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File Number: T 194/88
Application No.: 82 830 241.4
Publication No.: 0 076 786
Title of invention: Device for lifting and cutting forage in a self-loading
forage wagon
Classification: A01D 90/04

DECISION
of 30 November 1992

Proprietor of the patent: Eugenio Marangon & Figlio S.N.C.
Opponent: Claas Saalgau GmbH

Headword:

EPC Article 108, third sentence; Rules 60(1), 67

Keyword: "Conditions for application of Rule 60(1) EPC not met"

Catchword

Rule 60(1) EPC establishes no legal obligation for the EPO to ascertain of its own motion the legal status of a European patent and does not apply in case of an alleged surrender or lapse of the European patent, unless confirmation of its surrender or lapse has been received by the EPO from the appropriate authorities of all the designated Contracting States.



Case Number : T 194/88

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 30 November 1992

Appellants :
(Opponents)

Claas Saulgau GmbH
Postfach 1154
D-7968 Saulgau (DE)

Respondents :
(Patentees)

Eugenio Marangon & Figlio S.N.C.
11, Via Valsugana
I-35010 San Giorgio in Bosco Padova (IT)

Decision under appeal :

Decision of the Opposition Division of the
European Patent Office dated 10 March 1988
rejecting the opposition pursuant to
Article 102(2) EPC.

Composition of the Board :

Chairman : G. Szabo
Members : W. Moser
W.D. Weiss

Summary of Facts and Submissions

- I. The mention of the grant of the European patent No. 0 076 786 in respect of European patent application No. 82 830 241.4, filed on 23 September 1982 and claiming the priority of 5 October 1981 from an earlier application in Italy, was published in European Patent Bulletin 86/08 of 19 February 1986.
- II. On 13 November 1986, the Appellants (Opponents) filed a Notice of Opposition against the grant of the patent and requested revocation thereof in accordance with Article 100(a) EPC.
- III. On 1 December 1986, the Respondents (Patentees) informed the Opposition Division that they were no longer interested in prosecuting the patent in suit and that, therefore, the latter was to be considered abandoned.
- IV. By its decision dated 10 March 1988, the Opposition Division rejected the opposition pursuant to Article 102(2) EPC without dealing with the fact that the Respondents had previously expressed their intention to abandon the patent in suit.
- V. In a letter dated 25 March 1988, received by the EPO on 31 March 1988, the Appellants asked to be informed whether the patent in suit was still valid in spite of the fact that the Respondents had expressed their intention to abandon it.
- VI. By a communication dated 5 May 1988, confirming a previous telephone conversation, the Appellants were informed by a Formalities Officer of the Opposition Division that the EPO was not competent to receive a statement by the Respondents concerning the abandonment of their patent in

suit. The Respondents could have requested the revocation of their patent. Since they did not submit such a request, the Opposition Division had to decide on the case disregarding the aforementioned statement.

VII. The Appellants filed a Notice of Appeal against the decision of the Opposition Division on 5 May 1988 together with the Statement of Grounds of Appeal. The appeal fee was paid within the prescribed time limit.

In essence, the Appellants argued as follows:

Since the Respondents abandoned the patent in suit, the opposition proceedings should not have been continued for lack of a corresponding request of the Appellants. The Appellants had therefore been surprised by the decision under appeal to reject the opposition. Consequently, having not been given beforehand the opportunity to comment, the Appellants considered the Opposition Division's course of action to be unlawful.

