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**Datasheet for the decision  
of 24 January 2022**

**Case Number:** T 1051/20 - 3.5.03

**Application Number:** 14890679.5

**Publication Number:** 3131357

**IPC:** H04W72/12, H04J11/00,  
H04B7/024, H04B7/0452

**Language of the proceedings:** EN

**Title of invention:**

Signal processing method, device, and system

**Applicant:**

Huawei Technologies Co., Ltd.

**Headword:**

Incomplete reasoning/HUAWEI

**Relevant legal provisions:**

EPC Art. 111(1), 116(1)  
EPC R. 103(1)(a), 111(2), 124(1)  
RPBA 2020 Art. 11, 12(6), 12(8)

**Keyword:**

Decision in written proceedings - (yes): no oral proceedings  
necessary or appropriate

Substantial procedural violation (yes): lack of reasoning on  
non-admittance of claim requests

Remittal - fundamental deficiency in first-instance  
proceedings (yes)

Reimbursement of appeal fee - (yes)

**Decisions cited:**

G 0001/88, J 0007/82, T 0493/88, T 0042/90, T 0166/91,  
T 0315/92, T 0047/94, T 1727/12, T 0899/17



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Case Number: T 1051/20 - 3.5.03

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.03**  
**of 24 January 2022**

**Appellant:**  
(Applicant)

Huawei Technologies Co., Ltd.  
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Bantian  
Longgang District  
Shenzhen, Guangdong 518129 (CN)

**Representative:**

Maiwald Patent- und Rechtsanwaltsgesellschaft mbH  
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Elisenstraße 3  
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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 22 October 2019  
refusing European patent application  
No. 14890679.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chair**

K. Bengi-Akyürek

**Members:**

J. Eraso Helguera

C. Heath

## **Summary of Facts and Submissions**

- I. The appeal was lodged by the applicant against the decision of the examining division to refuse the present European patent application for lack of clarity (Article 84 EPC) with respect to the independent claims of a main request and of an auxiliary request.
- II. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of any of four claim requests (**main request** and **auxiliary requests I to III**) filed with the statement of grounds of appeal.
- III. In view of the reasons below, it is not necessary to reproduce the wording of the claims requests filed with the statement of grounds of appeal.

## **Reasons for the Decision**

1. *Substantial procedural violation*
  - 1.1 The four claim requests filed with the statement of grounds of appeal are identical to the claim requests already filed before the examining division. In particular, the **main request** is the same as the main request filed on 25 June 2018, **auxiliary request I** is the same as the auxiliary request 1 filed on 23 August 2019 and **auxiliary requests II and III** are the same as auxiliary requests 2 and 3, respectively, filed during the oral proceedings before the examining division.

1.2 Point 5 of the minutes of the oral proceedings before the examining division states the following:

*"The representative asked as well to submit two further auxiliary requests, indicated as auxiliary requests 2 and 3, respectively (a copy of the text of the respective claims is annexed to these minutes)."*

Point 8 of the minutes makes clear that those requests were considered by the examining division:

*"After a short break, the representative repeated again his view that the features of the claims were broad but that the claim 1 as a whole was indeed clear."*

*The Chairman clarified that the content of the second and third auxiliary requests led prima-facie to the same objections under Article 84 raised against the claims of the main and the first auxiliary request. For this reasons the second and third auxiliary requests were not admitted in the procedure."*

Point 9 subsequently concludes the minutes of the oral proceedings as follows:

*"After a short break to deliberate on the main and first auxiliary requests, the Chairman announced that the application EP14890679.5 is refused under Article 97(2) EPC on the grounds that the independent claims of the main and first auxiliary requests do not fulfil the requirements of Article 84 EPC."*

*The detailed decision and the minutes of this Oral Proceedings will follow in short."*

As indicated in the section "Enclosure(s)" of EPO Form 2009.2, copies of auxiliary requests 2 and 3 - clean and with amendments marked - were attached to the minutes of those oral proceedings issued on 21 October 2019.

