

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 15 December 2021**

**Case Number:** J 0006/21 - 3.1.01

**Application Number:** 18875354.5

**Publication Number:** 3782120

**IPC:** G06T7/73, A61B5/00, A61B5/0402

**Language of the proceedings:** EN

**Title of invention:**  
HEART POSITION ESTIMATION

**Applicants:**  
Peacs Investments B.V.  
Peacs B.V.  
Dam, Van, Peter Michael  
Dam, Van, Eelco Mattias

**Headword:**  
Revocation of debit order

**Relevant legal provisions:**  
PCT R. 49.2ter  
Arrangements for deposit accounts

**Keyword:**

request for restoration of the right of priority  
payment of fee  
revocation of debit order - incorrect debiting of fees



**Juristische Beschwerdekammer**  
**Legal Board of Appeal**  
**Chambre de recours juridique**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: J 0006/21 - 3.1.01

**D E C I S I O N**  
**of the Legal Board of Appeal 3.1.01**  
**of 15 December 2021**

**Appellant:** Peacs Investments B.V.  
(Applicant 1) Weijland 38  
2415 BC Nieuwerbrug aan den Rijn (NL)

**Appellant:** Peacs B.V.  
(Applicant 2) Weijland 38  
2415 BC Nieuwerbrug aan den Rijn (NL)

**Appellant:** Dam, Van, Peter Michael  
(Applicant 3) Weijland 38  
2415 BC Nieuwerbrug aan den Rijn (NL)

**Appellant:** Dam, Van, Eelco Mattias  
(Applicant 4) Weijland 38  
2415 BC Nieuwerbrug aan den Rijn (NL)

**Representative:** Hoeben, Ferdinand Egon  
Allied Patents B.V.  
Postbus 1551  
1200 BN Hilversum (NL)

**Decision under appeal:** **Decision of the European Patent Office posted on 21 January 2021 holding that the request for restoration of the right of priority under Rule 49ter.2 PCT for priority claim NL 2019635 dated 27 September 2017 is considered deemed not to have been filed**

**Composition of the Board:**

<b>Chairman</b>	W. Sekretaruk
<b>Members:</b>	F. Bostedt
	B. Müller

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision issued by a formalities officer for the examining division and dated 21 January 2021, holding that the request for restoration of the right of priority under Rule 49ter.2 PCT for priority claim NL 2019635 dated 27 September 2017 was considered deemed not to have been filed. The events preceding the decision are summarised below.
- II. On 2 June 2020, the appellant (applicant) filed a request for restoration of the right to priority, together with Form 1200 (entry into European phase), for patent application EP18875354.5. The appellant's representative substantiated the request by pointing to the crash of a software program with which he had prepared both the application at issue and a further application, which both claimed priority from the same application.
- III. On the same day, the appellant filed a debit order, authorising the EPO to debit the relevant fee (Fee 013, amount of 665 EUR) from the deposit account.
- IV. By a communication pursuant to Article 113 EPC of 25 August 2020 (Rule 49ter.2(e) PCT), the Receiving Section informed the appellant that the request for restoration of the right to priority was considered deemed not to have been filed since the prescribed fee had not been paid. The Receiving Section noted that a debit order had been filed on 2 June 2020 but due to the insufficient funds in the deposit account it had not been, and still was not, possible to debit the fee.

- V. In the reasons for the decision under appeal, dated 21 January 2021, reference was made to the communication of 25 August 2020 and it was held that the request was deemed not to have been filed because the relevant fee had not been paid in time. Proceedings would thus continue without a priority claim.
- VI. The appellant filed notice of appeal and requested that the decision be set aside and, as a precaution, that oral proceedings be held.
- VII. In its statement setting out the grounds of appeal, the appellant argued that the application in issue should be treated the same way as application EP 18877035.8, which had been filed on the same date based on the same priority application and the priority of which had been reinstated. The reason for missing the time limits both for the application in issue and the other application was a software malfunction on the computer on which both applications had been drafted. The appellant enclosed to its statement of grounds a letter of 12 March 2021 filed under the reference of the other application, explaining the software malfunction in detail.

As to the failed debit order, the appellant submitted that several fees for other applications were deducted on 2 June 2020, which should not have been deducted from the account since the appellant had withdrawn the debit orders for these fees on or before 2 June 2020 and their amounts were thus erroneously debited; the appellant also indicated that these incorrectly debited fees were refunded in January 2021. It was for these reasons that the fee for the request for restoration of the right to priority could not be debited from the account. The appellant argued that it had taken all

measures to provide funds for the fee in question and could not anticipate the incorrect deductions of the other fees.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The law regarding the payment of the fee relevant in the case in hand is as follows.
  - 2.1 The request for restoration of the right of priority under Rule 49ter.2 PCT was rejected on the ground that the request was deemed not to have been filed because the relevant fee had not been paid in time.
  - 2.2 Under Rule 49ter.2 PCT, the applicant may file with the designated Office a request for restoration of the right of priority. Such request is only admissible under Rule 49ter.2(b) and (d) PCT if it is filed within one month from the applicable time limit under Article 22 PCT for entering the national (or regional) phase, it contains the reasons for the failure to file the international application within the priority period, and the requisite fee for restoration is paid. Rule 49ter.2(d) PCT allows the designated Office to levy a fee for the request for restoration, which is to be paid at the same time as the filing of the request (Rule 49ter.2(b)(iii) PCT: the request must be "accompanied" by that fee). Such a fee is indeed levied by the EPO as designated Office, see Article 2(1), item 13, of the Rules relating to Fees, which expressly mentions restoration under Rule 49ter.2(d) PCT.

2.3 The appellant chose to pay the fee per debit order from its deposit account. According to the Arrangements for deposit accounts applicable at the time (valid from 1 October 2019, see OJ EPO 2019, supplementary publication 4, "ADA"), the EPO processes debit orders that were received or that were to be executed on the same day in the following order of priority:

- (a) automatic debit orders,
- (b) any other debit orders.

Subject to this, debit orders are booked in ascending order of application number. See ADA, point 5.2.1.

If the account contains sufficient funds, the date on which the debit order is received is considered as the payment date. See ADA, point 5.4.1.

A debit order may be revoked. The notice of revocation of a debit order must indicate the number of the deposit account, the number of the application or patent. The notice of revocation is not effective if received by the EPO after the date of receipt of the debit order. This revocation procedure applies *mutatis mutandis* to debit orders with deferred execution dates. See ADA, points 6.1-6.3.

3. On appeal, the appellant puts forward two lines of argument.

First, the application in issue should be treated the same way as application EP 18877035.8, for which the restoration request had been granted.

Second, other fees had been incorrectly deducted from the appellant's deposit account so that the fee for the restoration of the right of priority regarding the



application in issue could not be debited.

4. For the present decision it suffices to address the second line of argument.
5. In order to establish the relevant facts regarding the fee payment and to be able to verify the submissions made by the appellant, the Board made an ex officio enquiry with the competent department of the EPO. From this enquiry, the Board establishes the following set of events.
  - 5.1 On 2 June 2020, the account was replenished and various fees (related to other applications) were debited. Debit orders were booked in ascending order of application number, as provided in point 5.2.1 ADA. The fees related to the other applications, which all had an application number lower than the present application (18875354.5), were debited until the amount left in the account was lower than 665 EUR (i.e. the amount of the fee relevant in this case).
  - 5.2 Also on 2 June 2020, the appellant revoked the automatic debit order in relation to various applications. This revocation notice was received at 15:23 CET. The electronic receipt confirming the revocation indicated that "[t]he automatic debit order for the following application [...] ceased to be effective on the date of receipt of your instruction revoking it." Seven application numbers were mentioned on this receipt notice.

However, at this point in time, according to the competent EPO department, "the EPO system could not react in time to prevent debiting of fees". The fees relating to six of the seven application numbers were

therefore debited on 2 June 2020 (see point 5.1. above).

- 5.3 Still on 2 June 2020, the appellant filed the debit order for the payment of the fee relevant for this case, i.e. 665 EUR. This debit order was received at 23:59 CEST. Since the amount left in the account was not sufficient for the debiting of the fee, the debit order was not executed.
- 5.4 On 4 June 2020, the applicant was informed via email that the debit order for, inter alia, the payment of the fee relevant for the present case was held due to insufficient funds. The notification explained that, according to the relevant rules of the ADA, if, on the date a debit order is received, the account does not contain sufficient funds, that date cannot be considered as the payment date. The fees would be considered to have been paid on the date on which the deposit account was duly replenished.
6. From these facts, the Board draws the following conclusions.
- 6.1 Relevant for the case in hand, the appellant made two filings in relation to the deposit account on 2 June 2020:
- (a) the revocation of the automatic debit orders in relation to seven applications,
  - (b) the debit order for the payment of the fee relevant for the present case.
- 6.2 Regarding (a), the appellant was informed that the revocation took effect on the same date as the request for revocation was received. This information is in line with ADA, points 6.2. and 6.3: the execution date

of the debit orders was 2 June 2020 and the notice of revocation was received on 2 June 2020. Only if the notice of revocation were received after the execution date, would it be not effective. Accordingly, the appellant could assume that the automatic debit orders, which were revoked on 2 June 2020, would not be executed on that day.

- 6.3 Decisively, had the six (of the seven) fees, which pertained to these wrongly executed automatic debit orders, not been debited on 2 June 2020, the account would have contained sufficient funds for the debit order mentioned above under (b).
- 6.4 In these circumstances, it must be deemed in the appellant's favour that the deposit account had sufficient funds for the relevant fee on 2 June 2020, so that this date is considered as the date on which the payment was made (see ADA, pint 5.4.1).
7. In the appealed decision the request was considered deemed not to have been filed since the prescribed fee had not been paid. For the reasons given above, the Board finds this conclusion to be incorrect. Therefore, the decision must be set aside.
8. The appealed decision also stated that there was "no need to go into the merits of the request". The Board considers that the lack of any findings on the merits of the request are special reasons which justify remitting the case to the department whose decision was appealed for further prosecution (Article 11, first sentence, RPBA 2020).

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division for further prosecution.

The Registrar:

The Chairman:



C. Eickhoff

W. Sekretaruk

Decision electronically authenticated