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**Datasheet for the decision  
of 17 November 2022**

**Case Number:** T 1917/20 - 3.5.01

**Application Number:** 15878306.8

**Publication Number:** 3192025

**IPC:** G06Q10/06, G06Q10/08, G06Q50/02

**Language of the proceedings:** EN

**Title of invention:**  
A SYSTEM AND A METHOD FOR LIFE OF MINE PLANNING AND COST CONTROL

**Applicant:**  
MineRP IP Inc.

**Headword:**  
Re-establishment of rights/MineRP IP

**Relevant legal provisions:**  
EPC Art. 122(1)  
EPC R. 136

**Keyword:**  
Re-establishment of rights (no - no special circumstances, no isolated error)

**Decisions cited:**

G 0001/18, J 0002/86, J 0003/86, J 0011/03, T 0166/87



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 1917/20 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 17 November 2022**

**Appellant:** MineRP IP Inc.  
(Applicant) 333 Bay Street  
Suite 2400  
Toronto, ON M5H 2T6 (CA)

**Representative:** Gordon, Naoise Padhraic Edward  
Black & Associates Limited  
Office 2/1  
211 Dumbarton Road  
Glasgow G11 6AA (GB)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 5 November 2019  
refusing European patent application No.  
15878306.8 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** C. Schmidt  
**Members:** M. Höhn  
I. Kürten

## **Summary of Facts and Submissions**

- I. The appeal concerns the decision of the examining division to refuse the European patent application No. 15878306.8. The appellant also requested re-establishment "of the right to Appeal" under Article 122 EPC.
- II. The following dates are relevant:
- The decision under appeal was posted on 5 November 2019.
  - The appellant returned the acknowledgement of receipt on 13 November 2019. It was signed by Mr Gordon.
  - At latest on 7 August 2020 the appellant and its representative became aware of the missed time limit.
  - An appeal against this decision was filed on 5 October 2020. At the same time the appellant filed a request for re-establishment and the statement setting out the grounds of appeal. Furthermore, it paid the appeal fee and the fee for re-establishment.
- III. The appellant argued that it missed the time limit to file an appeal because the decision to refuse the application was "misfiled" and therefore not noted in its representative's records. The representative used the case management system Equinox.

In response to a communication pursuant to Rule 100(2) EPC the appellant explained in more detail that in the office of its representative the incoming mail was separated into "system mail" and "non-system mail". The non-system mail then was further categorised into mail which required action - i.e. bank statements or

invoices or the like - and mail to be discarded. The mail requiring action - also called "accounts mail" - was collected by the law firm's bookkeeper and processed. The "system mail" was filed into physical files which were used to store correspondence, copies of prior art documents and the like and - in addition - on the Equinox database. Equinox was used as the "official file" and also contained deadlines including a fatal date marked in red which, if passed, would result in a loss of rights and at least one reminder. According to the appellant's submission, the Equinox database was maintained in the following way:

- A grid was written on the front page of the mail item containing for example the tasks "On System", "Report to client", "Received instructions" and "Response filed",
- completion of the task and date of completion was noted,
- The process of entering the deadlines and mail "On system" required the deadlines to be entered into the Equinox database from the hard copy and the soft copy of the mail to be put on the Equinox case record,
- in all cases, the procedure was that hard copy mail was not filed away until the task had been completed.

The appellant regarded the misfiling as an isolated error in a normally satisfactory working system. A cross-check as required by the Board of Appeal's jurisprudence was dispensable because its representative's law firm had only one full-time member of staff, which was Mr Black, a UK qualified patent attorney and owner of the law firm, resident in Glasgow. Mr Gordon, in charge of the current case was engaged as a consultant for the business and instructed

by Mr Black exclusively in relation to matters before the European Patent Office. Moreover, since Mr Gordon worked in Ireland a cross-check would have created additional sources of error.

### **Reasons for the Decision**

1. The request for re-establishment is admissible because it was filed in due time after the removal of the cause of non-compliance (Rule 136(1) EPC) - which in this case was on 7 August 2020, the day the appellant and its representative were corresponding regarding the payment of the renewal fees. Also the fee required by Rule 136(1) EPC was paid.
  
