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**Datasheet for the decision
of 6 July 2007**

Case Number: T 1691/06 - 3.2.07

Application Number: 02076879.2

Publication Number: 1300345

IPC: B65D 88/16

Language of the proceedings: EN

Title of invention:

Net-based baffels for flexible intermediate bulk containers

Applicant:

Sunjut Suni Jut Sanayi Ve Ticaret A.S.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 108, 122

Keyword:

"Re-establishment of rights (no)"

Decisions cited:

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Catchword:

-



Case Number: T 1691/06 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 6 July 2007

Appellant:

Sunjut Suni Jut Sanayi Ve Ticaret A.S.
Yukari Dudullu
Organize Sanayi Bölgesi 1. Cad.
No: 29 Umraniye
TR-81230 Istanbul (TR)

Representative:

Kaya, Erdem
Bilen Intellectual Property Services
& Consulting Co. Ltd.
Kircaali Mh. Özen Sk.
Özgün Is Mrk. No. 4/9
TR-16220, Osmangazi, Bursa (TR)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 3 May 2006
refusing European application No. 02076879.2
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
E. Lachacinski

Summary of Facts and Submissions

I. The applicant lodged an appeal and filed simultaneously the grounds of appeal on 13 September 2006 against the decision of the Examining Division posted on 3 May 2006 refusing the European patent application n° 02 076 879.2. Before lodging the appeal the applicant had paid the corresponding fee on 24 July 2006.

II. By a communication dated 14 November 2006 and sent by registered letter with advice of delivery, the registry of the Board informed the applicant that the appeal fee had been paid out of time and that the appeal was accordingly deemed not to have been filed.

The applicant was invited to file observations within two months. Attention was also drawn to Article 122 EPC.

III. On 22 December 2006, the applicant applied to have his right to appeal re-established, and on the same day paid the fee for re-establishment of rights.

IV. In support of the applicant's request its professional representative set out the following grounds and facts:

- the prosecution of the application was taken over by him in March 2006,
- all necessary data of the application were entered into the monitoring software used by his firm which was "the single comprehensive IP handling and monitoring software in Turkey",

- the monitoring capability of the software for EPC applications was very limited since such applications were rare in Turkey,
- it was noted that the software had many deficiencies which were neither noticed nor revealed before, particularly in monitoring EPC and PCT applications, and especially those in the present appeal procedure,
- although the data entry was correct and a periodic cross-check was applied, the miscalculated deadlines could not be detected despite all due care,
- all necessary actions were immediately taken after the expiration of the due dates,
- the deficiency consisted of an isolated procedural mistake caused by the software used and did not result from an inadequacy in the care to timely pay the required fees or to send relevant instructions.

V. No oral proceedings were requested by the applicant.

VI. After a preliminary examination of the case, the Board remarked in a communication dated 2 February 2007, that it had to consider whether the applicant, who represented by his professional representative failed to lodge the appeal within the applicable time limit, had taken all due care required of it in the circumstances.

It was up to the applicant to convince the Board with arguments and evidence, not mere assertions that the software system chosen was the most adequate system adapted for a firm of patent attorneys, that all data entries were correctly and timely introduced in the computer system by qualified and supervised personnel, that a cross-check system was automatically or manually

configured to avoid failure, that a reminder- and data backup system was organised as a precaution and in general, that all due care had been taken to file the appeal in time, so as to prove it was an isolated procedural mistake within a normally satisfactory system (J 2/86 and J 3/86, OJ EPO 1987, 362) which caused the loss of substantive rights.

Attention was also drawn to decisions T 874/01 (Points 3.2, 4 and 5) and T 902/05 (Points 3 and 6) (both decisions not published in the OJ).

VII. No answer has been received within the time limit of 4 months set by the Board.

Grounds for the decision

1. The applicant's request for re-establishment of rights in filing the appeal meets all formal requirements of Article 122(2) EPC and is therefore admissible.
2. The applicant, however, in not replying the above-mentioned considerations of the Board (point IV) failed to demonstrate that in spite of all due care as required by the circumstances having been taken, he was unable to observe the time limit of two months for lodging the appeal and paying the appeal fee.

The application for re-establishment of rights in respect of the time limit for filing the appeal therefore has to be rejected.

3. The appeal was filed out of the two months time-limit laid down in Article 108, first sentence, EPC. The fee for appeal has also been paid out of time.

Since re-establishment of rights is not possible, the appeal was filed out of time and the fee for appeal was neither paid in time. In such a case the appeal must be deemed not to have been filed pursuant to Article 108, second sentence, EPC.

4. If an appeal is deemed not to have been filed there is no legal basis for retaining the appeal fee. The appeal fee must therefore be reimbursed.

Order

For these reasons it is decided that:

1. The application for re-establishment of rights is rejected.
2. The appeal is deemed not to have been filed.
3. The appeal fee shall be reimbursed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders