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I N T E R L O C U T O R Y
D E C I S I O N
of 16 November 1998

Case Number: T 0377/98 - 3.2.5

Application Number: 92107737.6

Publication Number: 0512549

IPC: B41C 1/10

Language of the proceedings: EN

Title of invention:
Printing press

Patentee:
Fuji Photo Film Co., Ltd.

Opponent:
MAN Roland Druckmaschinen AG

Headword:
Re-establishment/FUJI

Relevant legal provisions:
EPC Art. 122

Keyword:
"Re-establishment - grounds of appeal"
"Due care - yes"

Decisions cited:
G 0001/86, J 0002/86, J 0003/86

Catchword:
-



Case Number: T 0377/98 - 3.2.5

**I N T E R L O C U T O R Y
D E C I S I O N**
of the Technical Board of Appeal 3.2.5
of 16 November 1998

Appellant: MAN Roland Druckmaschinen AG
(Opponent) Mühlheimer Strasse 341
63075 Offenbach (DE)

Representative: -

Respondent: Fuji Photo Film Co., Ltd.
(Proprietor of the patent) 210 Nakanuma
Minami-Ashigara-shi
Kanagawa-ken (JP)

Representative: Grünecker, Kinkeldey,
Stockmair & Schwanhäusser
Anwaltssozietät
Maximilianstrasse 58
80538 München (DE)

Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 3 April 1998
concerning maintenance of European patent
No. 0 512 549 in amended form.

Composition of the Board:

Chairman: A. Burkhart
Members: P. E. Michel
C. Holtz

Summary of Facts and Submissions

- I. This interlocutory decision concerns the request of the appellant/opponent for re-establishment regarding the grounds of appeal.

- II. The decision under appeal is dated 3 April 1998. The appellant filed a notice of appeal on 9 April 1998 and paid the appeal fee the same day. The statement of grounds of appeal was filed on 7 September 1998 per fax, together with a request for re-establishment. The fee for re-establishment was paid the same day.

- III. The representative for the appellant explained that the delay in filing the grounds of appeal was due to a reorganisation of the computer system for monitoring time limits, which required that different employees temporarily had to monitor the system during times when others were being trained in the new system. The time limit for the statement of grounds, 3 August 1998, was duly noted in the system, as shown by a copy of the list of due dates for the period in question, and the grounds were also written. Unfortunately, the training resulted in nobody noticing that the grounds never were sent off. The mistake was only discovered after the holidays, when the file was archived.

- IV. The respondent/patentee questioned the allowability of the request for re-establishment, for the reason that the appellant did not furnish any information as to when the fault was discovered.

Reasons for the Decision

1. The appeal meets the conditions of Article 108 EPC, but for the statement of grounds of appeal which was filed out of time. The request for re-establishment was filed and the corresponding fee paid even before the registrar of the boards of appeal had informed the appellant of the missing statement of grounds. The request for re-establishment is therefore admissible.
2. A request for re-establishment with regard to the grounds of appeal may be entertained in accordance with decision G 1/86, OJ EPO 1987, 447, when the notice of appeal and appeal fee have been submitted within the prescribed time limit. The present case meets those conditions. The board will therefore examine whether the appellant has shown all due care required by the circumstances and still was unable to observe the time limit for the statement of grounds of appeal.
3. Under the case law of the boards of appeal all due care is considered to have been shown in cases where the non-compliance with a time limit was due to a single mistake in an otherwise satisfactory system for monitoring the time limits (J 2/86 and J 3/86, OJ EPO 1987, 362). The board is satisfied that the non-observance of the time limit for grounds of appeal in the present case was due to such an exception. The remark by the respondent seems to be founded on a misunderstanding of the request for re-establishment, which does contain the statement that the mistake was

discovered after the holidays (see above point III).
The request for re-establishment can therefore allowed.
Accordingly, the appeal is admissible.

Order

For these reasons it is decided that:

1. The request for re-establishment is allowed.
2. The appeal is admissible.

The Registrar: The Chairman:

A. Townend

A. Burkhart