VIII. In a communication pursuant to Article 110(2) EPC dated 7 February 1990, the Board pointed out that:

- the legal surrender or lapse of a European patent was determined in accordance with the national law of the designated Contracting States and that the evidence of surrender or lapse required to apply Rule 60(1) EPC had therefore to be supplied in the form of a confirmation by the appropriate authorities in those States;
- the conditions for applying Rule 60(1) EPC were not met just because a patentee stated, without providing evidence (in the form of the above confirmation), that he had surrendered the European patent in all designated Contracting States;

- the EPO was under no legal obligation to ascertain of its own motion the legal status of a European patent during the national phase by checking with the appropriate national authorities, where the patentee had stated that he had surrendered the European patent in all designated Contracting States;
- the EPO was merely obliged under Rule 60(1) EPC in conjunction with Article 114(1) EPC to check whether confirmation of the surrender or lapse had been received from the appropriate authorities of all the designated Contracting States;
- the lapse of the European patent had been confirmed in the present case by all but one designated Contracting State (i.e. France) and that, consequently, the conditions for applying Rule 60(1) EPC had not been met during the opposition proceedings; and
- a procedural violation justifying reimbursement of the appeal fee (Rule 67 EPC) did therefore not appear to have been made.

IX. In a letter dated 2 April 1990, the Appellants submitted that the patent in suit never had any legal effect in France because no translation in French of the patent in suit as prescribed had been filed and that, for this reason, no confirmation by the appropriate French authorities was needed in view of an eventual application of Rule 60 (1) EPC. Consequently, in the Appellants' view, the requirements for applying Rule 60(1) EPC had already existed when the Opposition Division took the decision under appeal. The Appellants are therefore of the opinion that the opposition proceedings should have been terminated without any decision as regards the validity of

the patent in suit after no request to continue the proceedings within the meaning of Rule 60(1) EPC had been filed.

X. The Appellants submitted the following requests:

(a) The decision under appeal should be set aside and the termination of the opposition proceedings after reception of the Respondents' communication to abandon the patent in suit as well as the lapse of this patent due to abandonment should be pronounced.

(b) The appeal fee should be refunded.

XI. The Respondents did neither respond nor submit any requests.

Reasons for the Decision

1. The appeal is admissible.

It complies in particular with Article 108, third sentence, EPC because the grounds of appeal submitted by the Appellants state the legal and factual reasons why, in their opinion, the decision under appeal should be set aside and the appeal allowed. Indeed, because the Opposition Division considered implicitly that the conditions for applying Rule 60(1) EPC were not met when it rendered the decision under appeal, the Appellants argue in their Statement of Grounds of Appeal that the Opposition Division should have applied Rule 60(1) EPC in view of the fact that the Respondents surrendered the patent in suit in all designated Contracting States, and that the opposition proceedings should not have been

continued for lack of a corresponding request of the Appellants.

2. Neither the Appellants' submissions nor the Board's investigations suffice to prove unequivocally that the lapse of the patent in suit had been confirmed by the appropriate French authorities when the Opposition Division took the decision under appeal. Furthermore, the Appellants failed to substantiate their allegation according to which the patent in suit never had any legal effect in France because no translation in French of the patent in suit as prescribed had been filed.
3. In addition, the EPO was under no legal obligation to ascertain of its own motion the legal status of the patent in suit during the national phase in France by checking with the appropriate French authorities. Consequently, the conditions for applying Rule 60(1) EPC had not been met during the proceedings before the Opposition Division.
4. It ensues that the Appellants' objections that the opposition proceedings should not have been continued for lack of a corresponding request of the Appellants and that the Opposition Division's course of action was unlawful because the Appellants had not been given the opportunity to comment before the decision under appeal had been taken are not correct. Consequently, no substantial procedural violation within the meaning of Rule 67 EPC occurred which perhaps might have caused the Board to set aside the decision under appeal. Therefore, the latter is to be maintained.
5. Thus, the appeal has to be dismissed. Since the appeal is not deemed to be allowable, no reimbursement of the appeal fee may occur (Rule 67 EPC).

Order

For these reasons, it is decided that:

1. The appeal is dismissed.
2. The request for refund of the appeal fee is rejected.

The Registrar:



S. Fabiani

The Chairman:



G. Szabo

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H. D. W. 17.12.92

W. Moser 17.12.92