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**Datasheet for the interlocutory decision  
of 25 February 2016**

**Case Number:** T 1402/13 - 3.3.05  
**Application Number:** 04782625.0  
**Publication Number:** 1709215  
**IPC:** C25D3/56, C25D3/22, H05K3/38,  
C23C22/40  
**Language of the proceedings:** EN

**Title of invention:**

CHROMIUM-FREE ANTITARNISH ADHESION PROMOTING TREATMENT  
COMPOSITION

**Applicant:**

GBC Metals, LLC

**Headword:**

Conditional withdrawal of appeal where renewal fee has not  
been paid in due time.

**Relevant legal provisions:**

EPC Art. 108, 110, 86(1)  
EPC R. 103(1) (b), 103(2)

**Keyword:**

Appeal decision - withdrawal of appeal  
Loss of rights - non-payment of the renewal fee  
Reimbursement of appeal fee - withdrawal of appeal

**Decisions cited:**

J 0016/94, T 0006/92, T 0304/99, T 0502/02, T 0854/02

**Catchword:**

1. Whereas a conditional appeal is not possible, the conditional withdrawal of an appeal may be valid.

2. If a loss of rights due to the non-payment of a renewal fee has occurred and has not been remedied, a withdrawal of the appeal can neither be effective nor lead to a (partial) reimbursement of the appeal fee.



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 1402/13 - 3.3.05

**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 3.3.05**  
**of 25 February 2016**

**Appellant:** GBC Metals, LLC  
(Applicant) 427 North Shamrock Street  
East Alton IL 62024 (US)

**Representative:** Hedges, Martin Nicholas  
A.A. Thornton & Co.  
10 Old Bailey  
London EC4M 7NG (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 17 December  
2012 refusing European patent application No.  
04782625.0 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** H. Engl  
**Members:** J-M. Schwaller  
P. Guntz

## **Summary of Facts and Submissions**

- I. The appeal lies against the decision of the Examining Division dated 17 December 2012. It was filed on 13 February 2013. A statement of grounds was submitted on 24 April 2013.
- II. The renewal fee for the 12<sup>th</sup> year fell due on 31 August 2015 and was not paid by that date.
- III. On 18 February 2016 the Appellant submitted a declaration stating: "The Appellant ... hereby withdraws their Appeal against the decision of the Examining Division upon the condition that the withdrawal is received in time to qualify for at least a 50 % refund of the appeal fee."
- IV. The Board has neither issued a preliminary opinion nor set a date for oral proceedings.

## **Reasons for the Decision**

1. Procedural declarations may be made with the proviso that certain conditions are met, as long as a case is already pending (J 16/94, referring to Article 108, first sentence, and Rule 64(b) EPC 1973; T 854/02, Reasons 2.1) and these conditions do not concern facts outside the proceedings (T 502/02, Reasons 1, referring to Articles 21 and 111(1), second sentence, EPC). Thus, whereas a conditional appeal is not possible, the conditional withdrawal of an appeal may be valid (T 6/92, Reasons 2 and 3; T 304/99, Reasons 3.1.).

2. The withdrawal of an appeal can, though, only take effect if the appeal is still pending.
3. This is not the case here. Since the renewal fee for the 12<sup>th</sup> year was not paid in due time, the application is deemed to be withdrawn in accordance with Article 86(1), 3<sup>rd</sup> sentence, EPC. Such a loss of rights also affects the appeal proceedings. The fact that the Appellant might still reverse the loss of rights by paying the renewal fee plus an additional fee (50 % of the renewal fee) within 6 months after the due date, does not change the current situation, since no such fees have been received by the Office. Thus, at present the application is no longer pending and hence the appeal proceedings have also ended due to the loss of rights. Therefore, the declaration regarding the withdrawal of the appeal cannot be effective.
4. In consequence, the prerequisites of Rule 103(2) EPC are not met. Thus, no reimbursement of the appeal fee or parts of it is possible for as long as the renewal fee plus the additional fee have not been paid.

## **Order**

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

The request for a (partial) reimbursement of the appeal fee, dated 18 February 2016, is refused.

The Registrar:

The Chairman:



C. Vodz

H. Engl

Decision electronically authenticated