



GD 3
Geschäftsstelle

München, den 12. Februar 1985

An alle Bezieher
von Kopien der Entscheidungen der Beschwerdekammern des EPA

Es wird gebeten, das ursprüngliche Vorblatt zur Entscheidung
T 214/83 gegen das beiliegende auszutauschen.


J. Rückerl

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N° du recours : T 214/83

Anmeldenummer / Filing No / N° de la demande : 78200369.3

Publikations-Nr. / Publication No / N° de la publication : 2861

Bezeichnung der Erfindung:

Title of invention: Process of preparing vinyl chloride polymers by
Titre de l'invention : suspension polymerization and polymers so obtained

ENTSCHEIDUNG / DECISION

vom / of / du 3 September 1984

Anmelder/Patentinhaber: STAMICARBON B.V.
Applicant/Proprietor of the patent:
Demandeur/Titulaire du brevet :

Stichwort / Headword / Référence : Giro payment/SIGMA

EPO / EPC / CBE Article 8(1) Rules relating to Fees

"Date to be considered as the date on which payment is made"
"Giro payment" - "Evidence of payment - in due time"

Leitsatz / Headnote / Sommaire

A legal situation equivalent to entry of a payment in an account held by the EPO within the meaning of Article 8(1)(a) of the Rules relating to Fees also exists - as in the case of Decision J 26/80 of 13 November 1981 (OJ 1/1982, p.7) - where the payment of the opposition fee is made at a bank or post office in which the EPO has an account in due time, and thereby fulfils conditions under national law whereby the payer can neither revoke the payment nor can it be antedated, and where (as in the present case) evidence was provided in the form of a declaration by the opponent's professional representative within the opposition period, accompanied by a photocopy of the payment receipt stamped by the Post Office.

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Europäisches
Patentamt
Beschwerdekammern

European Patent
Office
Boards of Appeal

Office européen
des brevets
Chambres de recours



Case Number: T 214/83

DECISION
of the Technical Board of Appeal 3.3.1
of 3 September 1984

Appellant: SIGMA ITALIANA PRODOTTI CHIMICI S.p.A.
(Opponent) Piazza Libertà, 10
BERGAMO
Italy

Representative: Faggioni, Giovanmaria, Dr.
Fumero-Studio Consulenza Brevetti
Widenmayerstr. 4/I
D-8000 München 22

Respondent: STAMICARBON B.V.
(Proprietor of the patent) Postbus 10
NL-6160 MC Geleen

Representative: De Boer, Jan
OCTROOIBUREAU DSM
Postbus 9
NL-6160 MA Geleen

Decision under appeal: Decision of the ^{Formalities} Section of the European Patent Office
dated 25 July 1983 stating that the opposition filed against
European patent No. 2861 is deemed not to have
been filed.

Composition of the Board:

Chairman: D. Cadman

Member: O. Bossung

Member: G. Szabo

SUMMARY OF FACTS AND SUBMISSIONS

- I. The appellant filed an opposition against European patent No. 0 002 861 on 19 January 1983, citing at the same time application No. 78 200 369.3 and stating that a "voucher of the settlement of the opposition fee" was enclosed. The "voucher" consisted of a photocopy of the front and back of a completed Italian Post Office Giro form recording a payment of the equivalent of the opposition fee for the credit of Giro account No. 10 568 277 held by the European Patent Organisation with the Italian Post Office, the purpose of payment being given as the "opposition fee", indicating the aforementioned application No. and the name of the patent proprietor. The payment was receipted by Milan Post Office No. 15 in the form of an official stamp dated 18 January 1983. The opposition period ended on 21 January 1983 and the payment was credited to the EPO's Giro account on 22 January 1983.
- II. The Formalities Officer of the Opposition Division informed the appellant under Rule 69(1) EPC that the opposition was deemed not to have been filed owing to late payment of the opposition fee. In his reply the appellant referred to Decision of the Legal Board of Appeal J 26/80 of 13 November 1981 (OJ 1/1982, p.7) and, citing the provisions of Italian law, claimed *inter alia* that a Giro payment had the effect of discharging the payer ("has a liberatory value for the amount paid, as from the date in which the payment has been carried out ...").
- III. By a decision under Rule 69(2) EPC of 25 July 1983 the Formalities Officer ruled that the opposition under

Article 99(1) EPC was deemed not to have been filed owing to late payment. It was stated as one of the reasons that, in accordance with Decision of the Legal Board of Appeal J 07/81 of 21 December 1982 (OJ 3/1983, p.89), under Article 8(1)(a) of the Rules relating to Fees the decisive date was that on which the amount was entered in an account, not the date on which the transfer was ordered. The case was not comparable with that of Decision J 26/80 where a situation equivalent to crediting the account was created by the fact that the bank had informed the EPO by telex on the last day of the period for payment that it had received the amount and would credit it (albeit after expiry of the period). In the present case, however, the photocopy of the payment receipt submitted to the EPO within the period could not be regarded as assuring the EPO that the amount was at its disposal.

