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D E C I S I O N
of 30 June 1999

Case Number: T 0366/98 - 3.2.1

Application Number: 93400514.1

Publication Number: 0559539

IPC: B21B 1/08

Language of the proceedings: EN

Title of invention:

Process for manufacturing H-shaped steels

Applicant:

Sumitomo Metal Industries, Ltd.

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 108, 122

Keyword:

"Form of appeal - in existence (no)"
"Fee refund (yes)"
"Restitutio - all due care (no)"

Decisions cited:

J 0003/93, T 0381/93

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0366/98 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 30 June 1999

Appellant: Sumitomo Metal Industries, Ltd.
5-33, Kitahama 4-chome
Chuo-ku
Osaka-Shi
Osaka 541 (JP)

Representative: Schrimpf, Robert
Cabinet Regimbeau
26, Avenue Kléber
75116 Paris (FR)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 16 January 1998
refusing European patent application
No. 93 400 514.1 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. A. Gumbel
Members: S. Crane
J. H. P. Willems

Summary of Facts and Submissions

- I. Application No. 93 400 514.1 was filed on behalf of the applicant on 1 March 1993 and was published on 8 September 1993 in Bulletin 93/36 (EPA 0 559 539).
- II. After some correspondence with the applicant and after the filing by the applicant of amendments and modifications, the application was refused on the basis of Article 97(1) EPC by decision of the Examining Division, the notification of which was posted on 16 January 1998.
- III. With a telefax dated 30 March 1998 (received by the Office that same day) the representative of the applicant filed an appeal against the decision of the Examining Division. The appeal fee was paid on 30 March 1998.
- IV. With a further telefax of 30 March 1998, the representative of the applicant filed also a request for a re-establishment of rights under Article 122 EPC. The fee for this application was paid on 30 March 1998.
- V. In this request for re-establishment of rights, the representative of the applicant stated that he had forwarded to the Japanese patent attorney of the applicant the notification of the decision to refuse the patent on 21 January 1998, drawing the attention of this attorney to the deadline for filing an appeal, but that he had "just" received instructions to file an appeal.
- VI. The representative further stated that the applicant

appeared still to be studying the case and that he hoped that the re-establishment of rights would be decided "due to these circumstances".

- VII. By letter of 15 May 1998 the representative filed grounds for the appeal against the decision of the Examining Division.

Reasons for the Decision

The Application for re-establishment of rights

1. The application for re-establishment of rights under Article 122 EPC is admissible as it complies with the requirements of Articles 122(2) and 122(3) EPC.
2. However, the re-establishment of rights under Article 122 EPC can only be granted if the applicant was unable to observe a time limit in spite of all due care required by the circumstances.
3. The only facts as meant by Article 122(3) EPC which are stated in the application for re-establishment of rights are that the representative of the applicant has notified his client of the refusing decision shortly after the notification by the Office was posted and that he filed an appeal just after he received instructions to do so.
4. It is however not sufficient that the representative has taken all due care. Also the applicant itself has to comply with this requirement, see T 381/93 and

J 3/93, both not published in the OJ EPO. It follows from the statement of grounds that the applicant itself did not take any action. It was in fact the Japanese associate who on 23 March 1998 instructed the European representative to file an appeal. No reasons have been forwarded why the applicant was unable to give its instructions in due time.

The statement that the applicant appears still to be studying the case cannot be regarded as a sufficient reason for re-establishment.

5. As it has not been made clear to the Board that the applicant has taken all due care required by the circumstances, the application for a re-establishment of rights has to be refused.

The appeal

6. The decision of the Examining Division was posted on 16 January 1998. So having regard also to Rule 78(2) EPC, the time limit for filing the appeal was 26 March 1998. As the appeal fee was paid only on 30 March 1998, the appeal is deemed not to have been filed (Article 108, second sentence).

Order

For these reasons it is decided that:

1. The request for re-establishment of rights is rejected.

2. The appeal is deemed not to have been filed.
3. The appeal fee is to be reimbursed.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel