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D E C I S I O N
of 31 January 2006

Case Number: T 0752/05 - 3.5.01

Application Number: 98932474.4

Publication Number: 1015962

IPC: G06F 3/14

Language of the proceedings: EN

Title of invention:

Method for creating home network macros

Patentee:

SAMSUNG ELECTRONICS CO., LTD.

Opponent:

Interessengemeinschaft für Rundfunkschutzrechte e.V.

Headword:

Network macros/SAMSUNG ELECTRONICS

Relevant legal provisions:

EPC Art. 108, 109(1)

EPC R. 67

Keyword:

"Reimbursement of appeal fee upon withdrawal of appeal (no)"

Decisions cited:

G 0008/91, J 0012/86, T 0089/84, T 0773/91, T 0603/99

Catchword:

Where an appeal has been filed in due time, a request for reimbursement of the appeal fee can be allowed only under the requirements of Rule 67 EPC. The withdrawal of the appeal, whenever it occurs (here: within the 2-month time limit provided in Article 108 EPC for filing the notice of appeal), does not allow a reimbursement.



Case Number: T 0752/05 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 31 January 2006

Appellant 01: Interessengemeinschaft für
(Opponent) Rundfunkschutzrechte e.V.
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Appellant 02: SAMSUNG ELECTRONICS CO., LTD.
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Representative: Robinson, Ian Michael
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
20 April 2005 concerning maintenance of
European patent No. 1015962 in amended form.

Composition of the Board:

Chairman: S. Steinbrener
Members: K. Bumés
M. B. Tardo-Dino

Summary of Facts and Submissions

- I. Both the opponent and the patentee filed appeals against the Opposition Division's interlocutory decision of 20 April 2005. Subsequently, both appeals were withdrawn, on 17 June 2005 and 25 July 2005, respectively. No statement of grounds of appeal has been filed. The opponent's auxiliary request for oral proceedings has also been withdrawn.
- II. With the letter withdrawing its appeal, the appellant opponent has requested a reimbursement of its appeal fee on the ground that its appeal was withdrawn within the 2-month period laid down in Article 108 EPC for filing a notice of appeal. The early withdrawal distinguished its case from the constellation underlying decisions J 12/86, T 430/87, T 773/91, T 372/99 and T 543/99 (where the Boards of Appeal had refused a reimbursement of the appeal fee). As the critical point in time was the last day of the 2-month period, any procedural act or payment effected before that day should be reversible without leaving any legal consequence.
- III. In a communication according to Article 4(2) RPBA, the Board informed the parties that in a situation where the appeal is deemed to have been filed and thus has come into existence, the reimbursement of the appeal fee is governed by the restrictive provisions of Rule 67 EPC.

No observation on this communication has been received by the Board.

Reasons for the Decision

1. The Board considers the appellant opponent's request for reimbursement of its appeal fee as a procedural issue in respect of which the appeal procedure can be continued (G 8/91, OJ EPO 1993, 346, point 5).

2. According to Rule 67 EPC, the reimbursement of appeal fees shall be ordered in the event of interlocutory revision (excluded in *inter partes* cases, see Article 109(1) EPC) or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

This Rule has been interpreted in the established case law (e.g. J 12/86, OJ EPO 1988, 83, in particular points 3 and 4, or T 773/91) as the only legal basis for reimbursing an appeal fee (provided that the requirements of the Rule are met), once an appeal has been properly filed pursuant to Article 108 EPC and has therefore come into existence (as opposed to cases where the appeal is deemed not to have been filed).

Rule 67 EPC is considered as an exception which should not be extended to circumstances other than those defined in the Rule, see for instance T 603/99 or T 89/84 (OJ EPO 1984, 562).

3. In view of the appellant opponent's main argument concerning the early withdrawal of its appeal (point II *supra*), it is worth noting at this point that the aforementioned decision T 603/99 applied Rule 67 EPC to

- a case where the appeal was withdrawn within the 2-month period for filing the appeal.
4. In the present case, the opponent's appeal pursuant to Article 108 EPC has undoubtedly come into existence. That finding has not been challenged by the appellant opponent.
 5. Consequently, Rule 67 EPC is the only potential basis for a reimbursement of the opponent's appeal fee. However, Rule 67 EPC does not allow the Board to order a reimbursement of the opponent's appeal fee since at least one of the conditions set by Rule 67 EPC is not met: The withdrawal of the appeal prior to any decision from the Board has the necessary consequence that the condition that the appeal be allowed cannot be met.
 6. Arguments suggesting a liberal policy, economic considerations or hypothetical scenarios (e.g. a comparison with a fictitious appellant delaying the payment of the appeal fee until the last day of the 2-month period) are outside the legal framework and do not form a criterion for the decision.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

M. Kiehl

S. Steinbrener