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D E C I S I O N
of 21 June 2000

Case Number: T 0093/00 - 3.2.3

Application Number: 95905276.2

Publication Number: 0737113

IPC: B09B 3/00

Language of the proceedings: EN

Title of invention:

Method and furnace for treatment of ash

Applicant:

Asea Brown Boveri AG

Opponent:

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Headword:

Restitutio in integrum

Relevant legal provisions:

EPC Art. 122

Keyword:

"Isolated mistake in an otherwise satisfactory system"

Decisions cited:

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Catchword:

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Case Number: T 0093/00 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 21 June 2000

Appellant: Asea Brown Boveri AG
Haselstrasse 16
5401 Baden (CH)

Representative: Boecker, Joachim, Dr.-Ing.
Adelonstrasse 58
65929 Frankfurt am Main (DE)

Decision under appeal: Decision of the Examining Division 2.3.09.113 of
the European Patent Office posted 4 August 1999
refusing European patent application
No. 95 905 276.2 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: F. E. Brösamle
J. P. B. Seitz

Summary of Facts and Submissions

- I. European patent application No. 95 905 276.2 was filed on 22 December 1994 as International Application Number PCT/SE 94/01241 and published on 6 July 1995. Applicant is Asea Brown Boveri AG.
- II. With letter dated 4 August 1999 the decision of the Examining Division to refuse the application was notified to the applicant.
- III. On 27 September 1999, in the name and by order of the applicant, its representative Dr Boecker filed an appeal against the above mentioned decision. The appeal fee was paid on 29 September 1999.
- IV. However no written statement setting out the grounds of appeal was filed within the time limit of four months after the date of notification of the impugned decision.

Since the appeal did not comply with Article 108 EPC, the Board in a communication under Rule 65(1) EPC dated 14 February 2000, notified to the appellant that the appeal would probably be rejected as inadmissible.
- V. On 29 February 2000 the appellant completed the omitted act by filing the grounds of appeal and simultaneously filed an application to have his rights re-established. The corresponding fee was paid on the same day, and the written statement setting out the grounds and facts on which said application relied was filed on 6 April 2000.

The representative submitted that in his relatively small office, in which he personally was responsible for noting the time limits, this was a system which normally worked in a satisfactory manner and that the present case should be considered as an isolated mistake.

Reasons for the Decision

1. The application for re-establishment of rights complies with all the formal requirements set out in Articles 122(2) and (3) EPC, and is therefore admissible.
2. The applicant for a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office, should have this right re-established, if said non observance causes the loss of his application.
3. It is the constant and established jurisprudence of the Boards of Appeal that the provisions of Article 122 EPC are intended to ensure that an isolated mistake within an otherwise normally satisfactory system, does not lead to the loss of the substantive right.
4. In the present case the crucial question for deciding on the allowability of the application for restoration is whether or not the applicant's representative, with whom the burden of proof lies, has exercised throughout the whole period following the impugned decision the required due care for filing an admissible appeal.

5. The first question to be decided then by the Board in order to appreciate the due care on the part of the professional representative, is whether the system for monitoring time limits set up by Dr Boecker was satisfactory or not.

5.1 In Dr Boecker's office no assistant has been entrusted with carrying out this task, which is achieved by the professional representative himself.

For this purpose Dr Boecker has instituted a proper reminder system consistent with the rather small office he has been ruling for almost thirty years for the benefit of ABB, his main client.

6. Normally after having been notified of a decision open to appeal he would immediately calculate the corresponding time-limits and immediately enter them in his office diary. He would even enter a precautionary time limit in said diary in order to provide himself with a cross-check on the action to be met.

5.2 In the present case after he had filed on due time the notice of appeal on 29 September 1999 (ie on the second date entered in his diary), the representative who had also as usual duly noted the corresponding time limits on the acknowledgement of receipt of said notice, forgot to enter them in his diary.

This isolated mistake occurred at a time when the representative who is more than seventy years old, was sick.

5.3 The Board is therefore satisfied that the system built up in this small office had worked well over a long

period of time on the one hand, and that due to the particular circumstances occurring at that time, an isolated mistake occurred on the other hand.

6. The conditions for re-establishment of rights are therefore met.

Order

For these reasons it is decided that:

The applicant is re-established in his rights.

The Registrar:

The Chairman:

A. Counillon

C. Wilson