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D E C I S I O N
of 4 January 2006

Case Number: T 1312/05 - 3.2.02

Application Number: 97305323.4

Publication Number: 0819407

IPC: A61B 6/10

Language of the proceedings: EN

Title of invention:
Fluoroscopy method and x-ray ct apparatus

Patentee:
GE YOKOGAWA MEDICAL SYSTEMS, LTD.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Rule 67

Keyword:
"Reimbursement of appeal fee (no)"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern   Boards of Appeal   Chambres de recours

Case Number: T 1312/05 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 4 January 2006

Appellant:	GE YOKOGAWA MEDICAL SYSTEMS, LTD. 7-127 Asahigaoka 4-chome Hino-shi Tokyo 191 (JP)
Representative:	Goode, Ian Roy London Patent Operation General Electric International, Inc. 15 John Adam Street London WC2N 6LU (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted 20 May 2005 refusing European application No. 97305323.4 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman:	T. Kriner
Members:	S. Chowdhury
	A. Pignatelli

Summary of Facts and Submissions

I.   This appeal is against the decision of the examining
        division dated 20 May 2005 to refuse European patent
        application No. 97 305 323.4.

        The application was refused on the grounds that the
        subject-matter of claim 5 related to a method for the
        treatment of the human or animal body by surgery and
        was objectionable under Article 52(4) EPC.

II.   On 20 July 2005, i.e. after the decision refusing the
        application was issued, an e-mail exchange took place
        between the primary examiner of the examining division
        and the appellant's representative, in which the
        representative proposed a new wording for the claim,
        but the examiner considered the proposed amendments to
        be unsatisfactory. In a further e-mail exchange between
        the examiner and the representative on 21 July 2005 the
        representative requested the examiner to delete claim 5
        but was invited to file an appeal under Article 108 EPC
        instead.

III.   On 25 July 2005 the appellant (applicant) lodged an
        appeal against the decision, paid the prescribed fee,
        and filed a statement of grounds of appeal.

IV.   The appellant requested that the decision under appeal
        be set aside and that the application be granted on the
        basis of claims 1 to 4 filed with the letter dated
        18 December 2004, and that the appeal fee be refunded.

V.   The examining division rectified the decision but did
        not refund the appeal fee.

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On 2 October 2005 the case was remitted to the board of appeal for a decision concerning the request for reimbursement of the appeal fee.

Reasons for the Decision

1.   The only issue before the Board is the request for reimbursement of the appeal fee.

1.1   According to Rule 67 EPC a board of appeal shall order a reimbursement of the appeal fee if such reimbursement is equitable by reason of a substantial procedural violation.

1.2   The Board is unable to regard the behaviour of the examining division as amounting to a substantial procedural violation in the sense of Rule 67 EPC since the application was refused under Article 52(4) EPC after the objection under Article 52(4) EPC had been duly communicated to the applicant. Moreover, the appellant has submitted no facts or arguments in support of its request for reimbursement of the appeal fee.

1.3   Since the appellant has not appealed the decision in substance, and since no substantial procedural violation justifying a reimbursement of the appeal fee occurred, there is no reason for a refund of the appeal fee.

Order

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For these reasons it is decided that:

Reimbursement of the appeal fee is refused.

The Registrar: The Chairman:

V. Commare   T. K. H. Kriner