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Aktenzeichen / Case Number / N<sup>o</sup> du recours : T 715/89 - 3.5.1

Anmeldenummer / Filing No / N<sup>o</sup> de la demande : 84 401 879.6

Veröffentlichungs-Nr. / Publication No / N<sup>o</sup> de la publication : 0 140 751

Bezeichnung der Erfindung: Cache invalidation mechanism for multiprocessor  
Title of invention: system  
Titre de l'invention :

Klassifikation / Classification / Classement : G06F 12/08

### ENTSCHEIDUNG / DECISION

vom / of / du 16 March 1990

Anmelder / Applicant / Demandeur : Digital Equipment 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

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number : T 715/89 - 3.5.1

**D E C I S I O N**  
of the Technical Board of Appeal  
of 16 March 1990

**Appellant :** Digital Equipment Corporation  
146 Main Street  
Maynard, MA 01754 (US)

**Representative :** Mongrédién, André  
c/o Société de Protection des Inventions  
25, rue de Ponthieu  
F-75008 Paris

**Decision under appeal :** Decision of Examining Division 065  
of the European Patent Office  
dated 29 May 1989 refusing European  
patent application No. 84 401 879.6  
pursuant to Article 97(1) EPC

**Composition of the Board :**

**Chairman :** P.K.J. van den Berg

**Members :** M. Lewenton  
W.J.L. Wheeler

## Summary of Facts and Submissions

- I. The European representatives of the Appellant filed a Notice of Appeal and paid the appeal fee on 10 July 1989, i.e. within the time limit of Article 108, first sentence, EPC against the decision of the Examining Division of 29 May 1989 refusing European patent application No. 84 401 879.6.
  
- II. The Statement of Grounds was received on 12 January 1990. In the same letter, pursuant to a communication of the Registrar of 18 December 1989, the representatives filed an application for re-establishment of rights concerning the time limit for filing the Statement of Grounds and paid the fee for re-establishment of rights. In support of their request, they stated three reasons which prevented the US representative of the Appellant to send them the arguments for a written statement in time: (1) recent changes in the client's internal structure; (2) important work schedule of the US attorney; (3) difficulties to contact the inventor due to vacations and inventor's work schedule.

## Reasons for the Decision

1. Since the decision of the Examining Division was dispatched to the Appellant on the day it was given, the Statement of Grounds was filed beyond the time limit of Article 108, third sentence, EPC. The Notice of Appeal contained nothing that could be regarded as a Statement of Grounds but simply requested that all the claims of the application, and possibly another set of claims which would be proposed in the appeal proceedings, be examined by the Board. Therefore the admissibility of the appeal

depends on whether the application for re-establishment of rights in respect of the time limit for filing the Statement of Grounds is allowed.

2. The request for re-establishment of rights complies with the requirements of Article 122(2) EPC. In favour of the Appellant, the Board considers as date of removal of the cause of non-compliance with the time limit of Article 108, second sentence, EPC, the date when the European representatives were informed by the Registrar of the possibility to apply for re-establishment of rights. It appears that the Appellant's European representatives received the Registrar's communication on 22 December 1989, so that the request for re-establishment of rights was filed within the time limit of Article 122(2) EPC.
3. According to Article 122(3) EPC the Appellant's request would be duly supported only if it was clear from the facts set out that he had taken all due care required by the circumstances to observe the time limit. In the present case, however, three general reasons have been mentioned without giving any details of the concrete circumstances which had prevented the Appellant or his representatives from filing the Statement of Grounds in time. In the communication of the Registrar, the representatives were informed of all requirements for filing an application for re-establishment of rights. In particular, this communication referred to the decision T 13/82 (OJ EPO 1983, 411) according to which the facts proving that all due care was taken by the applicant to observe the time limit, have to be set out and substantiated.
4. The Board is aware of the fact that, in the decision T 14/89 dated 12 June 1989, a Board of Appeal of the

European Patent Office stated that the principles of good faith governing the relations between the EPO and the applicants for European patents, require the EPO to direct the applicant's attention to any deficiencies in his request for re-establishment of rights if those deficiencies can be corrected within the two-month term of Article 122(2) EPC.

The case with which the cited decision dealt, concerned an applicant who had filed a request for re-establishment of rights but failed to set out the pertinent facts and had not paid the fee due under Article 122(3) EPC. Neither before he had filed his request nor later on, had the competent division of the European Patent Office given any notice to the applicant on the requirements for re-establishment of rights. Therefore, in the circumstances of that particular case where six weeks of the two-month term of Article 122(2) EPC were still left, it was decided that the EPO should have informed the applicant of the deficiencies of his request. However, the principles of that decision are not applicable to the present case.

Through the communication of the Registrar the representatives were informed beforehand on how to proceed for filing a complete request for re-establishment of rights. Therefore there is no ground to grant the Appellant an amendment of his application for re-establishment. It has to be rejected, since the facts on which it relies have not been set out as required by Article 122(3) EPC.

5. Consequently the appeal has to be rejected as inadmissible solely because the Statement of Grounds was not filed in due time. Following the above-cited decision T 13/82, the appeal fee is not refundable in such a case.

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:

S. Fabiani

P.K.J. van den Berg