

Veröffentlichung im Amtsblatt	Ja /Nein
Publication in the Official Journal	Yes /No
Publication au Journal Officiel	Oui /Non

Aktenzeichen / Case Number / N^o du recours : J 9/89 - 3.1.1
Anmeldenummer / Filing No / N^o de la demande : 86 901 931.5
Veröffentlichungs-Nr. / Publication No / N^o de la publication : WO87/01152
Bezeichnung der Erfindung: Construction Industry tool
Title of invention:
Titre de l'invention :
Klassifikation / Classification / Classement : E04F 21/165

ENTSCHEIDUNG / DECISION
vom / of / du 11 October 1989

Anmelder / Applicant / Demandeur : Darabi-Fard, Akbar
Patentinhaber / Proprietor of the patent /
Titulaire du brevet :
Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPU / EPC / CBE Article 122

Schlagwort / Keyword / Mot clé : "Restitutio in integrum - financial difficulties"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : J 9/89 - 3.1.1

D E C I S I O N
of the Legal Board of Appeal
of 11 October 1989

Appellant : Darabi-Fard, Akbar
15 Eastbry Road
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Representative : Clifford, Frederick Alan
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Decision under appeal : Decision of the Receiving Section
of the European Patent Office
dated 2 November 1988.

Composition of the Board :

Chairman : P. Ford
Members : J. Stephens-Ofner
F. Benussi

Summary of Facts and Submissions

I. The international phase of Euro-PCT application

No. 86 901 931.5 expired on 14 April 1987. On 25 June 1987 the Appellant was notified, (Rule 85a EPC), that the fee specified in Articles 79(2) and 158(2) EPC had not been paid. On 2 October 1987 he was advised, (Rule 69(1) EPC), of the impending loss of his rights. By letter dated 26 November 1987 he formally applied for re-establishment of rights under Article 122 EPC. All the necessary fees had been paid before that date.

II The subsequent history of the proceedings is, for the purposes of this decision, adequately summarised in the decision under appeal which also sets out the grounds upon which the Appellant relied before the first instance. These were:

- (i) Financial difficulties causing inability to pay the fees in due time and necessitating the support of a backer;
- (ii) Problems of communication between the Appellant and a friend who was advising him;
- (iii) A number of local postal strikes;
- (iv) The Appellant's lack of familiarity with EPO forms and procedure and his resultant misinterpretation of EPO communications.

III. In a reasoned decision of 2 November 1988 the Receiving Section found that grounds (ii)-(iv) inclusive were not established. It also found against the Appellant under ground (i), essentially on the basis that "under

established EPO practice, financial difficulties which have prevented the Applicant from paying fees on time do not meet the necessary criterion of due care." By this, the Receiving Section must have meant that for the purposes of Article 122 EPC the exercise by an Applicant of due care is inconsistent with the existence of any financial difficulties encountered by him within the course of the European patent grant procedure.

- IV. An appeal was lodged against the above decision on 29 December 1988.

Reasons for the Decision

1. The appeal is admissible.
2. The Appellant's case before the Board is in effect an elaboration of ground (i) submitted by him to the first instance. The elaboration consists in giving detailed reasons for the existence of his financial difficulties, namely, longterm health problems of a nature that the Appellant was originally reluctant to rely upon openly in support of his application for restoration of rights.

It is, of course, possible that an inquiry by the Receiving Section into the causes of his financial difficulties would have elicited them, but no such inquiry was ever made. Indeed, it is clear from the decision under appeal that no answer to such an inquiry would have made any difference to that decision on the ground of financial hardship, based as that decision was on the supposed "basic principle" that the existence of financial difficulty, for whatever reason, was tantamount to a lack of due care by the Applicant.

3. Contrary to the view expressed on this point in the decision under appeal, this Board has recently decided that financial difficulties which are beyond the control of an Applicant for a European patent may be a ground for re-establishment of rights, provided that he can show that he has exercised all due care in the circumstances in attempting to overcome those financial difficulties: decision J 22/88, 29 April 1989, to be published.

4. In the present case, the Appellant's voluntary personal adviser, Mr. Appleton, was made aware by the Appellant's professional representatives at about the time when the application was due to enter the regional phase (April 1987), that further action had to be taken and further expenditure incurred. It is abundantly clear that, at that stage, the Appellant had no longer a financial backer (cf. paragraph 5 of the statement under Article 122(3) EPC, filed on 27 November 1987), but there is no evidence before the Board of any efforts having been made by or on behalf of the Appellant to find a backer during the critical period between April and mid-July 1987. (The period of grace under Rule 85a EPC expired on 14 July 1987).

5. The Board has sympathetically considered the information presented by the Appellant in his statement of grounds of appeal about his health problems during and preceding the critical period in this application, but concludes that those problems were not really the cause of the failure to pay the fees on time, which was, instead, that the Appellant had no financial backer when he needed one. He clearly expected Mr. Appleton to continue to try to find him one, but in the absence of evidence, it is not possible to decide that that was a reasonable expectation in all the circumstances.

6. It follows that the appeal must fail.

Order

For the above reasons, it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

J. Rückerl

P. Ford