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**Datasheet for the decision
of 21 December 2011**

Case Number: T 1234/11 - 3.2.03

Application Number: 07425320.4

Publication Number: 1995522

IPC: F24C 15/00

Language of the proceedings: EN

Title of invention:

Oven

Applicant:

Candy S.p.A.

Headword:

-

Relevant legal provisions:

EPC Art. 97(1), 107, 108, 113(1), 122
EPC R. 103, 71(3)(4)

Relevant legal provisions (EPC 1973):

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Keyword:

"Entitlement to appeal (no)"
"Time limit for filing an appeal"
"Re-establishment of rights (no)"

Decisions cited:

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Catchword:

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Case Number: T 1234/11 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 21 December 2011

Appellant: Candy S.p.A.
(Applicant) Via Missori, 8
I-20052 Monza, Monza e Brianza (IT)

Representative: Perani, Aurelio
Perani & Partners
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I-20122 Milano (IT)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 9 December 2010
to grant a European patent No. 07425320.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: U. Krause
Members: C. Donnelly
J.-P. Seitz

Summary of Facts and Submissions

- I. European patent application 07425320.4 was filed with the EPO on 25 May 2007 by Candy S.p.A.
- II. With communication dated 16 December 2009 under Rule 71(3) EPC, the examining division informed the applicant of its intention to grant a European patent, and further indicated on the basis of which documents it should be granted.
- III. The proposed text was approved by the applicant in its letter received on 17 March 2010. In the same letter it was also requested that minor amendments be carried out. On 26 October 2010 the applicant asked for a further minor amendment to be made.
- IV. Following a consultation by telephone with the applicant, said amendments were accepted by the examining division on 10 November 2010.
- V. The decision to grant the European patent in the corresponding text pursuant to Article 97(1) EPC was notified to the applicant with letter dated 9 December 2010 and deemed notified on 19 December 2010.
- VI. The applicant, hereafter the appellant, filed a notice of appeal against this decision with letter received at the EPO on 28 February 2011. The reasons underlying this appeal were annexed to the notice.
- VII. New grounds of appeal were filed on 19 April 2011 by the appellant's representative, in which the following requests were made:

- to consider the appeal admissible and to reopen the grant proceedings,
 - to reimburse the appeal fee on the basis of a substantial procedural violation,
 - to allow the appellant to provide evidence that its application contained in fact more than one invention,
 - to organise oral proceedings, should the Board of appeal consider refusing said requests.
- VIII. On 26 April 2011, the appellant's representative filed a further request for re-establishment of rights with respect to the missed time-limit to file an appeal. Oral proceedings were also requested.
- IX. In a communication dated 22 August 2011, pursuant to Article 15(1) RPBA, annexed to the summons to oral proceedings, the board informed the appellant of its reasons for considering that in its provisional opinion the appeal was not admissible.
- X. By letter of 19 October 2011 the appellant informed the board that it would not be attending the oral proceedings scheduled for 25 November 2011.
- XI. In a communication dated 31 October 2011, the board informed the appellant that the oral proceedings had been cancelled.
- XII. Essentially the appellant argued that its rights had been infringed since, contrary to its normal practice, the EPO had failed to make an objection of lack of unity under Article 82 EPC despite the application

clearly containing more than one invention. Furthermore, the EPO did not indicate what claims could be granted nor whether limiting claim 1 with features taken from the description could have led to a patent being granted.

XIII. Hence, the appellant had been negatively affected by the EPO's decision to grant a patent since its right to know what patentable inventions were present in the application had not been respected.

XIV. In the appellant's view, this question has become all the more important since the introduction of new Rule 36 EPC imposing absolute time limits for applicants to file divisional applications.

Reasons for the decision

1. *Entitlement to appeal, Article 107 EPC*

1.1 Any party to proceedings adversely affected by a decision may appeal.

1.2 The appellant's argument that the EPO has a duty to indicate all possible patentable inventions present in an application and make suggestions as to what claims could be granted or whether limiting a claim with features taken from the description could lead to a patent being granted is false. It is the applicant's responsibility to know the content of its application and what inventions it contains.

1.3 Article 113(1) EPC states that the European Patent Office shall examine, and decide upon a European patent application only in the text submitted to it, or agreed, by the applicant. This requirement was strictly adhered to by the examining division through its communication dated 16 December 2009 under Rule 71(3) EPC and in view of its consideration of the appellant's letters of 16 March 2010 and 26 October 2010 as well as the telephone consultation held on 26 October 2010.

1.4 Accordingly, the decision of 9 December 2010 to grant a patent in the version expressly approved by the applicant in accordance with Article 113(1) and Rules 71(3) and (4) cannot adversely affect it and is therefore not subject to appeal under Article 107 EPC.

1.5 For this reason the appeal is not admissible.

2. *Time limit for filing an appeal, Article 108 EPC*

2.1 For the sake of completeness, the Board observes that the appeal was received at the EPO on 28 February 2011, whereas the impugned decision, i.e. the decision to grant and not the publication of the patent, was deemed notified on 19 December 2010.

2.2 Thus, the right to appeal, if any, would in any case have expired on 21 February 2011.

2.3 *Re-establishment of rights, Article 122 EPC*

2.4 Moreover, the Board of Appeal sees no reason to allow the appellant's request for re-establishment, since on the one hand the alleged neglected right has no legal

basis under the provisions of Article 107 EPC, and on the other hand it would seem that prima facie all due care has not been taken by the appellant, who should at least have been aware of the consequences of its approval of the proposed text and was not prevented in any way from filing an appeal in due time.

2.5 The appeal is also therefore inadmissible for this reason.

3. From the above it is evident that no procedural violation has occurred. Thus, there is no reason for the appellant to provide evidence that its application contains more than one invention and for the Board to order the reimbursement of the appeal fee since none of the conditions set out in Rule 103 EPC is met in the present case.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The requests for reinstatement in the appeal time limit and for reimbursement of the appeal fee are refused.

Registrar:

Chairman:

D. Hampe

U. Krause