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D E C I S I O N
of 20 August 2001

Case Number: J 0009/00 - 3.1.1

Application Number: 99...

Publication Number: -

IPC: ...

Language of the proceedings: EN

Title of invention:

...

Applicant:

N.N.

Opponent:

-

Headword:

Appeal deemed not filed/N.N.

Relevant legal provisions:

EPC Art. 108 (second sentence), 122(2)

EPC R. 69(1)

Keyword:

"Appeal fee not paid in time"

"Request for re-establishment of rights - late filed - appeal
late filed"

Decisions cited:

-

Catchword:

-



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Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: J 0009/00 - 3.1.1

D E C I S I O N
of the Legal Board of Appeal 3.1.1
of 20 August 2001

Appellant: N.N.

Representative: N.N.

Decision under appeal: Decision of the Receiving Section of the European Patent Office dated 20 December 1999 refusing European patent application No. 99 ... pursuant to Article 91(3) EPC.

Composition of the Board:

Chairman: J.-C. Saisset

Members: M. Tardo-Dino

M. B. Günzel

Summary of Facts and Submissions

- I. N.N. filed on 29 June 1999 an application for grant of a European patent, under the No. 99
- II. The Receiving Section in a decision dated 20 December 1999, refused the application, pursuant to Article 91(3) EPC.
- III. The applicant appealed from this decision by letter dated 27 February 2000 and received on 7 March 2000.
- IV. The appeal fee was not paid. By a communication of loss of rights pursuant to Rule 69(1) EPC dated 3 August 2000, the Registrar of the Board informed the appellant that the appeal fee had not been paid.
- V In a letter dated 13 October 2000 and received on 16 October 2000, in response to the communication of the Registrar, the appellant submitted, that he had ordered payment of the appeal fee but that his bank did not carry out the transfer and that he had now paid the appeal fee and the fee for re-establishment of rights, on 28 September 2000.
- VI. The Board sent a communication on 21 December 2000 drawing the appellant's attention on two issues to be considered:
1. The letter dated 13 October 2000 was considered as a request for re-establishment of rights into the time limit for paying the appeal fee.

It was stressed that, however, this request for re-establishment of rights was not filed within

the time limit of two months from the removal of the cause of non compliance, as required by Article 122(2) EPC ie within the two months after the communication dated 3 August 2000, since the letter was received on 16 October 2000.

Accordingly, the request for re-establishment of rights appeared to be inadmissible.

2. The notice of appeal was not filed within two months after the date of notification of the decision appealed from (Article 108 first sentence EPC), since it was received on 7 March 2000.

Thus, the appeal appeared to be inadmissible (Article 108 and Rule 65 EPC).

Except a telephone call on 19 January 2001 to ask what to do, the appellant made no observation.

Reasons for the Decision

1. Pursuant to Article 108 (second sentence) EPC, the notice of appeal shall not be deemed to have been filed until after the fee for appeal has been paid.

In this case, the appeal fee was not paid within the time limit for filing the appeal.

The appeal is therefore deemed not to have been filed.

2. It is obvious from the circumstances that by his letter dated 13 October 2000 but received on 16 October 2000, the appellant intended to apply for *restitutio in integrum* into the time limit for paying the appeal fee pursuant to Article 122 EPC.

According to Article 122(2) EPC the application for re-establishment of rights must be filed within two months from the removal of the cause of non compliance with the time limit.

In the present case, the appellant did not respect this time limit. According to the advice of delivery on file the communication of loss of rights Rule 69(1) EPC informing the appellant that the appeal fee had not been paid has been handed down to the appellant on 9 August 2000. The appellant's letter dated 13 October 2000 was received by the EPO on 16 October 2000.

The appellant's request for re-establishment of rights is therefore inadmissible.

3. *Reimbursement of appeal fee*

As there is no appeal in existence ,the appeal fee paid late must be reimbursed (J 0021/80).

Order

For these reasons it is decided that:

1. The request for re-establishment of rights is rejected as inadmissible.
2. The appeal is deemed not to have been filed.
3. The appeal fee will be refunded

The Registrar:

The Chairman:

M. Beer

J. Saisset