

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 10 July 2015**

Case Number: T 2351/13 - 3.5.02
Application Number: 04388072.3
Publication Number: 1652586
IPC: B03C3/68
Language of the proceedings: EN
Title of invention:
Pulse generating system for electrostatic precipitator
Patent Proprietor:
FLSmidth A/S
Opponent:
Siemens Aktiengesellschaft
Relevant legal provisions:
EPC Art. 108
EPC R. 101(1)
Keyword:
Admissibility of appeal - missing statement of grounds



**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 2351/13 - 3.5.02

**D E C I S I O N
of Technical Board of Appeal 3.5.02
of 10 July 2015**

Appellant: FLSmidth A/S
(Patent Proprietor) Vigerslev Allé 77
2500 Valby (DK)

Respondent: Siemens Aktiengesellschaft
(Opponent) Wittelsbacherplatz 2
80333 München (DE)

Representative: Siemens AG
Postfach 22 16 34
80506 München (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
16 September 2013 concerning maintenance of the
European Patent No. 1652586 in amended form.**

Composition of the Board:

Chairman M. Ruggiu
Members: R. Lord
R. Cramer

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the Opposition Division of 20 March 2013, posted on 16 September 2013.
- II. The appellant filed a notice of appeal on 26 November 2013 and paid the appeal fee on the same day.
- III. By communication of 7 February 2014, receipt of which was acknowledged by the appellant, the Registry of the Board informed the appellant that it appeared from the file that the written statement of grounds of appeal had not been filed, and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, third sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was informed that any observations had to be filed within two months of notification of the communication.
- IV. No reply to that communication was received. However, with letter of 15 June 2015 the appellant requested reimbursement of the appeal fee in view of the inadmissibility of the appeal.

Reasons for the Decision

1. No written statement setting out the grounds of appeal was filed within the time limit provided by Article 108, third sentence, EPC in conjunction with Rule 126(2) EPC. In addition, neither the notice of appeal nor any other document filed contains anything that could be regarded as a statement of grounds pursuant to Article 108 EPC and Rule 99(2) EPC. Therefore, the

appeal has to be rejected as inadmissible (Rule 101(1) EPC).

2. The fact that the appeal is inadmissible does not have the consequence that it has not come into existence and hence that the appeal fee has not become due (see Case Law of the Boards of Appeal, 7th Edition, 2013, section IV.E.8.1.2 c)). Since none of the conditions mentioned in Rule 103 EPC applies either, there is no legal basis for the reimbursement of the appeal fee.

Order

For these reasons it is decided that:

1. The appeal is rejected as inadmissible.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



B. ter Heijden

M. Ruggiu

Decision electronically authenticated