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Aktenzeichen / Case Number / N<sup>o</sup> du recours : J 31/89 - 3.1.1  
Anmeldenummer / Filing No / N<sup>o</sup> de la demande : 85 901 022.5  
Veröffentlichungs-Nr. / Publication No / N<sup>o</sup> de la publication : 0 205 434  
Bezeichnung der Erfindung: Storage method and apparatus  
Title of invention:  
Titre de l'invention :  
Klassifikation / Classification / Classement : B28C 7/10

**ENTSCHEIDUNG / DECISION**

vom / of / du 31 October 1989

Anmelder / Applicant / Demandeur : Beaver, Paul Robert et al  
Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :  
Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 122 EPC

Schlagwort / Keyword / Mot clé : "Restitutio in integrum - erroneous interpretation of EPC"

**Leitsatz / Headnote / Sommaire**



Case Number : J 31/89

**D E C I S I O N**  
of the Legal Board of Appeal  
of 31 October 1989

**Appellant :**

- (1) Beaver, Paul Robert  
77 Midland Road  
Thrapston  
Nr. Kettering  
Northants NM14 4JS (GB)
- (2) Nugent, Michael John  
Grey Stanes Eastern Middleton  
Gorebridge  
Midlothian (GB)

**Representative :** Archer, Philip Bruce, et al  
Urquhart-Dykes & Lord Trinity Court  
Trinity Street  
Priestgate  
Peterborough  
Cambridgeshire PE1 1DA (GB)

**Decision under appeal :** Decision of the Receiving Section  
of the European Patent Office  
dated 17 April 1989 rejecting  
re-establishment of rights.

**Composition of the Board :**

**Chairman :** P. Ford  
**Members :** M. Lewenton  
J.C. Saisset

## Summary of Facts and Submissions

- I. The Appellant (1) filed international application PCT/GB/8500055 on 13 February 1985 claiming the priority of a national patent application filed in Great Britain on 14 February 1984. This application was given the European patent application number 85 901 022.5.
  
- II. In a letter dated 15 April 1988, the Receiving Section notified the Appellant (1) that the renewal fee for the fourth year fell due on 29 February 1988, and had not been paid in due time. However, it could be validly paid within six months of the due date, provided that within this period the additional fee (10% of the renewal fee) was also paid.

The fee paid by the Appellants was received on 31 August 1988, the date of a partial assignment of rights between the two Appellants by virtue of which the Appellant (2) became co-applicant in the application. On 21 September 1988, the Receiving Section informed the Appellant (1) that the patent application was deemed to be withdrawn, since the payment of the renewal fee had not been made in due time.

- III. By letter of 28 September 1988, the Appellant (1) filed a request for re-establishment of rights. In support of his request he set out the difficulties he had had in negotiating an agreement with his brother, the Appellant (2), which was intended to avoid the loss of the application. This agreement was not signed until 31 August 1988, owing to problems of communication between the parties, due - inter alia - to a public holiday in England.

- IV. By decision dated 17 April 1989, the Receiving Section rejected the request for re-establishment on the grounds that, under established EPO practice, financial difficulties having prevented the applicant from paying fees in time do not meet the necessary criteria of due care. The basic principle of ability to pay in connection with the provisions of Article 122 EPC would require that the applicant was able to pay the necessary fees at any time within the course of the European patent procedure. The other circumstances described in the request, such as the problems of communication between the parties concerned as a cause of the delayed arrangement, also were not suitable as grounds for the restoration of rights.
- V. The Appellants filed an appeal against that decision on 15 June 1989. In their statements of grounds, received on 15 and 26 July 1989, they mainly argued that the time limit as stated by the Receiving Section was incorrect and therefore the payment of the renewal fee was in due time. Without prejudice to this contention, the Appellants referred to the grounds submitted in the First Instance. The necessary level of care and attention to time limits had been paid by the Appellant (1) and his representative, having regard to the circumstances set out in the application for re-establishment and having regard also to the fact that re-establishment had been allowed, for example, on the grounds that a renewal fee had been overlooked because the applicant's representative had been acting single-handed under conditions of acute personal stress.

#### Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and therefore is admissible.

2. The Board agrees with the Receiving Section's opinion that the renewal fee in respect of the fourth year fell due on 29 February 1988, and that the last date on which payment validly could have been made was 29 August 1988. According to Article 86(1), read in conjunction with Rule 37(1) EPC, renewal fees for a European patent application in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application. The application in question was filed on 13 February 1985; therefore the last day of the month of February in 1988, the 29th, was the day on which payment of the renewal fee should have been effected.
  
3. Furthermore, the late payment of the renewal fee on 31 August 1988, is not to be considered as a payment in due time. According to Article 86(2) EPC, the (new) time limit starts on the "due date", which, in the present case, is 29 February 1988. Therefore, the Receiving Section correctly concluded that in accordance with Rule 83(4) EPC the expiry date was the day in August corresponding to the same number of the day in February. The opinion of the Appellants, expressed in their letter of 24 July 1989, is based on an erroneous interpretation of the EPC. It is true that the cited commentary of the Chartered Institute of Patent Agents referring to the late payment of renewal fees may be misleading. However, as set out above, the relevant Article and Rule of the EPC are very clear on that point. According to the principle that everyone is presumed to know the law, especially if advised by qualified persons, the failure to interpret the law correctly cannot excuse the Appellants.
  
4. The Board has been unable to find circumstances which, in spite of all due care taken, have prevented the Appellants from observing the time limit concerned. The question

whether financial difficulties may be a ground for a re-establishment request does not fall to be decided in the present case. It may be observed, however, that this Board has recently decided the question in a sense contrary to the view expressed in the decision under appeal: decision J 22/88, 29 April 1989, to be published. Furthermore, the Appellants themselves do not maintain the argument that such difficulties were the true cause of the loss of rights. As they have explained in their letter of 24 July 1989, funds for payment of the renewal fee were always available. During the negotiations between the two Appellants, there was an understanding with the professional representatives dealing with the application that any further debts of the Appellant (1) incurred by the professional representatives would be honoured by the Appellant (2).

5. The Board has sympathetically considered the information presented by the Appellants in their statements of grounds of appeal about the social, technical and business difficulties suffered by the Appellant (1). Those difficulties certainly gave rise to problems in the course of the negotiations between the Appellants causing also stress to all parties involved. However, the Board concludes that this situation - being typical in such negotiations - were not really the cause of the failure to pay the fees on time. It is apparent from the statements of grounds of appeal that during the discussions on the agreement between the two Appellants, everyone, including their representative, was aware of the necessity for payment of the renewal fee. However, they failed to determine correctly the last date for valid payment of the renewal fee. For the reasons given above, it is not possible to decide that that was a circumstance justifying a re-establishment of rights.
6. It follows that the appeal must fail.

**Order**

**For the above reasons, it is decided that:**

**The appeal is dismissed.**

**The Registrar:**

J. Ruckerl

**The Chairman:**

P. Ford