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THE EUROPEAN PATENT  
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(C) [X] To Chairmen

**DECISION**  
of 16 May 1995

**Case Number:** T 0737/94 - 3.5.2

**Application Number:** 82304627.1

**Publication Number:** 0074252

**IPC:** H03H 9/64

**Language of the proceedings:** EN

**Title of invention:**  
Surface acoustic wave device

**Patentee:**  
KABUSHIKI KAISHA TOSHIBA

**Opponent:**  
Siemens AG

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 108, 3rd sentence  
EPC Rule 65(1)

**Keyword:**  
"Grounds of appeal - inadequate content"  
"Inadmissibility of appeal"

**Decisions cited:**  
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**Catchword:**  
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Case Number: T 0737/94 - 3.5.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.2  
of 16 May 1995

**Appellant:** Siemens AG  
(Opponent) Postfach 22 16 34  
D-80506 München (DE)

**Representative:** -

**Respondent:** KABUSHIKI KAISHA TOSHIBA  
(Proprietor of the patent) 72, Horikawa-cho  
Saiwai-ku  
Kawasaki-shi  
Kanagawa-ken 210 (JP)

**Representative:** Freed, Arthur Woolf  
MARKS & CLERK  
57-60 Lincoln's Inn Fields  
London WC2A 3LS (GB)

**Decision under appeal:** Interlocutory decision of the Opposition Division  
of the European Patent Office dated 4 July 1994  
concerning maintenance of European patent  
No. 0 074 252 in amended form.

**Composition of the Board:**

**Chairman:** W. J. L. Wheeler  
**Members:** R. G. O'Connell  
J.-C. Saisset

### Summary of Facts and Submissions

I. The Appellant filed an opposition against European Patent No. 74 252 and now contests the interlocutory decision of the Opposition Division that account being taken of the amendments made during the opposition proceedings, the patent and the invention to which it related were found to meet the requirements of the EPC.

II. The Appellant filed a notice of appeal and paid the appeal fee in due time. In a letter dated 10 November 1994 and received on 11 November 1994, the Appellant stated only:

"Zur Begründung der mit Schriftsatz vom 06.09.1994 erhobenen Beschwerde wird vollinhaltlich auf die Ausführungen der offenkundigen Vorbenutzung (Schriftsatz vom 25.01.1990) Bezug genommen. Die darin vorgetragenen Argumente werden weiterhin als zutreffend angesehen."

III. On 6 December 1994 the Board issued a communication drawing attention to the jurisprudence of the Boards of Appeal that in order to comply with the requirement of Article 108, last sentence, EPC, the appellant must present the legal and/or factual reasons why the decision under appeal should be set aside (cf. decisions T 220/83, OJ EPO 1986, 249 and T 213/85, OJ EPO 1987, 482), and that a reference to submissions made in the proceedings before the department of first instance did not, as a rule, discharge this obligation (cf. T 432/88, EPOR 1990, 38 and T 154/90, OJ EPO 1993, 505).

IV. In reply, the Respondent argued that the appeal was inadmissible because the statement of grounds of appeal was irremediably defective.

V. In a letter dated 30 March 1995 the Appellant said only:

"Hiermit beantragen wir Entscheidung nach Aktenanlage."

### Reasons for the Decision

1. It has to be decided whether the requirement of EPC Article 108, last sentence, that within four months after the date of notification of the decision under appeal, a written statement setting out the grounds of appeal must be filed, has been duly observed. This depends solely on whether the Appellant's letter dated 10 November 1994 can be regarded as an adequate statement of grounds of appeal.
2. The Appellant's letter dated 10 November 1994 consists of a reference to the submissions made in the letter dated 25 January 1990 (in the proceedings before the Opposition Division) concerning an alleged prior public use and the comment that the arguments set out therein are still considered to be correct.
3. It is established jurisprudence of the Boards of Appeal that in order to comply with the requirement of EPC Article 108, last sentence, the appellant must present the legal and/or factual reasons why the decision under appeal should be set aside, see decisions T 220/83 (OJ EPO 1986, 249) and T 213/85 (OJ EPO, 1987, 482).
4. It has also been decided by the Boards of Appeal that a reference to submissions made in the proceedings before the department of first instance does not, as a rule, discharge this obligation, see T 432/88 (EPOR 1990, 38) and T 154/90 (OJ EPO 1993, 505), in particular points 1.2 - 1.2.3 of the Reasons for the Decision.


5. An inspection of the file shows that the submissions in the letter of 25 January 1990 concerning the alleged prior public use, were dealt with in the communication of the Opposition Division dated 11 August 1993 and in the impugned decision under point 2 of the reasons, in a manner which, on the face of the it, appears to be correct.
  
6. The Appellant's letter dated 10 November 1994 amounts to no more than a mere assertion that the contested decision is incorrect in its assessment of the alleged prior public use, leaving it entirely to the Board and the Respondent to conjecture in what respect the Appellant may consider the decision under appeal to be defective on this point. This is just what the requirement that grounds for appeal be filed is designed to prevent. It is essential for the Appellant to set out the specific factual and/or legal reasons on which he is relying. Otherwise the Respondent is at a loss to know how to prepare his case and the Board cannot direct the appeal proceedings in an efficient way.
  
7. In the opinion of the Board, the appeal does not comply with the requirements of EPC Article 108, last sentence, and it has to be rejected as inadmissible, in accordance with Rule 65(1) EPC.

**Order**

**For these reasons it is decided that:**

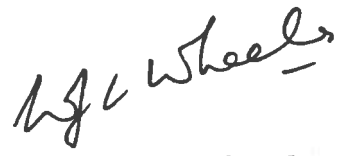
The appeal is rejected as inadmissible.

The Registrar:



M. Kiehl

The Chairman:



W. J. L. Wheeler