

Publication in the Official Journal ~~Yes~~ / No

File Number: J 1/92 - 3.1.1  
Application No.: 88 906 868.0  
Publication No.:  
Title of invention: Interior rear vision mirror

Classification:

D E C I S I O N  
of 15 July 1992

Applicant: Shimojo, Jin  
Appellant: Riebling, Peter, Dr.-Ing.

Headword:

EPC Article 107

Keyword: Entitlement to appeal (representative not entitled to appeal in his own name)



Case Number : J 1/92 - 3.1.1

**D E C I S I O N**  
of the Legal Board of Appeal 3.1.1  
of 15 July 1992

**Appellant :** Riebling, Peter, Dr.-Ing.  
Patentanwalt  
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**Decision under appeal :** Decision of the Receiving Section of the European  
Patent Office dated 18 September 1991 refusing a  
request for re-establishment of rights.

**Composition of the Board :**

**Chairman :** O. Bossung  
**Members :** J.-C. De Preter  
J.P. Seitz

### Summary of Facts and Submissions

- I. Euro-PCT application No. 88 906 868.0 was filed with the Japanese Patent Office under application No. PCT/JP 88/00765 on 29 July 1988.
- II. On 28 May 1990 the Receiving Section sent a communication pursuant to Rule 69(1) EPC, in which the Applicant was informed that the application was deemed to be withdrawn as no translation of the related international application into one of the official languages of the EPO had been filed within the time limit prescribed by Article 22(1) PCT. The Applicant's attention was also drawn to Article 122 EPC.
- III. In the impugned decision of 18 September 1991 it was held that the application for re-establishment of rights did not comply with the provisions of Article 122(2) EPC as re-instatement of the term for filing the translation was not sought before 16 February 1991.
- IV. A Notice of Appeal was filed on 28 September 1991 as follows: "I, (followed by the name of the Representative and his address) file herewith an appeal against the Decision of EPO dated September 18, 1991. The appeal is lodged in my own name ...".
- V. In the Statement of Grounds filed on 24 December 1991 it was stated inter alia that the notification of the loss of rights dated 28 May 1990 was not legally valid as the form was insufficiently completed and a possible reference to the fact that re-instatement may have been possible, was not made because it was impossible to read the handwritten footnote (except Figure 122 EPC, which was discernible with great difficulty).

VI. In its letter of 24 January 1992 the Registry drew the Representative's attention to the fact that the appeal, as it had been lodged not on behalf of the Applicant but in the own name of the Representative, might be considered inadmissible. A communication of the Board to the same effect was forwarded on 10 March 1992.

The Representative replied that the sentence "The appeal is lodged in my own name ..." is misleading because this sentence contradicts the statement in the heading that Shimojo Jin (Applicant) is represented. Thus the EPO should have interpreted the declaration in its entirety. The above-mentioned sentence merely signified that the appeal was lodged by him, i.e. by him personally and nobody else. This could have arisen through an error in translation.

#### Reasons for the Decision

1. The interpretation, as set out by the Representative, is only possible if the objective content of the Notice of Appeal is subject to doubt.

It is true that above the Notice of Appeal, as in previous letters from the Representative, for example those of 12 February 1991 and 15 July 1991, the same heading appears with the words "representation of Shimojo Jin" ("Vertretung von Shimojo Jin").

Nevertheless it is clearly stressed in the above-mentioned Notice that the appeal is lodged on behalf of the Representative himself. Indeed the first sentence "I, (followed by the name and the address of the Representative) file herewith an appeal" is immediately completed by the totally unequivocal words "The appeal is

lodged in my own name". This means unmistakably that the appeal was not lodged on behalf of the Applicant. An error in translation from German into English cannot be accepted, as "im eigenen Namen ..." does not differ much from "in my own name". Thus the appeal is not admissible, as it was not lodged on behalf of the adversely affected party, i.e. the Applicant, but on behalf of the Representative.

2. Even if the appeal had been admissible, it would have been dismissed.

It is true that the EPO form of 28 May 1990 could have been completed more carefully but its content is clear; the tick inserted on this form is placed next to the words "Article 22(1) PCT" and not next to the words "Article 39(1) PCT". Furthermore, for a Representative who had completed the form "Procedural steps" (EPO form 1200-1), there cannot have been any doubt as to which period was concerned, i.e. the one first mentioned in Rule 104(b) EPC (21 months).

The handwritten reference put at the bottom of the form relating to Article 122 EPC was also legible. Even if, as submitted, only "122 EPC" could be read, the meaning of the sentence ought to have been clear to a Professional Representative before the EPO.

In any case, even if no such reference had been made, the cause of non-compliance was removed by the receipt of the communication of 28 May 1990 under Rule 69(1) EPC, so that the request for re-establishment of rights, which dates from 12 February 1991, was not filed in due time.

**Order**

**For these reasons, it is decided that:**

**The appeal is dismissed.**

**The Registrar:**

**The Chairman:**

**M. Beer**

**O. Bossung**