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zur Entscheidung T 22/88-351

Please find enclosed

a copy of the decision correcting errors in

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the decision _____

Veillez trouver en annexe

une copie de la décision rectifiant des erreurs dans

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la décision _____

Case Number : T 22/88 - 3.5.1

DECISION
of 6 October 1992
correcting errors in the decision
of the Technical Board of Appeal 3.5.1
of 22 November 1991

Appellant : Siemens Aktiengesellschaft
(Opponent) Berlin and München
Postfach 22 16 34
W - 8000 München 22 (DE)

Respondent : The Secretary of State for Defence in Her
(Proprietor of the patent) Britannic Majesty's Government of the United
Kingdom of Great Britain and Northern Ireland
Whitehall
London SW1A 2HB (GB)

Representative : Beckham, Robert William
Ministry of Defence
Pats 1A
Room 2016
Empress State Building
Lillie Road
London SW6 1TR (GB)

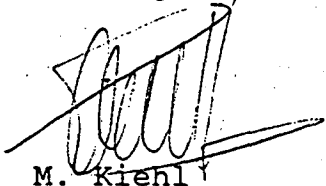
Decision under appeal : Decision of the Opposition Division of the
European Patent Office dated 28 December 1987
revoking European patent No. 0 007 222 pursuant
to Article 102(4), (5) EPC.

Composition of the Board :

Chairman : P.K.J. Van Den Berg
Members : F. Benussi
W.J.L. Wheeler


In application of Rule 89 EPC the front page of the decision in the appeal case T 22/88 - 3.5.1 is corrected in that the words "Appellant" and "Respondent" are interchanged. The corrected version is presented in the Annex.

The Registrar:



M. Kienl

The Chairman:



P.K.J. Van den Berg

Publication in the Official Journal Yes / ~~No~~

File Number: T 22/88 - 3.5.1
Application No.: 79 301 340.0
Publication No.: 0 007 222
Title of invention: Stripline antennas

Classification: H01Q 1/38

D E C I S I O N
of 22 November 1991

Applicant: The Secretary of State for Defence in Her Britannic Majesty's Government of the United Kingdom of Great Britain and Northern Ireland

Opponent: Siemens Aktiengesellschaft, Berlin and München

Headword: "Grounds for appeal"/SECRETARY OF STATE FOR DEFENCE (UNITED KINGDOM)

EPC Article 108, Rule 65(1)

Keyword: "Grounds for appeal - Inadequate content - Inadmissibility of appeal"

Headnote

Headnote follows



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Patentamt

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Patent Office

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des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : T 22/88 - 3.5.1

Annex

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 22 November 1991

Appellant :
(Proprietor of the patent)

The Secretary of State for Defence in Her
Britannic Majesty's Government of the United
Kingdom of Great Britain and Northern Ireland
Whitehall
London SW1A 2HB (GB)

Representative :

Beckham, Robert William
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Respondent :
(Opponent)

Siemens Aktiengesellschaft
Berlin and München
Postfach 22 16 34
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Decision under appeal :

Decision of the Opposition Division of the
European Patent Office dated 28 December 1987
revoking European patent No. 0 007 222 pursuant
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Composition of the Board :

Chairman : P.K.J. Van Den Berg

Members : F. Benussi

W.J.L. Wheeler

Case Number : T 22/88 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 22 November 1991

Appellant :
(Opponent)

Siemens Aktiengesellschaft,
Berlin and München
Postfach 22 16 34
W - 8000 München 22 (DE)

Respondent :
(Proprietor of the patent)

The Secretary of State for Defence in Her
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Composition of the Board :

Chairman : P.K.J. Van Den Berg
Members : F. Benussi
W.J.L. Wheeler

Summary of Facts and Submissions

- I. European patent No. 0 007 222 was granted on European patent application No. 79 301 340.0 filed on 9 July 1979. A notice of opposition to the grant of the patent was filed on 20 February 1984.

In the proceedings before the Opposition Division, an interlocutory decision was issued on 26 May 1987 that the patent could be maintained in amended form on the basis of the document specified in the communication pursuant to Rule 58(4) EPC dated 15 April 1986.

