BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS | BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE | CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [X] To Chairmen

D E C I S I O N
of 5 September 2000

Case Number: T 0742/96 - 3.2.5

Application Number: 89311690.5

Publication Number: 0368680

IPC: D06F 39/02

Language of the proceedings: EN

Title of invention:
Method and device for treating textile

Patentee:
UNILEVER PLC, et al

Opponent:
Procter & Gamble European Technical Center N.V.

Headword:
Textile/UNILEVER

Relevant legal provisions:
EPC Art. 108, 112(3)
EPC R. 69(2), 78(3), 83(1), (2), (4)

Keyword:
"Fee for appeal"
"Time limit missed"
"Principle of good faith (no)"

Decisions cited:
G 0002/97

Headnote:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0742/96 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 5 September 2000

Appellant: (Opponent)
Procter & Gamble European Technical Center N.V.
Temselaan 100
B-1853 Strombeek-Bever (BE)

Representative:
Engisch, Gautier
Procter & Gamble
European Technical Center N.V.
Temselaan 100
B-1853 Strombeek-Bever (BE)

Respondent: (Proprietor of the patent)
UNILEVER PLC
Unilever House
Blackfriars
P.O. Box 68
London EC4P 4BQ (GB)

Representative:
Hamilton, Alistair
Mewburn Ellis
York House
23 Kingsway
London WC2B 6HP (GB)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 4 July 1996 rejecting the opposition filed against European patent No. 0 368 680 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: P. Alting van Geusau
Members: M. Aúz Castro
G. Kadner

Summary of Facts and Submissions

I. Against the decision of the opposition division of 4 July 1996 rejecting the opposition, the appellant (opponent) filed a notice of appeal on 12 August 1996.

II. On 8 November 1996 a communication of loss of rights pursuant to Rule 69(1) EPC was sent to the opponent informing him that it appeared from the file that he had not paid the appeal fee.

III. The appellant paid the appeal fee on 19 November 1996 and sought review under Rule 69(2) EPC on the grounds that the notice of appeal was filed more than five weeks before the expiry of the period for payment of the appeal fee and that the communication from the registry of the board confirming receipt of the appeal although sent well in advance of the expiry of the time limit had failed to draw attention to the fact that the appeal fee had not been paid. He alleged that the principle of good faith should be applied to his case according to which he should have been reminded of the missing payment.

IV. The appellant requested that the appeal be allowed to proceed, by way of auxiliary request that the question of applicability of the principle of good faith to his case be referred to the Enlarged Board of Appeal.

A further auxiliary request concerning the re-establishment of rights (Article 122 EPC) and oral proceedings (Article 116 EPC) had been withdrawn.

V. The Board, having informed the appellant in a communication, that it could not acknowledge the appeal fee as having been paid within the respective time limit, decided on 9 June 1997, in accordance with the appellant's auxiliary request to refer the following question to the Enlarged Board of Appeal:

Are the boards of appeal, in application of the principle of good faith, bound to notify the appellant of a missing appeal fee when the notice of appeal is filed so early that the appellant could react and pay the fee in time, even if there was no indication - either in the notice of appeal or in any other document filed in relation to the appeal - from which it could be inferred that the appellant would, without such notification, inadvertently miss the time-limit for payment of the appeal fee?

VI. The Enlarged Board of Appeal, in its decision G 2/97 (published in OJ EPO 1999, 123) answered the question as follows:

The principle of good faith does not impose any obligation on the boards of appeal to notify the appellant that an appeal fee is missing in the circumstances mentioned in the question referred, ie when the notice of appeal is filed so early that the appellant could react and pay the fee in time, if there is no indication - either in the notice of appeal or in any other document filed in relation to the appeal - from which it could be inferred that the appellant would, without such notification, inadvertently miss the time-limit for payment of the appeal fee.

Reasons for the Decision

1. Pursuant to Article 108, first sentence EPC notice of appeal must be filed in writing at the European Patent Office within two months after the date of notification of the decision appealed from. According to the second sentence of this provision the notice shall not be deemed to have been filed until after the fee for appeal has been paid.

2. The impugned decision having been posted on 4 July 1996, it is - pursuant to Rule 78(3) EPC - deemed to have been delivered to the appellant on 15 July 1996, the 14 July being a Sunday, Rule 85(1) EPC. Thus the two months time limit started on 16 July and ended on 16 September 1996, 15 September being again a Sunday, Rules 83(1), (2), (4), 85(1) EPC. The appeal fee having been paid on 19 November 1996 was therefore paid outside the time limit pursuant to Article 108 EPC.

3. Since the Enlarged Board of Appeal has decided that in circumstances as they underlie the present case the principle of good faith does not apply, this decision being binding on the board pursuant to Article 112(3) EPC, the fact that the appeal fee was paid late can only lead to the conclusion that the appeal is deemed not to have been filed (Article 108, second sentence EPC) with the consequence that the appeal fee has to be reimbursed ex officio.

Order

For these reasons it is decided that:

The appeal is deemed not to have been filed.

The Registrar: The Chairman:

M. Patin P. Alting van Geusau