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INTERLOCUTORY  
D E C I S I O N  
of 9 August 2002

**Case Number:** T 0558/02 - 3.2.4

**Application Number:** 95934001.9

**Publication Number:** 0787252

**IPC:** F02B 75/28

**Language of the proceedings:** EN

**Title of invention:**

A dual piston internal combustion engine

**Applicant:**

Beare, Malcolm J

**Opponent:**

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**Headword:**

Re-establishment/BEARA

**Relevant legal provisions:**

EPC Art. 122

**Keyword:**

"Re-establish - all due care - sudden illness"

"Appeal admissible - yes"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0558/02 - 3.2.4

INTERLOCUTORY  
D E C I S I O N  
of the Technical Board of Appeal 3.2.4  
of 9 August 2002

**Appellant:** Beare, Malcolm J  
"Wynkie Marsh  
AU-Bordertown, S.A. 5268 (AU)

**Representative:** Burrows, Anthony Gregory  
Business Centre West  
Avenue One, Business Park  
Letchworth Garden City  
Hertfordshire SG6 2HB (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 14 February 2002  
refusing European patent application  
No. 95 934 001.9 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** T. K. H. Kriner  
C. Holtz

## Summary of Facts and Submissions

- I. This interlocutory decision concerns the request for re-establishment of the appellant with regard to the time limit for filing the notice of appeal and paying the appeal fee.
- II. The decision under appeal is dated 14 February 2002. The notice of appeal was filed and the appeal fee paid on 29 April 2002, i.e. outside the two month term under Article 108 EPC for filing an appeal. On the same day the appellant filed a request for re-establishment and paid the required fee.
- III. The appellant explained in a reasoned statement that the reason for the belated filing was due to the representative having suddenly been taken ill a few days before expiry of the time limit for filing the notice of appeal and paying the appeal fee. On the day he fell ill, the representative had put the current file aside as an urgent matter in order to prepare the appeal, but after falling ill, he mistakenly thought that it had already been taken care of.
- IV. In support of the explanations of the representative, a request form for a radiology test dated 27 April 2002 was submitted, as well as a statutory declaration from a third person, confirming that the representative had sounded very ill during a telephone conversation on Monday 22 April, which prevented the representative from setting up a meeting that day with said third person. This person further declared that the next time the two talked was on Sunday 28 April 2002, as far as

he could remember. At that time the representative said that he had just gone back to work. Their meeting was eventually set up for Thursday 2 May 2002.

V. The grounds of appeal were filed on 24 June 2002.

### **Reason for the Decision**

1. The representative discovered on going back to work after his illness that no appeal had been filed in the present case. The request for re-establishment was then filed immediately, together with a notice of appeal and payment of the appeal fee and fee for re-establishment, on 29 April 2002. The request for re-establishment is admissible.
  
2. Under Article 122 EPC, a request for re-establishment is allowed if the party in question was unable to observe the time limit in spite of having taken all due care required by the circumstances. This Board finds it self-evident that sudden illness, over which a person has no control, may excuse that person from having to take measures to ensure that time limits are met. The evidence filed corroborates the explanations given. The Board finds, as far as the facts in the present case have been established, that the representative under these circumstances cannot be blamed for having mistakenly thought that he had already dealt with the file, and that it could not have been expected from him to go back to his office or ask any colleague to make sure that the notice of appeal and appeal fee had indeed been dispatched.

3. The requirements of Article 122 (1) EPC have thus been met. Since the request for re-establishment is allowable and the grounds of appeal, which were filed in due time, are sufficient to constitute a basis for the appeal, the appeal is admissible.

## **Order**

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

1. The request for re-establishment is allowed.
2. The notice of appeal and the appeal fee are considered to have been submitted in due time.
3. The appeal is admissible.

The Registrar:

The Chairman:

G. Magouliotis

C. A. J. Andries