- IV. The opponent filed an appeal against this decision on 21 September 1983 and paid the fee. His main argument in the Statement of Grounds filed on 24 November 1983 was that his case equated to that of Decision J 26/80, the situation on expiry of the period being equivalent to an account having been credited within the meaning of Article 8(1)(a) of the Rules relating to Fees: under Italian law and the provisions governing the Italian Post Office it was impossible to ante-date or revoke the payment, a point confirmed by the Manager of the Milan Giro Office in a declaration dated 14 November 1983.

The appellant requests that the contested decision be set aside, that the opposition be declared admissible and that the fee for appeal be refunded.

- V. The patentee's attention was drawn to the aforementioned Decisions and he was given the opportunity to comment on the admissibility of the opposition. No observations were filed.

REASONS FOR THE DECISION

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. As is confirmed in Decision J 07/81, the date on which payment is considered to have been made to the EPO under Article 8(1)(a) of the Rules relating to Fees is the date on which the amount is entered in an account held by the Office. Decision J 26/80 set out the Legal Board of Appeal's opinion as to the reasons for this provision. The first reason given was that from the date of entry "the moneys have irrevocably become the assets of the EPO, which the payer can no longer recall, and that the EPO thereupon has the right to dispose of them as it wishes". A further reason is seen in the fact that "any subsequent change in the date of payment, in particular antedating, is excluded after entry". Decision J 07/81 does not address situations which are legally equivalent to entry in an account, but instead confirms that as a rule the date of entry must be considered as the ruling date of payment. In Decision J 26/80, however, it was acknowledged as an exception that under special circumstances "a legal situation" can be created prior to entry which is "equivalent to that of entry in the account".
3. Such circumstances are also present in this case, evidence having been supplied to the EPO by means of the notice of opposition, filed in due time, that the opposition fee had been paid on 18 January 1983, i.e. prior to expiry of the opposition period terminating on 21 January 1983. This evidence was in the form of a declaration by the opponent's professional representative within the opposition period,

accompanied by a photocopy of the payment receipt stamped by the Post Office. Furthermore, under Italian law revocation of the payment would no longer have been possible. A situation was thus created on 18 January 1983, i.e. three days prior to expiry of the opposition period, in which entry of the opposition fee in the Giro account held by the EPO was assured, either in due time or - as was the case - late. From the time of payment onwards the payer could neither influence the date of entry nor revoke the payment. Evidence of that situation was also supplied to the EPO, assuming that the relevant Italian law was known.

5. It need not be established whether the two factors must coincide to create a situation - as in Decision J 26/80 - equivalent to entry in due time. In any event a situation was created in the present case in which the clear intention of Article 8(1)(a) of the Rules relating to Fees - namely that crediting to the account is the decisive factor - was fulfilled. Payment in due time at a bank or post office where the EPO had an account was made under conditions which made it impossible to revoke or antedate the payment. There is also no need in this case to establish whether the existence of such a situation has to be demonstrated to the EPO - as was done here - prior to expiry of the opposition period or whether it is sufficient that such a situation actually exists and the evidence may be supplied subsequently.
6. The appeal fee may not be reimbursed under Rule 67 EPC, since there has been no procedural violation; the facts of the case were merely given a different legal interpretation to that of the Board of Appeal in the present decision.

ORDER

For these reasons,

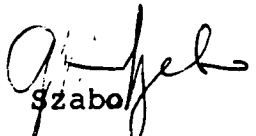
it is decided that:

1. The contested decision is set aside and the case remitted to the Opposition Division for further prosecution.
2. The opposition fee is declared to have been paid in due time.
3. The request for reimbursement of the fee for appeal is refused.

The Registrar:


Rückerl

The Chairman:


Szabo