- II. On 11 August 1987, the Formalities Officer of the Opposition Division issued a Communication under Rule 58(5) EPC (Form 2328.2) to the Patentee, informing him that the interlocutory decision of the Opposition Division had become final, and requesting the Patentee within a period of three months from notification to pay the printing fee and to file translations of the amended claims.

The form stated that "If this request is not complied with in full and in due time, the European patent will be revoked (Article 102(4) and (5) EPC)".

By 21 November 1987 the printing fee had not been paid and the translations had not been filed.

- III. On 28 December 1987 the Formalities Officer issued documents respectively headed "Revocation of the European patent pursuant to Article 102(4) EPC" and "Revocation of the European patent pursuant to Article 102(5) EPC" (Forms 2332 and 2333).

Under the heading "Grounds for the decision", both forms state, inter alia, that the printing fee was not paid and the translations of the amended claims were not filed. An accompanying sheet (Form 2019) set out, in accordance with Rule 68(2) EPC information as to the possibility of appeal, including the text of Articles 106 to 108 EPC.

- IV. On 7 January 1988 the Patentee filed a notice of appeal against the decision dated 28 December 1987, and paid the appeal fee and the printing fee.

At the same time he submitted under the heading "Grounds for Appeal" that "the import of the official letter of 11 August 1987" (the Communication under Rule 58(5) EPC) "was not recognised and in consequence the applicant failed to act on its content".

Furthermore, under the same heading, the Appellant submitted that "the omitted translation of the revised claim will be filed as soon as possible and certainly within the four months period allowed for submitting the Grounds of Appeal".

On 10 February 1988, confirmed by letter received 15 February 1988, the Patentee (the Appellant) filed the translations of the claims in the two official languages of the European Patent Office other than the language of the proceedings.

- V. No application for re-establishment under Article 122 EPC has been filed by the Appellant.

Reasons for the Decision

1. The appeal complies with the requirements as to admissibility set out in Articles 106, 107, 108 first and

second sentences, and Rule 64 EPC. However, there still remains the question of whether a statement setting out the grounds of appeal was filed in due time.

2. In fact, no appeal can in any circumstances be allowed unless a Statement of Grounds has been filed (such a Statement can, of course, be incorporated in the document which constitutes the Notice of Appeal).

In its Decision J 22/86 (OJ EPO 1987, 280) the Legal Board has already had the occasion to deal with the question concerning the requirements for admissibility of the appeal set out in Article 108 EPC.

In particular, the Board dealing with the question whether a statement alleged to be a Statement of Grounds of Appeal in a particular case meets the minimum requirement of Article 108 EPC, expressed the opinion that it can only be decided in the context of the particular case.

3. In the present case, the text of the notice of appeal, as indicated under item IV, might be construed to mean that the part of it headed "Grounds of appeal", in reality, consists in an announcement that within four months the grounds of appeal would be submitted. However, the Appellant did not present any statement of grounds for the appeal within this period. Therefore the Board has to consider whether the submissions of the Appellant within the said period, i.e. the cited part of the notice of appeal headed "Grounds of Appeal" together with the translations of the claims of 10 February 1988, can be accepted as substantively adequate grounds within the meaning of Article 108, third sentence EPC.

In the opinion of the Board this is clearly not the case, because the Appellant, although adversely affected by the

decision under appeal, has in said submissions not given the legal or factual reasons why the decision should be set aside.

A written statement announcing only that the Appellant will complete an omitted act, in this case the filing of the translations of the revised claims, within the four-month period allowed for submitting the Grounds of Appeal, does not comprise such reasons and therefore does not constitute a valid Statement of the Grounds of Appeal.

The Board notes that the Appellant has merely given a reason why he missed the time limit under Rule 58(5) and has completed the omitted act before the Board of Appeal. However, since no application for re-establishment under Article 122 EPC has been filed, there is no ground for the Board to consider these submissions any further.

Order

For these reasons, it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

M. Kiehl

P.K.J. van den Berg