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**Datasheet for the decision  
of 29 April 2014**

**Case Number:** T 1086/09 - 3.5.04

**Application Number:** 05250848.8

**Publication Number:** 1623875

**IPC:** B60R1/00, H04N7/18, G06T15/20,  
H04N5/225

**Language of the proceedings:** EN

**Title of invention:**  
Monitoring apparatus and method of displaying bird's-eye view  
image

**Applicant:**  
Kabushiki Kaisha Toshiba

**Headword:**

**Relevant legal provisions:**  
EPC R. 103

**Keyword:**  
Reimbursement of appeal fee - withdrawal of appeal

**Decisions cited:**  
J 0011/94

**Catchword:**



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Case Number: T 1086/09 - 3.5.04

**D E C I S I O N  
of Technical Board of Appeal 3.5.04  
of 29 April 2014**

**Appellant:** Kabushiki Kaisha Toshiba  
(Applicant) 1-1, Shibaura 1-chome,  
Minato-ku  
Tokyo 105-8001 (JP)

**Representative:** Granleese, Rhian Jane  
Marks & Clerk LLP  
90 Long Acre  
London WC2E 9RA (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 12 December  
2008 refusing European patent application  
No. 05250848.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Paci  
**Members:** B. Müller  
A. Dumont

## **Summary of Facts and Submissions**

- I. The then applicant filed an appeal against the decision of the examining division refusing European patent application No. 05250848.8. Oral proceedings were scheduled for 29 April 2014 in line with the request for "oral proceedings in lieu of any adverse decision" in the statement of grounds of appeal. In a communication attached to the summons to oral proceedings the board expressed its provisional opinion that the subject-matter of claims 1 and 9 of the main (and sole) request, if admitted into the proceedings, would not involve an inventive step (Article 56 EPC 1973).
  
- II. A letter by the representatives of the then appellant was received on 28 March 2014. The message conveyed by this letter consisted of the following two sentences:

We hereby withdraw our appeal, and we request a 50% refund of the appeal fee. Under the new Rules which take effect on 1<sup>st</sup> April 2014, we understand that this refund should be available, given that we are withdrawing the appeal over four weeks before the date for Oral Proceedings.
  
- III. In a communication faxed to the representatives on 4 April 2014, the board expressed its preliminary view that the refund could not be ordered. This was because, on the date of entry into force of the "new Rules", the appeal was no longer pending, as required by those rules.
  
- IV. In a letter received on 7 April 2014 the representatives requested to make the withdrawal of the appeal take effect on 1 April 2014. In the event that the board granted that request, then the request for oral proceedings was withdrawn.

- V. The Registrar of the board informed the representatives by telephone on 23 April 2014 that oral proceedings would be held as scheduled on 29 April 2014. Oral proceedings were then conducted on that date in the absence of the party and its representatives. At the end of the oral proceedings, the board gave its decision.

### **Reasons for the Decision**

1. *The "new Rules"*

The "new Rules" referred to by the representatives are set out in the "Decision of the Administrative Council of 13 December 2013 amending Rule 103 of the Implementing Regulations to the European Patent Convention (CA/D 16/13)" (OJ EPO 2014, A3; hereinafter referred to as "the Decision").

Under Article 1 of the Decision, Rule 103 EPC shall read *inter alia* as follows:

- (1) The appeal fee shall be reimbursed in full
- ...
- (b) if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired.

[unamended]

(2) The appeal fee shall be reimbursed at 50% if the appeal is withdrawn after expiry of the period under paragraph 1(b), provided withdrawal occurs:

- (a) if a date for oral proceedings has been set, at least four weeks before that date;

[new]

Article 2 of the Decision reads as follows:

(1) Rule 103 EPC as amended under Article 1 of this decision shall enter into force on 1 April 2014.

(2) Rule 103 EPC as amended under Article 1 of this decision shall apply to appeals pending at the date of entry into force and to appeals filed after the date of entry into force.

2. *The board's preliminary view*

In its communication faxed on 4 April 2014 the board expressed the following preliminary view:

It is noted that the withdrawal of the appeal took effect upon receipt by the EPO on 28 March 2014 of the letter referred to at the outset. Upon its withdrawal the appeal became no longer pending.

The "new Rules", more precisely the provisions of new Rule 103(2) EPC, providing for a reimbursement at 50% of the appeal fee under certain circumstances, apply to appeals pending at their entry into force, i.e. on 1 April 2014 (and to appeals filed thereafter). See Article 2 of the Decision. On 1 April 2014 the appeal was no longer pending. As a consequence, the board currently considers that a reimbursement at 50% of the appeal fee under the "new Rules" cannot be ordered.

The representative's submission that the appeal was withdrawn over four weeks before the date set for oral proceedings, in line with the "new Rules", is immaterial because the "new Rules", i.e. the provisions of new Rule 103(2) EPC, do not apply to the present appeal.

