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**Datasheet for the decision  
of 12 December 2018**

**Case Number:** T 1633/18 - 3.5.07

**Application Number:** 07732950.6

**Publication Number:** 2087445

**IPC:** G06F17/30

**Language of the proceedings:** EN

**Title of invention:**  
Computer implemented searching

**Applicant:**  
Grapeshot Limited

**Headword:**  
Computer implemented searching/GRAPESHOT

**Relevant legal provisions:**

EPC Art. 108  
EPC R. 2, 99(2), 101(1)

**Keyword:**

Filing of appeal via Web-Form Filing Service - legitimate expectations  
Admissibility of appeal - appeal sufficiently substantiated  
(no)

**Decisions cited:**

T 0305/11, T 1628/18



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Case Number: T 1633/18 - 3.5.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.07**  
**of 12 December 2018**

**Appellant:** Grapeshot Limited  
(Applicant) 3 Shaftesbury Road  
Cambridge CB2 2BW (GB)

**Representative:** Norris, Timothy Sweyn  
Basck  
16 Saxon Road  
Cambridge CB5 8HS (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 29 January 2018  
refusing European patent application  
No. 07732950.6 pursuant to Article 97(2) EPC**

**Composition of the Board:**

**Chairman** R. Moufang  
**Members:** M. Jaedicke  
R. de Man

## Summary of Facts and Submissions

- I. The applicant (appellant) appealed against the decision of the Examining Division refusing European patent application No. 07732950.6, filed as international application PCT/GB2007/001930 and published as WO 2007/135440 A2.
- II. In its decision dispatched on 29 January 2018, the Examining Division decided that amendments made to claims 1, 2, 5, 6 and 13 of the sole request on file added subject-matter extending beyond the content of the application as originally filed, that claims 1, 2, 3, 5, 6, 12 and 13 lacked clarity and that the method of claim 12 was directed to a mental act, i.e. subject-matter excluded from patentability under Article 52(2)(c) EPC.
- III. By letter of 28 March 2018, received at the EPO via the EPO Web-Form Filing Service on the same day, the appellant submitted its notice of appeal, authorised payment of the appeal fee from an account at the EPO and indicated that it would shortly file its statement of grounds of appeal.
- IV. The EPO deducted the appeal fee from the indicated account on 28 March 2018.
- V. By letter of 14 May 2018, received at the EPO via the EPO Web-Form Filing Service on the same day, the appellant submitted among other things the following:  
  
"The Applicant submitted a letter dated 27 March 2018 to the EPO concerned [*sic*] a Notice of Appeal in respect of the Applicant's aforementioned European

patent application EP07732950.6, and has duly arranged for the appeal fee to be paid. The Appeal regards a decision of the Examining Division dated 29 January 2018 that the Applicant submits has been made incorrectly by the Examining Division. The Applicant is presently preparing substantive arguments that the Applicant aims to submit by the deadline of 29 May 2018. The Applicant is desirous to attend any oral proceedings in person concerning the Appeal, a [sic] provided for by Art 116 EPC.

The Applicant seeks to appeal in respect of the Applicant's claims presently on file (i.e. the Applicant's claims 1 to 13) in view of objections of:

- (i) clarity and conciseness (Art 84 EPC);
- (ii) added subject matter ((Art 123(2) EPC); and
- (iii) excluded subject matter (Art 52(2) EPC),

raised by the Examiner during substantive examination of the Applicant's application EP07732950.6. [...]

**Added subject matter, Art 123(2) EPC:**

By the deadline of 29 May 2018, the Applicant will provide a detailed basis of support for all the amendments made in the Main Request claim set as presently pending for the Applicant's application, to address the Examiner's concerns regarding added subject matter. The Applicant submits that the Examiner's objections are incorrect, and that there is very suitable support in the Applicant's application for the amendments made. The Applicant will also substantiate the Applicant's assertions regarding there being no unallowable added subject matter by reference to EP caselaw. More Applicant submits that the Examiners of the Examining Division have been over-severe in respect of their consideration if [sic] added subject matter in

comparison to what is permitted for other applicants. Again, the Applicant submits the Examiners of the Examining Division have been over-severe when judging the Applicant's application and amendments made thereto.

