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**Datasheet for the decision  
of 24 July 2014**

**Case Number:** J 0008/12 - 3.1.01  
**Application Number:** 04460051.8  
**Publication Number:** 1661963  
**IPC:** C09J103/00, C09J131/00,  
C09J131/04  
**Language of the proceedings:** EN

**Title of invention:**

Adhesive to glue posters to advertising boards and method of  
its production

**Applicants:**

Kulicki, Andrzej, Dariusz  
Kulika, Wieslawa

**Headword:**

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**Relevant legal provisions:**

EPC R. 112(2), 130(1)

**Keyword:**

"Loss of rights - confirmed"

**Decisions cited:**

R 0002/09, T 0703/92

**Catchword:**

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Case Number: J 0008/12 - 3.1.01

**D E C I S I O N**  
**of the Legal Board of Appeal 3.1.01**  
**of 24 July 2014**

**Appellant:** Kulicki, Andrzej, Dariusz  
(Applicant 1) ul. Prochowa 7/11  
04-360 Warszawa (PL)

**Appellant:** Kulika, Wieslawa  
(Applicant 2) ul. Prochowa 7/11  
04-360 Warszawa (PL)

**Decision under appeal:** **Decision of the Formalities Officer on behalf of  
the Examining Division of the European Patent  
Office, posted 7 November 2011**

**Composition of the Board:**

**Chairwoman** C. Vallet  
**Members:** F. Blumer  
D. T. Keeling

## **Summary of Facts and Submissions**

- I. By decision of 7 November 2011, the formalities officer, on behalf of the examining division, decided that the appellants' request for a decision under Rule 112(2) EPC and their request for re-establishment of rights were deemed not to have been filed. In the same decision, the appellants' request for refund of the fifth renewal fee and the additional fee was rejected.
- II. In its letters of 16 January 2012, 23 January 2012 and 5 February 2012, the appellants objected to the decision. They did not pay an appeal fee but argued that the relevant charge could be paid from the sum of EUR 2026 which had been overpaid by the appellants (cover letter of the letter dated 5 February 2012).
- III. The board, in its communication sent on 9 January 2014, gave its preliminary conclusion that an appeal had not been validly filed because no appeal fee had been paid within the two month period prescribed in Article 108 EPC. The board explained that in view of decision R 2/09, the payment of due fees by means of set-off could not be accepted if the appellant's alleged counterclaims are disputed. The board further explained why the appellants' alleged counterclaims were disputed or did not exist in its view.
- IV. The communication of 9 January 2014 referred to Rule 100(2) EPC, a time limit for filing any reply of two months was set. Reference was made also to Rule 100(3) EPC and the risk of loss of rights ("Failure to reply in due time will result in the application being deemed to be withdrawn (Rule 100(3) EPC).").

- V. On 31 March 2014, a telefax letter dated 28 March 2014 was filed in which the appellants enquired about the status of their application and informed that the cooperation with their representative had been terminated.
- VI. On 9 April 2014, the board sent a note of loss of rights pursuant to Rule 112(1) EPC, noting that the appellants' reply to the communication of 9 January 2014 was received on 31 March 2014, i.e., not in due time.
- VII. On 16 April 2014, the appellants filed a letter in response to the notice of loss of rights of 9 April 2014. They explained that the long response time before the filing of their telefax letter dated 28 March 2014 was because they did not receive all documents from the EPO (which had been sent to their former representative) in due time. Furthermore, they asked for a response to their letter dated 28 March 2014 in which they enquired about the status of their application.
- VIII. No other reaction to the notice of loss of rights of 9 April 2014 was received within the two month time limit pursuant to Rule 112(2) EPC (taking into account Rule 126(2) EPC).

### **Reasons for the Decision**

1. In response to a notice of loss of rights under Rule 112(1) EPC, an applicant may request a decision on the finding concerning the loss of rights. If the loss of rights is notified in the course of appeal proceedings, such decision cannot be appealed.

2. In their response to the notice of loss of rights filed on 16 April 2014, the appellants explained why their response to the board's communication was only filed after a "long response time" and they enquired about the status of the application (by reference to their earlier letter dated 28 March 2014). The board is not interpreting the letter of 16 April 2014 as a request for re-establishment of rights. No respective fee has been paid, and the omitted act (the filing of a response to the board's communication of 9 January 2014) has not been completed.
3. The board explained in its communication of 9 January 2014 its conclusion that the required appeal fee had not been paid (neither directly nor by means of set-off against a valid counterclaim) which means that the appeal is deemed not to have been filed (i.e., is considered inexistent). In lack of any substantive response of the appellants, the board does not see any reason to deviate from its position.
4. The board interprets the letter of 16 April 2014 as a request for a decision under Rule 112(2) EPC. The letter was filed within the two month time limit of Rule 112(2) EPC. Such decision may only concern the basis of the notice of loss of rights (i.e., the failure to reply in due time to the board's communication of 9 January 2014).
5. The appellants, in their letter of 16 April 2014, explained that their former representative did not forward the board's communication of 9 January 2014 to them before March 2014. They did not otherwise dispute the finding that the reply to the board's communication was not filed in due time.

6. When the communication of 9 January 2014 was issued, the former representative of the appellants was still registered as their representative. Consequently, the communication was sent to the representative only (Rule 130(1) EPC). The board was informed of the termination of the appellants' cooperation with their representative only on 31 March 2014 (cf. Facts and Submissions, point V.). The communication is deemed to have been received by the appellants when it was received by their representative (see decision T 703/92).
7. Under these circumstances, it is not relevant whether the appellants received the board's communication of 9 January 2014 from their representative before or after the expiry of the two month time limit set in said communication.
8. As the sole argument brought forward by the appellants as to their failure to reply in due time to the board's communication of 9 January 2014 cannot be upheld for the above reasons, the board may only confirm the finding in its communication of 9 April 2014 that the replay to its communication of 9 January 2014 was not filed in due time and that the European patent application is deemed to be withdrawn.

## **Order**

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

1. The European patent application is deemed to be withdrawn.

2. The appeal proceedings are terminated.

The Registrar:

The Chairwoman:



C. Eickhoff

C. Vallet

Decision electronically authenticated