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D E C I S I O N
of 17 January 2003

Case Number: T 0502/02 - 3.5.1

Application Number: 94201114.9

Publication Number: 0679000

IPC: H04L 25/06

Language of the proceedings: EN

Title of invention:
Soft quantisation

Applicant:
Koninklijke Philips Electronics N.V.

Opponent:
-

Headword:
Soft quantisation/PHILIPS

Relevant legal provisions:
EPC Art. 21, 108, 111(1)
EPC R. 65(1)

Keyword:
"Conditional withdrawal (not admissible)"
"Admissibility of the appeal (no)"
"Statement of grounds - substantiation (no)"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0502/02 - 3.5.1

**D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 17 January 2003**

Appellant: Koninklijke Philips Electronics N.V.
Groenewoudseweg 1
NL-5621 BA Eindhoven (NL)

Representative: Schoenmaker, Maarten
Internationaal Octrooibureau B.V.
Prof. Holstlaan 6
NL-5656 AA Eindhoven (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 18 December 2001
refusing European patent application
No. 94 201 114.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. R. K. Zimmermann
Members: R. S. Wibergh
P. Mühlens

Summary of Facts and Submissions

I. The appeal concerns European application number 94 201 114.9 (publication number 0 679 000) filed by the appellant in 1994. The examining division refused the application for lack of inventive step. The written decision was posted on 18 December 2001 and notified by registered letter with advice of delivery.

II. The decision refers to the patent specification US-A-4 309 772 published in 1982 and cited in the examination proceedings as document D1. This US patent has been acknowledged by the appellant as representing the most relevant prior art. The decision gives reasons why in respect thereto the technical contribution provided by the invention as set out in claim 1 does not involve an inventive step and deals in some detail with the arguments submitted by the appellant in support of its alleged invention.

In addition, the decision raises the objection that "the dependent claims do not contain any additional feature which, in combination with the independent claims, meet the requirement of inventive step". Having regard to dependent claim 2, the decision indicates that the features of this claim are known from document D1.

III. Against the refusal of the application, the appellant filed a notice of appeal on 12 February 2002, requesting reversal of the decision and grant of a European patent as well as, auxiliarily, oral proceedings. The appeal fee was paid effective the same day on the basis of an automatic debit order.

On 25 April 2002, the appellant filed a further letter containing an amended claim 1. Apart from the usual reference information and the signature of the representative, the letter has the following wording:

"Arguments appeal [shown in bold type]
Further to my letter of February 12, 2002 please find my remarks below.
I am still of the opinion that the claims on file are new and inventive over the available prior art mentioned in the application and D1.
However to even further distinguish claim 1 from D1 please find enclosed a new claim 1 being a combination of old claim 1 and claim 2. By combining the features of claim 2 with the features of claim 1 in my opinion a new and inventive claim is available. After agreement has been reached over claim 1 the other claims and description will be amended."

- IV. The Board issued, together with the summons to oral proceedings, a communication pursuant to Article 11(2) RPBA, raising doubts regarding the admissibility of the appeal since neither one of the letters filed by the appellant in the context with the appeal was considered a written statement setting out the grounds of appeal as required by Article 108 EPC. The filing of amended claim 1 did not change the situation either, since the decision under appeal already raised reasoned objections against such a combination of claims 1 and 2.
- V. In a letter dated 24 October 2002, the appellant unconditionally revoked the automatic debit order and declared to "withdraw the above-mentioned EP Patent Application, on the condition that any fee is

refunded", adding that "if no refund is possible, the application is not withdrawn."

In a second letter dated 25 October 2002, the appellant informed the Board that its request for oral proceedings was withdrawn and that the appellant would not attend the oral proceedings to which it was summoned.

- VI. The oral proceedings took place as scheduled, however, without attendance by the appellant. The decision on the appeal was announced on the basis of the requests filed with the notice of appeal, taking into account claim 1 as filed on 25 April 2002.

Reasons for the Decision

1. Since the withdrawal of the application immediately and automatically terminates the appeal proceedings, at least as regards the substantive issues, the first point to be decided is whether the appellant's intention to withdraw the application "on the condition that any fee is refunded" as stated in its letter of 24 October 2002 takes effect.

Regarding the competence conferred on the boards of appeal by Articles 21 and 111(1), second sentence, EPC, a board has the responsibility and power only to examine and decide matters which are connected to the admissibility and allowability of the appeal, and to deal with such issues, as is the *restitutio in integrum* or the apportionment of costs, for which the EPC provides a legal basis for the board to act. Requests and actions obliging a board to examine questions

outside of the framework of the appeal concerned, like "the condition that any fee is refunded", are not admissible and cannot be dealt with in substance within such appeal proceedings.

The conditional withdrawal of the application filed with the letter of 24 October 2002 is thus not admissible and does not take any legal effect in the present appeal proceedings.

2. Moreover, an appeal must be rejected as inadmissible according to Rule 65(1) EPC if (*inter alia*) it does not comply with Article 108, unless the deficiency has been remedied before the relevant time limit laid down in Article 108 EPC.

Filing a written statement setting out the grounds of appeal within four months after the date of the notification of the decision under appeal (see Article 108 EPC) is hence a condition of admissibility of the appeal. According to the case law of the EPO, such a written statement must enable the responsible board and the other parties to the proceedings (if any) to understand why the appellant considers the appeal allowable, without having first to make investigations of their own (see "Case Law of the Boards of Appeal of the European Patent Office" 4th edition 2001, 2002 European Patent Office, pages 527 ff.). Exceptionally, an appeal may be admitted, despite an insufficient statement of grounds, if it is evident from the file that the first instance proceedings suffered from substantial procedural violations or if the legal and/or factual basis underlying the decision under appeal does not any longer apply to the case to be decided.

3. The Board is not aware of any procedural deficiencies which may have impaired the first instance proceedings. The decision under appeal is also reasoned and issued in compliance with the provisions of the EPC. In particular the reasons for the objection of lack of inventive step are clearly presented and the arguments provided by the appellant are taken into consideration.
4. In the letter of 25 April 2002, the only submission in writing which comes near to a statement of grounds, the appellant repeats only what is already implicit in lodging the appeal, namely that the invention is considered by the appellant as new and inventive. The letter, however, does not indicate any facts or arguments which allow the Board to understand how the appellant arrives at this conclusion; to find that out the Board would have to make investigations of its own. The said letter does thus not meet the minimum criteria required by the EPO for setting out the grounds of appeal.
5. Neither is the circumstance that the appellant filed an amended claim a reason to admit the appeal. This claim is actually a mere combination of former claims 1 and 2. In respect to such a combination the decision under appeal already indicates why the requirement of inventive step has considered not to be met. The amendments to claim 1 do hence not remove the legal or factual basis of the decision under appeal.

The reasons given by the examining division, although short in length, are clear and not *per se* illogical or for other reasons unreasonable. The appellant, however, did not forward any arguments in respect thereto so that the Board would have to make its own investigations why the decision is wrong in this point.

The appellant failed, also in so far, to set out the grounds of appeal.

6. In summary, the appeal neither meets the admissibility requirement of Article 108 EPC in respect to the statement of grounds nor does it reveal any particular circumstances which justify admitting the appeal despite such deficiencies.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

R. Schumacher

R. R. K. Zimmermann