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File Number: J 4/92 - 3.1.1

Application No.: 87 600 009.2

Publication No.: 0 292 628

Title of invention: Synthetic wood composition from fruit kernels or shells  
and/or marble chips

Classification: C08L 97/02, C04B 14/28

**D E C I S I O N**  
of 18 February 1993

Applicant: Stavrakellis Panayiotis

Headword:

EPC Articles 86(3) and 122(2)

Keyword: "Missed time limit for payment of renewal fee - re-establishment of  
rights (inadmissible)"



**Europäisches  
Patentamt**

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Boards of Appeal

Chambres de recours

Case Number : J 4/92 - 3.1.1

**D E C I S I O N**  
**of the Legal Board of Appeal 3.1.1**  
**of 18 February 1993**

**Appellant :** Stavrakellis Panayiotis  
Akademias 64  
GR - 10679 Athens (GR)

**Decision under appeal :** Decision of the Formalities Officer of the European Patent Office dated 2 August 1991 refusing the request that the renewal fee for the third year be deemed to have been paid in time.

**Composition of the Board :**

**Chairman :** R. Schulte  
**Members :** J.-C. De Preter  
J.-P. Seitz

## Summary of Facts and Submissions

- I. The third year's renewal fee for European patent application No. 87 600 009.2, filed on 17 August 1987, was not paid by the due date, i.e. 31 August 1989. Notwithstanding a notice of 6 October 1989 drawing the attention of the Applicant to Article 86(2)(3) EPC, the payment of the fee (GRD 35.900) was not made until 4 April 1990 and no additional fee was paid.
- II. By his letter of 29 June 1990 the Formalities Officer informed the Applicant that, following the Decision of the President of the EPO dated 21 February 1990 revising the equivalents of the fees, costs and prices in currencies other than DM, the equivalent of the third renewal fee had been fixed with effect from 22 March 1990 at GRD 46.000 so that he was requested to make good the deficit of GRD 10.100 within two months of notification of this request. It was further mentioned that, if the deficit was paid in due time, the fee would be deemed to have been validly paid.
- III. The deficit of GRD 10.100 and GRD 61.000 in respect of the renewal fee for the fourth year was paid on 13 August 1990.
- IV. In his communication of 17 December 1990 pursuant to Rule 69(1) EPC, the Formalities Officer informed the Applicant that the payment of GRD 35.900 for the third renewal fee was not valid because it was made after the time limit of Article 86(2) EPC which had expired on 28 February 1990 and because the additional fee of 10% was not paid so that the application was deemed withdrawn. It was further pointed out that the Office's communication of 29 June 1990 regarding only the change in currency had been issued in error and that, as the one-year time limit

provided in Article 122(2) EPC had expired on 31 August 1990, the Office saw no possibility of the Applicant being re-established in his rights.

- V. By his letter of 24 January 1991 the Applicant requested an appealable decision and explained that he had interpreted the EPO letter of 6 October 1989 wrongly, i.e. that he had considered that he was given a six-month term from the date of this letter to make a payment of GRD 35.900 and that he had not understood that a 10% surcharge should have been paid. Furthermore, he pointed out that he had dealt with the Office's request of 29 June 1990 in due time, that he had also paid the renewal fee for the fourth year in due time and that, having received another communication of the Examining Division pursuant to Article 96(2) and Rule 51(2) EPC dated 12 February 1990 and a four-month term to reply, he did send his reply on 11 May 1990. He expressed his hope that it had become evident that he had never had the intention of abandoning or withdrawing his application.
- VI. By a decision of the Formalities Officer of 2 August 1991 the request was refused.
- VII. The Applicant lodged an appeal against this decision on 4 October 1991, paid the appropriate fee and submitted a Statement of Grounds on 6 December 1991.

He submitted that the EPO form of 6 October 1989 could have been made clearer to help nationals of each one of the member States who do not enjoy the advantage of commanding one of the alternative three official languages of the EPC and that he felt he had been misled by the communication of 29 June 1990 that made him believe that his payment of 4 April 1990 was in order. Had he received on 29 June 1990 a communication pursuant to Rule 69(1) EPC

he would have been given ample time to request re-establishment of his rights. Therefore he requested that the impugned decision be set aside and re-establishment of rights be granted.

VIII. By his facsimile of 12 February 1992 the Appellant expressly filed an application for re-establishment of rights and paid the corresponding fee with the additional fee on the third renewal fee. The grounds therefor are approximately the same as in his Statement of Grounds.

#### Reasons for the Decision

1. The appeal is admissible.
2. As neither the payment of the third year renewal fee nor the additional fee - notwithstanding the clear notice of 6 October 1989 which constituted only a voluntary service of the EPO - were made before the end of the period of grace (Article 86(2) EPC) the loss of rights according to Article 86(3) EPC occurred automatically, i.e. by operation of law on expiry of the time limit that had not been observed (28 February 1990) without any decision therefore being necessary (cf. G 1/90, OJ EPO 1991, 275, point 5 of the Reasons). The fact that the Appellant complied with the Formalities Officer's request of 29 June 1990 regarding the revised equivalents of the fees in currencies other than DM could not make good this loss of rights that had already taken place. So by his communication of 17 December 1990 the Formalities Officer rightly informed the Appellant that the communication of 29 June 1990 had been issued in error and that the application was deemed withdrawn.
3. However, the Appellant having been misled by the above-mentioned communication of 29 June 1990 lost the

opportunity to file a request for re-establishment of rights within the time limit provided by the last sentence of Article 122(2) EPC, i.e. before 28 August 1990.

Nevertheless, even if it could be considered that because the Appellant had been misled, he should still have been entitled to file a request for re-establishment of rights after 28 August 1990, he would have had to act within at least two months from the removal of this misapprehension following receipt of the communication of 17 December 1990, which he failed to do.

4. In any case, such a request would not have been allowable as it appears inter alia from the Appellant's request for an appealable decision filed on 24 January 1991 that he considered that by the notice of 6 October 1989 he was given a six-month term from this date to make a payment and did not understand that a 10% surcharge had to be paid. However, this notice was clear and unambiguous so that he did not take all due care according to Article 122(1) EPC.

Order


For these reasons, it is decided that:

1. The appeal is dismissed.
2. The request for re-establishment of rights is dismissed as inadmissible.

The Registrar:

  
M. Beer

The Chairman:

  
R. Schulte