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Datasheet for the decision of 13 February 2017

Case Number: J 0016/16 - 3.1.01

Application Number: 12860972.4

Publication Number: 2852778

IPC: F16H25/22

Language of the proceedings: EN

Title of invention:
AN INESCAPABLE PATH TO TRANSFORM A FORM OF MOTION

Applicant:
Gulyas, József

Headword:
Missing grounds of appeal

Relevant legal provisions:

Keyword:

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

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Case Number: J 0016/16 - 3.1.01

D E C I S I O N
of the Legal Board of Appeal 3.1.01
of 13 February 2017

Appellant: (Patent Proprietor)	Gulyas, József Csalogány út 25. 3530 Miskolc (HU)
Representative:	Kocsis, Péter JUREX Intellectual Property Office P.O. Box 78 1656 Budapest (HU)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 18 February 2016 refusing European patent application No. 12860972.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman	E. Kossonakou
Members:	C. Heath
	C. Brandt

Summary of Facts and Submissions

I. By decision of the examining division posted 18 February 2016, the appellant's request for re-establishment of rights into the period for payment of the renewal fee for the 3rd year for the application no. 12860972.4 was refused.

II. Against this decision, an appeal was filed on 23 April 2016, and the appeal fee was paid on the same day. In the notice of appeal, oral proceedings were requested. The notice of appeal also mentioned that

"A written statement setting out the grounds of appeal will be duly filed within the time limit prescribed in Article 108 EPC."

III. On 5 August 2016, the appellant was informed that no grounds of appeal had been filed, and that it could therefore be expected that the appeal would be dismissed (Form 3028).

The appellant's representative received this information on 1 September 2016. He then filed grounds of appeal on 21 October 2016, explaining why the request for re-establishment of rights into the period for payment of the renewal fee should have been allowed.

IV. Oral proceedings were appointed, and in the annex to the summons the Board expressed its preliminary opinion that the appeal appeared inadmissible and would likely be dismissed.

V. Oral proceedings were held on 13 February 2016, in the course of which the admissibility of the appeal was

discussed. The appellant's representative did not contest that the grounds of appeal were late filed, and essentially gave two justifications for this:

First, that the form 3028 was somehow misleading and gave him the impression that the grounds of appeal could still be validly filed. While the form is entitled "Inadmissibility of the Appeal" and indicates that "It is therefore to be expected that the appeal will be rejected as inadmissible", the following sentence notes that "observations must be filed within two months of notification".

Second, that he had serious health problems, in respect of which he filed a medical certificate which he confirmed wishing to have excluded from file inspection.

VI. No further submissions were made.

Reasons for the Decision

1. For the following reasons, the appeal is inadmissible.

2. The decision under appeal dates from 18 February 2016. According to Article 108 EPC in connection with Rule 126(2) EPC, the notice of appeal should have been filed until 28 April 2016 (which was the case), the appeal fee should likewise have been paid until that date (which was also the case), and the grounds of appeal should have been filed until 28 June 2016, which was not the case. Rather, they were filed on 21 October 2016, and therefore out of time. In such a case, the appeal shall be dismissed as inadmissible, Rule 101(1) EPC.

3. The Board readily concedes that the representative's medical condition as apparent from the medical certificate filed during oral proceedings could have been a valid reason for allowing a request for re-establishment of rights into the period for filing the grounds of appeal. Yet no such request was made, and no corresponding fee was paid. As this is the only possible legal remedy to the late filing of the statement of grounds of appeal, the Board can only confirm its provisional finding regarding the admissibility of the current appeal.

4. Finally, the Board considers that a possible misunderstanding regarding the contents of Form 3028 cannot have caused the representative to file the grounds of appeal only at a later stage, as Form 3028 was only dispatched after the period for filing the grounds of appeal had already expired. Nor could it have induced the belief of a potential legal remedy to the non-filing of a statement of grounds of appeal, as its structure and wording are considered clear.

Order

For these reasons it is decided that:

The appeal is dismissed as inadmissible.

The Registrar: The Chairwoman:

C. Eickhoff E. Kossonakou

Decision electronically authenticated