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**Datasheet for the decision
of 9 September 2014**

Case Number: T 0150/11 - 3.2.04

Application Number: 07003280.0

Publication Number: 1835165

IPC: F02M25/022

Language of the proceedings: EN

Title of invention:

Injection device and procedure for feeding diesel engines with hydro-alcoholic blends

Applicant:

PROMETEUS di Daniele Quartieri

Headword:

Relevant legal provisions:

EPC Art. 108

Keyword:

Admissibility of appeal - statement of grounds -
filed within time limit (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0150/11 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 9 September 2014

Appellant: PROMETEUS di Daniele Quartieri
(Applicant) Via Turati 5/A
20077 Melegnano MI (IT)

Representative: Pipparelli, Claudio
PIPPARELLI & PARTNERS
Via Quadronno, 6
20122 Milano (IT)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 2 June 2010 refusing European patent application No. 07003280.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman C. Heath
Members: E. Frank
J. Wright

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division dated 19 May 2010 and posted on 2 June 2010 to refuse European application No. 07 003 280.0 pursuant to Article 97(2) EPC, regarding the main and auxiliary requests as filed during the oral proceedings.
- II. The appellant (applicant) filed a notice of appeal on 13 August 2010, paying the appeal fee on the same day. The statement of grounds of appeal was filed on 10 December 2010.
- III. In a communication sent on 16 June 2011 the appellant was notified that it appeared from the file that the notice of appeal in the proceedings was not filed in due time. With its reply of 19 December 2011 the appellant provided the original envelope of the Office's registered letter of the impugned decision, submitting that it had been received from the Italian Post on 14 June 2010. In the subsequent communication of 13 February 2012 the Board noted that the envelope did not carry any postal stamp or date according to which a date of receipt could be established. Together with its letter of 1 March 2012, the appellant furnished the Board with the original letter of the Office's written decision, which was said to be enclosed in the registered envelope. The first page of the decision bears a receiving stamp of the appellant's representatives, Pipparelli & Partners, dated 14 June 2010.
- IV. A communication dated 10 June 2014 pursuant to Article 15(1) RPBA was issued together with a summons to attend oral proceedings, which were duly held on 9 September 2014. During the oral proceedings, inter alia the filing

date of the statement of grounds of appeal was discussed.

V. The appellant requests that the decision under appeal be set aside and a patent be granted on the basis of the set of claims of its sole request as filed during the oral proceedings on 9 September 2014.

VI. The appellant submitted essentially the following arguments:

The decision under appeal was delivered to Pipparelli & Partners by the Italian Post on 14 June 2010.

Thus, the notice of appeal received by the Office on 13 August 2010 had been filed in good time. As to the belated filing of the grounds of appeal on 10 December 2010, this occurred because there was an uncertainty as to whether or not the Office ultimately deemed the notice of appeal to have been duly filed. In fact, a communication of the Office had been expected in this regard. The annex to the summons to oral proceedings also did not mention the issue of late filed grounds of appeal.

Reasons for the Decision

1. *Admissibility of the appeal*

1.1 Article 108 EPC, last sentence, requires a statement setting out the grounds of appeal to be filed within four months of notification of the (written) decision. Otherwise, the appeal is inadmissible, Rule 101(1) EPC.

- 1.2 A written decision that is duly notified according to Article 119 and Rule 126 (1) EPC is regarded as having been received 10 days after the date stamp on the Office letter, Rule 126(2) EPC. In the present case this would have been 12 June 2010.

- 1.3 While the Board accepts that the written decision under appeal had actually been received on 14th of June, the grounds of appeal should then have been filed on 14 October 2010 at the latest. However, the statement of grounds of appeal was sent by fax only on 10 December 2010 and therefore out of time.

- 1.4 As to the reasons for such late filing as advanced by the appellant during oral proceedings, the Board notes that a communication questioning the timely filing of the appeal had only been sent on 16 June 2011 and can hardly have been the cause for the appellant's belated filing of the grounds of appeal. After an appeal is filed, it is neither customary nor required that the Boards of Appeal send an acknowledgement as to whether the appeal has been filed in good time. Any expectation of the appellant in this respect can thus neither be based on custom or law.

- 1.5 Following from the above, the appeal is inadmissible. This being so, no decision can be made on the merits of the appeal, Article 110 EPC.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



G. Magouliotis

C. Heath

Decision electronically authenticated