

Veröffentlichung im Amtsblatt	Ja/Yes
Publication in the Official Journal	Yes
Publication au Journal Officiel	Oui



Aktenzeichen / Case Number / N° du recours : T 192/84

Anmeldenummer / Filing No / N° de la demande : 80301002.4

Publikations-Nr. / Publication No / N° de la publication : 0017459

Bezeichnung der Erfindung: Process for removing water from surfaces of articles and water removing bath for use in the process  
Title of invention:  
Titre de l'invention :

ENTSCHEIDUNG / DECISION

vom / of / du 9 November 1984

Anmelder/Patentinhaber: Daikin Kogyo Co Ltd  
Applicant/Proprietor of the patent:  
Demandeur/Titulaire du brevet :

Stichwort / Headword / Référence : < [Restitutio in integrum -] Interruption in delivery of mail / Daikin Kogyo  
EPO / EPC / CBE  
Article 122  
Rule 85(2)

Leitsatz / Headnote / Sommaire

If the President of the EPO extends time limits expiring during a period of general interruption in the delivery of mail in a Contracting State (Rule 85(2) EPC), a pending application for re-establishment of rights considered to have been lost during that period which has been made by a representative having his place of business within that State must be deemed to have been made without purpose ab initio even though the non-observance of the time limit was due to causes other than the interruption in the delivery of mail. Accordingly, it can be declared that no rights were lost and the fee for re-establishment of rights can be refunded.

Europäisches  
Patentamt

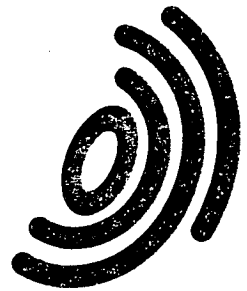
Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number: T 192 / 84

**DECISION**

of the Technical Board of Appeal 3.4.1

of 9 November 1984

concerning re-establishment of rights

**Appellant:** Daikin Kogyo Co.Ltd.  
Shin-Hankyu Building,  
12/39 Umeda-1-chome,  
Kita-ku,  
Osaka-shi, Osaka,  
Japan

**Representative:** Funge, Harry et al.  
Wilson, Gunn & Ellis  
41 Royal Exchange  
Cross Street  
Manchester  
M2 7BD  
Great Britain

**Decision under appeal:** Decision of Examining Division 031  
Office dated 4 May 1984  
application No 80301002.4  
EPC

of the European Patent  
refusing European patent  
pursuant to Article 97(1)

**Composition of the Board:**

**Chairman:** R. Kaiser  
**Member:** P. Ford  
**Member:** J. Roscoe

## SUMMARY OF FACTS AND SUBMISSIONS

- I. By virtue of the provisions of Rule 78(3) EPC, the decision under appeal, dated 4 May 1984, is deemed to have been notified to the appellant's representative on 14 May 1984. The EPO was not open for receipt of documents on 14 or 15 July 1984. The last day for filing a notice of appeal and paying the appeal fee in accordance with Article 108 and Rule 85(1) EPC was, therefore, 16 July 1984.
- II. On 2 July 1984, the appellant's patent agents in Japan sent the appellant's representative a telex message instructing that a notice of appeal be filed. For reasons which the representative cannot positively state, although a duplicate copy of all telexes received is retained in a central file, the top copy of the received telex message, which was intended to be given to the person concerned with the actual filing of any appeal, was lost or mislaid in the representative's office and never seen by that person. Accordingly, no notice of appeal was filed on or before 16 July 1984, and the person concerned wrote to the appellant's patent agents in Japan advising them that no instructions having been received, no action had been taken and the application was no longer in being. They immediately replied that they had sent telexed instructions to file an appeal on 2 July 1984.
- III. Under cover of a letter dated 31 July 1984, received on 13 August 1984, the appellant's representative filed with the present application for re-establishment of rights, a notice of appeal which was not strictly in conformity with the provisions of Rule 64 EPC. On 24 August 1984, he filed an amended notice of appeal, dated 20 August 1984, which remedied the deficiencies in the first notice. The appeal fee was paid on 13 August 1984. The fee for re-establishment of rights was duly paid.

.../...

IV. While the present application for re-establishment of rights was pending before the Technical Board of Appeal, on 21 September 1984, the President of the European Patent Office issued a Notice concerning extension of time limits under Rule 85 EPC which stated that:

"1. In the period from 11 July to 17 August 1984 inclusive there was a general interruption in the delivery of mail in the United Kingdom within the meaning of Rule 85, paragraph 2 EPC.

2. For those parties having their residence or principal place of business in the United Kingdom or who have appointed representatives having their place of business in that State, the time limits expiring in the period from 11 July to 17 August 1984 have accordingly been extended to 20 August 1984 pursuant to Rule 85 EPC." This Notice was published in OJ EPO 10/1984, 495.

REASONS FOR THE DECISION

1. The present application for re-establishment of rights was made in due time and the relevant fee has been duly paid.
2. The Notice under Rule 85 EPC issued by the President of the Office on 21 September 1984 has the retrospective effect in the present case that the appellant never lost the rights which he has sought to have re-established. It is not necessary for him to show that the non-observance of the time limit under Article 108 and Rule 85(1) EPC was due to the general interruption in the delivery of mail in the United Kingdom to which the Notice refers.
3. Accordingly the request for re-establishment of rights must be deemed to have been made without purpose ab initio and in consequence the fee paid for re-establishment of rights must be refunded.

.../...


O R D E R

For these reasons,

1. It is declared that the appellant corporation never lost the rights which it has sought to have restored and the notice of appeal and the appeal fee are to be treated as having been received in due time.
2. It is ordered that the fee for re-establishment of rights shall be refunded to the appellant corporation.

The Registrar:

The Chairman:



J. Rückerl



R. Kaiser

