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**Datasheet for the decision
of 3 December 2010**

Case Number: T 0708/08 - 3.3.07

Application Number: 00963837.0

Publication Number: 1140329

IPC: B01D 65/02

Language of the proceedings: EN

Title of invention:

Ultrafiltration and microfiltration module and system

Applicants:

Zenon Technology Partnership

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 122
EPC R. 136(1)

Relevant legal provisions (EPC 1973):

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Keyword:

"Re-instatement into period for paying renewal fee (no)"

Decisions cited:

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Catchword:

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Case Number: T 0708/08 - 3.3.07

D E C I S I O N
of the Technical Board of Appeal 3.3.07
of 3 December 2010

Appellants:

Zenon Technology Partnership
The Corporation Trust Company
Corporation Trust Centre
1209 Orange Street
Wilmington, DE 19801 (US)

Representative:

Szary, Anne Catherine
London Patent Operation
GE International Inc.
15 John Adam Street
London WC2N 6LU (GB)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 16 November 2007
refusing European application No. 00963837.0
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Perryman
Members: G. Santavicca
B. ter Laan

Summary of Facts and Submissions

- I. European patent application 00 963 837.0 of the applicants (hereinafter "requesters") was refused by the Examining Division, the written decision being posted on 16 November 2007.
- II. The 8th year renewal fee had been normally due on 30 September 2007, but could be paid with an additional fee up to 31 March 2008. A communication of 5 November 2007 from the EPO to the previous representative drew attention to this possibility. However the renewal fee was not so paid by 31 March 2008.
- III. An appeal was filed on 28 January 2008 by the previous professional representative of the requesters and the appeal fee paid on the same date. The previous representative indicated to the EPO on 11 March 2008 that the present representative would be taking over the case. A statement of grounds of appeal was filed on 26 March 2008 by the present professional representative.
- IV. Neither of the above representatives nor the requesters paid the 8th year renewal fee plus surcharge by the latest possible date of 31 March 2008.
- V. A notification of loss of rights was sent by the EPO on 21 May 2008 to the present representative noting that the application was deemed withdrawn for failure to pay the renewal fee for the 8th year, and drawing attention to Article 122 EPC.

VI. On 21 July 2008, the present representative filed a request for re-establishment of rights with regard to the payment of the 8th year renewal fee, together with payment of the renewal fee plus surcharge and the fee for the re-establishment request.

The professional representative explained that when she took over the case, she had assumed that the only remaining step that needed to be taken was to file the statement of grounds of appeal, and only became aware of the non-payment of the 8th year renewal fee on receipt of the notification of loss of rights dated 21 May 2008. No explanation was provided as to why neither the previous representative nor the requesters, despite filing an appeal, had not paid the 8th year renewal fee.

VII. In a communication dated 23 September 2010 accompanying a summons to oral proceedings on 3 December 2010 the board gave its provisional non-binding opinion to the effect that:

- For re-establishment under Article 122 EPC to be possible, a very high standard had to be met as indicated by the words in Article 122 EPC "all due care required by the circumstances".
- The evidence here would have had to show that the applicants, the previous representative and the present representative had each exercised all due care. It was unusual to file an appeal in a case where the yearly fee had not yet been paid, and no explanation had been provided on which the Board could find that the applicants and the previous

representative had exercised all due care required by the circumstances. Thus it did not appear that circumstances had been made out justifying the grant of *restitutio in integrum* into the period for payment of the renewal fee for the 8th year, so that in accordance with the notice of 21 May 2008 the application would be deemed withdrawn.

- It should be pointed out that the standard of care required to be shown for *restitutio* under Article 122 EPC to be possible was deliberately set by the legislator of the EPC at a high level. Unlike under some similar national legislation, it was not enough to show that no-one wanted the application to lapse, rather a positive case needed to be made out that everyone concerned took all reasonable care to ensure that the necessary steps were taken, and the evidence for this needed to be filed with the application for *restitutio*.

VIII. The present representative indicated by telephone confirmed by letter dated 30 November 2010 that the requesters would not be represented at the oral proceedings. No further submissions on the issues were made.

IX. The oral proceedings took place on 3 December 2010 in the absence, as announced, of any representative of the requesters. At the end of the oral proceedings the board announced its decision.

Reasons for the Decision

1. The request for re-establishment in this case was filed within two months of receipt of the notification of loss of rights noting that the application was deemed withdrawn for failure to pay the 8th year renewal fee, and so the admissibility requirement of Rule 136(1) EPC can be regarded as met.

2. However of those who might have taken action to pay the eighth year renewal fee, namely the requesters themselves, their previous professional representative and their present professional representative, the Board has been provided with no information as to who, for example by agreement between them, was responsible for this fee and why it was not paid. The only information provided was that the present representative when she took over responsibility for filing the grounds of appeal, assumed that the renewal fee had already been paid. No explanation has been provided why the previous representative or the requesters did not pay the renewal fee, despite an appeal being filed. The lack of information available to the Board makes it impossible to hold that the failure to pay this renewal fee within even the extended period was consistent with all due care being used, as required for re-establishment under Article 122 EPC.

3. The request for re-establishment of rights must thus be refused. This means that the notification of loss of rights sent by the EPO on 21 May 2008 noting that the application was deemed withdrawn remains in force and

any annual renewal fees paid after that date and not already repaid are to be repaid.

Order

For these reasons it is decided that:

The request for re-establishment of rights is refused.

The Registrar:

The Chairman:

S. Fabiani

S. Perryman