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**Datasheet for the decision
of 27 November 2018**

Case Number: J 0002/18 - 3.1.01

Application Number: 12250099.4

Publication Number: 2653294

IPC: B29C70/22, B29C70/46,
B29C70/48, B29C70/54,
B29C70/86, B29C70/88, B60B5/00,
B60B27/02, B29K307/04

Language of the proceedings: EN

Title of invention:

Manufacturing method and structure of bicycle wheel hub

Applicant:

Lin, Shu-Wei

Headword:

Relevant legal provisions:

EPC Art. 108
EPC R. 99(2), 101(1)

Keyword:

Admissibility of appeal

Decisions cited:

Catchword:



Juristische Beschwerdekammer
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Case Number: J 0002/18 - 3.1.01

D E C I S I O N
of the Legal Board of Appeal 3.1.01
of 27 November 2018

Appellant: Lin, Shu-Wei
(Applicant) 311 Feng Chia Road
Hsi Tun Taichung City (TW)

Representative: Brown, Michael Stanley
Alpha & Omega,
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 22 September
2017 refusing the request for re-establishment
of rights under Article 122 and Rule 136 EPC,
into the time limit for requesting further
processing under Article 121 EPC for failing to
reply in time to a communication under Article
94(3) EPC.

Composition of the Board:

Chairman G. Weiss
Members: E. Kossonakou
P. de Heij

Summary of Facts and Submissions

- I. The appeal lies from the decision by the formalities officer for the examining division dated 22 September 2017 refusing the applicant's request for re-establishment of rights into the time limit for requesting further processing under Article 121 EPC for failing to reply in time to a communication under Article 94(3) EPC. The request was found to be inadmissible for having been filed after expiry of the two-month time limit foreseen in Rule 136(1), first sentence EPC.
- II. The notice of appeal was filed on 8 November 2017 accompanied by the acknowledgement of receipt of the contested decision, purportedly received in the representative absence and thus undated. The appeal fee was paid on the same date.
- III. The statement setting out the grounds of appeal was filed on 25 January 2018 and consisted of a reference to the letter setting out the arguments in support of the re-establishment request and a request for the EPO "to exercise its discretion and allow the appeal" since "the delay was purely a matter of days".
- IV. In its communication dated 2 July 2018 the Board took the position that no proper statement setting out the grounds of appeal within the meaning of Rule 99(2) EPC appeared to have been filed.
- V. The appellant's further submission of 29 August 2018 in reply to the Board's aforementioned communication referred to the discretion at the disposal of the examiners at the UK Intellectual Property Office (UKIPO) and at the EPO in case of a late filed response

to an examination report and requested that such discretion be exercised in favour of the applicant.

VI. No request for oral proceedings has been filed.

Reasons for the Decision

1. The time limits of Article 108 EPC both for filing the notice and the statement setting out the grounds of appeal and for paying the appeal fee were observed. The appeal was thus filed in time.
2. The submission of 25 January 2018 was filed within the period for filing the statement setting out the grounds of appeal. Content-wise however it consists of a mere reference to the letter setting out the arguments in support of the request for re-establishment of rights and a request for the EPO "to exercise its discretion and allow the appeal" since "the delay was purely a matter of days" without any reference to the contested decision nor any argument countering the findings therein.
3. In the Board's judgment, set out in its communication of 2 July 2018, the representative appeared to implicitly accept the finding that the request for re-establishment of rights was late in his statement of the obvious ("the delay was purely a matter of days").
4. This finding was not contested in the appellant's further submission nor were any arguments brought up that could lead the Board to reconsider this finding.

The reference to the discretion at the disposal of the UKIPO examiners can have no bearing on the EPO proceedings. It is incidentally noted that the statement was not supported by any evidence at all.

The reference to the EPO discretion in excusing delays in the context here examined has no basis in the EPC. A request for re-establishment is a legal remedy strictly regulated in respect of the time limits to be observed when filing for it and the law is perfectly clear that no legal remedy - let alone discretion - is available, if those are not observed. An appeal may be filed against the decision refusing the request but there need to be arguments, why the negative findings against the requesting party are incorrect.

5. In the absence of arguments against the substance of the contested decision, the Board can only confirm its preliminary finding, namely that the appeal is to be rejected as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



C. Eickhoff

G. Weiss

Decision electronically authenticated