division dated 13 July 2001 on the ground that it did not comply with the requirement of Article 100(c) EPC.

II. The opponent I (appellant I, Mannesman VDO AG) filed a notice of appeal on 27 August 2001, paying the appeal fee the same day. The statement of grounds of appeal was filed on 12 November 2001. He requested that the patent be revoked additionally on the grounds of Articles 100(a) and (b) EPC which had already been invoked during the first instance proceedings.

On 20 September 2001, the patent proprietor (appellant II, Trutac Ltd.) filed a notice of appeal and paid the prescribed fee. The statement of grounds of appeal was filed on 21 November 2001. He requested that the contested decision be reversed and the patent be maintained as granted.

The opponent II (respondent, Micropross), party to the proceedings as of right, submitted his arguments with the letter of 6 June 2002.

All the parties requested the appointment of oral proceedings.

III. In a communication annexed to the summons to oral proceedings under Article 10(2) RPBA the Board observed *inter alia* that the appeal of the appellant I was apparently inadmissible, as he was not adversely affected by the contested decision in the sense of

Article 107 EPC, first sentence, since the contested decision corresponded to the request submitted to the Opposition Division in his letter of 8 February 2000 to entirely revoke the patent.

- IV. The respondent (opponent II) informed the Board that he would not attend the oral proceedings and that he withdrew his request for oral proceedings.
- V. The appellant II (patent proprietor) informed the Board that his appeal was withdrawn and that he would also not attend the oral proceedings.
- VI. The oral proceedings were, consequently, cancelled and a communication from the Board was sent to the parties inviting the appellant I to confirm his request for oral proceedings. The parties were informed that the sole issue to be addressed at the oral proceedings was the admissibility of the appeal by the appellant I.
- VII. With the letter dated 22 October 2004 the appellant I informed the Board that he withdrew his request for oral proceedings.

Reasons for the Decision

1. Admissibility of the appeal of the appellant I

The only issue in this appeal is the admissibility of the appeal of the appellant I (opponent I), as the admissible appeal of the appellant II (patent proprietor) has been withdrawn.

2. The appellant's I notice of appeal and the appeal fee were filed in due time. The requirements of Article 108 EPC are thus fulfilled.
3. Articles 106 and 107 EPC, however, state that the possibility of appeal is open to any party to the proceedings which has been adversely affected by a decision of the Receiving Section, Examining Division, Opposition Division and the Legal Division (emphasis added by the Board).
4. According to the decision under appeal, the patent was revoked in its entirety under Article 102(1) EPC, since the subject-matter of the patent extended beyond the content of the application as filed (Article 100(c) EPC).
5. Although the Opposition Division gave at the end of their decision some remarks in the way of an *obiter dicta* on the grounds of opposition under Articles 100(a) and (b) EPC invoked by the opponents I and II, it was made clear that the decision was only based on the ground of opposition mentioned in Article 100(c) EPC (cf. the contested decision, pages 8 to 10). Such *obiter dicta* remarks allow the Board to continue the proceedings in the event that it disagrees with the issue decided by the first instance department and may avoid the remittal of the case. An *obiter dicta*, however, is not part of the decision itself and does not adversely affect any of the parties to the proceedings (cf. T 473/98, OJ EPO 2001, 231, points 2.1 to 2.6 of the Reasons for the Decision and T 854/02, point 3 of the Reasons).

6. The contested decision corresponds, therefore, to the request of the appellant I in the opposition proceedings, namely to revoke the patent in its entirety (cf. the opponent's I letter of 8 February 2000), independently of the reasons that the Opposition Division had for reaching this decision.
7. For the above mentioned reasons, it is the judgement of the Board that the appellant I was not adversely affected by the contested decision in the meaning of Article 107 EPC, first sentence, and is accordingly not a party entitled to appeal.
8. As the appeal of the appellant II has been withdrawn and the appeal of the appellant I is not admissible, the decision of the Opposition Division to revoke the patent takes the full legal effect.

Order

For these reasons it is decided that:

The appeal of the appellant I is rejected as inadmissible.

The Registrar:

The Chairman:

P. Cremona

R. K. Shukla