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Datasheet for the decision of 4 November 2019

Case Number: T 2492/18 - 3.2.04

Application Number: 02252519.0

Publication Number: 1286037

IPC: F02K1/72, F02K1/76

Language of the proceedings: EN

Title of invention:
Lock for the turbofan engine thrust reverser

Patent Proprietor:
Rohr, Inc.

Opponent:
Safran Nacelles

Headword:
Request for continuation of opposition proceedings ignored

Relevant legal provisions:
EPC Art. 113(1)
EPC R. 84(1)

Keyword:
Lapse of patent in all designated states - continuation of opposition proceedings
Unambigous request ignored by the Opposition Division
Right to be heard - substantial procedural violation (yes)

Decisions cited:

Catchword:
Reasons 2 to 6, 9

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Case Number: T 2492/18 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 4 November 2019

Appellant: (Opponent)	Safran Nacelles Route du Pont 8 76700 Gonfreville - L'Orcher FRANCE
Representative:	Delorme, Nicolas Cabinet Germain & Maureau 12, rue Boileau BP 6153 69466 Lyon Cedex 06 FRANCE
Respondent: (Patent Proprietor)	Rohr, Inc. 850 Lagoon Drive Chula Vista California 91910 US
Representative:	Dehns St. Bride's House 10 Salisbury Square London EC4Y 8JD ROYAUME UNI
Decision under appeal:	**Decision of the Opposition Division of 27 July 2018 to discontinue the opposition proceedings against European Patent No. 1286037**

Composition of the Board:

Chairman	A. de Vries
Members:	C. Kujat
	W. Van der Eijk
	G. Martin Gonzalez
	T. Bokor

Summary of Facts and Submissions

I. On 4 October 2018 the opponent in the opposition proceedings against European patent EP 1286037 filed an appeal against the decision of the opposition division, dated 27 July 2018, not to continue the opposition proceedings in accordance with Rule 84(1) EPC. It provided the grounds of appeal and paid the appeal fee on the same day.

II. The appellant-opponent (hereinafter appellant) alleges that the opposition division when deciding not to continue the opposition proceedings, had ignored the request made by the appellant for continuation. The appellant refers in the grounds of appeal to its timely request for continuation, which was never withdrawn. It therefore challenges the reason given in the appealed decision, namely that it had not filed a request for the proceedings to be continued under Rule 84(1) EPC. Further the appellant argues that in ignoring its request the opposition division committed a substantial procedural violation.

III. The appellant requests that the opposition proceedings be continued and the appeal fee be reimbursed.

IV. On 24 May 2019 the Board sent out a communication to the parties with a preliminary opinion on the appeal. In the communication the Board provisionally agreed with the arguments presented by the appellant and indicated that it was inclined to set the decision under appeal aside and to remit the case to the opposition division in order to decide on the request for continuation, and also to order the reimbursement

of the appeal fee. None of the parties replied to this communication.

V. As the appellant has only requested oral proceedings in case the Board would not decide positively on its requests, and the patentee has not reacted at all to the appeal, the Board has decided not to summon to oral proceedings but to take a decision on the basis of the state of the file.

Reasons for the Decision

1. The appeal complies with Article 106 to 108 and Rule 99 EPC and is therefore admissible.

2. According to Rule 84(1) EPC, opposition proceedings may be continued, even if the patent concerned has been surrendered or has lapsed in all the designated Contracting States, at the request of the opponent, which has to be filed within two months of a communication informing him of the surrender or lapse.

3. In the present case the (somewhat unusual) chronology of events was as follows. The opposition division issued its interlocutory decision to maintain the patent in amended form on 22 December 2016. The opponent was informed with a communication pursuant to Rule 84(1) EPC dated 2 February 2017 of the lapse of the opposed European patent, and was given a time limit of two months to file a request for continuation if it so wished. On 28 February 2017 the opponent filed an appeal against the decision of the opposition division, receiving the file number T 0529/17. On 14 March 2017 the opponent stated its wish to continue the opposition proceedings, explicitly referring to the communication

dated 2 February 2017. On 26 April 2017 the opponent withdrew the appeal in the appeal proceedings T0529/17, but at the same time confirmed its wish that the opposition proceedings be continued, by an express reference to its previous request for continuation dated 14 March 2017. On 27 July 2018 (and thus more than one year after the request was made, and also more than one year after the request was confirmed when notifying the withdrawal of the appeal!) the opposition division decided not to continue the opposition proceedings. The reason given for the decision was that no timely request for continuation had been filed.

4. The Board agrees with the appellant that the reason advanced by the opposition division not to continue the opposition proceedings was incorrect, as indeed the file contains a letter of the appellant dated 14 March 2017 requesting within the required time limit and in an explicit and unambiguous manner that the proceedings be continued. Furthermore, the appellant had, when withdrawing its appeal against the interlocutory decision on 26 April 2017, expressly reconfirmed its request for continuation of the opposition proceedings and clearly stated that the withdrawal does not affect the request for continuation pursuant to Rule 84(1) EPC. Thus there could not have been any doubt as to the intentions of the opponent.

5. In this particular case the request for continuation was filed at the time an appeal was pending and it would have been within the competence of the Board in question to decide upon it. However the appeal was withdrawn after two months and thus before the Board was able to deal with it. From that moment on the competence to deal with the request was again with the opposition division. The course of events may have led

to some confusion, but that does not take away the fact that a request for continuation was timely filed and the opposition division had an obligation to consider it.

6. The Board is also of the view that the appellant is adversely affected by the decision. Although the opposition proceedings had led to an interlocutory decision which had become final after the withdrawal of the appeal against it, the opposition procedure was not yet completed and continuation of the proceedings could still have legal significance. For completion of the opposition proceedings the new specification of the amended patent would have to be published (Article 103 EPC). This publication is conditional upon certain acts of the proprietor, see Rule 82 (2) EPC, such as payment of the prescribed fee and filing of translations of the amended claims. According to the same rule the Office shall invite the proprietor to perform these acts within a certain time period. The consequence of non-compliance with such an invitation is that the patent shall be revoked, see Rule 82(3) EPC. Contrary to a lapse or surrender, revocation has retroactive legal effects, see Article 68 EPC.

There is no indication in the file that an invitation under Rule 82(2) EPC has been sent to the proprietor.

7. It follows from the above that the opposition division apparently has not recognized and considered the request of the appellant for continuation and that the appellant is thereby adversely affected.

8. As the decision not to continue the opposition proceedings is based on an erroneous ground - absence of a timely request for continuation of the proceedings - it has to be set aside and the opposition division should take a new decision, with due consideration of the request of the appellant.

9. The Board also finds that completely ignoring an explicit and unambiguous request constitutes a substantial procedural violation. Indeed, the appellant was quite obviously not heard with respect to this request, contrary to Article 113(1) EPC. The fact that this may not have been intentional but merely the result of an oversight on the part of the opposition division, so that the opposition division was not aware of the request at all, is not relevant in this respect. The Board finds it equitable under the circumstances that the appeal fee be reimbursed.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**

2. **The case is remitted to the opposition division for further prosecution.**

3. **The appeal fee is reimbursed.**

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated