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D E C I S I O N
of 30 December 2002

Case Number: J 0014/02 - 3.1.1

Application Number: 99928773.3

Publication Number: 1051461

IPC: C10L 1/10

Language of the proceedings: EN

Title of invention:
Fuel compositions employing catalyst combustion structure

Applicant:
ORR, William C.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 122(5), 150(3), 79(2), 94(2)
EPC R. 59c
PCT Art. 11(4) PCT

Keyword:
"Restitutio in integrum - examination fee - designation fees - no"

Decisions cited:
G 0003/91, G 0005/92, G 0005/93

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: J 0014/02 - 3.1.1

D E C I S I O N
of the Legal Board of Appeal 3.3.1
of 30 December 2002

Appellant: ORR, William C.
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Colorado 80210 (US)

Representative: Andrae, Steffen, Dr.
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Decision under appeal: **Decision of the Receiving Section of the European Patent Office posted 7 September 2001 refusing the request for re-establishment of rights concerning the payment of the examination and the designation fees relating to the international patent application PCT US 99 13751 (Euro PCT 99 928 773.3).**

Composition of the Board:

Chairman: J.-C. Saisset
Members: M. B. Tardo-Dino
S. U. Hoffmann

Summary of Facts and Submissions

I. The international patent application PCT US 99/13751 (Euro-PCT n° 99 928 773.3) was filed on 17 June 1999 and the request for entry in the regional phase before the EPO was filed on 17 May 2000.

II. By a letter dated 10 November 2000, the Receiving Section drew the applicant's attention to the fact that:

- the examination fee and the designation fees for the designated states had not been paid,

- these fees could still be validly paid within a period of grace of one month provided the payment of the surcharge under Rules 85b and 85a(1) EPC was made,

- otherwise a new communication under Rule 69(1) EPC would be issued to inform him that the application would be deemed to be withdrawn, and

- the applicant might NOT be re-established in his rights (NOT was emphasized by the Receiving Division in its notification).

III. By a communication dated 16 February 2001, the Receiving Section notified the applicant of the loss of rights under Rule 69(1)EPC including mention of the means of redress within the period of two months pursuant to Rule 69(2) EPC after notification of the communication.

IV. The applicant by letter dated 13 July 2001 filed a

request for re-establishment of his rights to pay the examination fee and the designation fees with surcharges.

He paid at the same date the examination and designation fees, with 50% surcharge and the third annuity with 50% surcharge and the fee for re-establishment of rights.

V. To support his request the applicant's representative contends that the principles of equity must set aside formal regulations of the EPC in view of the circumstances of the case. He explained that when entering the European phase, he did not receive instructions from the applicant regarding the date of the publication of the international search report and the countries for which designation fees were to be paid.

He tried to get this information and sent letters to the applicant's US representatives (15 June 2000; 17 November 2000) to inform them respectively of which states were to be designated and the amount of fees to pay, and of the Communication pursuant to Rules 85a and 85b) EPC. He never received answers because the applicant had never received the said letters.

To substantiate these submissions the applicant filed copies of the representative's letters dated 15 June 2000 and 17 November 2000, a statutory declaration from the applicant/inventor and from his US representative.

VI. By decision dated 7 September 2001, the Receiving Division refused the request for restitutio in integrum for the reason that the time limit mentioned in EPO

form 1218 (communication of 10 November 2000) is excluded from restitutio in integrum.

VIII. By letter dated 7 November 2001 the applicant filed an appeal against this decision and submitted his grounds of appeal on 7 January 2002.

IX. By a letter dated 2 August 2002 the Registry drew the applicant's attention to Article 86(2) EPC and Article 2 of the Rules relating to Fees and to the fact that he had not paid the renewal fee for the fourth year on the due date (30 June 2002).

The letter further informed the applicant that if he did not pay the fee and the surcharge of 10%, within the six months time limit following the due date, the application would be deemed to be withdrawn.

X. The request of the appellant appeal is to set aside the decision and to re-establish the applicant in his rights to pay the fees, on the basis of principle of equity which must take precedence over the formal requirements of the EPC.

Reasons for the Decision

1. As a preliminary remark, the Board considers that the appellant fully exercised his right to be heard since in his grounds of appeal he submitted all the legal and factual arguments concerning the points to be discussed by the Board in respect of the examination of the decision of the first instance.

Furthermore the appellant did not request oral

proceedings.

2. The Board is of the view that according to Article 150(3) EPC and to the case law of the Enlarged Board of Appeal (G 3/91, OJ EPO 1993, 08; G 5/92, OJ EPO 1994, 22; G 5/93, OJ EPO 1994, 447), once a PCT application meets all the requirements of Article 11(4) PCT, and the applicant requests a European patent, the international application is deemed to be an European patent application (Point 1.8 of the reasons of G 5/93).

According to the above-mentioned decisions G 3/91 and G 5/93 as regards the designation fee and G 5/92 concerning the examination fee the time limits to be observed by Euro-PCT and direct European applications are in essence identical and must be treated in the same way (Point 1.17 of the reasons of G 5/93).

3. Pursuant to Article 122(5) EPC, the time limits referred to by Article 79(2) EPC (designation fee), and Article 94(2) EPC (examination fee) are excluded from the provision of re-establishment of rights.

Therefore the mention of Article 79(2) and 94(2)EPC in Article 122(5) EPC is not limited to direct European applications but also refers to Euro-PCT applications which under Article 11(3) PCT have the effect of national (European) application as of the international filing date and are, according to Article 150(3)EPC, subject to the provisions of the EPC insofar as these provisions do not conflict with those of the PCT.

4. Thus, considering the provisions of the EPC the decision under appeal is not open to criticism.

5. The EPC does not provide that equity can be an extra-statutory means to avoid the consequences of the provisions of the Convention when a party finds their application disadvantageous.

Consequently the Board is of the view that the appeal is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar: The Chairman:

M. S. Fabiani M. J. C. Saisset