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**Datasheet for the decision
of 10 October 2024**

Case Number: T 2165/22 - 3.4.02

Application Number: 18814732.6

Publication Number: 3593091

IPC: G01C21/34

Language of the proceedings: EN

Title of invention:

A METHOD AND A COMPUTER SYSTEM FOR PROVIDING A ROUTE OR A
ROUTE DURATION FOR A JOURNEY FROM A SOURCE LOCATION TO A
TARGET LOCATION

Applicant:

Malewicz, Grzegorz

Headword:

Relevant legal provisions:

EPC Art. 113(1), 116(1)

EPC R. 103(1)(a), 115(2)

RPBA 2020 Art. 12(6), 12(8), 15(3)

Protocol on Privileges and Immunities of the European Patent
Organisation of 5 October 1973 Art. 14(a)

Keyword:

Request no longer maintained in first-instance proceedings -
admitted into appeal proceedings (no)
Right to be heard - violation (no)
Request for payment of damages (refused)
Request concerning the employment of an employee of the
European Patent Office (refused)

Decisions cited:

J 0014/87, T 2150/15

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 2165/22 - 3.4.02

D E C I S I O N
of Technical Board of Appeal 3.4.02
of 10 October 2024

Appellant: Malewicz, Grzegorz
(Applicant) Alabastrowa 56
25-753 Kielce (PL)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 26 April 2022
refusing European patent application No.
18814732.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Bekkering
Members: C. Kallinger
C. Almberg

Summary of Facts and Submissions

- I. The appellant filed an appeal against the decision of the examining division to refuse the European patent application.
- II. In its statement of grounds of appeal the appellant labelled the European Patent Office "Defendant", and formulated the following requests (see pages 2 and 3, sections headed Parties to the appeal and Effect of the appeal):
- 1. The Decision of the Defendant dated 2022.04.01, concerning a patent application EP18814732.6, of not allowing the claims as amended on 2021.08.31, is revoked.*
 - 2. The claims as amended on 2021.08.31, concerning a patent application EP18814732.6, are allowed.*
 - 3. The Defendant pays the cost of the Appeal.*
 - 4. The Defendant pays 100,000 EUR to the Appellant.*
 - 5. Any employment of "[name]" with the Defendant is terminated, and "[name]" is barred from holding any employment with the Defendant for five years.*
- III. The board summoned the appellant to oral proceedings by videoconference and set out its preliminary opinion in an accompanying communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal, "RPBA").
- IV. In a letter of reply dated 9 July 2024 (henceforth "the reply") the appellant filed further observations, including in regard of the board's preliminary opinion.

- V. Oral proceedings were held on 10 October 2024, by videoconference, in the absence of the appellant. At the end, the board's decision was announced.

Reasons for the Decision

1. Oral proceedings before the board

- 1.1 The board summoned to oral proceedings considered to be expedient (Article 116(1) EPC). From the reply alone (see §§ 73 and 74), it is clear that the appellant received the summons. In the summons (see page 2), he was asked to provide, inter alia, his email address, to enable the EPO to provide the video link for connecting to the oral proceedings. Accordingly, the appellant was duly summoned to the oral proceedings.

However, the appellant did not provide the required contact data. On the contrary, he informed the board that he intended not to attend the oral proceedings (see the reply, §§ 73 and 74). As a service measure in view of the oral proceedings, the registry of the board tried to reach the appellant by phone, then sent the video link to an email address used by the appellant in the first instance proceedings (see the attendance note of 9 October 2024).

- 1.2 The oral proceedings were then held as scheduled, in the absence of the duly summoned appellant, who was treated as relying only on his written case (see Rule 115(2) EPC, and Articles 12(8) and 15(3) RPBA).

2. Concerning the events towards the end of the oral proceedings before the examining division
 - 2.1 During the oral proceedings before the examining division, the appellant stated that he *"wishes to revert and cancel the two amendments made during the oral proceedings"* (see minutes, point 12). The examining division refused this request as it was considered not clear (see minutes, point 13, and appealed decision, point 19.1).
 - 2.2 On appeal, the appellant challenges the examining division's refusal of this request (see statement of grounds of appeal, pages 7 and 8, point 19).

