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**Datasheet for the decision  
of 7 October 2022**

**Case Number:** T 0342/21 - 3.5.02

**Application Number:** 10776172.8

**Publication Number:** 2497162

**IPC:** H01R13/703, H01R13/44

**Language of the proceedings:** EN

**Title of invention:**

Connector

**Patent Proprietor:**

Koninklijke Philips N.V.  
Philips Intellectual Property & Standards GmbH

**Opponent:**

Molnia, David

**Relevant legal provisions:**

EPC R. 82(2), 82(3), 103(1)(a)

**Keyword:**

Non-automatic debiting of the surcharge despite automatic debiting order.  
Reimbursement of appeal fee - substantial procedural violation (yes)



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Case Number: T 0342/21 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 7 October 2022**

**Appellant:** Koninklijke Philips N.V.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 22 February  
2021 revoking European patent No. 2497162  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman**            R. Lord  
**Members:**            C.D. Vassoille  
                              W. Ungler

## **Summary of Facts and Submissions**

- I. This is an appeal of the patent proprietor (appellant) against the decision of the opposition division, posted on 22 February 2021, revoking European patent no. 2 497 162.
- II. The opposition division had issued an interlocutory decision dated 27 February 2020 concerning maintenance of the patent 2 497 162 in the form of auxiliary request 2.
- III. In a communication pursuant to Rule 82(2) EPC dated 9 July 2020, the appellant had been requested, within a period of three months of notification of the communication, to pay the fee for publication of a new specification of the European patent and to file translations of the amended claims.
- IV. The fee under Rule 82(2) EPC was automatically debited on 19 October 2019.
- V. The translations of the amended claims were not filed within the three month time limit, i.e. by 19 October 2020, but on 22 October 2020.
- VI. In a communication under Rule 82(3) EPC, posted on 24 November 2020, the appellant was informed that the translations of the amended claims were not filed in due time, as required under Rule 82(2) EPC, and that this act could be validly performed within two months of notification of the communication.
- VII. In the reasons of the decision under appeal the opposition division *inter alia* found that the surcharge

was not paid within the two-month period and that the patent thus had to be revoked for failure to validly comply with the requirements under Rules 82(2) and (3) EPC.

VIII. The appellant requested in writing that the decision under appeal be set aside and that the patent be maintained in amended form as specified in the interlocutory decision of 27 February 2020. The appellant further requested that the appeal fee be reimbursed.

IX. The relevant arguments of the appellant can be summarised as follows:

The appellant took part in the automatic debit order procedure. On 22 October 2020, indeed too late, the requested translations of the amended claims were submitted together with a statement that any necessary fees could be debited from the appellant's deposit account using the automatic debit procedure. Similar statements referring to the automatic debit procedure had also been filed at various earlier occasions in the proceedings concerning the European patent.

On 24 November 2020, the appellant had been correctly informed that the translations of the amended claims had not been filed in due time. On page 2 of this communication the following had been stated:

***"Note to users of the automatic debiting procedure***  
*The basic time limit for payment of the above publishing fee had already expired when the automatic debit order was received. The publishing fee and the surcharge will be debited automatically on the last day of the two-month period."*

As the translations of the claims had already been submitted on 22 October 2020, and as the appellant had informed the EPO that the automatic debit procedure could be used, it was assumed that no further action was required on the side of the appellant. It was further clear from the electronic file (EP register) that the translations of 22 October 2020 as well as the statement regarding the automatic debit order were received by the EPO within the two-month time limit set out in the communication of 24 November 2020. The appellant had therefore met all the requirements as set out under Rule 82(2) and (3) EPC.

The request for reimbursement of the appeal fee was equitable, as the appellant had met all their obligations. The EPO had committed a substantial procedural violation because the valid filing of the translations and the automatic debit order had been ignored by the EPO.

### **Reasons for the Decision**

1. The appeal is admissible.

#### *Automatic debit order*

2. It is not contested by the appellant that the translations of the amended claims, as required under Rule 82(2) EPC, were filed too late. Nor is it in dispute that the surcharge should have been paid within the two-month time limit, as requested in the EPO's communication under Rule 82(3) EPC of 24 November 2020.

The appellant however argues that the surcharge should have been debited automatically by the EPO within the time limit indicated in the EPO's letter of 24 November 2020.

The board agrees with the appellant for the following reasons:

3. The appellant validly takes part in the automatic debit order procedure for the European patent. The provisions specified in the *Arrangements for the automatic debiting procedure (AAD)* are therefore applicable (see Annex A.1 to the Arrangements for deposit accounts (ADA), supplementary publication 4, OJ EPO 2019, pages 22 to 31).
4. Point 1.1 AAD specifies that by filing an automatic debit order, the deposit account holder, here the appellant, authorises the EPO to debit fees automatically as the proceedings progress.
5. It is clear from the appellant's deposit account overview that all fees, as far as they are covered by the AAD, which had fallen due until then were accordingly debited automatically. This includes the fee under Rule 82(2) EPC which was debited in due time within the time limit set out in the EPO's communication under Rule 82(2) EPC of 9 July 2020.
6. Reference is further made to the appellant's letter received on 22 October 2020, with which the translations of the amended claims were filed, where the method of payment is indicated in Form 1038 as "Automatic debit order", citing the name and number of the appellant's account.

7. It is further noted that the fee under Rule 82(2) EPC as well as the surcharge under Rule 82(3) EPC form part of the fees that are covered by the AAD and that are in particular not excluded from it (see point 3 AAD).
8. The board's own investigations further revealed that the appellant's account was sufficiently funded at the time the surcharge should have debited (see point 6 AAD and point 5.2 ADA).
9. Therefore, in view of the validly filed automatic debiting order and the EPO's corresponding provisions on the automatic debiting procedure laid down under the AAD and ADA, the surcharge should have been debited automatically on the last day of the two-month period under Rule 82(3) EPC, as also indicated on page 2 of the EPO's communication of 24 November 2020.
10. The board has thus come to the conclusion that the appellant was not responsible for the non-payment of the surcharge within the corresponding time limit. Furthermore, the translations of the amended claims were received in due time under Rule 82(3) EPC, namely on 22 October 2020.
11. Consequently, the appellant has taken all necessary steps to comply with the requirements under Rule 82(3) EPC. In particular, they could rely on the provisions set out under the AAD and in particular, that the surcharge would be debited automatically from their account in due time, i.e. within the two-month time limit under Rule 82(3) EPC.



*Request for reimbursement of the appeal fee*

12. Although the EPO had correctly issued a communication under Rule 82(3) EPC, the non-debiting of the surcharge, contrary to the provisions set out under the AAD (see in particular point 1 AAD and point 3.1 AAD), constitutes a procedural violation. Furthermore, the procedural violation is substantial, as it led to the decision of the opposition division to revoke the European patent. Not debiting the surcharge automatically therefore constitutes a substantial procedural violation on the part of the EPO, which justifies reimbursement of the appeal fee under Rule 103(1) (a) EPC.

## 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 with the order to maintain the patent as amended in the following form:

#### **Description:**

Paragraphs 1-7, 11-23, 25-44, 47, 49, 50 of the patent specification

Paragraphs 8-10, 24 filed during the oral proceedings on 20 September 2019

#### **Claims:**

No. 1-13 filed in electronic form on 10 July 2019

#### **Drawings:**

Sheet 1/1 of the patent specification

3. The appeal fee is reimbursed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated