

**Internal distribution code:**

- (A) [ ] Publication in OJ  
(B) [ ] To Chairmen and Members  
(C) [ ] To Chairmen  
(D) [X] No distribution

**D E C I S I O N**  
**of 16 December 2002**

**Case Number:** T 1176/01 - 3.2.7

**Application Number:** 97926156.7

**Publication Number:** 0948423

**IPC:** B24C 3/06

**Language of the proceedings:** EN

**Title of invention:**

Nozzles fitted on bar mechanism for treating steel surfaces

**Applicant:**

Antonaros, Ilias

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 108, 122

EPC R. 65(1), 84

**Keyword:**

"Grounds of appeal - not filed"

"Extension of time limit for filing appeal grounds - no"

"Request for restitution - not validly filed"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 1176/01 - 3.2.7

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.7  
of 16 December 2002

**Appellant:** Antonaros, Ilias  
5, Diagora Street  
GR-188 63 Perama (GR)

**Representative:** -

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 5 April 2001  
refusing European patent application  
No. 97 926 156.7 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** A. Burkhart  
**Members:** P. A. O'Reilly  
E. Lachacinski

## Summary of Facts and Submissions

- I. The appellant (applicant) filed notice of appeal on 1 June 2001 against the decision of the Examining Division to refuse the European application No. 97 926 156.7.
- II. In their decision dated 5 April 2001 The Examining Division refused the application because the application as amended did not comply with Article 123(2).
- III. On 18 July 2001 the representative of the appellant was reminded in a fax that the grounds of appeal should be filed by 16 August 2001.
- IV. On 6 September 2001 the representative of the appellant requested an extension of the time limit for filing the grounds of appeal. This request was repeated on 13 September 2001.
- V. With a letter of 18 September 2001 the representative of the appellant was informed by the European Patent Office that the time limit for filing the grounds of appeal was not extendable.
- VI. With communication of 12 November 2001 the Registrar of the Board informed the representative of the appellant that no grounds of appeal have been received. This communication included a reference to Article 122 EPC. The enclosed communication of the Board indicated that an extension of the time limit for filing the grounds of appeal was not possible.
- VII. On 5 January 2002 the appellant sent a fax to the EPO

which however contained no appeal grounds and concerned other matters.

- VIII. On 18 February 2002 the Registrar of the Board sent the appellant himself a fax. The fax included a copy of the letter from the Registrar dated 12 November 2001 to the representative.
- IX. With a fax dated 19 April 2002 the appellant indicated that he wished restoration of the application.
- X. With a fax dated 14 June 2002 the appellant requested oral proceedings.
- XI. In a provisional opinion dated 25 June 2002 the Board indicated that appeal grounds had still not been filed. The Board also pointed out that if the fax of 19 April 2002 were to be considered a request for restitution then the fee for restitution had not been paid, the omitted act (filing of appeal grounds) had not been completed, and the grounds for restitution had not been filed. The Board also explained that if a request for restitution were to be filed it was unlikely that it would be successful, as the two-month time limit for filing the request after the removal of the cause of non-compliance had already run out.
- XII. On 1 October 2002 the Board issued an invitation to oral proceedings. The communication accompanying the invitation essentially repeated the content of the provisional opinion of 25 June 2002.
- XIII. Oral proceedings took place on 16 December 2002. At the oral proceedings the appellant requested that the appeal be admitted and the decision of the Examining

Division set aside.

XIV. The appellant essentially argued as follows:

The appellant was not at fault. His attorney was at fault. Also, the European Patent Office was at fault for recommending the attorney. He should not suffer for the faults of others.

### **Reasons for the Decision**

#### *Admissibility of the appeal*

1. A notice of appeal was filed and the appeal fee paid in due time. However, no grounds of appeal were filed. The appeal therefore does not comply with Article 108 EPC and has to be rejected under Rule 65(1) EPC as inadmissible.

#### *Time limit for filing grounds of appeal*

2. The request for extension of the time limit for filing the grounds of appeal must be rejected. In accordance with Rule 84 EPC time limits may only be extended when they are set by the European Patent Office itself. Time limits which are set in the European Patent Convention may not be extended. The time limit for filing the grounds of appeal is set out in Article 108 EPC. Therefore, this time limit may not be extended.

#### *Request for restitution*

3. The appellant in his fax of 19 April 2002 indicated that he wished to restore the application. This is

understood by the Board to be a request for restitution in accordance with Article 122 EPC.

However, a request for restitution is only then validly filed when: the omitted act is completed (in this case filing the grounds of appeal), the fee for restitution has been paid, and the grounds for restitution have been given. Up to the present time, none of these requirements have been fulfilled. Therefore, no valid request for restitution has been filed.

Also, a request for restitution must be filed within two months from the removal of the cause of non-compliance with the time limit (Article 122(2) EPC). It seems that the representative of the appellant was aware that the grounds for appeal had not been filed in due time since the representative asked for a time limit extension for filing the appeal grounds. By the communication of 12 November 2001 the Registrar of the Board informed the representative of the appellant of his failure to file the grounds of appeal, indicating that rejection of the appeal as inadmissible may be expected for this reason. By virtue of receipt the fax of the Registrar of 18 February 2002 the appellant himself also was aware at the latest on that date of the failure to file the grounds of appeal. Therefore, a valid request for restitution should apparently have been filed by 18 April 2002 at the latest. On 19 April 2002, i.e. after the time limit had run out, the appellant made his request for restitution without however including his grounds for restitution, without paying the fee for restitution and without completing the omitted act. Therefore, no valid request for restitution has been filed. Moreover, even if a valid request had been filed, it would not have been within

two months after the latest possible date for removal of the cause of non-compliance.

As there is no valid request for restitution the Board does not have to consider whether or not the appellant and his representative took the required due care.

**Order**

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

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

D. Spigarelli

A. Burkhart