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**Datasheet for the interlocutory decision
of 18 October 2019**

Case Number: T 2575/19 - 3.5.06

Application Number: 12005325.1

Publication Number: 2518622

IPC: G06F9/445, G07F7/10

Language of the proceedings: EN

Title of invention:

Communication device, information processing device, program,
and reader/writer providing system

Applicant:

FeliCa Networks, Inc.

Headword:

Relevant legal provisions:

EPC Art. 51(4), 108

RFees Art 5(2), 7(2)

Arrangements for deposit accounts (ADA), points 5.1 and 5.4,
versions in force from 1 December 2017 and 1 October 2019

Keyword:

Decisions cited:

T 0015/01, G 0002/97

Catchword:



Beschwerdekammern
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Case Number: T 2575/19 - 3.5.06

I N T E R L O C U T O R Y D E C I S I O N
of Technical Board of Appeal 3.5.06
of 18 October 2019

Appellant: FeliCa Networks, Inc.
(Applicant) 1-11-1 Osaki Shinagawa-ku,
Tokyo, 141-0032 (JP)

Representative: Müller Hoffmann & Partner
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 30 April 2019
refusing European patent application No.
12005325.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Müller
Members: S. Krischer
A. Jimenez

Summary of Facts and Submissions

I. By a decision despatched with reasons on 30 April 2019, the Examining Division refused European patent application No. 12 005325.1.

II. On 19 June 2019 the applicant filed a notice of appeal using EPO form F1038E, which contained a debit order of the full amount of the appeal fee from deposit account 28000837.

Whereas the field "Fees" of the form was duly filled with the indication of the amount to be paid, the field "method of payment" was left unspecified and the "annotations" field of the form was used instead to indicate the number of the deposit account.

III. The appeal fee was not debited from said account.

IV. On 28 August 2019 the applicant filed a new form F1038E:

- referring to the previous one,
- noting in the "annotations" field that "contrary to our request of 19.06.2019 to debit the appeal fee in the amount of EUR 2 255.00 from our deposit account No. 28000837 with the EPO, no corresponding transactions has yet been effectively booked", and
- requesting that the corresponding transaction be carried out.

V. The statement setting out the grounds of appeal was received on 4 September 2019.

VI. With form 2701, the formalities officer transmitted the file to the boards of appeal on 5 September 2019, with

the indication that the appeal fee had not been paid within the time limit.

Reasons for the Decision

1. The only purpose of this interlocutory decision is to determine whether the appeal fee should be deemed to have been paid in time, even though it was not debited by the EPO.
2. Under Article 108 EPC, notice of appeal shall be filed within two months of the notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid.
3. The admissibility of the appeal is to be examined *ex officio* at every stage of the appeal proceedings (see, for instance, T 15/01, OJ 2006, 153, Reasons 1). A *fortiori*, this also applies to the examination of whether the appeal fee has been validly paid and whether the appeal is deemed to have been filed or not.
4. The notice of appeal was filed on 19 May 2019, within the two-month time limit but the fee for appeal has not been debited so far, despite the debit order contained in form F1038E filed as notice of appeal. The time limit for paying the appeal fee expired on 10 July 2019 (Rule 126(2) EPC).
5. The question arises whether this debit order via form F1038E has to be regarded as a valid and timely payment of the appeal fee despite the fact that the method of payment was not specified in the dedicated box but in the annotation field instead.

Validity of the debit order

6. The allowed methods of paying fees, other than those set out in Article 5(1) RFees, are specified in the Arrangement for deposit accounts (ADA), adopted by decision of the President of the Office pursuant to Articles 5(2) and 7(2) RFees, to which Article 51(4) EPC refers.

Under point 5.1.2 ADA in the applicable version as in force from 1 December 2017 (Supplementary publication 5, OJ EPO 2017), the debit order must be filed in an electronically processable format (XML) via one of the following:

- EPO Online Filing or the EPO Case Management System (CMS), using EPO Forms 1001E, 1200E, 2300E or 1038E;
- the EPO Online Filing software or PCT-SAFE, CMS and ePCT using the PCT fee calculation and payment feature;
- Online Fee Payment (OFP) in Online services.

Point 5.1.3 ADA (2017) provides that "debit orders submitted in any other way e.g. on paper, by fax, via the web-form filing service or using a different format such as PDF attachment, are invalid and will not be carried out. The EPO will inform the party to the proceedings accordingly, as a courtesy service. The legal consequence of filing an invalid debit order is laid down in point 5.4.2."

7. Point 5.4.2 ADA (2017) provides as this legal consequence that the date of receipt will not be regarded as the payment date.

8. In the case at hand, the debit order was made using form F1038E, that is to say via an expressly allowed form in a electronically processable format.
9. In this respect, the board considers that a debit order made using an allowed format cannot be construed as being in a "different" and thus invalid "format such as a PDF attachment", pursuant to point 5.1.3 ADA (2017), even if it was made in an incorrect field of form F1038E.
10. The board thus concludes that under the ADA (2017), there is no legal basis for holding invalid a debit order given in the annotation tabs of form F1038E, despite the mentioned EPO practice or the fact that it was published (see the FAQ: Main changes to the Arrangements for deposit accounts and their annexes as from 1 December 2017 on the EPO website, as of this writing available at <https://www.epo.org/applying/fees/payment/faq.html#faq-1084>).

As a consequence, the present debit order must be held valid even though it was made in the annotation tab of F1038E.

11. In addition, the board notes that the revised version of the ADA, as amended by decision of the President dated 20 August 2019 (Supplementary publication 4, OJ EPO 2019) and in force since 1 October 2019, seems to confirm this finding, as it now expressly codifies the pertinent EPO practice. New point 5.1.3 now explicitly specifies that "Debit orders submitted in any other way e.g. on paper, by fax, via the Web-Form Filing service or using a different format such as a PDF attachment or the annotation field in the online forms, are invalid

and thus will not be carried out" (emphasis by the board).

The published "Notice from the European Patent Office dated 20 August 2019 concerning revision of ADA" (also in the Supplementary publication 4, OJ EPO 2019) explains this amendment as follows:

"- Format requirements for debit orders (point 5.1.3 ADA) The online forms to be used for filing debit orders with the EPO include an annotation field which the party to proceedings can use to communicate additional information. In accordance with EPO practice, debit orders filed using the annotation field itself are invalid and will not be carried out. This has now been expressly clarified in point 5.1.3 ADA."

12. Pursuant to point 5.4.1 ADA (2017), the date on which the EPO received the debit order, i.e. 19 June 2019, is to be considered as the date on which the payment was made.

Warning obligation on the part of the formalities officer

13. As an aside, the board notes that point 5.1.3 ADA (both versions) specifies that the EPO will inform the party to the proceedings accordingly, as a courtesy service, if the debit order is submitted in an invalid format.

The board considers there to be a tension between the indication that the EPO "will" inform the party and the fact that this is called a mere "courtesy service". Arguably, the use of the word "will", in the future tense and indicative mode, at least suggests that the EPO is required to warn the appellant of the invalidity

of the debit order. The appellant might then expect this warning in good faith.

14. Following decision G 2/97 OJ EPO 1999, 123, Reasons 4.1, the EPO is required to warn the applicant of omissions or errors which could lead to a final loss of rights if such a warning can be expected in good faith. This presupposes that the deficiency can be readily identified by the EPO within the framework of the normal handling of the case at the relevant stage of the proceedings, and that the user is in a position to correct the deficiency within the time limit.
15. Here, the deficiency was immediately apparent on the date of filing F1038E (19 June 2019), since the "method of payment" box remained empty. The deficiency could also have easily been corrected within the time limit, which only expired on 10 July 2019. Nonetheless, no information was provided to the appellant.
16. That said, in view of the board's finding that the debit order was valid, it need not decide whether the conditions for the application of the principle of legitimate expectations are fulfilled and whether the appellant would have also been entitled to re-establishment in respect of the time limit for paying the appeal fee.

Order

For these reasons it is decided that:

1. The debit order contained in form F1038E filed on 19 June 2019 is valid.

2. The appeal fee is deemed to have been paid on 19 June 2019.

The Registrar:

The Chairman:



L. Stridde

M. Müller

Decision electronically authenticated