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**D E C I S I O N**  
**of 5 Januar 2006**

**Case Number:** T 0702/05 - 3.2.2

**Application Number:** 95942539.8

**Publication Number:** 0796057

**IPC:** A61B 5/05

**Language of the proceedings:** EN

**Title of invention:**

Optical techniques for examination of biological tissue

**Applicant:**

NON-INVASIVE TECHNOLOGY, INC.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 108

EPC R. 67

**Keyword:**

"Withdrawal of appeal"

"Reimbursement of appeal fee (no)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0702/05 - 3.2.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 5 Januar 2006

**Appellant:** NON-INVASIVE TECHNOLOGY, INC.  
4014 Pine Street  
Philadelphia, PA 19104 (US)

**Representative:** Wagner, Karl H., Dipl.-Ing.  
WAGNER & GEYER  
Patentanwälte  
Gewürzmühlstrasse 5  
D-80538 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 23 November 2004  
refusing European application No. 95942539.8  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** T. Kriner  
**Members:** M. Noel  
A. Pignatelli

## **Summary of Facts and Submissions**

- I. The appellant (applicant) lodged an appeal, received on 1 February 2005 against the decision of the Examining Division dispatched on 23 November 2004 on the refusal of the application No. 95 942 539.8. On 1 February 2005 the appeal fee was paid.
- II. With letter received on 3 February 2005, the appellant requested to disregard the Notice of appeal received on 1 February 2005 and to refund the appeal fee.

## **Reasons for the Decision**

1. The notice of appeal and the appeal fee have been filed within the time limit provided for by Article 108 EPC. The appeal is therefore considered to have been filed.
2. With his declaration on 3 February 2005, however, the appellant withdraw his appeal. The appeal procedure is therefore closed without a substantive decision.
3. According to Rule 67 EPC, the appeal fee shall be reimbursed 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. In the present case, the conditions provided for by Rule 67 EPC are not fulfilled. The request for reimbursement of the appeal fee is therefore to be refused.

**Order**

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

1. The appeal procedure is closed.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

V. Commare

T. Kriner