BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

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 24 July 2003

Case Number: T 1094/02 - 3.2.7

Application Number: 98107291.1

Publication Number: 0865990

IPC: B65C 3/08

Language of the proceedings: EN

Title of invention:
Method of labeling articles having convex surfaces

Applicant:
B & H MANUFACTURING COMPANY, INC.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 108
EPC R. 67

Keyword:
"Reimbursement of appeal fee (no)"

Decisions cited:
T 0543/99

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1094/02 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 24 July 2003

Appellant: B & H MANUFACTURING COMPANY, INC.
3461 Roeding Road
Ceres
California 95307 (US)

Representative: Marsh, Roy David
Hoffman Eitle,
Patent- und Rechtsanwälte
Arabellastrasse 4
D-81925 München (DE)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 28 March 2003 refusing European application No. 98107291.1 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: A. Burkhart
Members: H-P. Felgenhauer
E. Lachacinski

Summary of Facts and Submissions

I. By a decision dated 28 March 2002 , European patent application No. 98 107 291.1 was refused (Article 97(1) EPC).

II. The appellant (applicant) lodged an appeal against that decision on 15 May 2002 and at the same time paid the appropriate appeal fee. Grounds of appeal have not been filed.

III. By a letter dated 6 August 2002, the appellant withdrew the European patent application and requested full or partial reimbursement of the appeal fee.

IV. The arguments given in support of this request are essentially as follows:

At the date of filing the request for reimbursement the Online European Patent Register failed to show that an appeal had been filed. Consequently the public cannot be affected by the appeal fee being reimbursed.

Since grounds of appeal have not been filed the appeal not involved any work to the EPO.

The only reason for lodging the appeal had been to allow time for filing a divisional application. Refusal to refund the appeal fee would thus increase the costs of the divisional application.

V. By a communication dated 14 March 2003, the Board informed the appellant of its provisional opinion that the request for full or partial reimbursement of the appeal fee would probably have to be refused.

Although invited to file observations on the communication within a period of two months, the appellant did not submit any comments.

Reasons for the Decision

1. An appeal fee may only be reimbursed in case an appeal is considered as "deemed not to have been filed" or, as specified in Rule 67 EPC, in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

1.1 Notice of appeal has been filed within the two months period according to Article 108 EPC. The appeal fee has been paid at the same time. The appeal thus cannot be considered as "deemed not to have been filed".

1.2 The present case, in which a statement of the grounds of appeal was not filed and in which, after the appeal was lodged, the application was withdrawn, clearly falls outside of the provisions of Rule 67 EPC (cf. e.g. T 543/99).

Consequently the grounds for the appeal given by the appellant, namely to allow time for filing of a divisional application, and the arguments given by the appellant in support of his request for reimbursement,

according to which the public would not be misled by the reimbursement of the appeal fee and according to which, since no statement of the grounds of appeal has been filed, examination of the appeal has not involved any work to the EPO, are legally irrelevant.

2. From the above it follows that the request for full or partial reimbursement of the appeal fee has to be refused.

Order

For these reasons it is decided that:

The request for full or partial reimbursement of the appeal fee is refused.

The Registrar: The Chairman:

D. Spigarelli A. Burkhart