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D E C I S I O N
of 3 March 2000

Case Number: T 0636/95 - 3.5.1

Application Number: 84901013.7

Publication Number: 0148269

IPC: G05D 3/12

Language of the proceedings: EN

Title of invention:
Servo driving unit

Patentee:
FANUC LTD.

Opponent:
Robert Bosch GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 106(2)
EPC R. 60(1), 60(2), 66(1)

Keyword:
"European patent lapsed in all designated states"
"Termination of appeal proceedings"

Decisions cited:
G 0001/90, G 0007/91, G 0008/91, T 0195/94

Catchword:
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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0636/95 - 3.5.1

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 3 March 2000

Appellant: (Opponent)
Robert Bosch GmbH
Postfach 30 02 20
D-70442 Stuttgart (DE)

Representative:
-

Respondent: (Proprietor of the patent)
FANUC LTD.
3580, Shibokusa Aza-Komanba, Oshinomura
Minamitsuru-gun
Yamanashi 401-05 (JP)

Representative:
Billington, Lawrence Emlyn
Haseltine Lake & Co.
Imperial House
15-19 Kingsway
London WC2B 6UD (GB)

Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 29 June 1995 concerning maintenance of European patent No. 0 148 269 in amended form.

Composition of the Board:

Chairman: P. K. J. van den Berg
Members: R. Randes
S. C. Perryman

Summary of Facts and Submissions

I. The appellant lodged an appeal against the decision of the opposition division rejecting the opposition filed against the European patent No. 0 148 269.

II. In a notification pursuant to Rule 60(1) EPC, dated 23 March 1998, dispatched to the appellant by the registrar of the Board, it was stated that the "European patent has been surrendered or has lapsed with effect for all the designated contracting States". It was also pointed out that "the opposition proceedings may be continued at the request of the opponent, provided that within two months from notification of this communication a request is so filed".

III. In a communication (dated 21 May 1999) the Board expressed that the communication pursuant to Rule 60(1) EPC might have been misleading, since it referred explicitly only to "opposition proceedings". The Board, therefore, once more notified the parties to the proceedings, of the expiration of the national patents corresponding to the present European patent application and stated that the appeal proceedings in the present case would be terminated in accordance with the provision of Rule 60(1) EPC unless a request to continue the proceedings was filed within two months from notification of the same communication (dated 21 May 1999).

The Board considered that the Enlarged Board decisions G 7/91 and G 8/91 concerning Rule 60(2) EPC did not apply to Rule 60(1) EPC. The appeal proceedings were

thus not automatically terminated if the European patent had lapsed for all the designated States. Only if the opponent explicitly stated his agreement to the termination of the proceedings or did not react to the notification by the EPO of the lapse within two months, were they terminated.

IV. The opponent (appellant) did not request continuation of the proceedings.

Reasons for the Decision

1. Pursuant to Rule 60(1) EPC in conjunction with Rule 66(1) EPC, proceedings are not continued after the European patent has lapsed by non-payment of the renewal fees, unless there is a request to this effect by the opponent filed within two months as from the notification by the European Patent office of the lapse (cf. T 195/94, unpublished).

As in the present case, the parties are no longer interested in the proceedings, these are terminated (cf. G 1/90, OJ 275, Reason 7).

Order

For these reasons it is decided that:

The appeal proceedings are terminated

The Registrar: The Chairman:

M. Kiehl P. K. J. van den Berg