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D E C I S I O N
of 15 May 1995

Case Number: T 0169/94 - 3.4.1

Application Number: 89300371.5

Publication Number: 0324660

IPC: H01L 39/12

Language of the proceedings: EN

Title of invention:

Novel superconductors and processes for their preparation

Applicant:

UNIVERSITY OF ARKANSAS

Opponent:

-

Headword:

Isolated mistake/UNIVERSITY OF ARKANSAS

Relevant legal provisions:

EPC Art. 122

Keyword:

"Notice of Appeal duly filed, but appeal fee paid was too small"

"Mistake in accounts department not noticed by supervisor, and noticed too late by professional representative"

"Isolated mistake in normally satisfactory system"

"Restitutio (yes)"

Decisions cited:

J 2 and 3/86

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0169/94 - 3.4.1

D E C I S I O N
of the Technical Board of Appeal 3.4.1
of 15 May 1995

Appellant: UNIVERSITY OF ARKANSAS
Fayetteville
Arkansas 72701 (US)

Representative: Sheard, Andrew Gregory
Kilburn & Strode
30, John Street
London WC1N 2DD (GB)

Decision under appeal: Decision of the Examining Division of the European
Patent Office dated 29 September 1993 refusing
European patent application No. 89 300 371.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: G. D. Paterson
Members: H. J. Reich
R. K. Shulka

Summary of Facts and Submissions

I. The Examining Division refused this application by its decision dated 29 September 1993. The Applicant's representative filed a Notice of Appeal on 7 December 1993, and paid a fee of £60, which purported to be the appeal fee, on 9 December 1993, on which date the time limit for filing an appeal against the above decision expired.

On 17 December 1993 the representative realised that the fee of £60 was too small, since the appeal fee was £800, and sent a fax to the EPO which inter alia drew attention to this situation. The full appeal fee of £800 was paid to the EPO on Monday 20 December 1993.

On 11 January 1994 the Applicant was informed by the EPO that payment of the appeal fee was too late.

The Applicant filed a Statement of Grounds of Appeal on 7 February 1994, and an application for re-establishment of 10 February 1994, and duly paid the fee for re-establishment.

II. The application for re-establishment was accompanied by three statutory declarations, which explained that the Applicant's professional representative had received instructions to file an appeal from the above decision on 6 December 1993, and had filed a Notice of Appeal by fax on 7 December 1993. The professional representative in charge of the case had given written instructions to the accounts department of his firm to pay the appeal fee. These instructions were received by the accounts department on 8 December 1993, and processed on 9 December 1993. By an oversight, when determining the correct amount for the appeal fee, the amount of £60,

being the fee for further processing, was entered on the fee payment sheet by the accounts assistant responsible for the payment in the accounts department, instead of the correct amount - £800. The appeal fee of £800 was listed adjacent the fee for further processing (£60) in the Schedule of Fees set out in the relevant supplement to the Official Journal.

Subsequently, on 9 December 1993, a letter was written to the EPO's bank in London, and Form 1010 was completed, both of these referring to the appeal fee as £60. These documents were checked by the head of the accounts department (the accounts manager), and the error was not noticed, so such documents were sent to the bank by hand on 9 December 1993 together with a cheque for £60.

The professional representative has explained in his declaration that the personnel in the accounts department who were responsible for this case, the accounts manager and the accounts assistant, have been employed by his firm since March 1991 and April 1990 respectively, and have carried out their tasks satisfactorily since then.

It is submitted on behalf of the Applicant that the failure to pay the correct amount of the appeal fee in this case was an isolated oversight by both these personnel within a normally satisfactory system, in the sense of decisions J 2 and 3/86 (OJ EPO 1987, 362).

Reasons for the Decision

1. Having considered the evidence filed in this case, the Board is satisfied that the system for paying fees to the EPO, such as the appeal fee in the present case, is operated by staff who are normally reliable, and that neither the Applicant nor the firm of professional representatives who employ such staff had any reason to think that such system was anything other than perfectly satisfactory.

The oversight by both the accounts assistant and the accounts manager in the present case was most unfortunate, and the only explanation for such mistakes is human fallibility.

2. In all the circumstances of this case, including the fact that the proper amount for the appeal fee was paid only eleven days after the period for filing the Notice of Appeal expired, the Board is satisfied that the mistake which occurred was an isolated error in a normally satisfactory system within the accounts department of the firm of professional representatives, and accordingly that the failure to observe the time limit occurred in spite of all due care required by the circumstances having been taken.

Order

For these reasons it is decided that:

The Applicant's right to appeal is re-established, and the Notice of Appeal is considered to have been filed in due time.

The Registrar:

The Chairman:

M. Beer

G. Paterson