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Aktenzeichen / Case Number / N<sup>o</sup> du recours : T 223/88 - 3.5.1

Anmeldenummer / Filing No / N<sup>o</sup> de la demande : 82 101 851.2

Veröffentlichungs-Nr. / Publication No / N<sup>o</sup> de la publication : 0 066 045

Bezeichnung der Erfindung: **Method for automatically expanding the displayed**  
Title of invention: **width of a selected field in a text processing**  
Titre de l'invention : **system**

Klassifikation / Classification / Classement : G06F 15/20

**ENTSCHEIDUNG / DECISION**  
vom / of / du<sup>6</sup> July 1990

Anmelder / Applicant / Demandeur : **IBM Corporation**

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

**EPÜ / EPC / CBE Article 122**

Schlagwort / Keyword / Mot clé : **"Restitutio in integrum (refused).  
Due care not substantiated"**

**Leitsatz / Headnote / Sommaire**



Case Number : T 223/88 - 3.5.1

**D E C I S I O N**  
of the Technical Board of Appeal  
of 6 July 1990

**Appellant :** International Business Machines Corporation  
Armonk  
New York 10504  
USA

**Representative :** Bonneau, Gérard  
Compagnie IBM France  
Département de Propriété Intellectuelle  
F-06610 La Gaude

**Decision under appeal :** Decision of Examining Division 065  
of the European Patent Office  
dated 21 April 1987 refusing European  
patent application No. 82 101 851.2  
pursuant to Article 97(1) EPC

**Composition of the Board :**

**Chairman :** P.K.J. van den Berg  
**Members :** F. Benussi  
J.A.H. van Voorthuizen

## Summary of Facts and Submissions

- I. European patent application No. 82 101 851.2 was filed on 9 March 1982. Following its examination, a Decision dated 21 April 1987 was issued in which the application was refused.

The decision was dispatched by registered letter with advice of delivery to the applicant on the day it was given.

A notice of appeal dated 24 August 1987 was filed at the EPO on 31 August 1987 and a Statement of Grounds of Appeal equally dated 24 August 1987 was filed on 28 August 1987.

The fee for appeal was paid on 31 August 1987.

- II. By letter dated 24 August 1987, and filed on 31 August 1987, the Appellant applied under Article 122 EPC for re-establishment of rights and paid the corresponding fee also on 31 August 1987.
- III. The application under Article 122 EPC was supported by a detailed statement accompanied by copies of documents tending to establish that the Appellant had taken all due care required by the circumstances.

As grounds for re-establishment, the representative explained that the disrespect of the time limit for filing the notice of appeal provided in Article 108 EPC, due mainly to the delay involved by the late transmission to him of the registered letter dated 21 April 1987, was not the consequence of any lack of careful attention.

- IV. Furthermore, in the statement of grounds for re-establishment of rights, it was submitted on the basis of the evidence that accompanied it, that the method used by the Appellant for the administrative handling of notices received from the EPO shows such a degree of reliability that any person involved in this work, mainly relies on the reception date to determine the time limit for filing an appeal resulting from the delay of two months.

The fact that the registered letter containing the appealed decision was marked as being received on 25 June 1987 should be connected with an accidental mistake of the Appellant's Mail Service which normally could be shown to be sufficiently satisfactory so as to satisfy the requirement of "all due care".

- V. The Appellant's representative also submitted that the date of 25 June 1987 indicated by the reception stamp of the Intellectual Property Department of the Appellant could appear to be correct for a letter which could have been sent by the EPO on 21 June 1987. The date on the EPO's letter was indicated as 21.04.87, which would have misled any reasonable person to read 21.06.87 instead of 21.04.87.
- VI. In a communication dated 11 August 1988 the rapporteur drew the attention of the Appellant's representative to the fact that he had not given a sufficient statement of the circumstances to establish that, in spite of all due care required by the specific situation having been taken, he was unable to observe the time limit for filing an appeal and for paying the appeal fee.

Therefore, unless a satisfactory answer was given to this question, the application for re-establishment of rights was unlikely to succeed.

VII. The Appellant's representative, in response to the communication, filed a formal declaration signed by an employee of the Appellant's Mail Service who was in charge of the mail at that time.

In the declaration, the employee explaining the facts assumed that having noted at the Post Office as usual all the registered letters, he took them to the Mail Service of the Appellant.

In the opinion of the employee, on the occasion of the registration, the letter containing the notice of the decision of the Examining Division slipped behind a piece of furniture and was found on 25 June 1987.

VIII. Concerning the request of the Board, expressed in the communication sent by the Rapporteur, to be able to consider the original of the notice of the appealed decision, this could not be complied with by the Appellant's representative as it had been lost.

#### Reasons for the Decision

1. Since neither a notice of appeal nor a statement of Grounds of Appeal have been filed and no appeal fee has been paid within the time limit set by Article 108 and Rule 78(3) EPC, the appeal should be rejected as inadmissible in application of Rule 65(1) EPC, unless the request for re-establishment of rights, filed by the Appellant on 31 August 1988 is granted.
2. The request for re-establishment of rights fulfils the conditions of Article 122(2) and (3) EPC and is, therefore, admissible.

3. In order to succeed, the Appellant has to establish that he took "all due care" required by the circumstances (cf. Article 122(1) EPC).
4. The question whether a particular system used in a particular firm to ensure that procedural acts such as the filing of notices of appeal are completed in due time satisfies the requirements of "all due care" in Article 122, must depend upon the individual circumstances of each case.

As the Boards of Appeal have previously observed, in a large firm where a large number of dates have to be monitored at any given time, it must normally be expected that at least one effective cross-check is built into the Mail Service's system to ensure that official documents such as decisions by the EPO, which start time periods within which procedural steps have to be carried out, are properly taken care of.

From the evidence in the present case, it can be deduced in particular that in the Appellant's Mail Service there exists no cross-check system to ascertain that all registered letters taken from the Post Office are duly dealt with by distributing them to the different services to which they are addressed.

Although the Board understands that in the Appellant's Mail Service organisation there exists a "carnet à souches" in which such letters are noted when they come from the Post Office, it appears that no further use is made of this carnet for checking purposes.

The submission of the employee of the Appellant's Mail Service, who presumes to have let the registered letter slip behind a piece of furniture where apparently it was only found by accident, confirms the opinion of the Board.

Furthermore, it has to be noted that the original of the notice of the appealed decision has been lost by the Patent Department of the Appellant and, therefore, the Board was unable to examine whether the indication of the date on said notice might have been confusing as the Appellant alleges.

5. The Board is prepared to accept the submission that the Appellant has a very good record of procedural efficiency in general and that, normally, the system for keeping the time limits had never given rise to significant problems. However, it is apparent that the unobservance in the present case of the time limit for filing the notice of appeal stemmed from the lack of a cross-check system in the Appellant's Mail Service. The Board is, therefore, of the opinion that the Appellant has not taken all due care required so that the request for re-establishment of rights has to be refused.
6. Consequently, the appeal has to be rejected as inadmissible because the notice of appeal and the statement of grounds have not been filed in due time.

#### Order

For these reasons, it is decided that:

1. The application for re-establishment of rights is rejected.

2. The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

P. Martorana

P.K.J. van den Berg