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**Datasheet for the decision
of 13 March 2020**

Case Number: T 0193/20 - 3.3.02

Application Number: 13181664.7

Publication Number: 2842620

IPC: B01D67/00, B01D69/12, H01M8/10

Language of the proceedings: EN

Title of invention:
A method for preparing a composite membrane

Applicant:
AGFA-GEVAERT

Headword:

Relevant legal provisions:
EPC Art. 108
EPC R. 103(1) (b), 103(2) (b)

Keyword:
Withdrawal of appeal
Reimbursement of appeal fee in full - (no) - partial
reimbursement (yes)

Decisions cited:

Catchword:



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Case Number: T 0193/20 - 3.3.02

D E C I S I O N
of Technical Board of Appeal 3.3.02
of 13 March 2020

Appellant: AGFA-GEVAERT
(Applicant) Septestraat 27
2640 Mortsel (BE)

Representative: Viaene, Kris
AGFA NV
Intellectual Property Department
Septestraat 27
2640 Mortsel (BE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 16 August 2019
refusing European patent application No.
13181664.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. O. Müller
Members: M. Maremonti
R. Romandini

Summary of Facts and Submissions

- I. European patent application no. 13 181 664.7 was refused by the examining division by decision dated 16 August 2019.
- II. The applicant (hereinafter "appellant") filed a notice of appeal by letter dated 14 October 2019 and paid the appeal fee.
- III. By letter dated 19 December 2019, the appellant communicated that it had decided not to file the grounds of appeal. It requested reimbursement of the appeal fee pursuant to Rule 103(1)(b) EPC.
- IV. On 31 January 2020, the board issued a communication under Rule 100(2) EPC. In this communication, the board expressed the preliminary opinion that the appellant, on the basis of the wording used in its letter dated 19 December 2019, had merely stated its intention not to file the statement of grounds of appeal, but it had not withdrawn the appeal.

The appellant was informed that any observations had to be filed within two months of notification of the communication.
- V. The appellant replied to the board's communication by letter dated 1 March 2020, in which it contested the board's findings.
- VI. By letter dated 6 March 2020, the appellant withdrew the appeal.

VII. The appellant's requests

The appellant requested reimbursement of the appeal fee in full pursuant to Rule 103(1)(b) EPC (main request). In the alternative, it requested reimbursement of 50% of the appeal fee pursuant to Rule 103(2)(b) EPC.

Reasons for the Decision

Main request - reimbursement of the appeal fee in full pursuant to Rule 103(1)(b) EPC

1. The appellant conceded (see letter dated 1 March 2020) that the appeal had not been explicitly withdrawn in its letter dated 19 December 2019 (III, *supra*). However, it argued that by taking the reference to Rule 103(1)(b) EPC into account, it was clear that a withdrawal of the appeal was intended. Moreover, as not filing the grounds of appeal inevitably meant that the appeal was not admissible, it was clear that a statement indicating that the grounds of appeal would not be filed also indicated a withdrawal of the appeal.
2. The board disagrees for the following reasons.
 - 2.1 According to Rule 103(1)(b) EPC, the appeal fee shall be reimbursed in full "**if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired**" (emphasis added by the board).
 - 2.2 The withdrawal of an appeal in proceedings with just one appellant, as in the present case, is a procedural step decisive for the outcome of the appeal proceedings. In fact, upon withdrawal of the appeal by the sole appellant, appeal proceedings are immediately terminated (G 8/91, OJ 1993, page 346, Order). It

follows that the withdrawal of the appeal must be expressed by an explicit and absolutely clear statement.

2.3 In its letter dated 19 December 2019, the appellant stated that it had "*decided not to file the Grounds of Appeal*". Even in view of the request for reimbursement of the appeal fee in accordance with Rule 103(1)(b) EPC included in the above letter, this statement merely conveys the appellant's intention not to file the statement of grounds of appeal, but does not imply an unambiguous withdrawal of the appeal. The above-mentioned intention not to file the grounds of appeal cannot be considered an unambiguous withdrawal of the appeal either. In fact, the filing (or non-filing) of the statement of grounds of appeal and the withdrawal of an appeal are separate, distinct procedural steps.

2.4 The appellant withdrew the appeal by letter dated 6 March 2020, i.e. after the period for filing the statement of grounds of appeal pursuant to Article 108 EPC had expired. As a consequence, the requirements of Rule 103(1)(b) EPC have not been met. Thus, the appellant's main request cannot be allowed.

Auxiliary request - reimbursement of 50% of the appeal fee pursuant to Rule 103(2)(b) EPC

3. The appellant withdrew the appeal by letter dated 6 March 2020, i.e. within two months of notification of the communication issued by the board on 31 January 2020 under Rule 100(2) EPC (IV, *supra*).

It follows that the requirements of Rule 103(2)(b) EPC for reimbursement of 50% of the appeal fee have been met.

As a consequence, the appellant's auxiliary request is allowed.

Order

For these reasons it is decided that:

Reimbursement of 50% of the appeal fee is ordered.

The Registrar:

The Chairman:



N. Maslin

M. O. Müller

Decision electronically authenticated