3. *The response by the representatives of the (former) appellant*

In a letter received on 7 April 2014 the representatives argued as follows:

We intended that our withdrawal of the appeal should be effective under the regime of the new Rules, i.e. on or after 1 April 2014. Accordingly, please make our withdrawal of the appeal take effect on 1 April 2014. We would then be entitled to the 50% refund, since this is exactly four weeks before the date set for the Oral Proceedings.

We understand that you have rejected our request for a 50% refund of the fees, on the basis that our request was made by letter dated 27 March 2014, i.e. before 1 April 2014. However, we ask you with respect to take into consideration the legitimate expectations of the applicant in these circumstances. Our letter indicated that our expectation was that our request be dealt with under the new Rules, so that the refund should be available. Complying with our request would have no adverse consequences to the public interest. We gave the Board of Appeal as much notice as we were able to do, that we no longer required the Oral Proceedings, and that the case could be closed.

#### 4. *Analysis*

The representatives' submissions do not change the board's preliminary view as reproduced at point 2 above and which, therefore, becomes final. The board accordingly affirms that the withdrawal of the appeal took effect upon receipt by the EPO on 28 March 2014 of the representatives' letter and that, upon its withdrawal, the appeal ceased to be pending. As a consequence, the provisions of new Rule 103(2) EPC do not apply, and reimbursement of the appeal fee at 50% established by those provisions cannot be ordered.

The board could not accede to the request to make the withdrawal of the appeal take effect on 1 April 2014 so that the provisions of new Rule 103(2) EPC, providing for reimbursement at 50% of the appeal fee under certain circumstances, would apply to the present appeal and so that, in the representative's view, the

four-week period under paragraph 2(a) of that rule would have been complied with. This follows from the analysis below.

As a fundamental principle, to be effective, statements regarding procedure need, in the interest of legal certainty, to be clear, particularly statements terminating the proceedings; ambiguous statements are ineffective (cf. J 11/94, OJ 1995, 596, at point 2.2). It follows that it is not up to the board to make the withdrawal of the appeal take effect on a certain date. Rather, the date on which the withdrawal becomes effective must be clear from the statements made upon withdrawal. Otherwise, the withdrawal is ineffective.

The pertinent statements in the letter received on 28 March 2014, taken as a whole, cannot be interpreted such as to make the withdrawal take effect on 1 April 2014 instead of 28 March 2014, i.e. the date indicated in the board's communication sent on 4 April 2014. These statements, for the sake of convenience, are reproduced again:

We hereby withdraw our appeal, and we request a 50% refund of the appeal fee. Under the new Rules which take effect on 1<sup>st</sup> April 2014, we understand that this refund should be available, given that we are withdrawing the appeal over four weeks before the date for Oral Proceedings.

The statement that the appeal should be withdrawn "hereby", i.e. by the letter received on 28 March 2014, together with the statement that the appeal was withdrawn "over four weeks" before the oral proceedings on 29 March 2014, i.e. before 1 April 2014, makes it clear that the appeal was withdrawn on 28 March 2014.

The fact that the message also includes a request to refund 50% of the appeal fee, and expresses the view that withdrawal by the letter should make the requested refund available, has no impact on this conclusion. It is true that such refund is available only under new Rule 103(2) EPC which entered into force on 1 April 2014. Given, however, that no express link is present in the message received on 28 March 2014 according to which the withdrawal should become effective on 1 April 2014 only, the withdrawal did take effect on the date of its receipt, i.e. on 28 March 2014. The representatives' understanding, expressed in the message, that the refund should be available is the mere consequence of an error in law on their part, i.e. they incorrectly believed that a refund could be granted under the "new Rules", more precisely new Rule 103(2) EPC, entering into force on 1 April 2014 even if the appeal was withdrawn before that date, i.e. on 28 March 2014.

The representatives argue that compliance with the request to make the withdrawal take effect on 1 April 2014 would have no adverse consequences on the public interest, because the board was given as much notice as possible that the case could be closed. This argument is beside the point, because the board cannot depart from the statutory provisions discussed above, i.e. the "new Rules", that reflect the public interest as defined by the legislative body. Under those provisions reimbursement is unavailable if the withdrawal was made with so much notice that it took effect before the entry into force of new Rule 103 EPC on 1 April 2014.

Finally, to address the representatives' reliance on the principle of legitimate expectations, the board reiterates its opinion: the representatives'



understanding, according to their letter received on 28 March 2014, that a refund would be available is the consequence of an error in law, i.e. an incorrect reading of the "new Rules". In other words: the representatives may have had expectations that a 50% refund of the appeal fee would be ordered. However, those expectations were not legitimate, because they were based on an error in law.

## **Order**

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

The request for reimbursement of the appeal fee at 50% is refused.

The Registrar:

The Chairman:



R. Schumacher

M. Paci

Decision electronically authenticated