

**Internal distribution code:**

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

**Datasheet for the decision  
of 01 December 2008**

**Case Number:** T 0683/08 - 3.2.07

**Application Number:** 02764135.6

**Publication Number:** 1368133

**IPC:** B05C 1/02

**Language of the proceedings:** EN

**Title of invention:**

Coating Apparatus

**Applicant:**

3M Innovative Properties Company

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 108

EPC R. 103(1)(b)

**Relevant legal provisions (EPC 1973):**

-

**Keyword:**

"Withdrawal of the application"

"Period for filing the statement of grounds of appeal expired"

"Reimbursement of the appeal fee (no)"

**Decisions cited:**

T 0041/82, J 0012/86

**Catchword:**

-



Case Number: T 0683/08 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 01 December 2008

**Appellant:** 3M Innovative Properties Company  
3M Center  
P.O. Box 33427  
St. Paul MN 55133-3427 (US)

**Representative:** Hilleringmann, Jochen  
Patentanwälte  
Von Kreisler-Selting-Werner,  
Bahnhofsvorplatz 1 (Deichmannhaus am Dom)  
D-50667 Köln (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 17 October 2007  
refusing European application No. 02764135.6  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** E. Dufrasne  
H. Hahn

## Summary of Facts and Submissions

- I. In its decision dated 17 October 2007 the examining division refused European patent application 02 764 135.6.
- II. Against this decision the appellant filed a notice of appeal by letter received on 8 December 2007 and paid the fee for appeal on the same date. Auxiliarily, it requested oral proceedings.
- III. No statement of grounds was filed by the appellant before the expiration of the time limit of four months from the notification of the decision under Article 108 EPC.
- IV. By a letter received on 22 March 2008 the appellant withdrew the application. It also requested the reimbursement of the appeal fee.
- V. By a communication dated 18 July 2008 the Board informed the appellant of its intention to refuse the reimbursement of the appeal fee pursuant to Rule 103(1)(b) EPC and requested the appellant to clarify whether its auxiliary request for oral proceedings was intended to also apply to the question of the reimbursement of the appeal fee.
- VI. By a letter received on 31 July 2008, the appellant informed the Board that its auxiliary request for oral proceedings was not intended to also apply to the question of the reimbursement of the appeal fee.

## Reasons for the Decision

1. By the withdrawal of the application, the present appeal proceedings are terminated in respect of admissibility and allowability of the appeal. However, the appellant's request for reimbursement of the appeal fee remains to be decided by the Board in the exercise of its inherent power to decide any application made to it which arises out of the appeal (T 41/82, OJ EPO 1982, 256 and J 12/86, OJ EPO 1988, 83).
  
2. In the present case, the notice of appeal has been filed and the fee for appeal has been paid in time pursuant to Article 108 EPC. Therefore, the appeal has undoubtedly come into existence.

No interlocutory revision under Article 109 EPC has been granted by the examining division.

3. Rule 103 EPC is the only legal basis for reimbursement of the appeal fee once an appeal has been filed.

In the absence of interlocutory revision, the reimbursement of the appeal fee can only be allowed under said Rule where the Board deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation (Rule 103(1)(a) EPC) or if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired (Rule 103(1)(b) EPC).

The patent application having been withdrawn, the present appeal cannot be held to be allowable (see

point 1). Hence, the reimbursement of the appeal fee pursuant to Rule 103(1)(a) EPC is excluded.

In the present case, the withdrawal of the application occurred after the expiration of the period for filing the statement of grounds. The Board is therefore of the opinion that a reimbursement of the appeal fee is also not possible pursuant to Rule 103(1)(b) EPC.

Therefore, the request for reimbursement of the appeal fee must be refused.

## **Order**

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

The request for reimbursement of the appeal fee is refused.

The Registrar

The Chairman

G. Nachtigall

H. Meinders