2. Under Article 122(1) EPC an appellant has to prove that itself and the representative in charge of filing a possible appeal were not able to observe the time limit in spite of all due care required by the circumstances. For cases where the cause of non-compliance with a time limit involves some error in carrying out the party's intention to comply with the time limit, the case law has established criteria. The Boards of Appeal have accepted that either exceptional circumstances like organisational restructuring, change or withdrawal of representation, sudden serious illness or severe psychological stress of the responsible person, (see Case Law of the Boards of Appeal, 10th edition, chapter III.E.5.3.) or an isolated mistake within a normally satisfactory monitoring system that foresees a cross-checking system like the "four-eye-principle" or a "double-entry bookkeeping" (see J 2/86, J 3/86 (consolidated), OJ EPO 1987, 362, point 4 of the reasons with respect to a time limit for the payment of

a renewal fee and Case Law of the Boards of Appeal, 10th edition, chapter III.E.5.4.) may be acceptable reasons as to why a time limit could not be met. In relation to small firms and offices, however, the boards have at times dispensed with the requirement for a cross-check (see e.g. T 166/87 of 16 May 1988, point 2 of the reasons, J 11/03 of 23 August 2010, points 3.2.1 and 3.2.5.1 of the reasons).

3. From the appellant's submissions the Board understands that the "misfiling" of the decision as "non-system mail" occurred after the acknowledgement of receipt had been forwarded to Mr Gordon in Ireland and after Mr Gordon has returned it to Mr Black in Glasgow. Thus, the decisive question in this case is whether the procedure for dealing with incoming mail - i.e. separation of the mail into "system mail" and "non-system mail" meets the requirements of due care defined above. In contrast, it does not matter whether the process for recording data in the Equinox database - explained in detail by the appellant - meets the requirements of all due care. This procedure only applies for "system-mail" and does not take effect for "non-system mail".
4. According to the established jurisprudence of the Boards of Appeal defined above under point 2, exceptional circumstances or an isolated mistake within a normally satisfactory working system may be acceptable reasons as to why a time limit could not be met.
  - 4.1 The appellant has not submitted anything as to why, in the current case, special circumstances prevented the correct identification of the incoming mail as "system

mail" and caused the misfiling. Therefore no special circumstances can be seen.

- 4.2 Also it cannot be established that, in the current case, the misfiling occurred because of an isolated error in a normally satisfactory working system.
- 4.2.1 The Board has taken note of the fact that the law firm representing the appellant is rather small, consisting only of its owner, patent attorney Mr Simon Black, a bookkeeper also mentioned in the appellant's letter of 6 October 2021 and the European patent attorney Mr Gordon who, however, only works as a part-time consultant from another country.
- 4.2.2 The Board accepts that under these circumstances a cross-checking system applying the four-eye-principle as normally required by the Boards of Appeal is not feasible. This, however, does not exempt the appellant and its representative from the duty to take all possible and reasonable precautions to avoid missing deadlines.
- 4.2.3 To the decisive question whether, in its representative's office, any measures were foreseen to detect and correct errors made in the process of separating mail into "system mail" and "non-system mail", the appellant did not make any submissions. The Board notes that even in small entities where sorting the mail and organising the filing system is done by one and the same person, all due care requires that a routine control of these critical and potential error-prone acts is performed.
- 4.2.4 The Board further observes that the handling of cases before the European Patent Office in the



representative's office was rather complicated. In the case on hand the acknowledgement of receipt was first sent to Mr Gordon, resident in Ireland. This required that, initially, the letter from the European Patent Office must have been assessed as "system mail". Only after the acknowledgement had been returned to the Glasgow office and after it was sent back to the European Patent Office, the file got lost and the measures foreseen to ensure the registration of the deadline in Equinox could not take effect.

- 4.2.5 In order to avoid misunderstandings, it has to be stressed that structures in which the work on a file is carried out by different persons located in different cities or countries per se cannot be considered as a non-satisfactory working system. However, working in such a way creates the risk that information gets lost and thus requires specific safeguards to avoid mistakes. This also applies to small entities working in such a way.
- 4.3 From that, the Board concludes that the misfiling of the contested decision and the failure to register the deadline for filing the appeal cannot be regarded as an isolated error in a normally satisfactory working system. The request for re-establishment therefore has to be rejected.
5. Applying the principles laid down in the decision G 1/18 of the Enlarged Board of Appeal the appeal is deemed not to have been filed and reimbursement of the appeal fee is to be ordered ex officio.
6. The appellant has not requested oral proceedings under Article 116 EPC. The reasons why the request for re-establishment of rights is to be rejected having been

discussed, the Board is in a position to issue a written decision.

## Order

### For these reasons it is decided that:

1. The request for re-establishment of rights into the time limit to file the appeal is rejected.
2. The appeal is deemed not to have been filed.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:



T. Buschek

C. Schmidt

Decision electronically authenticated