

Internal distribution code:

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

**Datasheet for the decision
of 2 April 2009**

Case Number: T 1304/07 - 3.2.06

Application Number: 99119817.7

Publication Number: 0992295

IPC: B21B 37/66

Language of the proceedings: EN

Title of invention:

Method and device for the archive compensation of periodic disturbances during hot or cold rolling

Patentee:

Siemens VAI Metals Technologies GmbH

Former Opponent:

SIEMENS AKTIENGESELLSCHAFT

Headword:

Notification/SIEMENS VAI METALS TECHNOLOGIES

Relevant legal provisions:

-

Relevant legal provisions (EPC 1973):

EPC Art. 102(1)
EPC R. 58, 78(1)

Keyword:

"Notification of communication sent by registered letter valid?
(yes - official report of delivery)"

Decisions cited:

-

Catchword:

-



Case Number: T 1304/07 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 2 April 2009

Appellant: Siemens VAI Metals Technologies GmbH
(Patent Proprietor) Turmstraße 44
A-4031 Linz (AT)

Representative: Maier, Daniel Oliver
Siemens AG
CT IP Com E
Postfach 22 16 34
D-80506 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 21 June 2007
revoking European patent No. 0992295 pursuant
to Article 102(1) EPC 1973.

Composition of the Board:

Chairman: P. Alting Van Geusau
Members: G. Pricolo
R. Menapace

Summary of Facts and Submissions

- I. The appeal lies against the decision of the Opposition Division posted on 21 June 2007 revoking European Patent No. 992 295 on the ground that the patent in its amended form did not meet the requirements of the EPC (Article 102(1) EPC 1973).
- II. The reason for that finding was that the Opposition Division, in its communication pursuant to Article 101(2) and Rule 58(1) to (3) EPC 1973 duly dispatched by Registered Letter on 8 February 2007 had raised several objections against that version of the patent and, accordingly, had invited the Patent Proprietor to file observations within a period of two months; however, the patentee did not react, in particular he did not file any observations or amendments within the time limit set.
- III. In the statement of the grounds of appeal the Appellant (Patent Proprietor) submitted that the communication in question was not received by his representative in the patent department of the responsible company which runs a well organised system for reliably handling incoming IP related documents. Withdrawal of the revocation of the patent and grant of the patent based on the amended description and the claims filed together with the statement of grounds of appeal was requested.
- IV. By communication dated 25 October 2007 the Board informed the Appellant of the existence of an official report of the German Bundespost concerning the delivery of the registered letter in question whose relevant part reads as follows: "**RV90751088** Die Sendung wurde

zur Abholung durch den Empfänger bereitgestellt und von diesem am 13.02.2007 abgeholt".

V. In response the Appellant, in his letter received on 14 December 2007, set out in detail the company's system for postal deliveries, from the emptying of his PO box to the handling, including the entries into a patent administration database, of the incoming mail by a qualified central department headed by one Mr. König. The latter stated in a written declaration that mail of such kind was treated by him with particular care and that he was, except the case were a plurality of documents was contained in one registered letter, absolutely certain that the document in question had never reached the sphere of responsibility of his department. The Appellant reiterated his opinion that he did not receive the communication in question, so that it was not his fault that the time limit for answering it was missed. He pointed out that, in contrast to the notification of the decision under appeal on 22 June 2007, a signed acknowledgment of receipt of the communication was not available.

VI. By telefax of 2 March 2009 the Appellant withdrew his request for oral proceedings and requested that the decision on the appeal be based on the filed documents.

Reasons for the Decision

1. The appeal is admissible.
2. According to Rule 78(1) EPC 1973 which was applicable at the time of the notification of the communication dated 8 February 2007 "*[d]ecisions incurring a time*

limit for appeal, summonses ... shall be notified by registered letter with advice of delivery. All other notifications by post shall be by registered letter"; paragraph 2 of that Rule provides that "in the event of any dispute, it shall be incumbent on the European Patent Office to establish that the letter has reached its destination".

3. As said communication falls into the second category of documents, the Office has discharged its corresponding duty by producing the report of the responsible postal service according to which the registered letter was duly placed at the addressee's disposal (at his PO box and actually collected by him from there), i.e. it reached its destination.

4. There is nothing giving raise to doubts as to whether the delivery report of the German Bundespost corresponds to the facts: In contrast to documents of the first category under Rule 78(1) EPC 1973, as for example the decision under appeal, the notification of the communication was - correctly - made without an advice of delivery to be returned to the Office after having been signed on behalf of the Appellant as the addressee (acknowledgment of receipt). As the piece of mail containing the official communication was provably placed in the addressee's PO box, it is irrelevant for the validity of the notification, whether the communication then also reached "the sphere of responsibility" of the addressee's internal post services, or whether the envelope contained further official documents from the EPO.

5. The sole ground on which the appeal relies being the supposition that the communication dated 2 February 2007 had not reached its addressee, which supposition turned out to be unfounded, there is no basis for allowing the appellant's request to set aside the decision revoking the patent in suit.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau