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**Datasheet for the decision
of 21 February 2025**

Case Number: T 2093/22 - 3.4.01

Application Number: 05077044.5

Publication Number: 1662272

IPC: G01S13/92, G01S13/04,
G01S13/32, G08G1/01

Language of the proceedings: EN

Title of invention:

Method and system for detecting with a radar the passage of a vehicle at a point to be monitored on a road

Patent Proprietor:

Sensys Gatso Netherlands B.V./

Opponent:

Idemia Identity & Security France

Relevant legal provisions:

EPC Art. 108, 122

Keyword:

Re-establishment of rights - request withdrawn
Admissibility of appeal - appeal deemed not to have been filed

Decisions cited:

T 1026/06



Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
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Case Number: T 2093/22 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 21 February 2025

Appellant: Sensys Gatso Netherlands B.V.
(Patent Proprietor) Claes Tillyweg 2
2031 CW Haarlem (NL)

Representative: Bartelds, Erik
Arnold & Siedsma
Bezuidenhoutseweg 57
2594 AC The Hague (NL)

Respondent: Idemia Identity & Security France
(Opponent) 2 place Samuel de Champlain
92400 Courbevoie (FR)

Representative: Regimbeau
20, rue de Chazelles
75847 Paris Cedex 17 (FR)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 17 June 2022
revoking European patent No. 1662272 pursuant to
Article 101(3)(b) EPC.**

Composition of the Board:

Chair A. Medeiros Gaspar
Members: B. Noll
L. Bühler

Summary of Facts and Submissions

- I. By decision posted on 17 June 2022 the opposition division revoked European patent No. 1 662 272. Receipt of the decision was acknowledged by the patent proprietor on the same day.

- II. A Notice of Appeal against this decision was filed on 31 August 2022, and the appeal fee was paid on the same day.

- III. By communication dated 19 September 2022, the patent proprietor was informed of a loss of rights pursuant to Rule 112(1) EPC, because the notice of appeal and the appeal fee had been received after expiry of the two-month time limit according to Article 108, first sentence, EPC. The appeal was deemed not to have been filed.

- IV. On 31 October 2022, the patent proprietor filed a request for re-establishment of rights under Article 122 EPC and paid the prescribed fee. The proprietor requested that the acts of filing of the notice of appeal and paying the appeal fee be deemed to have been performed in due time. The proprietor argued that the failure to observe the time limit for filing the notice of appeal and paying the appeal fee occurred, in spite of all due care required by the circumstances having been taken, due to an isolated procedural mistake within a normally satisfactory system.

- V. The opponent requested that the request for re-establishment of rights be rejected.

- VI. In a communication sent with a summons for oral proceedings, the Board indicated that the proprietor could not rely on the occurrence of a single isolated mistake to excuse the failure to comply with the time limit and that all due care required by the circumstances had not been taken.

- VII. Subsequently, the proprietor withdrew their request for re-establishment of rights and announced that they would not attend the oral proceedings.

- VIII. The oral proceedings were then cancelled.

Reasons for the Decision

- 1. According to Article 108 EPC, notice of appeal must be filed in writing at the European Patent Office within two months of the date of notification of the decision appealed. It shall not be deemed to have been filed until after the fee for appeal has been paid.

- 2. The proprietor does not dispute that, in the present case, the filing of the notice of appeal and the payment of the appeal fee on 31 August 2022 occurred after the expiry of the period for filing the appeal, which was on Monday 27 August 2022.

3. Instead, the proprietor applied for re-establishing their rights pursuant to Article 122 EPC with respect to this time limit.
4. According to Article 122(1) EPC, a party who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit shall, upon application, have their rights re-established.
5. By later withdrawing their request for re-establishment of rights, the proprietor accepted the consequences of the non-observance of the time limit for filing an appeal.
6. Those consequences are that the appeal is deemed not to have been filed.
7. Furthermore, as there was no appeal in existence, the appeal fee was paid without purpose and must be reimbursed.
8. The fee for re-establishment of rights is not reimbursable (see T 1026/06, point 7). A fee can only be reimbursed if it was paid without legal basis or if a statutory basis for reimbursement exists. Under Rule 136(1), third sentence, EPC, a request for re-establishment of rights is deemed to have been filed only when the fee for re-establishment of rights has been paid. The fee is therefore necessary to make the request effective. The fee was accordingly paid for the correct reason and there is no basis for a reimbursement.

Order

For these reasons it is decided that:

1. The appeal is deemed not to have been filed.
2. The appeal appeal fee is reimbursed.

The Registrar:

The Chair:



D. Meyfarth

A. Medeiros Gaspar

Decision electronically authenticated