**Clarity and conciseness, Art 84 EPC:**

The Examiners of the Examining Division have alleged that the Applicant's presently pending Main Request lacks clarity for some of its recited essential features. The Applicant appreciates the point raised by the Examiners of the Examining Division that only a single independent method claim is allowed per claim set, proposes deletion of presently pending claims 14 and 15.

In the submission to be made by 29 May 2018, the Applicant will submit substantive arguments why the Examiners of the Examination Division are over-severe in their assessment, and the Applicant will submit an amended claim set that addresses all the objections regarding clarity raised by the Examiners.

As aforementioned, in this communication to the EPO, the Applicant reserves the right to make further submissions up until the deadline of 29 May 2018, and merely outlines here the scope of what the Applicant will be submitting. [...]"

- VI. No further documents were filed before the expiry of the time limit for filing the statement of grounds of appeal.
  
- VII. EPO form 2701, signed by the Examining Division on 14 June 2018, indicated that the notice of appeal and

the statement of grounds of appeal had been filed and the appeal fee had been paid within the respective time limits. The form also stated that the decision under appeal was not rectified and that the case was referred to the Board of Appeal without delay (Article 109 EPC).

VIII. In a communication under Rule 100(2) EPC dated 9 August 2018, the Board referred the appellant to Article 2(1) and (2) of the Decision of the President of the EPO dated 10 September 2014 concerning the filing of documents using the EPO Web-Form Filing service (OJ EPO 2014, A98). It informed the appellant that the EPO Web-Form Filing service must not be used for filing documents in respect of appeal proceedings. If such documents were filed nonetheless, they would not be deemed to have been received. Hence, both the notice of appeal and the further letter had to be considered as not validly filed. However, as the appellant had not been notified without delay, it could consider invoking the principle of protection of legitimate expectations and resubmitting the documents in a correct manner within the time limit set.

Moreover, since the appellant's further letter dated 14 May 2018 was clearly not intended as a complete statement of grounds of appeal, the Board strongly doubted that this letter complied with the requirements laid down in Article 108 EPC, third sentence, in connection with Rule 99(2) EPC. Thus, if the appellant (re-)submitted both the notice of appeal and the letter dated 14 May 2018, the appeal might have to be rejected as inadmissible pursuant to Rule 101(1) EPC.

IX. On 18 September 2018, the EPO received resubmitted paper copies of the appellant's earlier letters dated

28 March and 14 May 2018 without any further comments.

- X. In a communication under Article 15(1) RPBA accompanying the summons to oral proceedings, the Board informed the appellant that the oral proceedings were limited to hearing the appellant on the issues raised in the Board's communication dated 9 August 2018. A hearing of the appellant on the substance of the appeal was not foreseen at the oral proceedings.
- XI. By letter of 11 December 2018, received at the EPO via the EPO Web-Form Filing Service on the same day, the appellant informed the Board that it would not attend the oral proceedings.
- XII. Oral proceedings were held as scheduled in the absence of the appellant. At the end of the oral proceedings, the chairman pronounced the Board's decision.

### **Reasons for the Decision**

- 1. *Filing of documents in respect of appeal proceedings using the EPO Web-Form Filing service*
  - 1.1 The contested decision was dispatched on 29 January 2018. The applicant submitted both the notice of appeal dated 28 March 2018 and the further letter dated 14 May 2018 by using the EPO Web-Form Filing service.
  - 1.2 However, this service may not be used for filing documents in respect of appeal proceedings (see Article 2(1) and (2) of the Decision of the President of the EPO dated 10 September 2014 concerning the filing of documents using the EPO Web-Form Filing service, OJ EPO



2014, A98; Rule 2 EPC). The Board notes that this decision has been superseded by the Decision of the President of the EPO dated 9 May 2018 concerning the electronic filing of documents, which entered into force on 1 June 2018 but leaves the provisions concerning the use of the EPO Web-Form Filing service essentially unchanged (see Article 3 of the Decision dated 9 May 2018, OJ EPO 2018, A45). If documents in respect of appeal proceedings are nonetheless filed using the EPO Web-Form Filing service, they are deemed not to have been received.

