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**D E C I S I O N**  
of 30 September 1997

**Case Number:** T 0772/95 - 3.2.1

**Application Number:** 88105538.8

**Publication Number:** 0286082

**IPC:** B21B 1/46

**Language of the proceedings:** EN

**Title of invention:**

Method of and apparatus for rolling directly coupled with  
continuous casting

**Patentee:**

Hitachi, Ltd.

**Opponent:**

Hoogovens Groep BV  
Voest-Alpine Industrieanlagenbau Gesellschaft m.b.H.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 104(1)

**Keyword:**

"Costs - apportionment - equity - (no)"

**Decisions cited:**

G 008/91, T 0085/84, T 0614/89, T 0765/89

**Catchword:**

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Boards of Appeal

Chambres de recours

Case Number: T 0772/95 - 3.2.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.1  
of 30 September 1997

**Appellant:**  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 11 July 1995  
revoking European patent No. 0 286 082 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** F. A. Gumbel  
**Members:** P. Alting van Geusau  
J. H. Van Moer

## Summary of Facts and Submissions

I. The decision of the Opposition Division to revoke European patent No. 0 286 082 (resulting from application No. 88 105 538.8) was dispatched on 11 July 1995.

An appeal against this decision was received on 8 September 1995 and the appeal fee was paid the same day. The statement of grounds of appeal was received on 20 November 1995.

II. By a communication dated 2 August 1996, the appellant (patent proprietor), respondent 01 (opponent 02) and respondent 02 (opponent 03) were summoned for oral proceedings to be held on 27 March 1997.

III. On 24 March 1997 the appellant withdrew its appeal and informed the Board not to be present at the oral proceedings.

IV. With telefax dated 24 March 1997 respondent 01 requested apportionment to the appellant of costs incurred in connection with preparation for the oral proceedings and reservations for flight and hotel accommodation.

With telefax dated 25 March 1997 also respondent 02 requested apportionment of costs incurred in preparation for the oral proceedings.

V. By its communication dated 17 June 1997 the Board informed the respondents that there appeared to be no reason of equity that would demand an apportionment of costs in the respondent's favour. The respondents were invited to file observations within a period of 2 month.

- VI. No response of respondent 01 was received.  
Respondent 02 withdrew its request for apportionment of costs.

### Reasons for the Decision

1. The appeal is admissible.

The withdrawal of the appeal by the sole appellant (patent proprietor) on 24 March 1997 has the effect that the appeal proceedings are terminated in so far as the substantive issues decided by the first instance are concerned (see G 8/91, OJ 1993, 346).

The request for an apportionment of costs, following from the admissible appeal, does not fall within the framework of substantive issues decided by the first instance and has therefore to be decided by the Board.

2. As was set out in the Board's communication dated 17 June 1997, the request of respondent 01 based on Article 104 EPC lacked any motivation as to why, given the circumstances of the present case, an apportionment of costs would be equitable or even, in view of the fact that no oral proceedings took place, why the provisions of Article 104(1) EPC should be considered applicable.

The Board draws attention to the fact that oral proceedings in accordance with Article 116 are any parties' unconditional right and that in fact also the respondent 01 had auxiliary requested oral proceedings to be held.

Furthermore, in the Board's opinion no indication of abuse of proceedings or negligence on behalf of the appellant is apparent from the appeal proceedings. It can certainly not be derived from the fact alone that the message of withdrawal of the appeal was sent to the EPO and respondent 01 shortly in advance of the oral proceedings (3 days).

3. In these circumstances and in the absence of any further substantiation of the respondent's 01 request in response to the Board's communication the Board sees no reason of equity that would demand an apportionment of costs in the respondent's favour (see also the decisions T 85/84 of 14 January 1986, T 614/89 of 11 June 1992 and T 765/89 of 8 July 1993, not published in the OJ EPO).

## Order

**For these reasons it is decided that:**

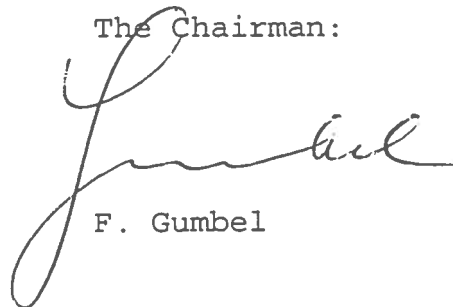
Respondent's 01 request for apportionment of costs is rejected.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel

