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**Datasheet for the interlocutory decision
of 3 June 2025**

Case Number: T 0553/25 - 3.4.01

Application Number: 19816152.3

Publication Number: 3803902

IPC: G21B3/00, G21G7/00

Language of the proceedings: EN

Title of invention:

SYSTEM AND METHOD FOR PHONON-MEDIATED EXCITATION AND DE-
EXCITATION OF NUCLEAR STATES

Applicant:

Metzler, Florian

Headword:

Declaration of eligibility to the reduced fee for appeal

Relevant legal provisions:

EPC Art. 108

EPC R. 7a, 7b

RFees Art. 2(1), item 11

Keyword:

Reduced fee for appeal - declaration of eligibility - no legal
basis

Request for re-establishment - filed without legal reason

Decisions cited:

J 0001/85, T 0473/91



Beschwerdekammern

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Case Number: T 0553/25 - 3.4.01

I N T E R L O C U T O R Y D E C I S I O N
of Technical Board of Appeal 3.4.01
of 3 June 2025

Appellant:
(Applicant)

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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 5 December 2024
refusing European patent application No.
19816152.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman P. Scriven
Members: T. Zinke
 L. Bühler

Summary of Facts and Submissions

- I. The appeal, by the applicant, is of the Examining Division's decision to refuse European patent application 19816152.3.
- II. On 31 January 2025, the applicant filed a notice of appeal and paid the appeal fee for persons referred to in Rule 7a(2)(a) to (d) EPC as provided for in Article 2(1), item 11 RFees ("reduced fee for appeal").
- III. By communication dated 6 February 2025, the applicant was informed as follows (EPO Form 2901 - emphasis as in the original):

According to Article 2(1), item 11, of the Rules relating to Fees, a reduced fee for appeal is due on condition that (each of) the appellant(s) is either a natural person or an entity according to Rule 7a(2) EPC (i.e. a small or medium-sized enterprise, a non-profit organisation, a university or a public research organisation) and that a declaration to this effect is filed at the latest by the time of payment of the appeal fee within the time limit under Article 108 EPC. For more details, see the Notice from the EPO dated 18 December 2017 concerning the reduced fee for appeal (Article 108 EPC) for an appeal filed by a natural person or an entity referred to in Rule 6(4) EPC (OJ EPO, 2018, A5) and the notice from the EPO

dated 25 January 2024 concerning fee-related support measures for small entities (OJ EPO 2024, A8).

*The initial formal check of the present appeal has revealed that the reduced fee for appeal has been paid but **a declaration that (each of) the appellant(s) is a natural person or an entity according to Rule 7b EPC has not been filed.***

*Such a declaration may still be filed **within the time limit under Article 108 EPC.***

Otherwise, the appellant(s) are not eligible for the reduced fee, meaning that the full amount of the fee for appeal is due.

If the missing amount is not paid within the above-mentioned time limit, the notice of appeal may be deemed not to have been filed or the appeal may be considered inadmissible.

- IV. On 11 February 2025, the applicant filed a request for re-establishment into the time-limit for paying the appeal fee.
- V. In view of this request, the examining division remitted the case to the Board on 14 February 2025.
- VI. On 7 April 2025, the applicant filed the statement of grounds of appeal.

Reasons for the Decision

Declaration of eligibility for the reduced fee for appeal

1. The Examining Division's communication, dated 6 February 2025 (see point III., above) relies, *inter alia*, on the *Notice from the EPO dated 18 December 2017 concerning the reduced fee for appeal (Article 108 EPC) for an appeal filed by a natural person or an entity referred to in Rule 6(4) EPC ("Notice")*. The Notice refers to Rule 6 EPC, as modified by decision of the Administrative Council CA/D 19/13 of 13 December 2013 (OJ EPO 2014, A4). Rule 6 EPC has meanwhile been modified by decision of the Administrative Council CA/D 16/23 of 14 December 2023 (OJ EPO 2024, A3). The provisions on fee reduction were transferred into new Rules 7a and 7b EPC. In the following, the Board will refer to these later provisions, which entered into force as of 1 April 2024.
2. Items 3 to 5 of the Notice require appellants who are eligible pursuant to Article 2(1), item 11 RFees together with Rule 7a(2)(a) to (d) EPC for a reduced fee for appeal, to file a declaration of eligibility. According to item 11 of the Notice, *In case of an incorrect, false or missing declaration with payment of the reduced fee the notice of appeal may be deemed not to have been filed or the appeal may be considered inadmissible*.
3. The Notice thus introduces a formal requirement for the valid payment of the fee for appeal and thereby also an additional requirement for lodging an appeal. However, there is no legal basis, in the EPC, for such a requirement; and nor is the Board aware of any

provision empowering the Office to adopt such regulations, even less so at the level of a notice by the Office.

4. Article 2(1), item 11 RFees refers to Rule 7a(2)(a) to (d) EPC, to define the persons and entities eligible to pay the reduced fee for appeal. This simply avoids listing these persons and entities in Article 2(1), item 11 RFees and has no legal implications beyond giving a definition of who is eligible for the reduced fee for appeal.
5. There is no reference in Article 2(1), item 11 RFees to Rule 7b(1) EPC, which establishes a requirement to declare eligibility to a reduction in fees, in a different context. According to Rule 7b(1) EPC, such a declaration is required if persons or entities according to Rule 7a(2)(a) to (d) EPC wish to avail themselves of a reduced fee according to Rule 7a(1) or (3) EPC. These provisions concern fees to be paid for patent applications up to the grant of a patent. Rule 7b EPC does not apply to the payment of the reduced fee for appeal, be it directly or by way of reference. Even less can Rule 7b EPC apply to the fee for appeal by way of a mere analogy.
6. It follows from the foregoing that there is no legal basis for a prior declaration of eligibility as a prerequisite for a valid payment of the reduced fee. The right to pay the reduced fee is not comparable to a legal situation in which a declaration made within the prescribed period is a prerequisite for the right coming into existence. The presumption, in the Examining Division's communication dated 6 February 2025 (see point III. above), that the omission of a declaration according to items 3 to 5 of

the Notice has the consequence that the appellant is "*not eligible for the reduced fee, meaning that the full amount of the fee for appeal is due*", is, therefore, wrong.

7. A declaration of eligibility might be seen as a form of evidence supporting a payment of the reduced fee for appeal. Indeed, when examining the admissibility of an appeal, a Board may require appellants who pay a reduced fee to provide evidence that they fall into one of the categories of persons and entities listed in Rule 7a(2) (a) to (d) EPC. However, the Office has no power to define what is to be accepted by the Boards as evidence, and even less to limit such evidence to a declaration as set out in items 3 to 5 of the Notice. Nevertheless, the Notice considers such a declaration to be official confirmation that the appellants fall into one of the other eligible categories (item 8), and states that further evidence may be requested "*in case of doubt as to the veracity of the declaration given by an appellant*" (item 10). Therefore, items 8 and 10 of the Notice conflict with the competence of the Boards to examine an appeal as to its admissibility, and also with the principle of free evaluation of evidence in that the Notice limits the need for further evidence to cases in which there are doubts as to the veracity of the declaration given by an appellant.
8. The Board also fails to see any reason why evidence as to an appellant's status with respect to Rule 7a(2) (a) to (c) EPC cannot be filed after expiry of the time-limit for filing the notice of appeal under Article 108, first sentence, EPC, contrary to what is explained in item 11 of the Notice and the Examining Division's communication. Of course, an appeal is only deemed to be filed if the fee for appeal has been paid within

said time-limit. The time-limit for payment is, in turn, deemed to have been observed only if the (applicable) full amount of the fee has been paid in due time (Article 8, first sentence, RFees). Moreover, the difference in amount between the regular and the reduced fee for appeal is more than 30%, which cannot reasonably be considered a minor underpayment that could be overlooked within the meaning of Article 8, fourth sentence, RFees. However, this does not preclude an assessment of whether the time-limit for payment of the appeal fee has been observed on the basis of evidence provided after its expiry. While it is true that it is the facts as they stand at the end of the period are relevant, evidence for those facts may be submitted at a later stage, in particular in response to a communication by the competent Board under Rule 112(1) EPC, before a decision is taken on whether the appeal is deemed to have been filed. Indeed, this view is reflected in Article 7(3) RFees.

