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Aktenzeichen / Case Number / N° du recours : T 89/84

Anmeldenummer / Filing No / N° de la demande : 79 300 496.1

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Bezeichnung der Erfindung: Improvements in or relating to roller bearings

Title of invention:

Titre de l'invention :

ENTSCHEIDUNG / DECISION

vom / of / du 3 July 1984

Anmelder / Applicant / Demandeur : THE TORRINGTON COMPANY

Stichwort / Headword / Référence : Reimbursement of appeal fees/Torrington

EPO/EPC/CBE Articles 108, 110(2), 113(1), 114(1)

Rules 65(1), 67

"Fee for appeal - no refund if Statement of Grounds not filed"

"Cross-appeal - no necessity to file"

Leitsatz / Headnote / Sommaire

- I. If a Statement of Grounds of appeal is deliberately not filed so as to render the appeal inadmissible, the appeal fee cannot be reimbursed.

- II. Since a Board of Appeal is required to examine the facts of its own motion and may consequently re-open any matter decided by the department of first instance, there seems to be no procedural necessity for the filing of a "cross-appeal" by a respondent or by a party, who might be a respondent to an appeal filed by another party, even if, which is an open question, the appeal procedure under the EPC permits the filing of a "cross-appeal".



Case Number: T 89 / 84

DECISION
of the Technical Board of Appeal 3.2.1
of 3 July 1984

Appellant:
(Proprietor of the patent)

THE TORRINGTON COMPANY
59 Field Street
Torrington
Connecticut 06790 (US)

Representative:

Couch, Bernhard Charles et al.
W.P. Thompson & Co.
Coopers Building
Church Street
Liverpool LI 3AB (GB)

Respondent:
(Opponent)

SKF Kugellagerfabriken GmbH
Postfach 14 40
D-8720 Schweinfurt

Representative:

Decision under appeal:

Decision of the Opposition Division of the European Patent
Office dated 31 January 1984 rejecting the opposition filed
against European patent N°.0016880 pursuant to Article
102 (2) EPC

Composition of the Board:

Chairman: G. Andersson

Member: P. Ford

Member: M. Huttner

SUMMARY OF FACTS AND SUBMISSIONS

- I. The appellant is the proprietor of European patent No. 00 16 880 against which an opposition was filed on 4 February 1983 by SKF Kugellagerfabriken GmbH, Schweinfurt (DE). The opponent requested revocation of the patent on the ground that its subject matter was not patentable having regard to the state of the art. The appellant contested the admissibility of the opposition and argued that even if it were admissible it should be rejected as unsubstantiated.
- II. By the decision under appeal, dated 31 January 1982, the Opposition Division held that the opposition was admissible but that it had not been substantiated. Accordingly, it was decided that the opposition was rejected and that the patent should be maintained unamended.
- III. On 6 April 1984, by telex, the appellant filed a Notice of Appeal against that part of the decision which related to the issue of the admissibility of the opposition. The telex was duly confirmed in writing and the appeal fee was duly paid.
- IV. The notice of appeal included a statement to the effect that if the opponent did not file a Notice of Appeal in due time the appellant would not file a Statement of Grounds in support of its appeal but would request the Board of Appeal to issue a decision that the appeal was inadmissible "thereby enabling the appeal fee to be refunded".
- V. The opponent did not file a Notice of Appeal in due time and by letter received on 26 June 1984 the appellant's representative stated that accordingly he had not filed a Statement of Grounds. He conceded that the appeal was not admissible but argued that the filing of the appeal was "in effect a procedural necessity" having regard to the fact that only matters under appeal can be considered by the Board and had the opponent appealed and the appellant not appealed, the appellant would not have been able to argue about the admissibility of the opposition. Accordingly, the representative submitted that there was a good case for reimbursement of the appeal fee.

REASONS FOR THE DECISION

1. The appellant has correctly conceded that the appeal is inadmissible because no Statement of Grounds in support of the appeal was filed in due time as required by Article 108 EPC. Since the appeal is not admissible the Board of Appeal cannot examine whether it is allowable (cf. Article 110(1) EPC) and must reject the appeal (Rule 65(1) EPC).
2. Rule 67 EPC, in laying down the conditions under which a Board of Appeal shall order reimbursement of appeal fees, requires as its first condition that the Board shall deem the appeal in question to be allowable. It follows that, irrespective of any other considerations, Rule 67 EPC cannot be applied in the present case.
3. It has previously been held by a Board of Appeal that the restrictive language of Rule 67 EPC is plainly inconsistent with the idea that a Board of Appeal has a wide discretion to order reimbursement of appeal fees: Decision of Technical Board 3.3.1 dated 30 March 1982 in Case T 41/82 (Official Journal EPO, 1982/256). That Decision was expressly followed by Technical Board of Appeal 3.5.1 in its Decision of 3 March 1983 in Case T 13/82 (Official Journal EPO, 1983/411), which is referred to in the appellant's written submissions.
4. If an appellant does not file a Statement of Grounds in support of his appeal in due time, whether as a result of a genuine omission (as in Case T 13/82), or because the appeal was filed as a precautionary measure (as discussed by the Munich Diplomatic Conference: cf. para 7. of the Reasons for the Decision in Case T 13/82), or as an alleged "procedural necessity", as in the present case, in the view of the Board, the result must be that the appeal fee cannot be refunded. No distinction of principle can be made between such cases. Indeed, it would be illogical to treat appellants who deliberately refrained from filing Statements of Grounds more generously than those

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who failed to file by inadvertence.

5. In the present case, it should also be said that the Board is not satisfied that there was any "procedural necessity", as alleged, for the appellant to file an appeal against an adverse finding in a decision which, in its overall result, was favourable. If the opponent had appealed, the Board would have had to consider the admissibility question. When considering an appeal, a Board of Appeal is always required to examine the facts of its own motion (cf. Article 114(1) EPC) and the Board may, consequently, re-open any matter which was decided by the department of first instance, including the admissibility of an opposition, without the matter being raised by any party. If it does so, of course, all parties concerned will be given an opportunity to present their comments on the matter, in accordance with the principle set out in Articles 110(2) and 113(1) EPC. Therefore, there seems to be no necessity for the filing of a "cross-appeal" by a respondent or by a party who might be a respondent to an appeal filed by another party, in proceedings before the Boards of Appeal of the EPO, even if, which is an open question, the appeal procedure under the EPC permits the filing of a "cross-appeal".

ORDER

For these reasons,

it is decided that:

1. The appeal is rejected as inadmissible.
2. The request for reimbursement of the appeal fee is rejected.

The Registrar

J. Rückerl
J. Rückerl

The Chairman

G. Andersson
G. Andersson

*ult
PF.*