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**Datasheet for the decision  
of 3 March 2009**

**Case Number:** T 2121/08 - 3.4.03

**Application Number:** 02788334.7

**Publication Number:** 1461981

**IPC:** H05B 37/00

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for controlling lighting based on user behavior

**Applicant:**

Koninklijke Philips Electronics N.V.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 109(1)  
EPC R. 100(2), 103(1)a)b), 103(2)

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Reimbursement of appeal fee (no)"  
"No grounds given"

**Decisions cited:**

J 0030/94, J 0032/95, J 0038/97, T 0308/05

**Catchword:**

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Case Number: T 2121/08 - 3.4.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.03  
of 3 March 2009

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

**Representative:** Bekkers, Joost J.J.  
Philips  
Intellectual Property & Standards  
P.O. Box 220  
NL-5600 AE Eindhoven (NL)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 8 May 2008  
refusing European application No. 02788334.7  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** G. Eliasson  
**Members:** T. Bokor  
E. Wolff

## **Summary of Facts and Submissions**

- I. This is an appeal against the decision of the examining division refusing European patent application No. 02788334.7.
- II. The appellant filed a notice of appeal and paid the appeal fee on the same day. In the timely filed statement of the grounds of appeal the appellant requested that the decision be set aside and a patent be granted on the basis of a new set of claims filed with the statement of the grounds of appeal. Reasons were given why the newly filed claims are patentable.
- III. The appellant further requested reimbursement of the appeal fee and oral proceedings. No reasons were given in support of the request for the reimbursement.
- IV. Rectification pursuant to Article 109(1) EPC was ordered by the Examining Division. The request for reimbursement of the appeal fee was not allowed, so that the case was referred to this board (Rule 103(2) EPC).
- V. In a communication under Rule 100(2) EPC the board indicated that no reasons were apparent which would justify the requested reimbursement. The appellant was asked to indicate whether the request for oral proceedings in respect of the ancillary issue of the reimbursement was upheld.
- VI. The appellant informed the board that the request for oral proceedings was not maintained.

## **Reasons for the decision**

1. The appeal is admissible.
2. The conditions for the reimbursement of the appeal fee are laid down in Rule 103(1)a and b EPC. One condition is that the reimbursement must be equitable by reason of a substantial procedural violation. The second condition is that either the examining division rectified its decision pursuant to Article 109 EPC or the board deemed the appeal to be allowable.
3. In the present case the examining division did rectify its decision, but did not order the reimbursement. In such cases the Boards of Appeal are still competent to issue such an order, cf. Rule 103(2) EPC, last sentence. Reference is made to J 32/95 (OJ EPO 1999,713), see Headnote.
4. The appellant did not give any reasons why the reimbursement should be equitable by reason of a substantial procedural violation, as required by Rule 103(1)a EPC. Nor does the board perceive any such reasons, or any exceptional circumstances which, if at all, might have justified a reimbursement of the appeal fee even beyond the scope of Rule 103(1)(a) EPC for reasons of equity, see T 308/05 of 27 February 2006 (point 5 of the reasons), J 30/94 of 9 October 1995 and J 38/97 of June 1999 (none published in OJ).
5. Since in the present case Rule 103(1)b EPC is not applicable either, there is no legal basis for a reimbursement of the appeal fee.

**Order**

**For these reasons it is decided that:**

The request for reimbursement of the appeal fee is refused.

Registrar

Chair

S. Sánchez Chiquero

G. Eliasson