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D E C I S I O N
of 11 October 2005

Case Number: J 0003/03 - 3.1.01

Application Number: 00122852.7

Publication Number: -

IPC: B65G 49/06

Language of the proceedings: EN

Title of invention:

Automatic or semiautomatic machine for stocking, selecting and distributing of sheets of glass, or similar materials or different materials

Applicant:

FOR.EL. BASE di VIANELLO FORTUNATO & C. S.n.c.

Opponent:

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Headword:

Re-establishment of rights

Relevant legal provisions:

EPC Art. 122(1), 90(3), 14(4)

EPC R. 6(1)

Keyword:

"Delayed filing of translations - re-establishment of rights (no) "

Decisions cited:

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Catchword:

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Case Number: J 0003/03 - 3.1.01

D E C I S I O N
of the Legal Board of Appeal 3.1.01
of 11 October 2005

Appellant: FOR.EL. BASE di VIANELLO FORTUNATO & C. S.n.c.
Via per Monastier 4
I-31056 Vallio di Roncade (Treviso) (IT)

Decision under appeal: Decision of the Receiving Section dated
27 August 2002 refusing the applicant's request
for re-establishment of rights into the time
limit under Rule 6(1) EPC for the filing of
translations.

Composition of the Board:

Chairman: J.-C. Saisset
Members: P. Mühlens
S. C. Perryman

Summary of Facts and Submissions

- I. The appeal lies against the decision of the Receiving Section dated 27 August 2002 refusing the appellant's request for re-establishment of rights into the time limit under Rule 6(1) EPC for the filing of translations.
- II. European patent application 00122852.7 was filed in the Italian language on 20 October 2000, claiming priority from an Italian application of 29 October 1999. On 1 December 2000, and thus beyond the time limit of 13 months after the priority date (Rule 6(1) EPC), the appellant filed a translation of the priority application into English and requested Further processing of the application, as the translation "reached the EPO a little late" with regard to the time limit of 13 months after the priority date. The communication "Noting of loss of rights" according to Rule 69(1) EPC was dispatched on 19 February 2001.
- III. By letter dated 17 April 2001, the appellant requested re-establishment of rights. It submitted that one cause for the delayed filing was a misleading passage in the EPO Guide for applicants (9th edition, point 216). From the wording "The simplest possibility of completing the omitted act (i.e. Further processing) applies particularly in the cases.....(where time limits are set by the office)", it had understood that Further processing is also possible in other cases, as "particularly" in its understanding does not mean "only". Therefore, it appeared that a simple request for Further processing was sufficient in the present case. In addition, the appellant submitted that the

dispatch of the translation (on 30 November 2000) was within the time limit of 13 months, and only the arrival at the EPO was late, that this late arrival was due to the fact that the translation was given late to the translation agency and that, as the time limit of 3 months for filing the translation after the filing of the application (Rule 6(1) EPC was met and only the time limit of 13 months after the priority date was missed, only the priority and not the application itself could be lost.

- IV. By the appealed decision, the Receiving section refused the request for *restitutio in integrum* and consequently stated that the application was deemed to be withdrawn with effect from 30 November 2000 for not filing the translation in due time (Rule 6(1) EPC, Article 90(3) EPC). The Receiving section held that the filing was late and that the difficulty of interpretation of the European Patent Convention could never be a reason for re-establishment of rights.
- V. With the present appeal, the appellant reiterated its argumentation that the delay was caused by a misleading passage of the Guide for applicants and also by several other circumstances, *inter alia* that the translation agency was not available. It also requested oral proceedings.
- VI. In a communication dated 7 March 2005, the Board indicated its opinion that the passage in question was in no way misleading and that the appellant had not made out its case for re-establishment, as its submissions, although they explained how it came to the

delay, did not demonstrate that the delay was unavoidable.

- VII. In its answer, the appellant stressed its argument that a lot of circumstances in combination had led to the delay, such as a wrong interpretation of the Guide for applicants, a wrong interpretation of Rule 83 EPC, problems with the translation software and the fact that the translation agency was not able to produce the translation in due time.

The request for oral proceedings was withdrawn.

Reasons for the Decision

1. The appeal is admissible.
2. Under Article 14(4) EPC, documents filed with the EPO in a language of a Contracting State other than an official language of the EPO must be followed by a translation. The time limit for filing the translation is, if priority is claimed, 13 months after the priority date. Thus, the time limit being calculable according to Rule 83(4) EPC ended in the present case on 29 November 2000. Consequently, the filing on 1 December 2000 was late. According to Article 90(3) EPC, the application is therefore deemed to be withdrawn.
3. To support its request for re-establishment of rights under Article 122 EPC, the appellant has put forward that, due to a misleading passage in the EPO Guide for applicants, it thought that it could remedy the delayed

filing by a simple request for Further processing, and that in essence a combination of several accidental circumstances had led to the delay.

- 3.1 Although in principle difficulties in interpreting legal texts cannot be a ground for re-establishment of rights, the Board holds that if official guidelines explaining such texts were misleading and led an applicant to take a course of action detrimental to his interests, this would have to be taken into account when considering any application for re-establishment in such a case. However, here the Board finds the relevant point 216 of the EPO Guide for applicants perfectly clear. The text says exactly what is laid down in Article 121 of the European Patent Convention, namely that Further processing is limited to cases where time limits have been set by the European Patent Office. The last part of the first sentence of point 216 explicitly states "this possibility is thus ruled out in the case of time limits fixed in the Convention". The Guide is thus in no way misleading.
- 3.2 Nor do the other submissions of the appellant in support of its request for re-establishment demonstrate that the delay was unavoidable "in spite of all due care having been taken" (Article 122(1) EPC). These circumstances - failure of the automatic translation system, translation agency unable to deliver the translation in due time from the moment the translation was assigned to it - are every-day problems which all applicants may be confronted with from time to time, which possible problems and delays need to be allowed for when exercising due care to meet a known deadline for filing a translation. If such due care had been

taken, the failure to meet the time limit and consequently to the loss of rights could here have been avoided. The mere fact that the combined occurrence of several such banal problems led to a failure to meet the time limit cannot be treated as evidence that the failure to meet the time limit occurred despite all due care being taken. As the board cannot find the requirement of all due care having been taken as met, re-establishment cannot be granted.

- 3.3 Regarding the appellant's submission in its letter of 21 April 2005 to the effect that it would be unfortunate to lose the application just because of a delay of one day only, the Board before granting re-establishment is obliged to decide in accordance with the law, as embodied in Article 122(1) EPC, whether it has been made out that the failure to observe the time limit occurred in spite of all due care being taken. On the facts here the Board is not satisfied that all due care was taken, so that the length of time by which the time limit was missed cannot lead to a different outcome.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

S. Fabiani

J. C. Saisset