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Aktenzeichen / Case Number / N^o du recours : J 12/84
Anmeldenummer / Filing No / N^o de la demande : 80 200 114.9
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Bezeichnung der Erfindung: Construction and/or application in relation to the
Title of invention: generation or the use of pressures, forces, flows
Titre de l'invention : and movements in and by means of hydraulic or
hydro-pneumatic systems

ENTSCHEIDUNG / DECISION

vom / of / du 25 January 1985

Anmelder/~~Patentinhaber~~: PROWECO BV
Applicant/~~Proprietor of the patent~~:
Demandeur/~~Titulaire du brevet~~:

Stichwort / Headword / Référence : Re-establishment of rights

EPO / EPC / CBE Articles 86(2), (3); 122(1)
Rule 37

Leitsatz / Headnote / Sommaire

1. The applicant must ensure that renewal fees for European patent applications are paid in time irrespective of whether the letter sent by the EPO (without obligation) after expiry of the time limit for payment laid down in Rule 37(1) EPC and drawing attention to the fact that the fee may still be paid with an additional fee under Article 86(2) EPC, has or has not been received.
2. An applicant who relies only on the above-mentioned letter from the EPO may not have his rights re-established in respect of the time limit pursuant to Article 86(2) EPC.

**Europäisches
Patentamt**
Beschwerdekammern

**European Patent
Office**
Boards of Appeal

**Office européen
des brevets**
Chambres de recours



Case Number: J 12 /84

DECISION
of the Legal Board of Appeal
of 25 January 1985

Appellant:

PROWECO BV
Wilhelminasingel 92
NL-9202 NC Maastricht

Representative:

Decision under appeal:

Decision of the Head of Formalities Section
of the European Patent Office of 19 January 1984
refusing the request for re-establishment of rights.

Composition of the Board:

Chairman: R. Singer
Member: F. Benussi
Member: O. Bossung

Summary of Facts and Submissions

- I. On 8 February 1980, the appellant filed a European patent application (No. 80 200 114.9) claiming priority from Dutch national patents.

- II. By letter dated 21 April 1982, the Formalities Section of the European Patent Office drew the applicant's attention to the fact that he had not paid the renewal fee due on 1 March 1982 provided for in Article 86(2) EPC, but that it could be validly paid within 6 months of the date due (1 September 1982) provided that the additional fee was paid, failing which the patent application would be deemed to be withdrawn.

From the appellant's submission and the attached acknowledgment of receipt it emerges that the letter dated 21 April 1982 was delivered on 23 April 1982 by a Post Office official to an employee of the IGF Co.

- III. On 6 October 1982 the Formalities section wrote informing the applicant that since the payment of the renewal fee and the additional fee had not been made in due time, in accordance with Article 86(2) EPC the application was deemed to be withdrawn.

- IV. The appellant did not ask for a decision under Article 69(2) EPC, but by letter dated 29 October 1982 he applied under Article 122 for re-establishment of rights. He paid the requisite fee giving as a reason for non-payment of the renewal fee the fact that the letter from the Formalities Section dated 21 April 1982 had not been received by him due to an administrative lack of communication at the address given. This fact was substantiated by a statement on 29 October 1982 signed by the person responsible for receiving

letters for the appellant, who declared that he had barely been informed of the existence of the appellant's company and supposed that the said registered letter had been lost amongst many other papers.

For these reasons the appellant was unable to observe the time limit for paying the renewal fee.

On 26 November 1982 the renewal fee was paid, as was the additional fee.

- V. The Formalities Section of the European Patent Office issued a decision dated 19 January 1984 rejecting the application for re-establishment of rights on the simple ground that it did not appear from the facts that the applicant had taken all due care required by the circumstances to observe the time limit.
- VI. By letter dated 27 March 1984 the appellant filed an appeal against the decision of the Formalities Section. The appeal fee was duly paid and a statement of grounds was communicated in a letter dated 19 May 1984 received on 26 May 1984.
- VII. In his appeal the appellant contended that he took all due care required by the circumstances to ensure that the time limit could be complied with. He submitted that his company was established at the same address as the IGF Company, which he regularly visited.
- VIII. By letter dated 22 August 1984, the rapporteur invited the appellant to specify what steps he had taken to ensure that the Netherlands postal authorities delivered post addressed to the appellant's company only to the appellant or, in his absence, to employees of IGF and to specify whether or not those employees are paid for this service.

