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**Datasheet for the interlocutory decision  
of 4 February 2015**

**Case Number:** T 1269/13 - 3.5.02

**Application Number:** 08251645.1

**Publication Number:** 1993188

**IPC:** H02K5/14, H02K5/167

**Language of the proceedings:** EN

**Title of invention:**  
Electric motor

**Applicant:**  
Johnson Electric S.A.

**Relevant legal provisions:**  
EPC Art. 122

**Keyword:**  
Re-establishment of rights - (yes)

**Decisions cited:**  
J 0002/86, J 0003/86

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1269/13 - 3.5.02

**I N T E R L O C U T O R Y   D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 4 February 2015**

**Appellant:** Johnson Electric S.A.  
(Applicant) Freiburgstrasse 33  
3280 Murten (CH)

**Representative:** Oxley, Robin John George  
Marks & Clerk LLP  
Alpha Tower  
Suffolk Street Queensway  
Birmingham B1 1TT (GB)

**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 22 January 2013 refusing European patent application No. 08251645.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Ruggiu  
**Members:** G. Flynn  
P. Mühlens

## **Summary of Facts and Submissions**

- I. The appeal is directed against the decision of the Examining division to refuse the application dated 22 January 2013 and posted on the same day. According to Rule 126(2) EPC (delivery plus 10 days), the decision is deemed to have been delivered on 1 February 2013. Thus, the period of 2 months for filing an appeal (Article 108 EPC) ended on 1 April 2013.
- II. On 29 April 2013, the EPO received a notice of appeal together with a request for re-establishment of rights under Article 122 EPC. The statement of grounds of appeal was filed in due time on 30 May 2013.
- III. The appellant submits that the belated filing of the appeal was due to an isolated mistake in an otherwise reliable system and that therefore the failure to file the appeal in time was in spite of all due care having been taken.

## **Reasons for the Decision**

1. The formal requirements for a request for re-establishment of rights (Rule 136 EPC) are met.
2. The office of the appellant's representative uses a web-based IP management platform for handling case data and monitoring deadlines. When a communication with a deadline is received, the relevant data is entered into the system, which calculates the deadline and edits a special sheet which is presented to the attorney responsible for that case. The attorney then cross-checks the deadline and, when it is found to be

- correct, signs it off. Once the deadline is entered into the system, reminders are automatically generated, which automatically appear each day on the screen of the case worker or manager.
3. The same procedure was applied to the decision under appeal in the present case. However, when an employee forwarded a letter to the attorney's client by e-mail, she entered "Appeal Decision" instead of "Decision to refuse the application" into the system by mistake, with the consequence that the system cancelled all reminders.
  4. Therefore the Board comes to the conclusion that there exists in the office of the appellant's representative an elaborate, satisfactory and normally reliable system for the monitoring of time limits and that the failure to observe the appeal deadline was caused by an isolated mistake of an employee which bypassed the safeguards of the system. According to established case law of the Boards of Appeal (see for example J2/86, J3/86, OJ 1987, 362) such a mistake is excusable.
  5. Moreover, the appellant's representative has demonstrated that the employee who made the error is experienced, has been familiar with the monitoring system for many years and, like all other staff, is fully trained. That means that the error of the employee was an isolated error by an otherwise reliable person and is thus excusable.
  6. The Board therefore concludes that the appellant's request for re-establishment of rights may be granted, Article 122 (2) EPC.

**Order**

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

The appellant is granted re-establishment of rights in respect of the non-observed period for filing the notice of appeal.

The Registrar:

The Chairman:



U. Bultmann

M. Ruggiu

Decision electronically authenticated