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**Datasheet for the decision
of 3 June 2019**

Case Number: T 2704/16 - 3.5.01

Application Number: 09808021.1

Publication Number: 2339471

IPC: G06F12/02, G06F12/00, G06F3/06

Language of the proceedings: EN

Title of invention:
STORAGE REGION MANAGEMENT METHOD, STORAGE REGION ALLOCATION
METHOD AND PROGRAM

Applicant:
Yoshioka, Makoto

Headword:

Relevant legal provisions:
EPC R. 103

Keyword:
Reimbursement of the appeal fee (no)

Decisions cited:

Catchword:



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Case Number: T 2704/16 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 3 June 2019

Appellant: Yoshioka, Makoto
(Applicant) 6-18-8, Hinominami
Kounan-ku
Yokohama-shi
Kanagawa 234-0055 (JP)

Representative: Klunker IP
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 July 2016
refusing European patent application No.
09808021.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman N. Glaser
Members: Y. Podbielski
M. Höhn

Summary of Facts and Submissions

- I. The appellant (applicant) filed a notice of appeal on 8 September 2016 against the decision of the examining division refusing the patent application in suit. The statement setting out the grounds of appeal was filed on 8 November 2016.
- II. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the main request or the auxiliary request. As an auxiliary measure, oral proceedings were requested.
- III. By letter dated 18 May 2018 the appellant stated that the appeal as filed on 8 September 2016 was withdrawn and requested a decision according to the state of the file.
- IV. In a telephone conversation with the Registrar of the Board on 28 May 2018 the appellant stated that he had intended to withdraw the request for oral proceedings rather than the appeal, and to request a decision on the state of the file. By letter dated 11 June 2018 the appellant requested a decision according to the state of the file. He also stated that his previous submissions dated 18 May 2018 should be omitted.
- V. By communication dated 4 September 2018 the appellant was informed that the renewal fee had not been paid by the due date on 31 July 2018 and that it could still be validly paid within six months of the due date together with an additional fee. The appellant was also informed that if the renewal fee and the additional fee were not paid in due time, the application would be deemed withdrawn.

- VI. On 29 January 2019 the appellant requested a refund of the appeal fee.
- VII. A notice of loss of rights pursuant to Rule 112(1) EPC dated 8 March 2019 was sent to the appellant in which he was informed that the application was deemed withdrawn under Article 86(1) EPC. No response was received from the appellant within 2 months of notification of this communication apart from a repetition of the request for refund of the appeal fee.

Reasons for the Decision

1. This decision only concerns the appellant's request for reimbursement of the appeal fee. No substantive requests can be considered as the application is deemed withdrawn pursuant to Article 86(1) EPC. The request for oral proceedings is considered withdrawn in view of the subsequent request for a decision according to the state of the file.
2. The appellant has not given any reason as to why the appeal fee should be reimbursed. The Board cannot see any such reason either. The legal basis for reimbursement of the appeal fee is provided for in Rule 103 EPC. According to this rule the appeal fee may be reimbursed if a substantial procedural violation occurred in the proceedings before the department of first instance (and certain additional conditions are fulfilled - see Rule 103(1)(a) EPC) or if the appeal has been withdrawn at a certain stage of the appeal proceedings (Rule 103(1)(b) and (2) EPC). However, neither of these conditions have been fulfilled in the case before the Board - the appellant has neither alleged a substantial procedural violation nor has he withdrawn the appeal.

3. A withdrawal of an appeal must be expressed in unambiguous terms. The appellant's statement in his letter dated 18 May 2018 that the appeal was withdrawn was in direct contradiction to the request for a decision according to the state of the file, because a withdrawal of the appeal leads to the decision of the department of first instance taking legal effect without a decision by the Board. In view of this contradiction the letter dated 18 May 2018 did not contain a valid request for a withdrawal of the appeal. The appellant's letter dated 11 June 2018 clarified the appellant's intention to request a decision according to the state of the file and not to withdraw the appeal.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



T. Buschek

N. Glaser

Decision electronically authenticated