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D E C I S I O N
of 25 April 1995

Case Number: T 0836/92 - 3.2.5

Application Number: 86904310.9

Publication Number: 0233895

IPC: B41F 17/00

Language of the proceedings: EN

Title of invention:
Device for printing spherical objects and the like

Patentee:
UNICE, S.A.

Opponent:
PRINTING INTERNATIONAL NV
Nef Automation AG
Smits Plastics B.V.

Headword:
-

Relevant legal provisions:
EPC Art. 108
EPC R. 65(1)

Keyword:
"Form of appeal - grounds - substantiation (no)"

Decisions cited:
T 0145/88, T 0250/89, T 0188/92

Catchword:
-



Case Number: T 0836/92 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 25 April 1995

Other party:
(Opponent I)

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Appellant:
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Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office dated 29 June 1992
concerning maintenance of European patent
No. 0 233 895 in amended form.

Composition of the Board:

Chairman: C. V. Payraudeau
Members: H. P. Ostertag
W-D. Weiß

Summary of Facts and Submissions

- I. This appeal lies against the interlocutory decision of the Opposition Division concerning maintenance of European patent No. 0 233 895 in amended form.
- II. The Appellant (Opponent III) filed a Notice of Appeal, requesting cancellation of the impugned decision and revocation of the patent.
- III. In a letter dated 28 October 1992, referred to by the Appellant as the Statement of Grounds, the Appellant submitted that: "The objections as made in the Notice of Opposition filed on October 9, 1990 will be maintained as far as it concerns the literature discussed in that Notice of Opposition" and "Opponent III wishes further to file evidence in the form of declarations that Tampo Print already sold in 1982 hollow flexible stamps being within the scope of the claims on basis of which the above-mentioned European patent No. 0 233 895 has been granted and from which the further restrictions as made in the claims as in force now, are obvious."

The two declarations by the managing director and the head of the technical applications department of Tampo Print, respectively, stated that the hollow flexible stamps developed by Tampo Print in the period 1975 to 1978, referred to as "prior use V3" in the decision under appeal, were provided with ventilation holes.

- IV. In a communication pursuant to Article 110(2) EPC the Board expressed the provisional opinion that the letter dated 28 October 1992 did not seem to meet the requirements of Article 108 EPC, since it did not contain any argumentation why the decision under appeal should be set aside.

- V. In response to this communication the Appellant filed a letter dated 8 February 1995, wherein it was submitted that from "reading the decision under appeal and our letter of 28 October 1992 together with the declarations filed with said letter it will be immediately apparent that the decision of the Opposition Division has to be set aside in view of the fact that the opinion of the Opposition Division with respect to the prior use V3 is not correct".

Reasons for the Decision

1. The Notice of Appeal was filed and the appeal fee was paid within the time period as set out in Article 108 EPC, first and second sentence. The appeal also complies with Article 106 and 107 and with Rule 1, paragraph 1, and Rule 64(b) EPC.

The admissibility of the appeal thus depends principally on whether or not a written statement setting out the grounds of appeal was filed within four months after the date of notification of the decision (cf. Article 108, third sentence, and Rule 65(1) EPC).

2. According to the constant jurisprudence of the Boards of Appeal, the Statement of Grounds must indicate the legal and factual reasons why the appeal should be allowed and why the decision under appeal should be set aside (see for example T 145/88, OJ EPO 1991, 251 and T 250/89, OJ EPC 1992, 355).

The Appellant must state his arguments sufficiently clearly and precisely so that the Board and the other party or parties can immediately understand why the decision under appeal would be incorrect, and on what facts the Appellant bases his arguments, without first

having to make investigations of their own. As indicated, for example, in the unpublished decision T 188/92 dated 15 December 1992, it is not sufficient merely to refer in general terms to statements in earlier submissions for the appeal to be admissible.

3. After careful consideration of the contents of the letter dated 28 October 1992 and the further arguments of the Appellant (see point V of the Summary of Facts of Submissions) the Board has come to the conclusion that this letter does not contain any arguments why the decision under appeal should be set aside. In what way and to what extent the submissions would be relevant vis-à-vis the grounds given for the contested decision, is not mentioned.

This letter does therefore not meet the minimum contents required of grounds for appeal.

4. The Appellant has argued that by reading the letter of 28 October 1992 in combination with the decision under appeal and the declarations filed with said letter, it would be immediately apparent that the decision of the Opposition Division has to be set aside, since the opinion of the Opposition Division with respect to the prior use V3 would be incorrect.

The Board cannot accept these arguments for the following reasons. A reference to the decision under appeal was made for the first time in the letter of 8 February 1995. In the referenced point 17.1 of the decision under appeal the Opposition Division stated that the feature of Claim 1, that "the stamp is capable of ... flattened deformation over substantially the same area for pick-up of the design, and characterized by means through which the fluid leaves the body during deformation and returns automatically when deformation

ceases to assist the resilient deformation and recovery of the stamp", is not disclosed by the prior use V3.

In the declarations it was stated that the stamps according to prior use V3 were provided with ventilation holes. The impugned decision is however silent about ventilation holes. So even if the impugned decision and the letter of 28 October 1992 are read in conjunction, it would remain unclear why the decision under appeal should be set aside. All the more because in the opinion of the Board the mere presence of ventilation holes would not anticipate the feature "means through which the fluid leaves the body during deformation and returns automatically ...", since the air escaping from a hollow pad with ventilation holes cannot be equated with "the fluid leaves ... and returns", as the use of the definite article in "the fluid" makes clear.

The arguments of substantial law submitted with the letter of 8 February 1995 were filed outside the time limit prescribed in Article 108 EPC and cannot qualify as a valid Statement of Ground, the question whether the arguments are convincing or not being irrelevant.

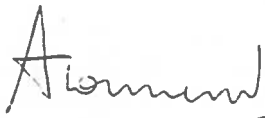
5. As the "Statement of Grounds" filed with letter of 28 October 1992 does not comply with the requirements of Article 108, third sentence, the appeal must be rejected as inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:



A. Townsend

The Chairman:



C. Payraudeau

