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D E C I S I O N
of 18 March 1998

Case Number: T 0229/98 - 3.2.5

Application Number: 89112963.7

Publication Number: 0352571

IPC: D02G 1/20

Language of the proceedings: EN

Title of invention:
A texturizing machine

Applicant:
Officine Meccaniche Riva S.r.l.

Opponent:
-

Headword:
Appeal withdrawn - reimbursement of appeal fee/OFFICINE
MECCANICHE RIVA S.r.l.

Relevant legal provisions:
EPC Art. 108

Keyword:
"Withdrawal of appeal within time limit for notice of appeal -
appeal fee reimbursed"

Decisions cited:
J 0021/80, T 0210/89, J 0001/92

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0229/98 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 18 March 1998

Appellant: Officine Meccaniche Riva S.r.l.
Via Vignola, 7
22048 Oggiono (Como) (IT)

Representative: De Nova, Roberto
c/o Jacobacci & Perani S.p.A.
Via Visconti di Modrone 7
20122 Milano (IT)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 November 1997
refusing European patent application
No. 89 112 963.7 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. Burkhart
Members: C. Holtz
C. G. F. Biggio

Summary of Facts and Submissions

- I. On 22 January 1998 the applicant filed a notice of appeal and paid the appeal fee in respect of the decision posted on 14 November 1997, by which the examining division refused the applicant's European patent application. On 19 February 1998, the EPO received a letter from the applicant indicating that it had decided not to file any statement of grounds and to abandon the European patent application. With the same letter, the notice of appeal was withdrawn and a refund of the appeal fee was requested.

- II. On 27 February 1998, the file was transferred from the examining division to the boards of appeal.

Reasons for the Decision

1. Under Article 108 EPC, first and second sentence, a notice of appeal is only deemed to have been filed when the fee for the appeal has been paid. If this is done, an appeal is considered to be in existence, and a decision on its admissibility must then be taken by a board of appeal (T 1/92, J EPO 1993, 685). If a statement of grounds is not filed within four months after notification of the decision appealed from, the appeal has to be declared inadmissible. In such a situation the appeal fee is not reimbursed. However, if either the notice of appeal or the appeal file have not been submitted within the prescribed time limit, the appeal is not considered to be in existence (see e.g. J 21/80, OJ EPO 1981, 101 and T 210/89, OJ EPO 1991, 433) and the appeal fee is reimbursed.

2. As both the notice of appeal and the fee were received by the EPO within the two month term prescribed by Article 108 EPC, an appeal was properly formed. However, the Board notes that, given the so-called ten-day-rule of Rule 78(3) EPC, the two month term for filing the notice of appeal and paying the appeal fee expired on 24 February 1998. This means that the withdrawal of the appeal and the request for reimbursement of the appeal fee were filed before this term expired. The initially formed appeal was thereby rendered non-existent. Analogous to the established case law of the Boards of Appeal in respect of late filed notices of appeal and late payment of appeal fees and other procedural situations which have been considered not to constitute any appeals under Article 108 EPC, the appeal shall be considered as not having been filed and the appeal fee accordingly shall be reimbursed.

Order

For these reasons it is decided that:

The appeal fee is reimbursed.

The Registrar:



A. Townend

The Chairman:



A. Burkhart