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**Datasheet for the decision
of 25 March 2025**

Case Number: T 0399/23 - 3.4.03

Application Number: 17873517.1

Publication Number: 3531811

IPC: H05K7/20, G06F1/20

Language of the proceedings: EN

Title of invention:

HEAT DISSIPATION PANEL, HEAT DISSIPATION DEVICE AND ELECTRONIC APPARATUS

Applicant:

Huawei Technologies Co., Ltd.

Headword:

Heat dissipant device/Huawei

Relevant legal provisions:

RPBA 2020 Art. 12(4), 12(6)

Keyword:

Amendment to case - amendment admitted (no) - need for procedural economy
Late-filed request - no longer maintained in first-instance proceedings (yes) - should have been submitted in first-instance proceedings (yes)



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Case Number: T 0399/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 25 March 2025

Appellant: Huawei Technologies Co., Ltd.
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Bantian
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Representative: Gill Jennings & Every LLP
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 8 August 2022
refusing European patent application
No. 17873517.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Decker
Members: M. Stenger
J. Thomas

Summary of Facts and Submissions

- I. The appeal concerns the decision of the examining division to refuse European patent application No. 17 873 517. In the contested decision, the examining division raised objections under Articles 123(2), 84 and 56 EPC against the claims of the then main (and sole) request.
- II. The appellant requests that the contested decision be set aside and that the application be allowed to proceed to grant on the basis of the claims of the (new) main request filed with the statement setting out the grounds for appeal.
- III. In its communication under Article 15(1) RPBA, the board expressed its preliminary opinion that it was inclined not to admit the new (and sole) main request into the appeal proceedings under Article 12(4) and (6) RPBA.
- IV. With a letter dated 24 February 2025, the appellant submitted arguments with respect to parts of the board's considerations in points 4.3 and 4.5 of its communication dealing with objections raised under Articles 123(2) and 84 EPC. It did not submit any arguments regarding the question set out in points 4.3, last paragraph, and 4.4 of the communication whether or not the sole request should be admitted into the appeal proceedings under Article 12(4) RPBA or Article 12(6) RPBA.
- V. With a letter dated 18 March 2025, the appellant announced that it would not be represented at the oral proceedings before the board.

VI. Claim 1 of the new main request has the following wording (labeling **a**, **b**, ... added by the board; marking of additions by underscoring and deletions shown in strikethrough with respect to claim 1 as underlying the contested decision also added by the board):

a A heat dissipation system comprising of a heat dissipation apparatus, wherein the apparatus is mounted applied to an electronic device and includinges a heat dissipation panel built in the electronic device, and wherein the heat dissipation panel (10) comprises:

b a first layer of flexible heating conducting material, the first layer of flexible heat conducting material comprising:

b1 a first heat conducting layer (11), comprising a first surface and a second surface,

b2 wherein the first surface is a surface exposed to the outside of the electronic device when the first heat conducting layer (11) is bent,

b3 the second surface is a surface opposite to the first surface,

b4 and a first region on the first heat conducting layer (11) is used to absorb heat released by a heat emitting component of the electronic device, and conduct the heat to a second region on the first heat conducting layer (11), to dissipate the heat;

b5 a first flexible layer (12), comprising a third region, wherein the third region adheres to a position that is on the second surface of the first heat conducting layer (11) and that corresponds to a bending region;

b6 a second flexible layer (13) that adheres to the first surface of the first heat conducting layer (11), and the second flexible layer (13) partially or

completely covers the first surface of the first heat conducting layer (11); and

c *a second layer of flexible heating conducting material,*

c1 *the second layer of flexible heat conducting material comprising a first heat conducting layer, a first flexible layer, and a second flexible layer; and*

d *an air gap disposed on an adhesion portion between the first flexible layer (12) of the first layer of flexible heating conducting material and the second flexible layer of the second layer of flexible heating conducting material-;*

e *and a shielding cover, disposed on a lower surface of the heat dissipation panel,*

e1 *the shielding cover and a shielding base that is pre-disposed in the electronic device form a shielding case,*

e2 *the shielding case is configured to shield a chip, and*

e3 *the lower surface of the heat dissipation panel is a surface that is of the heat dissipation panel and that faces the heat emitting component.*

