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File Number: T 814/90 - 3.2.2

Application No.: 84 303 756.5

Publication No.: 0 128 722

Title of invention: Method for supervision of injection molding by use of
waveform of internal die pressure

Classification: B29C 45/17

D E C I S I O N
of 16 December 1991

Proprietor of the patent: TECHNOPLAS INC:

Opponent: Gebrüder Bühler AG

EPC Art. 8 Rules relating to Fees

Headnote



Case Number : T 814/90 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 16 December 1991

Appellant/other party : Gebrüder Bühler AG
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Appellant/other party : Battenfeld GmbH
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Appellant/other party : Maschinenfabrik Müller-Weingarten AG
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Respondent : TECHNOPLAS INC.
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Decision under appeal : Decision of Opposition Division of the European
Patent Office dated 24.08.1990.

Composition of the Board :

Chairman : G.S.A. Szabo
Members : F. Benussi
M.G. Noel

Summary of Facts and Submissions

- I. The mention of the grant of European patent No. 0 128 722 was published on 15 March 1989.
- II. On 15 December 1989 (Friday) the Appellant (Opponent III) filed a reasoned Notice of Opposition to the grant of the above-mentioned patent. On the same day the Appellant paid in cash the appropriate fee into a post office in Ravensburg (Germany) and the amount entered a giro account held by the EPO on 18 December 1989 (Monday).
- III. On 2 February 1990 the Formalities Section informed the Appellants (Form 2306) that the opposition was deemed inadmissible because the opposition fee had not been paid in due time.
- IV. In response the Appellant submitted that the opposition fee should be considered as having been paid into a post office in cash on 15 December 1989. He presented a letter dated 5 April 1990 signed by an official of the post office concerned, in which it was confirmed that the mentioned payment must have been made "not too much time" before 6 p.m. on 15 December 1989.

Referring to the Board of Appeal's Decisions J 24/86 (OJ EPO 1987, 399) and T 47/88 (OJ EPO 1990, 35) the Appellant asked the Opposition Division to declare the opposition admissible.

- V. On 24 August 1990, the Formalities Section ruled that the opposition was deemed not to have been filed.

In the reasons given for this decision, the Formalities Section referring to the Decision T 47/88 interpreted Article 8(1)(a) of the Rules relating to Fees as meaning

that the date of payment into a post office is to be considered the date on which the payer can no longer revoke his order. According to Section 24 of the postal giro regulations of the Federal Republic of Germany's Posts and Telecommunications, a payment order can be cancelled by the remitter as long as the amount has not entered the payee's account.

In the present case, the fact that the payment was made few minutes before the end of business hours had to be considered as irrelevant and in any case only on the following working day on 18 December 1988, i.e. after expiring of the opposition period, was the revocation of the payment no longer possible. Having to decide whether payments made one hour, two hours or five hours before the end of business hour were made in due time would give rise to considerable legal uncertainty.

Under these circumstances the opposition should be deemed not to have been filed because the opposition fee had not been paid in due time.

- VI. The Appellant filed an appeal against the Formalities Section's decision on 20 October 1990 paying the prescribed fee at the same time, and on 28 December 1990 filed a Statement of Grounds.

The Appellant argued, inter alia, that:

- (a) the payment at the post office was made only few minutes before the end of business hours; therefore, the revocation of the payment was no longer possible; and
- (b) in the Appellant's firm neither orders nor instructions could be taken on Friday after 4 p.m.

Furthermore, the Appellant has submitted that after this time no instructions could be given to the representative of the Appellant.

- VII. The Appellant requested that the contested decision be set aside.

Reasons for the Decision

1. The appeal is admissible.
2. As noted in the Formalities Section's Decision, the cash payment at the post office in Ravensburg on 15 December 1989 represented a "payment to a giro account" held by the office under Article 5(1)(b) of the Rules relating to Fees.
3. Article 8(1)(a) has been modified by decision of the Administrative Council of 7 December 1990 revising the amounts of fees and amending the Rules relating to Fees (OJ EPO, 1991, 11):

"In accordance with Article 2(3) of the Decision of the Administrative Council of 7 December 1990, revising the amounts of fees and amending the Rules relating to Fees, the Article 8 of these Rules as amended, shall apply to all cases which the establishment of loss of rights has not yet become final on the date of the entry into force of this decision i.e. on 3 January 1991" (Article 3 of that Decision).

Since the filing of an appeal has suspensive effect (Article 106(1) EPC), in the present case the establishment of loss of rights has not yet become final,

and Article 8 of the Rules relating to Fees as amended has therefore to be applied.

4. Article 8(1) provides that by payment or transfer to a bank account held by the office and by payment or transfer to a giro account held by the office, the date on which any payment has to be considered to have been made to the office, is the date on which the amount of the payment or of the transfer is "actually (French: effectivement; German: tatsächlich) entered" in a giro account held by the office.

Furthermore, Article 8(3) provides that if a payment of a fee is not considered to have been made until after expiring of the period in which it should have been made, it shall be considered that this period had been observed if evidence is provided to the office that the person who made the payment in a Contracting State within the period within which the payment should have been made, if "he effected the payment through a banking establishment or a post office, provided that the cheque is met, and if the person who made the payment paid a surcharge of 10% on the relevant fee" (cf. Article 8(4)).

5. In the case, like the present, if the person who made the payment did not produce evidence as to the date on which a condition according to Article 8(3)(a) was fulfilled and did not pay the surcharge referred to in sub-paragraph (3)(b), the office has to request the person who made the payment to produce that evidence and to pay the surcharge within a period to be specified by the office.

The obligatory character of the request by the office results from the Article 8(4), second sentence of the Rules relating to Fees, in which is provided that the period for the payment of the relevant fee shall be considered not to have been observed only if the person who has made the payment did not comply with the request of the office or if the evidence is insufficient, or if the required surcharge is not paid in due time.

6. In the present case, for the reasons given in 3, Article 8 of the Rules relating to Fees, as amended by decision of the Administrative Council of 7 December 1990, is applicable.

Order

For these reasons, it is decided that:

1. The Opposition Division's decision of 24 August 1990 is set aside.
2. The case is remitted to the Opposition Division in order to decide the case on the basis of the Article 8 of the Rules relating to Fees as amended by the decision of the Administrative Council of 7 December 1990 revising the amounts of fees and amending the Rules relating to Fees.



The Registrar

S. Fabiani



The Chairman

G. Szabo



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