1.3 Pursuant to Article 2(2), second sentence, of the above cited Decision dated 10 September 2014, in such a situation the sender, if identifiable, should be notified without delay. In the present case, it is apparent from the file that the EPO did not notify the applicant in conformity with this provision. Hence, the appellant was not informed that its notice of appeal and its further letter dated 14 May 2018 were not deemed to have been received. Rather, the EPO acknowledged the receipt of both letters using an automatically generated form, added both letters to the official file and deducted the appeal fee from the account indicated. As is evident from EPO Form 2701, the department of first instance considered the appeal to be validly filed.

1.4 Since both letters were received well before the expiry of the respective time limits (for filing the appeal and for filing a statement of grounds of appeal), by not observing its duty to inform the appellant without delay, the EPO deprived it of the opportunity to resubmit its letters by correct means of filing documents.

1.5 As the appellant resubmitted its letters in a correct manner in reply to the Board's communication pursuant to Rule 100(2) EPC and as the EPO failed to notify the appellant of its incorrect use of the Web-Form Filing service, the appellant has to be treated, according to the principle of protection of legitimate expectations, as if it had submitted these letters in a correct manner before the expiry of the time limits for filing the notice of appeal and the statement of grounds of appeal, respectively. Consequently, the Board considers that the letters dated 28 March and 14 May 2018 are validly filed.

2. *Admissibility of the appeal*

2.1 According to Rule 99(2) EPC, the statement of grounds of appeal is to indicate the reasons for setting aside the decision impugned. If this requirement is not complied with before expiry of the time limit for filing the statement of grounds of appeal, the appeal is to be rejected as inadmissible (Rule 101(1) EPC). For the statement of grounds of appeal to comply with Rule 99(2) EPC, it has to address in sufficient detail each of the grounds for the decision (see decisions T 1628/18 of 26 November 2018, reasons 1; T 305/11 of 26 April 2016, reasons 1.1, and the decisions cited there). As a rule, a ground for refusal can be addressed by arguing why the objection raised was incorrect or by amending the application and explaining why the objection is no longer relevant.

2.2 In the present case, the contested decision raised objections under Articles 84 and 123(2) EPC for various claims. In its letter dated 14 May 2018, the appellant neither submitted any amendments to the claims on file nor provided any basis for the amendments made in the

first-instance proceedings to which the objections under Article 123(2) EPC referred. Moreover, this letter does not contain any substantive argument why the clarity objections raised in the contested decision were incorrect. As this letter was clearly not intended as a complete statement of grounds of appeal, this lack of substantiation is hardly surprising (see the following passages of the letter: "The Applicant is presently preparing substantive arguments that the Applicant aims to submit by the deadline of 29 May 2018"; "This letter from the Applicant is merely a notification that the Applicant is presently preparing detailed substantive arguments to be submitted by 29 May 2018"; "By the deadline of 29 May 2018, the Applicant will provide a detailed basis of support for all the amendments made in the Main Request claim set ... to address the Examiner's concerns regarding added subject-matter"; "In the submission to be made by 29 May 2018, the Applicant will submit substantive arguments why the Examiners of the Examination Division are over-severe in their assessment, and the Applicant will submit an amended claim set that addresses all the objections regarding clarity raised by the Examiners.").

3. The Board does not need to decide whether the appellant's letter dated 14 May 2018 qualifies as an (albeit insufficiently substantiated) statement of grounds of appeal within the meaning of Article 108 EPC or whether it merely constitutes a further letter announcing the appellant's intention to submit a statement of grounds of appeal at a later stage.
4. In view of the above, the appellant did not submit a statement of grounds of appeal addressing in sufficient detail each of the grounds for refusal. The appeal does

not comply with Rule 99(2) EPC and is therefore to be rejected as inadmissible (Rule 101(1) EPC).

**Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



I. Aperribay

R. Moufang

Decision electronically authenticated