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Datasheet for the decision of 6 May 2019

Case Number: T 0177/18 - 3.2.03

Application Number: 06793736.7

Publication Number: 1934003

IPC: B22D11/04

Language of the proceedings: EN

Title of invention:
INGOT MOLD FOR CASTING SLABS

Patent Proprietor:
DANIELI & C. OFFICINE MECCANICHE S.p.A.

Opponent:
SMS group GmbH

Headword:
INGOT MOLD FOR CASTING SLABS / SMS group GmbH

Relevant legal provisions:
EPC Art. 108
EPC R. 99(1)(a), 101(2)

Keyword:
Admissibility of appeal (no) - address missing - no response to the communication

Decisions cited:
T 0034/90, T 0229/90, T 0810/93, T 0501/92, T 1251/07

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0177/18 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 6 May 2019

Appellant: (Opponent)	SMS group GmbH Eduard-Schloemann-Strasse 4 40237 Düsseldorf (DE)
Representative:	Meissner, Peter E. Meissner & Meissner Patentanwaltsbüro Hohenzollerndamm 89 14199 Berlin (DE)
Respondent: (Patent Proprietor)	DANIELI & C. OFFICINE MECCANICHE S.p.A. Via Nazionale, 41 35042 Buttrio (IT)
Representative:	Cinquantini, Bruno Notarbartolo & Gervasi S.p.A. Corso di Porta Vittoria, 9 20122 Milano (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 13 November 2017 rejecting the opposition filed against European patent No. 1934003 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Ashley
Members:	C. Donnelly
	G. Weiss

Summary of Facts and Submissions

I. With the decision of 13 November 2017 the opposition division rejected the opposition against European patent No. 1 934 003 since it was felt that the grounds of opposition did not prejudice the maintenance of the patent as granted.

II. With the letter dated 11 January 2017, received on 15 January 2017, the appellant (opponent) lodged an appeal against the decision of the opposition division, paying the fee at the same time.

III. With the communication dated 24 January 2018 (Form 3045), the appellant's representative was informed that the notice of appeal did not contain the address of the appellant, and was requested to remedy the deficiency within two months of notification of the communication. The communication also indicated that failure to provide the address would result in the appeal being rejected as inadmissible pursuant to Article 108, first sentence, in conjunction with Rule 101(2) EPC.

IV. A reply to this communication was not received within the prescribed time limit.

V. By the communication of 8 November 2018, the Board informed that the appellant that there had been no response to the communication of 24 January 2018, which had been delivered by registered letter with advice of delivery. The appellant was invited to file any observations within two months.

VI. With letter dated on 9 November 2018, the appellant replied as follows (original version):

"Es wird Bezug genommen auf die Mitteilung vom 08.11.2018.
Es wird zugegeben, dass die Mitteilung vom 24.01.20**17** [bold in the text] (sic) versehentlich nicht beachtet worden ist.
Zur Entschuldigung kann nur vorgebracht werden, dass bei der Beschwerdeeingabe vom 11.01.17 (Formal Beschwerde) im Betreff die Angabe enthalten war „Einsprechende SMS group GmbH Düsseldorf/DE" und die Beschwerde „namens und im Auftrag der Einsprechenden SMS group GmbH" erfolgte.
Benutzt wurde hierbei die identische Angabe aus der Einspruchsentscheidung vom 18 November 2016 (sic), Seite 1, Pkt. 2. „..Opposition was filed by: SMS group GmbH Düsseldorf (DE)"

Die vollständige Adressenangabe erfolgte in der Einspruchsform 2300E und in der Communication vom 18.09.2015.

Es wird gehofft, dass diese Begründung anerkannt werden kann, so dass über die Beschwerde sachlich und nicht formal entschieden werden kann."

The English translation reads as follows :

"Reference is made to the communication of 08.11.2018.

It is admitted that the communication of 24.01.2017 was inadvertently overlooked.
As an excuse, it can only be argued that the notice of appeal of 11.01.17 (formal notice of appeal) contained in the subject the statement "Opponent SMS group GmbH Düsseldorf/DE" and the appeal has been filed "in the name of and on behalf of the opponent SMS group GmbH".

The identical information was used in the opposition decision of 18 November 2016, page 1, item 2, "..Opposition was filed by: SMS group GmbH Düsseldorf (DE)"

The complete address was given in the opposition form form 2300E and in the communication of 18.09.2015.

It is hoped that this reasoning can be accepted, so that a decision on the appeal can be taken objectively and not formally."

Reasons for the Decision

1. According to Rule 99(1)(a) EPC, the notice of appeal must contain the name and address of the appellant in accordance with the provisions of Rule 41(2)(c) EPC. The omission regarding the appellant's address may be remedied under Rule 101(2), first sentence, EPC by invitation of the board of appeal.

If the deficiency is not corrected within the prescribed time-limit, a board has no option but to reject the appeal as inadmissible, as specified in Rule 101 (2) EPC, second sentence.

In the present case the appellant was invited in a communication dated 24 January 2018 to remedy the deficiency due to the omission of the address. The communication was sent by registered letter with advice of delivery, and was received by the appellant on 25 January 2018. A reply to this communication was not received by the EPO, and this has not been contested by the appellant.

2. In response to the communication by the Board dated 9 November 2018, the appellant argued essentially that the notice of appeal contained in its heading the name of the "Opponent SMS group GmbH Düsseldorf/DE", and stated that the appeal was filed "in the name of and on behalf of the opponent SMS group GmbH". Concerning the address, the appellant referred to the opposition form 2300E and to the communication of 18 September 2015, both forms in the opposition proceedings indicating the full address of the appellant.

3. The board is not persuaded by the appellant's argument for the following reasons.

4. An appeal only comes into existence if a party files a notice of appeal and pays the appeal fee, both within two months of the date of notification of the written decision in question (Article 108 EPC, first and second sentences). The notice has to indicate the name and the address of the appellant (Rule 99(1)(a) EPC). The appeal procedure established by the EPC constitutes a procedure which takes place after the administrative examination and opposition procedures and, as such, is completely separate from them. The Board wishes to reiterate the well-established principle laid down in the case law of the boards of appeal, that appeal proceedings are not and were never intended to be the mere continuation of first-instance proceedings (see T 34/90, OJ EPO 1992, 454, Reasons No. 2; T 229/90 of 28 October 1992, Reasons No 2; T 810/93 of 15 March 1995, Reasons No. 2.2, T 501/92, OJ EPO 1996, 261, Reasons No 1.1 and T 1251/07 of 21 September 2010, Reasons No. 5). Rather, their function is to give a judicial decision upon the correctness of a separate earlier decision taken by the first-instance department. It follows that, as intended by the legislator, for the purpose of

the admissibility of the appeal, as well as for other procedural purposes, appeal proceedings are wholly separate and independent from first-instance proceedings. The evaluation of the admissibility of the appeal can therefore only be based on information provided by the appellant within the appeal proceedings and in principle at their outset.

5. Since the appellant did not remedy the deficiency within the set time limit, the legal consequence is clearly specified in Rule 101(2) EPC, second sentence.

The Board has no discretion and can therefore only conclude that the appeal be rejected as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

C. Spira G. Ashley

Decision electronically authenticated