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D E C I S I O N
of 10 May 1994

Case Number: T 0021/94 - 3.5.2

Application Number: 88117711.7

Publication Number: 315023

IPC: H02G 3/04

Language of the proceedings: EN

Title of invention:

Improvements relating to cable tray systems

Applicant:

Swifts of Scarborough Limited

Opponent:

-

Headword:

Restitutio/SWIFTS OF SCARBOROUGH

Relevant legal norms:

EPC Art. 108, 122

Keyword:

"Appeal deemed not to have been filed, reimbursement of appeal fee (yes)"

"Application for *restitutio in integrum* withdrawn, reimbursement of fee (no)"

Decisions cited:

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Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0021/94 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 10 May 1994

Appellant: Swifts of Scarborough Limited
Cayton Tow Road
Eastfield,
Scarborough YO11 3BY, Yorks. (GB)

Representative: Denmark, James
c/o Bailey, Walsh & Co.
5 York Place
Leeds LS1 2SD, Yorks. (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office dated 28 May 1993 refusing
European patent application No. 88 117 711.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: E. Persson
Members: W.J.L. Wheeler
M. Villemin

Summary of Facts and Submissions

- I. European patent application No. 88 117 711.7 was refused by a decision of the Examining Division dated 28 May 1993. On 8 November 1993, the applicant filed an application for *restitutio in integrum* under Article 122 EPC in respect of the filing of a notice of appeal under Article 108 EPC and paid the relevant fee. A notice of appeal and a Statement of Grounds of appeal were filed on 25 November 1993. The appeal fee was duly paid only on 13 December 1993.

- II. In response to a communication from the Board of 21 February 1994, the applicant by letter of 25 April 1994 stated that he had decided not to continue with the appeal which was withdrawn. Also the application for *restitutio in integrum* was withdrawn. The applicant requested reimbursement of all or part of the appeal fee and of the (whole) fee for *restitutio in integrum*.

Reasons for the Decision

1. The application for *restitutio in integrum* having been withdrawn, no appeal can be deemed to have been filed under Article 108 EPC. The purpose of the payment of the appeal fee could therefore not be achieved and this fee must be reimbursed (cf. J 16/82 (OJ EPO 1983, 262)).

2. There is no support under the EPC for the idea that a fee for *restitutio in integrum* may be reimbursed merely because of the withdrawal of the application for such relief. The request for reimbursement in this respect therefore must be rejected.

Order

For these reasons, it is decided that:

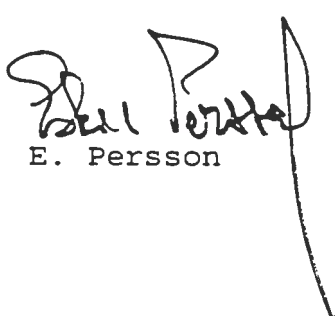
1. The appeal against the decision of the Examining Division dated 28 May 1993 is deemed not to have been filed.
2. Reimbursement of the appeal fee is ordered.
3. The request for reimbursement of the fee for *restitutio in integrum* is rejected.

The Registrar:



M. Kiehl

The Chairman:



E. Persson