IX. By letter dated 27 September 1984, the appellant replied that the head of administration of IGF was responsible for receiving on his behalf all the post addressed to Proweco when the appellant was not in the office. The appellant submitted that in the case of registered letters he normally went to the Post Office to collect them.

As regards the second point, the appellant explained that the employees acting for his company were not on the payroll of IGF.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. Article 86(2) EPC provides that when a renewal fee has not been paid on or before the due date, the fee may be validly paid within six months of the said date, provided that the additional fee is paid at the same time.

Furthermore, Article 86(3) provides that if the renewal fee and any additional fee have not been paid in due time the European patent application will be deemed to be withdrawn.

3. In the present case the appellant claims that he paid neither the renewal fee nor the additional fee in due time because the European Patent Office failed to inform him that he had not paid the renewal fee due (1 March 1982) and that he could validly pay it within six months of the due date (1 September 1982). The fact that the appellant received no communication from the European Patent Office had indeed prevented him from observing the time limit for paying the renewal fee.

4. Before the Board of Appeal examines whether the conditions laid down in Article 122 EPC are met in the case in question, it should be pointed out that the Convention nowhere stipulates that the Office must notify the applicant or his representative that fees - and therefore the renewal fee for the third year - have not been paid in time.

Where a renewal fee has not been paid the European Patent Office does indeed generally notify the applicant of such fact by means of the "Notice drawing attention to Article 86(2) EPC" (EPO Form 2522). This in fact happened in the present case, the Office sending on 21 April 1982 the said communication by registered letter (No. 609) which the appellant claims not to have received.

However, in communicating such information, the Office is providing a voluntary service from which the applicant would be able to derive no claims had the communication not been sent. Establishing whether or not it had in fact been sent is therefore irrelevant to the decision.

The applicant must ensure that renewal fees for European patent applications are paid in time irrespective of whether the letter, sent by the EPO (without obligation) after expiry of the time limit for payment laid down in Rule 37(1) and drawing attention to the fact that the fees may still be paid with an additional fee under Article 86(2) EPC, has been received.

Even where the European Patent Convention expressly prescribes, as in Rule 50(1), that the applicant be informed of a prevailing time limit, the applicant may derive no rights from the omission of that communication (Rule 50(2)), any more than he may in the present case where the EPO is under no obliga-

tion to send a communication drawing attention to the fact that the renewal fees have not been paid within the time limit.

5. Inability to comply with the time limit provided for in Article 86 EPC as a result of not receiving a communication from the Office has no bearing on the decision.

In any case, *restitutio in integrum* in accordance with Article 122(1) EPC is conditional upon the applicant showing that when he was unable to observe a time limit vis-à-vis the European Patent Office, all due care required by the circumstances had been taken and this is not the case.

In fact, he had not taken the trouble to note the due dates of renewal fees or to observe them, claiming instead that it was for the European Patent Office to inform him of when the fees were due.

6. The appellant also claims that the reminder from the EPO did not reach him because of an employee's pardonable error. He submits to have exercised the necessary care in instructing employees of another company to receive registered letters addressed to him. This is of no legal significance, as it has already been found in point 5 that the appellant did not exercise the necessary due care. Irrespective of this finding, however, not even an error of an employee could result in such a case in re-establishment.

As the Legal Board of Appeal has previously held in case No. J 05/80 (Official Journal EPO, 1981, 343) the culpable error of an employee in carrying out routine tasks is not to be imputed to the representative if the latter has himself shown that he exercised the necessary due care in dealing with his

assistant. The representative has to choose for the work a suitable person, properly instructed in the tasks to be performed, and to exercise reasonable supervision over the work.

The Board of Appeal does not consider that the due care required by the circumstances can be said to have been exercised. In the absence of support staff of his own, the appellant relied on persons from outside his company whose work he could not supervise.

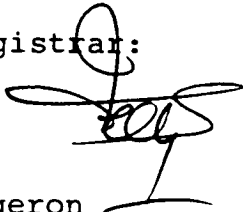
ORDER

For these reasons

it is decided that:

The appeal against the Decision of the Formalities Section of the European Patent Office dated 19 January 1984 is rejected.

The Registrar:



J. Bergeron

The Chairman:



R. Singer