With reference to a complaint filed by the appellant after receiving the decision under appeal (see complaint filed by email on 2 May 2022, point 12), the appellant argues that, after departing from the oral proceedings, he repeated in writing the request made verbally during the oral proceedings by sending an email, on the same day, at 12:57 PM.

The appellant further argues (see complaint filed 2 May 2022, points 13 to 15) that the request as stated verbally at the oral proceedings, and in writing in said email, was understandable, meaning a rolling back of the two amendments.

With respect to his statement made towards the end of the oral proceedings, the appellant argued in particular (see the reply, §§ 28 and 29) that the verbs *"revert"* and *"cancel"* were not contradictory, but had *"exactly the same meaning"*. It was therefore clear that the appellant's request at the end of the oral

proceedings was *"the Main Request as filed on 31. August 2021"*.

2.3 Concerning the events towards the end of oral proceedings before the examining division, the board makes the following assessment:

2.3.1 Email sent at 12:57

The board notes that the appellant choose to leave the oral proceedings shortly after making the statement cited in point 2.1 above.

The oral proceedings then continued in the appellant's absence, and the examining division took a decision on the appellant's latest statement (see minutes, points 12 and 13, and appealed decision, point 19.1) as well as on the application as then on file (see minutes point 14 and decision point 18).

As the oral proceedings were closed at 12:45 (see minutes, point 15), the appellant's email sent at 12:57 was received after the final decision was irreversibly taken when announced (see minutes, point 14) and could, therefore, not be taken into account by the examining division, let alone affect the already taken decision.

2.3.2 Examining division's discretion

With respect to the examining division's refusal of the appellant's request based on his statement made towards the end of the oral proceedings, *"wishes to revert and cancel the two amendments made during the oral proceedings"*, the board notes the following:

This decision is a discretionary decision taken by the examining division. According to established jurisprudence, a discretionary decision should only be overruled by a board if the board concludes that the department of first instance has exceeded the proper limits of its discretion.

In the case at hand, the examining division was of the opinion that the request was unclear, and that it was in particular not clear what this request meant in terms of the submissions on file (see minutes, point 13, and appealed decision, point 19.1).

Whereas the board recognises that the appellant's request *could* be understood to promote the claims filed with letter dated 31 August 2021, in view in particular of the seemingly contradictory combination of verbs, "*revert and cancel*", other interpretations seem not to be excluded. Therefore, it was not unreasonable by the examining division to try to clarify the appellant's statement and, thereby, his request. It is common practice before all departments and instances of the EPO that a party's requests are clarified at the conclusion of oral proceedings in order to avoid misunderstandings.

To start with, it is the party's responsibility to make a clear request. At the very least, the party should contribute to the clarification of its requests. However, in the present case, the appellant left the oral proceedings before the statement could be clarified giving up the opportunity to be heard on this issue. If the appellant had not left the oral proceedings, this request could have easily been clarified. Instead, the appellant took the risk of the request being considered unclear even if, in his view,

it was not. The board agrees with the examining division's reasoning in this respect (see appealed decision, point 19.1.1)

In addition, for the sake of completeness, the board notes that the examining division (see appealed decision, point 19.2) even considered the interpretation of the appellant's statement such that the request was directed at the claims filed with letter dated 31 August 2021. Even then, the examining division held that the appellant failed to provide arguments for refiling these previously abandoned claims and that, therefore, this request would still not have been admitted.

In conclusion, the board is of the opinion that the examining division did not decide in an arbitrary or unreasonable way, and therefore did not exceed the proper limits of its discretion.

2.3.3 Appellant's right to be heard

The board holds that the appellant's right to be heard has not been violated, neither with respect to his requests nor his arguments.

By leaving the oral proceedings, the appellant waived the opportunity to be heard on the issue of the last request made. He thus took the risk that the request would be considered unclear, whereas it could easily have been clarified if he had stayed.

Furthermore, leaving the oral proceedings unilaterally does not terminate the oral proceedings, and the appellant had to expect that the examining division

would take a decision in his absence (cf. Rule 115(2) EPC, and Articles 12(8) and 15(3) RPBA).

The further alleged violation of the appellant's right to be heard, as to the examining division not considering his arguments with respect to the objections against the claims filed with letter dated 31 August 2021 (see statement of grounds of appeal, page 7, point 16), is also not convincing as the decision under appeal is not based on said claims.

3. Appellant's main request on appeal (requests 1 and 2, see point II above)

The appellant's main request on appeal is that the decision under appeal be set aside and that a patent be granted based on the claims filed with the letter dated 31 August 2021.

The main request on appeal, based on claims filed with a letter dated 31 August 2021, was no longer maintained by the appellant in the proceedings leading to the decision under appeal (see minutes, points 4 to 7 and 10, in particular the replacing of the respective previous request reported in points 4 and 10).

As the appellant has not put forward, and the board can also not see, any circumstances of the appeal case which would justify its admission, the board does not admit the main request on appeal (Article 12(6), second sentence, RPBA).

Accordingly, there is no allowable request on file for granting a patent.

4. Appellant's request 3 on appeal

The board interprets this request as a request for reimbursement of the appeal fee.

According to Rule 103(1)(a) EPC, the appeal fee shall be reimbursed in full where the board deems the appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

As set out above (see point 2.3.3), the board is of the opinion that the appellant's right to be heard has not been violated. The board can also not see any other substantial procedural violation appearing in the file.

For this reason alone, the board is of the opinion that the appellant's request for reimbursement of the appeal fee must be refused.

5. Appellant's requests 4 and 5 on appeal

These requests relate to the payment of damages to the appellant, and to the employment of an employee of the European Patent Office.

The board cannot see a legal basis under the EPC for granting either the request for damages (see decision in J 14/87, Headnote 2, Reasons 13), or the request relating to an employment (see Article 14(a) of the Protocol on Privileges and Immunities of the European Patent Organisation of 5 October 1973).

6. Further issues raised by the appellant

6.1 Correction of the first instance minutes

The appellant argued (see the reply, § 12) that the board refused to correct the minutes of the oral proceedings before the examining division, and that the minutes *"should have been corrected, per Article 12(6) of the Rules of Procedure of the Boards of Appeal."*

The board notes that the appellant's statement of grounds of appeal referred to a request for correction of the minutes (see page 8 to 10, points 20, 22, 23, 25, and 26). However, this request was directed at the examining division which refused it (see communication by the examining division dated 22 June 2022). Apart from the appellant's requests as indicated above (see point II), the statement of grounds of appeal did not contain a request for correction of the minutes directed at the board.

Even if the appellant's statement in the reply were to be interpreted as a request for correction of the minutes addressed to the board, the board notes that only the examining division is competent to correct its minutes (see, for example, decision in T 2150/15, Reasons 6). In particular, Article 12(6) RPBA does not give the board the power to examine such a request.

6.2 Failure to address evidence and arguments

The appellant argued (see the reply, §§ 57 to 70) that the board failed to address evidence and arguments which the appellant included in the appeal. This concerned in particular the alleged incompetence of the examining division (see §§ 60 and 61), and arguments

with respect to Articles 83 and 84 and Rule 43 EPC (see §§ 62 and 63), Article 123 (2) EPC (see §§ 66 to 68), and Article 56 EPC (see §§ 69 and 70).

The board recalls that the appellant's main request on appeal is not admitted (see point 3 above). Since there is thus no claim set on file in the appeal proceedings, there is no review for the board to carry out in view of the requirements of e.g. Articles 83, 84, 123(2), and 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The request for reimbursement of the appeal fee is refused.

The request for payment of 100,000 EUR to the appellant is refused.

The request relating to the employment of an employee of the European Patent Office is refused.

The Registrar:

The Chair:



L. Gabor

R. Bekkering

Decision electronically authenticated