- 1.3 In contrast to the statements made in the minutes and the annexed enclosures, the decision under appeal does not mention the existence of such auxiliary requests 2 and 3. According to point II.11 of that decision, the examining division's refusal decision is based on the claims of a main request filed on 25 June 2018 and on the claims of auxiliary request 1 filed on 23 August 2019. Point II.12 of the impugned decision states the following:

*"The claims under consideration are attached to this decision. As to the other application documents, reference is made to the file."*

However, EPO Form 2007 "Decision to refuse a European Patent application" contradicts this statement. It only mentions two enclosures: Form 2916 (reasons) and Form 2019 (means of redress), none of which contains the text of any claim request.

- 1.4 There is no evidence on file of a withdrawal of auxiliary requests 2 and 3 or an abandonment of their subject-matter by the then applicant in any form after the chair of the examining division had announced in the oral proceedings that auxiliary requests 2 and 3 were not admitted into the proceedings. According to the general principle "*A jure nemo recedere*

*praesumitur*" mentioned in **G 1/88** (OJ 1989, 189), Reasons 2.4, in the absence of an explicit withdrawal, surrender of a right cannot be simply presumed.

- 1.5 From the minutes of the oral proceedings before the examining division, the board concludes that auxiliary requests 2 and 3 were not admitted into the examination proceedings, yet maintained by the then applicant.

Pursuant to Rule 124(1) EPC, the minutes of oral proceedings shall contain their essentials and the relevant statements made by the parties. A cursory reasoning, as set out in point 8 of the present minutes, on the decision regarding non-admittance (see point 1.2 above), can neither replace nor supplement a complete and conclusive reasoning to be provided in the written decision. It follows that the decision under appeal should have set out the reasons that actually led the examining division to the non-admittance of auxiliary requests 2 and 3. The absence of such a reasoning is to be considered a violation of Rule 111(2) EPC which, according to the established jurisprudence of the Boards of Appeal, is regarded as a substantial procedural violation (see **T 899/17**, Reasons 1).

- 1.6 This lack of reasoning further prevents the board from reviewing the examining division's exercise of discretion, as would be required under Article 12(6) RPBA 2020 for the purposes of admittance of **auxiliary requests II and III** into the appeal proceedings. Rather than analysing a *complete* chain of reasoning, the board would in fact be forced to speculate about the examining division's motivation for a conclusion announced only orally during the oral proceedings, and on the sole basis of the succinct statement appearing

in point 8 of the respective minutes, to which the written decision does not even refer.

2. *Reimbursement of the appeal fee (Rule 103(1)(a) EPC)*

2.1 It is established case law that failure to provide reasons pursuant to Rule 111(2) EPC constitutes a substantial procedural violation justifying reimbursement of the appeal fee (see **T 493/88**, Reasons 7).

2.2 Hence, reimbursement of the appeal fee is ordered on the board's own motion (see e.g. **J 7/82** (OJ EPO 1982, 391), headnote III).

3. *Remittal to the examining division for further prosecution (Article 111(1) EPC)*

3.1 Pursuant to Article 11 RPBA 2020, fundamental deficiencies (such as substantial procedural violations) which are apparent in the first-instance proceedings constitute "special reasons" for a remittal of an appeal case to the first-instance department for further prosecution.

3.2 Accordingly, the board has decided that the case is to be remitted to the examining division for further prosecution on the basis of the four claim requests on file at the end of the oral proceedings held before the examining division, which are the same claim requests as filed with the statement of grounds of appeal.

4. *Auxiliary request for oral proceedings*

4.1 The appellant requested oral proceedings before the board in the event that the board considers not to



grant a patent based on the present main request.

- 4.2 The board recalls that a request for oral proceedings under Article 116(1) EPC must be granted if it is envisaged that a final decision might be issued which is adverse to the party making that request (see e.g. **T 47/94**, Reasons 6). However, it is established jurisprudence that a remittal of an appeal case without any consideration of the substantive issues is not to be considered as being adverse to a party, so that no hearing before the board is deemed necessary or appropriate solely to discuss whether or not such case should be remitted (see e.g. **T 42/90**, Reasons 5; **T 166/91**, Reasons 7; **T 315/92**, Reasons 5; **T 47/94**, Reasons 6; **T 1727/12**, Reasons 3).
- 4.3 In view of the above, the board's decision is handed down in written proceedings (cf. Article 12(8) RPBA 2020).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of the four claim requests filed with the statement of grounds of appeal.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated