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**Datasheet for the decision
of 27 June 2008**

Case Number: T 0348/08 - 3.5.03

Application Number: 97950970.0

Publication Number: 0937344

IPC: H04J 3/14

Language of the proceedings: EN

Title of invention:

Inter-ring cross-connect for survivable multi-wavelength optical communication networks

Applicant:

Telcordia Technologies, Inc.

Opponent:

-

Headword:

Inter-ring cross-connect/TELCORDIA

Relevant legal provisions:

EPC Art. 108
EPC R. 101(1)

Relevant legal provisions (EPC 1973):

EPC R. 67

Keyword:

"Missing statement of grounds"
"Reimbursement of the appeal fee (no)"

Decisions cited:

T 0308/05, T 0030/94, T 0038/97

Catchword:

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Case Number: T 0348/08 - 3.5.03

D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 27 June 2008

Appellant: Telcordia Technologies, Inc.
One Telcordia Drive
RRC 5G117
Piscataway, NJ 08854 (US)

Representative: Poulin, Gérard
BREVALEX
3, rue du docteur Lancereaux
F-75008 Paris (FR)

Decision under appeal: Decision of the examining division of the
European Patent Office posted 7 September 2007
refusing European application No. 97950970.0
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: A. S. Clelland
Members: F. van der Voort
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. This appeal is against the decision of the examining division refusing European patent application No. 97950970.0, which was originally filed as international application PCT/US97/23155 (publication number WO 98/25365 A).

II. The appellant filed a notice of appeal and paid the appeal fee on the same day.

In the notice of appeal the appellant requests that the decision be set aside and a patent be granted "on the basis of the last claims before the EPO or on the basis of amended claims that will be filed with the written statement setting out the grounds of appeal". The appellant further requests that the appeal be allowed under Article 109 EPC and that the appeal fee be reimbursed under Rule 67 EPC 1973. No reasons were given.

III. A written statement setting out the grounds of appeal was not filed within the four-month time limit provided for in Article 108 EPC.

IV. In a communication the board informed the appellant that it appeared that no statement setting out the grounds of appeal had been filed and that the appeal could therefore be expected to be rejected as inadmissible. The appellant was informed that any observations should be filed within two months.

V. The appellant filed no observations in response to the communication.

Reasons for the Decision

1. Since no statement setting out the grounds of appeal was filed within the time limit provided for in Article 108 EPC and since the notice of appeal does not contain anything that might be considered as such a statement, the appeal is to be rejected as inadmissible pursuant to Rule 101(1) EPC.

2. The present case clearly falls outside the scope of Rule 103(1)(a) EPC (cf. Rule 67 EPC 1973). A prerequisite for the ordering of a reimbursement of the appeal fee pursuant to this rule is that either the examining division rectified its decision pursuant to Article 109 EPC or the board deems the appeal to be allowable. In the present case the examining division did not rectify its decision. Further, since the appeal is to be rejected as inadmissible (see point 1 above), the board will not enter into the issue of examining whether the appeal is allowable, Article 110 EPC.

Further, the case in which no notice of appeal has been filed or in which no notice of appeal is deemed to have been filed, which in the absence of any legal basis for its payment would have justified a reimbursement of the appeal fee, does not apply here (see point II above). Nor does the board see any exceptional circumstances which, if at all, might have justified a reimbursement of the appeal fee outside the scope of Rule 103(1)(a) EPC for reasons of equity, see T 308/05 (point 5 of the reasons), J 30/94, and J 38/97 (all not published in OJ).

Consequently, there is no legal basis for a reimbursement of the appeal fee.

Order

For these reasons it is decided that:

1. The appeal is rejected as inadmissible.
2. The request for the reimbursement of the appeal fee is rejected.

The Registrar

The Chairman

D. Magliano

A. S. Clelland