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**Datasheet for the decision  
of 28 April 2010**

**Case Number:** T 1992/08 - 3.2.03

**Application Number:** 03747166.1

**Publication Number:** 1504217

**IPC:** F21V 29/00, F21V 31/00,  
F21V 15/00, A42B 1/24,  
F21Y 101/02, H01L 33/00

**Language of the proceedings:** EN

**Title of invention:**  
Lighting apparatus

**Applicant:**  
Lewis, Keith

**Opponent:**  
-

**Headword:**  
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**Relevant legal provisions:**  
EPC Art. 106(1), 86(1)  
EPC R. 103

**Relevant legal provisions (EPC 1973):**  
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**Keyword:**  
"Reimbursement of appeal fee (no)"  
"Refund of annual renewal fee (no)"

**Decisions cited:**  
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**Catchword:**

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Case Number: T 1992/08 - 3.2.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.03  
of 28 April 2010

**Appellant:** Lewis, Keith  
15 Birchfield Drive  
Longridge  
Preston  
Lancashire PR3 3HP (GB)

**Representative:** Neill, Alastair William  
APPLEYARD LEES  
15 Clare Road  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 2 June 2008  
refusing European application No. 03747166.1  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** U. Krause  
**Members:** C. Donnelly  
K. Garnett

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the examining division dated 2 June 2008 refusing the European patent application No. 03 747 166.1 for non-conformity with Articles 123(2), 84 and 54 EPC.
- II. The applicant (hereinafter: the "appellant") filed a notice of appeal against this decision on 29 July 2008 and paid the corresponding fee the same day. The grounds of appeal were duly filed on 30 September 2008 by letter of the same date.
- III. The Board informed the appellant of its provisional opinion in a communication dated 2 February 2010, pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings.
- IV. By letter of 19 March 2010, received the same day by telefax, the appellant withdrew the appeal. In the same letter, without giving any reasons, the appellant requested refund of the appeal fee as well as the "redundant renewal fee" paid in 2009.
- V. By official communication of 6 April 2010 the appellant was informed that the appeal proceedings were closed without a substantive decision.

## Reasons for the decision

### 1. *Reimbursement of appeal fee*

1.1 The appellant has withdrawn the appeal, thus, there is no need for the Board to decide on the substantive technical aspects of the case. Thus, as indicated in the official communication of 6 April 2010 no decision will be issued in this respect. However, the requests for refund of the appeal and renewal fees made in the letter of 19 March 2010 remain outstanding and must be addressed.

1.2 The reimbursement of appeal fees is governed by Rule 103 EPC, which stipulates that the appeal fee shall be reimbursed:

(a) in the event of interlocutory revision (see Article 109(1) EPC) or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, or

(b) 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.

1.3 In the present case interlocutory revision has not occurred nor has any substantial procedural violation occurred or been alleged to have occurred. Thus, the conditions for reimbursement stipulated in paragraph (a) Rule 103 EPC are not fulfilled.

1.4 The grounds of appeal were duly filed on 30 September 2008; hence, the conditions of paragraph (b) Rule 103 EPC are also not fulfilled.

1.5 Thus, there is no reason for the appeal fee to be reimbursed.

2. *Refund of the annual renewal fee*

2.1 The last annual renewal fee of 1000 Euros was paid by the appellant on 14 March 2009 with respect to the seventh year running from 22 April 2009 to 21 April 2010 calculated in accordance with Article 86(1) EPC based on a filing date of 22 April 2003.

2.2 As laid out in the Guidelines Part A, XI-10.1.1, it is a general principle that fee payments lacking a legal basis will be refunded. In order for a fee payment to be fully valid two conditions must be met:

(i) the payment must relate to proceedings that are pending; and

(ii) the date of payment must be on or after the due date, or in the case of annual renewal fees at that time, up to one year beforehand (cf. Rule 51(1) EPC valid until 1 April 2009).

2.3 The payment of 14 March 2009 meets the first condition since according to Article 106(1) EPC the effect of an appeal is suspensive and proceedings were still pending before the Board.

2.4 The second condition is also met since payment was made in the year before the due date and the advice of the withdrawal of the appeal was received on 19 March 2010, i.e. over one year later.

2.5 Thus, the renewal fee payment had a clear legal basis. Furthermore, it cannot be regarded as "redundant", since the contested decision had not taken effect and the appellant has enjoyed full rights throughout the period up to the formal recognition of the appeal's withdrawal.

## **Order**

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

1. The request for refund of the appeal fee is refused.
2. The request for refund of the annual renewal fee is refused.

Registrar:

Chairman:

A. Counillon

U. Krause