Reasons for the Decision

1. Admittance of the new main request
 - 1.1 The contested decision was based on a request filed by letter dated 3 February 2022. By contrast, the appeal is based on a request filed with the statement setting out the grounds of appeal.
 - 1.2 According to Article 12(2) RPBA, "a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based". According to Article 12(4) RPBA,

"[a]ny part of a party's appeal case which does not meet the[se] requirements ... is to be regarded as an amendment, unless the party demonstrates that this part was admissibly raised and maintained in the proceedings leading to the decision under appeal". Thus, the new main (and sole) request is an amendment within the meaning of Article 12(4) RPBA.

Any such amendment may be admitted only at the discretion of the board. According to Article 12(4) RPBA, *"[t]he Board shall exercise its discretion in view of, inter alia, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy"*.

- 1.2.1 Claim 1 of the present sole request differs from claim 1 on which the contested decision was based in particular in that it additionally comprises features **e**, **e1**, **e2** and **e3**. These additional features correspond to the additional features of claim 6 as originally filed.
- 1.2.2 The influence of features **e**, **e1**, **e2** and **e3** on inventive step was discussed by the search division and the examining division only very briefly while discussing the then dependent claim 6 (in conjunction with the then dependent claims 7 and 8), referring to Figure 4 and paragraphs [0057] to [0059] of US 2011/0242764 A1 (D3; see European Search Opinion dated 2 October 2019, section 5.3, and communication dated 20 October 2020, section 8.3).
The then dependent claims 6 to 8 were then first renumbered to claims 5 to 7 and finally deleted in reply to the summons to oral proceedings. Hence, the

contested decision is silent on the features of all these claims, including features **e**, **e1**, **e2** and **e3**.

Thus, the influence of features **e**, **e1**, **e2** and **e3** on inventive step was not discussed in depth during the first-instance proceedings. To do so for the first time during the appeal proceedings would be detrimental to procedural economy (Article 12(4) RPBA).

1.3 Furthermore, according to Article 12(6) RPBA, the board *"shall not admit requests ... which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance"*.

1.3.1 The examining division had raised, in sections 2.2.2 to 2.2.4 of its summons to oral proceedings dated 1 December 2021, an objection under Article 123(2) EPC with respect to the then dependent claims 5 to 7.

As mentioned above, in reply, the appellant deleted these dependent claims in the set of claims filed with the letter dated 3 February 2022 (i.e. the set of claims on which the contested decision is based).

1.3.2 By no longer maintaining then dependent claims 5 to 7 (and therefore features **e**, **e1**, **e2** and **e3**), the appellant prevented the examining division from giving a reasoned opinion on the allowability of their subject-matter, an opinion which could now have been reviewed by the board (see Article 12(2) RPBA).

1.3.3 Moreover, the appellant chose not to discuss the case with the examining division by announcing not to attend

the oral proceedings before the examining division. By doing so, the appellant deliberately waived the opportunity to react to objections raised by the examining division, e.g. by filing new claim requests (such as the new main request filed at the appeal stage) aimed at overcoming these objections. The examining division's reasoned opinion on the allowability of these new requests could then have been reviewed by the board.

- 1.3.4 To summarise, during the first instance proceedings, a claim request including features **e**, **e1**, **e2** and **e3** was no longer maintained. However, such a claim request could and should have been submitted in these proceedings, at the latest during the oral proceedings before the examining division. The appellant did not set out why there were any circumstances of the appeal case that would nevertheless justify the admittance of the amended claims. The board does not see any such circumstances either.

For these reasons, the requirements of Article 12(6) RPBA prevent the new main request from being admitted.

2. For the above reasons, the board decides not to admit the new (and sole) main request into the appeal proceedings under Article 12(4) and (6) RPBA. In the absence of any admitted request, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



S. Sánchez Chiquero

G. Decker

Decision electronically authenticated