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**Datasheet for the decision  
of 25 October 2016**

**Case Number:** T 1653/16 - 3.5.03

**Application Number:** 05006735.4

**Publication Number:** 1580910

**IPC:** H04H7/00

**Language of the proceedings:** EN

**Title of invention:**

Audio-related system node instantiation

**Applicant:**

Harman International Industries, Inc.

**Headword:**

Audio-related system node instantiation/HARMAN

**Relevant legal provisions:**

EPC Art. 109, 111(1), 113(2)

EPC R. 103(1)(a), 111(2)

**Keyword:**

Basis of decision - text submitted or agreed by applicant (no)

Appealed decision sufficiently reasoned (no)

Substantial procedural violations (yes)

Reimbursement of the appeal fee (yes)

Remittal (yes)

**Decisions cited:**

T 0070/02, T 0552/97

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1653/16 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 25 October 2016**

**Appellant:** Harman International Industries, Inc.  
(Applicant) 8500 Balboa Boulevard  
Northridge,  
CA 91329 (US)

**Representative:** Grünecker Patent- und Rechtsanwälte  
PartG mbB  
Leopoldstraße 4  
80802 München (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 8 October 2015  
refusing European patent application No.  
05006735.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** F. van der Voort  
**Members:** T. Snell  
O. Loizou

## **Summary of Facts and Submissions**

- I. This appeal was lodged by the applicant against the decision of the examining division refusing European patent application No. 05006735.4 with publication number EP 1580910 A. The refusal was based on the ground of lack of novelty in respect of claim 21 of respectively a main request and three auxiliary requests I-III.
- II. The appellant requests in the notice of appeal that the decision under appeal be set aside and a patent granted. Claims of a main request and two auxiliary requests I and II were submitted with the statement of grounds of appeal. The appellant indicated that these requests corresponded to those submitted on 1 June 2015 in response to the summons to attend oral proceedings before the examining division.
- III. In the statement of grounds of appeal, the appellant argued that the main request submitted on 1 June 2015 was wrongfully not addressed in the decision. Instead, the decision was based on a version of a claim "unofficially submitted" by email as a basis for discussion. The appellant also argued that the decision, as regards the main request, did not present any discussion of the extensive arguments exchanged during the oral proceedings, and that no reasoning at all was provided to reject claim 21 of auxiliary requests II and III (now auxiliary requests I and II).
- IV. The examining division, albeit later than the 3 month time limit of Article 109(2) EPC, indicated its intention to allow the appeal and to rectify its decision (Form 2701 dated 28 June 2016). However, in

view of the missed time limit, the appeal was forwarded to the board of appeal.

## **Reasons for the Decision**

### *1. Article 113(2) EPC*

1.1 In accordance with Article 113(2) EPC, the European Patent Office shall examine, and decide upon, the European patent application only in the text submitted to it, or agreed, by the applicant.

1.2 In the present case, amendments were proposed in telephone discussions which included an informal submission of an amended claim 21 (cf. the minutes of the oral proceedings, page 1, lines 2-7). This amended version then appears to have been discussed during the oral proceedings, and found to be not allowable (cf. the minutes, page 2, last paragraph). However, there is no record in the file of the telephone discussions referred to, nor a copy of the amended claim informally submitted by the applicant, nor any explicit statement explaining the amendments which would enable the new wording to be determined. Further, from the minutes of the oral proceedings, it is not clear whether the main request was still maintained or whether the applicant even requested a decision on the amended version of claim 21, since it appears that at the end of the proceedings, before announcing the decision, the applicant was not asked to state its final requests (cf. the minutes, page 5, last 5 lines).

1.3 Consequently, the examining division did not establish whether the main request which it refused was the version agreed by the applicant, in violation of

Article 113(2) EPC. The examining division thereby committed a substantial procedural violation (cf. T 552/97, point 3 of the reasons ff.).

1.4 Consequently, the decision has to be set aside.

2. *Reasoned decision - Rule 111(2) EPC*

2.1 It is established case law that a decision, in order to be reasoned within the meaning of Rule 111(2) EPC, must contain at least some reasoning on crucial points of dispute, i.e. deal with at least the main counter-arguments presented by the applicant (cf. e.g. T 70/02, point 7 of the reasons).

2.2 The present decision is based on lack of novelty of the subject-matter of claim 21 with respect to the disclosure of D5 (which was incidentally cited for the first time in the communication accompanying the summons to oral proceedings). With respect to what the examining division considered to be the main request, the reasoning consists of reciting what is assumed to be the wording of the unofficial version of claim 21 submitted by email, annotated with references to D5. The applicant however had challenged this reasoning, cf. the minutes of the oral proceedings which reflect that this matter was discussed extensively (apparently from 10:22 am to 11:50 am, with interruptions). The decision does not deal with any points arising from this discussion. The same applies to auxiliary requests I to III, whereby the board notes that, in respect of auxiliary requests II and III (now auxiliary requests I and II), some features are recited without any reference to passages of D5 at all.

2.3 The board concludes that the decision is not reasoned in the sense of Rule 111(2) EPC. This is a further substantial procedural violation requiring the decision to be set aside.

3. *Remittal*

It is the established practice of the boards of appeal to remit a case where a substantial procedural violation has been committed. In any case, given that the circumstances of the case would have rendered appropriate the granting of interlocutory revision under Article 109 EPC (see point IV above), it would now be illogical for the board itself to consider the substance of the appeal on its merits, namely the objection of lack of novelty. The case is therefore remitted to the examining division for further prosecution (Article 111(1) EPC).

4. *Reimbursement of the appeal fee*

As the appeal is allowable by reason of two substantial procedural violations, the board deems the reimbursement of the appeal fee to be equitable (Rule 103(1)(a) EPC).

**Order**

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

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.
3. The appeal fee is reimbursed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated