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**Datasheet for the decision  
of 14 December 2017**

**Case Number:** T 0327/17 - 3.3.09

**Application Number:** 11173002.4

**Publication Number:** 2412517

**IPC:** B32B1/04, B32B17/02, E04B1/76,  
B32B3/06

**Language of the proceedings:** EN

**Title of invention:**  
System for the formation of small curvature radius in preformed  
mineral wool panels

**Patent Proprietor:**  
Saint Gobain Isover Ibérica, S.L.

**Opponent:**  
URSA Insulation S.A.

**Headword:**  
Appeal deemed not to have been filed (yes)  
Reimbursement of the appeal fee (yes)

**Relevant legal provisions:**  
EPC Art. 108

**Keyword:**

Re-establishment of rights concerning time limit for filing  
notice of appeal - request withdrawn  
Reimbursement of appeal fee

**Decisions cited:**

J 0019/90, R 0002/10, T 1325/15

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0327/17 - 3.3.09

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.09**  
**of 14 December 2017**

**Appellant:** Saint Gobain Isover Ibérica, S.L.  
(Patent Proprietor) c/ Principe de Vergara n° 132  
28002 Madrid (ES)

**Representative:** Isern-Jara, Nuria  
J. Isern Patentes y Marcas  
Paseo de la Castellana 115 1 Dcha.  
28046 Madrid (ES)

**Respondent:** URSA Insulation S.A.  
(Opponent) Paseo de Recoletos 3  
28004 Madrid (ES)

**Representative:** Stiebe, Lars Magnus  
Balder  
Paseo de la Castellana 93, 5  
28046 Madrid (ES)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 18 October 2016  
revoking European patent No. 2412517 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** W. Sieber  
**Members:** N. Perakis  
D. Prietzel-Funk

## **Summary of Facts and Submissions**

- I. This appeal procedure is concerned with a decision of the opposition division revoking the European patent No. 2 412 517. The decision was dispatched on 18 October 2016.
- II. The patent proprietor paid the appeal fee on 19 December 2016. The statement setting out the grounds of appeal was received on 17 February 2017 but a notice of appeal had not been received before at the EPO.
- III. Following a communication of the board noting that the mere payment of an appeal fee did not constitute a valid means for lodging an appeal, the patent proprietor argued in its letter of 25 April 2017 that a notice of appeal had been filed on 12 December 2016 through registered mail (annexed as DOCUMENT No.1). On 4 May 2017 it filed a request for re-establishment of rights accompanied by the notice of appeal dated 12 December 2016, which had allegedly been sent to but not received by the EPO.
- IV. The board summoned the parties for oral proceedings and sent a communication setting out its preliminary opinion about the circumstances regarding the request for re-establishment of rights. After having received this communication the patent proprietor withdrew its requests for re-establishment of rights and for oral proceedings and further requested reimbursement of the appeal fee. The oral proceedings were then cancelled.

## **Reasons for the Decision**

1. After the withdrawal of the request for re-establishment of rights by the patent proprietor the only issue left to be decided is the reimbursement of the appeal fee which is to be decided in favour of the patent proprietor for the following reasons.
  
2. The time limit to file the notice of appeal of two months according to Art. 108 EPC against the decision of the opposition division was not observed. It expired on 28 December 2016, i.e. 2 months and 10 day after notification of the decision. The EPO did not receive a notice of appeal within that time limit but only on 25 April 2017 and 4 May 2017. That was without any doubt too late. The mere payment of an appeal fee however also does not constitute a valid means for lodging an appeal (see decision J 19/90 of 30 April 1992, decision R 2/10 of 3 November 2010). If no notice of appeal is (deemed to have been) filed in due time, then no appeal comes into existence (following decision T 1325/15 of 7 June 2016, points 34 to 42 of the reasons). Thus in the present case the appeal is deemed not to have been filed and, consequently, the appeal fee is to be reimbursed in full.

## Order

### For these reasons it is decided that:

1. The appeal is deemed not to have been filed.
2. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:



M. Cañueto Carbajo

W. Sieber

Decision electronically authenticated