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Datasheet for the decision of 14 May 2014

Case Number: J 0021/13 - 3.1.01

Application Number: 10840252.0

Publication Number: 0

IPC: H04R1/10, A42B3/16, A61F11/10, B29C39/22, H04R25/00

Language of the proceedings: EN

Title of invention:
HEAD-MOUNTED DEVICE FOR SETTABLE COMPOUND DELIVERY SYSTEM FOR INFLATABLE IN-EAR DEVICE

Applicant:
Sonomax Technologies Inc.

Headword:

Relevant legal provisions:
EPC Art. 108
EPC R. 99(2), 101(1), 126(2), 132(2)

Keyword:
Admissibility of appeal - statement of grounds (not filed)

Decisions cited:

Catchword:

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Case Number: J 0021/13 - 3.1.01

D E C I S I O N
of Legal Board of Appeal 3.1.01
of 14 May 2014

Appellant: (Applicant)	SONOMAX TECHNOLOGIES INC. 8375 Mayrand Street Montréal, Québec G0N 1X0 CANADA
Representative:	Patentanwaltskanzlei Matschnig & Forsthuber OG Siebensterngasse 54 A-1071 Wien (AT)
Decision under appeal:	**Decision pursuant to Article 121(2) and Rule 135(3) EPC of the Receiving Section dated 24 May 2013**

Composition of the Board:

Chairwoman: B. Guenzel
Members: I. Beckedorf
E. Kossonakou

Summary of Facts and Submissions

I. The appeal is directed against the decision of the Receiving Section of 24 May 2013 with which the application was deemed to be withdrawn with effect as of 1 August 2012.

II. The appellant filed a notice of appeal on 31 July 2013 and paid the appeal fee on the same day.

III. By communication of 17 February 2014, duly received by the appellant, the Registry of the Board informed the appellant that it appeared from the file that the written statement of grounds of appeal had not been filed, and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was informed that any observations thereto had to be filed within two months of notification of the communication.

IV. By letter dated 22 April 2014 the applicant informed the office that a new representative had taken over the representation and filed an authorisation dated 9 April 2014. By communication of 25 April 2014 the Registry of the Board confirmed the appointment of the new representative.

V. By letter dated 25 April 2014 the new representative asked for an extension of time by two additional months to reply to the communication of 17 February 2014.

VI. No substantive reply to the communication of 17 February 2014 was received within the time limit set.

Reasons for the Decision

The appellant's request for time extension

1. By communication of 17 February 2014 the Registry of the Board informed the appellant that it appeared from the file that the written statement of grounds of appeal had not been filed, and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was informed that any observations had to be filed within two months of notification of the communication.

By letter dated 25 April 2014, the new representative asked for an extension of time by two additional months to reply to the communication. He reasoned the request by referring to "the complexity and unexpected difficulties in collecting the circumstances of the payments and appeal".

According to Rule 132(2), last sentence, EPC a period specified by the EPO, i.e. here by the Legal Board of Appeal, may be extended upon request "in special cases".

However, the reason given by the appellant cannot be qualified as such a "special case". The kind of difficulties is not specified nor is any real explanation given justifying the requested extension. Furthermore, since the appellant's new representative was authorised already on 9 April 2014, i.e. two and half weeks before the expiry of the period set in the Board's communication of 17 February 2014, one could have reasonably expected him, if not to be in

possession of, to at least have had initiated some kind of enquiry to collect the relevant circumstances leading to the omission to file the written statement of grounds of appeal. Instead, the appellant waited until only two days before expiry and requested an extension of the period in quite a vague form.

Thus, the requested extension of the period has to be refused.

Admissibility of the appeal

2. No written statement setting out the grounds of appeal was filed within the time limit provided by Article 108, third sentence, EPC in conjunction with Rule 126(2) EPC. In addition, neither the notice of appeal nor any other document filed in this case contains anything that could be regarded as a statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC.

Therefore, the appeal has to be rejected as inadmissible (Rule 101(1) EPC).

Order

For these reasons it is decided that:

1. **The requested extension of the time limit to reply to the communication of 17 February 2014 is refused.**

2. **The appeal is rejected as inadmissible.**

The Registrar: The Chairwoman:

C. Eickhoff B. Guenzel

Decision electronically authenticated