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Aktenzeichen / Case Number / N° du recours : T 80/84

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Bezeichnung der Erfindung: Method of removing residual toner from surface
Title of invention: of photo-conductive member for use in electrostatic
Titre de l'invention : copying apparatus of the transfer type

Klassifikation / Classification / Classement :

ENTSCHEIDUNG / DECISION on a question of
procedure vom / of / du 21 June 1985

Anmelder / Applicant / Demandeur /

Patentinhaber / Proprietor of the patent / MITA INDUSTRIAL CO. LTD
Titulaire du brevet :

Einsprechender / Opponent / Opposant : OCE-NEDERLAND B.V.

Stichwort / Headword / Référence : Representation/MITA

EPO/EPC/CBE Articles 112(1), 125, 133, 134

Oral proceedings - representation - reference to Enlarged Board
of Appeal - principles of procedural law

Leitsatz / Headnote / Sommaire

An unqualified and unauthorised person who is not entitled to represent a party in accordance with the provisions of Articles 133 or 134 EPC, may not present part of the case of a party in oral proceedings even under the direct supervision of that party's authorised representative.



Case Number: T 80

/ 84

DECISION
on a question of procedure
of the Technical Board of Appeal 3.4.1
of 21 June 1985

Appellant:
(Proprietor of the patent)

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Decision under appeal:

Decision of the Opposition Division of the European Patent Office
dated 16 January 1984 revoking European patent No.
0 001 413 pursuant to Article 102(1) EPC

Composition of the Board:

Chairman: O. Huber
Member: P. Ford
Member: W. Oettinger

Summary of Facts and Submissions

- I. At the commencement of oral proceedings in this appeal, on 13 June 1985, the duly authorized representative of the appellant, a German Rechtsanwalt, informed the Board that he intended to present the applicant's requests formally to the Board and then to leave the detailed viva voce presentation of his client's case, which he referred to as the Ausführung, to an unqualified and unauthorized person who accompanied him and who was training to be a German Patentanwalt. The Rechtsanwalt stated that he would remain present throughout the Ausführung and that he would accept full responsibility for everything said by the unqualified person. He asserted that this was an accepted mode of presenting a case in German national procedures and a useful way of training a future Patentanwalt and he submitted that there was nothing in the European Patent Convention to forbid it. (The Board referred him to the express provisions of Articles 133 and 134 EPC). Challenged by the Board to support his request by reference to the Convention, the Rechtsanwalt cited Article 125 EPC, urging that account should be taken of the principles of procedural law generally recognized in the Contracting States. In this connection, he did not refer to any specific principle and the Board pointed out that the practice which he asserted was followed in the German Federal Republic was not allowed in the United Kingdom. The Board indicated that it was prepared to consider of its own motion possible reference to the Enlarged Board of Appeal of the question of law raised.

- II. The Board adjourned the oral proceedings sine die in order to consider the matter and give a ruling, this being apparently the first time that a request had been made for an unauthorized person to be allowed to present part of a case to a Board of Appeal.

Reasons for the Decision

1. In the opinion of the Board, representation cannot be undertaken in oral proceedings except by persons entitled to represent in accordance with Articles 133 and 134 EPC and duly authorized to do so. Three fundamental provisions of those Articles appear to be exhaustive : First, Article 134(1) provides that professional representation of natural or legal persons in proceedings established by the Convention may only be undertaken by professional representatives whose names appear on the list maintained by the EPO. Secondly, Article 134(7) EPC provides also for representation by qualified legal practitioners who satisfy certain stated requirements. Thirdly, Article 133(3) provides for representation, in certain circumstances, by employees of a party who do not satisfy the requirements of Article 134(1) EPC.

2. The Board considers that, from the very detailed regulation of representation in the Convention, it is abundantly clear that representation is not to be regarded in any way as a formal matter, such that it can be undertaken as a matter of substance by persons other than those duly entitled and authorized and merely given formal approval by the authorized representative. It may be observed, obiter, that if the procedure proposed by the appellant's representative were generally adopted there would seem to be an even greater danger in oral proceedings than in written proceedings of an authorized representative innocently approving incorrect, incomplete or misleading statements made in his name in relation to matters which he does not fully understand himself.

3. The Board is no more satisfied, after careful reflection, than it was at the time of the oral proceedings, that the procedure proposed by the appellant's representative is consistent with the very strict provisions of Articles 133 and 134 EPC.
4. With regard to the applicability of Article 125 EPC, the Board has been unable to discover any relevant principle of procedural law generally recognized in the Contracting States which could support the contentions of the appellant's representative. The basic right to be heard, either in person or through a representative, does not appear to be considered to be infringed, in any Contracting State, by restriction of the right to act as a representative, either generally or in special cases, to persons having prescribed qualifications. Nor does it seem that the basic right to make a free choice of representative is considered to be infringed by any such restriction.
5. As the answer to the question put to the Board appears to be clearly regulated by the provisions of the Convention, the Board can find no reason to refer any question to the Enlarged Board of Appeal.

Order

For these reasons, it is decided that :

The request of the appellant's representative to be allowed to entrust the oral presentation of his client's case in part to an unqualified and unauthorized person is refused.

The Registrar

J. Rückerl

The Chairman

O. Huber