9. In the absence of a legal basis or justification for requiring the filing of a declaration of eligibility for the reduced fee within the time-limit under Article 108, first sentence, EPC, the information in the Examining Division's communication, dated 6 February 2025 (see point III. above), that the notice of appeal may be deemed not to have been filed if neither the required declaration nor the payment of the full amount of the regular fee for appeal is received within the time-limit pursuant to Article 108, first sentence, EPC, incorrectly applies Article 108, second sentence, EPC together with Article 2(1), item 11 RFees.

Due payment of the reduced fee for appeal

10. In the present case, the application was filed by one of the inventors, who undoubtedly is a natural person within the meaning of Rule 7a(2)(c) EPC. The fact that the applicant is a natural person appears never to have been questioned by the Examining Division during examination. Rightly so, since there is no apparent reason to doubt it. The applicant was thus entitled to pay the reduced fee for appeal provided for in Article 2(1), item 11 RFees. Further proof for the appellant's entitlement is not needed and would appear excessively formalistic.
11. The applicable amount for the reduced fee for appeal was paid on 31 January 2025, i.e. within the time-limit for filing the notice of appeal pursuant to Article 108, first sentence, EPC. The notice of appeal complies with the requirements of Rule 99(1) EPC. Hence, the appeal is deemed to have been filed within the meaning of Article 108, second sentence, EPC.
12. The statement of grounds of appeal was filed on 7 April 2025, i.e. within the time-limit for its filing under Article 108, third sentence, EPC.
13. Since all other requirements for an admissible appeal are met, the appeal is admissible.

Request for re-establishment of rights

14. As set out above, the time-limit for payment of the appeal fee (Article 108, first and second sentence, EPC) was observed in the present case, because no declaration of eligibility was required. It follows

that no rights were lost by the appellant and that the communications dated 6 February 2025 was issued without cause. Consequently, there was no legal reason to request re-establishment into the time-limit pursuant to Article 108, first and second sentences, EPC, and the request filed by the appellant was unnecessary from the beginning. Consequently, the fee for re-establishment was also paid without any legal reason and is to be reimbursed (J 1/85, *Payment by check*, OJ EPO 1985, 126, reasons point 8).

Interlocutory revision

15. With the filing of a request for re-establishment of rights, the competence to decide on the case moves from the Examining Division to the competent Board (T 473/91, *Jurisdiction*, OJ EPO 1993, 630, headnote and reasons points 1.3 and 1.4). From a formal point of view, the Examining Division was therefore correct to remit the case to the present Board without examining whether or not to rectify its decision.
16. However, as explained above, the legal assessment in the Examining Division's communication dated 6 February 2025 was incorrect. This communication led the appellant to file a request for re-establishment although there had been no loss of rights. This filing, in turn, precluded and still precludes the Examining Division from considering interlocutory revision. The admissibility of the appeal as established by the present interlocutory decision, however, removes the reason for the remittal of the case to the present Board without consideration of interlocutory revision. Moreover, the time-limit for interlocutory revision has not yet expired. The Examining Division is, therefore,

still in a position to examine whether it considers the appeal to be well founded, in which case it can still rectify its decision. For this reason, the Examining Division is invited to do so within the applicable time-limit.

Order

For these reasons it is decided that:

1. The appeal is admissible.
2. The reimbursement of the fee for re-establishment of rights is ordered.
3. The Examining Division is invited to consider interlocutory revision according to Article 109 EPC.

The Registrar:

The Chairman:



D. Meyfarth

P. Scriven

Decision electronically authenticated