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D E C I S I O N
of 14 June 2000

Case Number: T 0537/98 - 3.2.4

Application Number: 92307641.8

Publication Number: 0529960

IPC: A45D 8/02

Language of the proceedings: EN

Title of invention:
Hair retaining device

Patentee:
NORTHGATE HOLDINGS LIMITED

Opponent:
Chatterjee, Sonjoy

Headword:
-

Relevant legal provisions:
EPC R. 64, 65(2)

Keyword:
"Indications concerning the appellant"
"Inadmissible appeal"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0537/98 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 14 June 2000

Appellant: (Proprietor of the patent)
NORTHGATE HOLDINGS LIMITED
c/o Riverdale Limited
Mignot Plateau
Cornet Street
St Peter Port
Guernsey
Channel Islands (GB)

Representative:
Bayliss, Geoffrey Cyril
BOULT WADE TENNANT
Verulam Gardens
70 Gray's Inn Road
London WC1X 8BT (GB)

Respondent: (Opponent)
Chatterjee, Sonjoy
14 Westbourne Gardens
London W2 5PU (GB)

Representative:
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Broadgate House
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London EC2M 7LH (GB)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 3 April 1998 revoking European patent No. 0 529 960 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: C. A. J. Andries
Members: M. G. Hatherly
R. E. Teschemacher

Summary of Facts and Submissions

I. European patent No. 0 529 960 was revoked by the opposition division's decision dispatched on 3 April 1998 giving the reason that the independent claim 1 of the sole request was not clear.

On 2 June 1998 an appeal was filed against this decision and the appeal fee was paid. The statement of grounds of appeal was filed on 7 August 1998.

II. Replying to the statement of grounds of appeal, the respondent (opponent) stated on page 1 of the letter of 20 January 1999 that, while the nationality of the applicant Northgate Holdings Limited was given on the form for request for grant of a European patent as Guernsey, this company was actually incorporated in the British Virgin Islands.

As evidence the respondent cited:

P12: letter of 8 May 1998 from Needham and Grant to Royds Treadwell

P13: British Virgin Islands Certificate of Incorporation No. 28203 of 8 May 1990 concerning Northgate Holdings Limited

The respondent concluded that the European patent application and all subsequent documents had been filed by a non-existent company.

III. In section 3 of the board's communication of 15 November 1999 the appellant was asked to comment - in detail - on the respondent's allegations concerning the state of incorporation of the proprietor and the legal consequences thereof for the identity of the proprietor.

IV. In the paragraph bridging pages 1 and 2 of the letter of 14 January 2000 the appellant (patentee) stated that a simple misunderstanding had occurred in that the applicant was Northgate Holdings Limited registered in the British Virgin Islands and Northgate Holdings Limited was set up by Riverdale Ltd which had its head office in Guernsey. There had been no intention to mislead and no bad faith on behalf of any party connected with Northgate Holdings Limited.

V. Section 1 of the board's communication dispatched on 21 March 2000 contained the following passages:

"1.3 The appellant states in the letter of 14 January 2000 that the applicant was Northgate Holdings Limited registered in the British Virgin Islands and that Northgate Holdings Limited was set up by Riverdale Ltd which has its head office in Guernsey.

The appellant himself has at no time given the full address of Northgate Holdings Limited, has not supplied any evidence in this respect, and has not requested that his error be corrected.

1.4 The requirement in Rule 26(2)(c) EPC for "the name, address and nationality of the applicant and the State in which his residence or principal place of business is located" was not satisfied in the grant

proceedings. Therefore the proprietor has not been entered in the Register of European Patents with his principal place of business (Rule 92(f) EPC).

Moreover, in accordance with Rule 65(2) EPC, the board finds that the appeal does not comply with the provisions of Rule 64(a) EPC and invites the appellant to remedy the deficiencies within a time limit of **two months**. The board does not intend to allow an extension of this time limit. If the appeal is not corrected within this time limit then the board shall reject it as inadmissible (Rule 65(2) EPC)."

VI. In reply, the appellant's letter of 14 April stated that this was "In response to Part 2 of that Communication" and indeed contained no comments about section 1 of the board's communication concerning the indications concerning the applicant and appellant.

VII. Oral proceedings were held on 19 May 2000, attended by the respondent. The appellant had been duly summoned but, as announced in his letter of 11 May 2000, was not present. In accordance with Rule 71(2) EPC the oral proceedings were continued without him.

The minutes of these oral proceedings, stating that the debate was closed and that a decision would be issued in writing, were dispatched to the parties on 15 June 2000.

VIII. No application by the appellant to remedy the deficiencies concerning the provisions of Rule 64(a) EPC had been received at the EPO by 31 May 2000 which, applying Rule 78(2) EPC, was the date on which the two month time limit set in the board's communication

dispatched on 21 March 2000 expired.

During a telephone call on 13 June 2000 the appellant's representative informed the board's registrar that indeed no reply to part 1 of the board's communication dispatched on 21 March 2000 had been sent to the EPO.

Reasons for the Decision

1. Rule 64 EPC states that "The notice of appeal shall contain: (a) the name and address of the appellant in accordance with the provisions of Rule 26, paragraph 2(c); ..." which in turn lists "the name, address and nationality of the applicant and the State in which his residence or principal place of business is located."

Rule 65(2) EPC states that "If the Board of Appeal notes that the appeal does not comply with the provisions of Rule 64, sub-paragraph (a), it shall communicate this to the appellant and shall invite him to remedy the deficiencies noted within such period as it may specify. If the appeal is not corrected in good time, the Board of Appeal shall reject it as inadmissible."

In the present case the indications concerning the appellant in the notice of appeal are not consistent with the appellant's later statement that it is registered in The British Virgin Islands. Moreover, no address of the appellant in The British Virgin Islands has been supplied.

2. In its communication dispatched on 21 March 2000 the

board noted the deficiency under Rule 64(a) EPC and invited the appellant to remedy it within a time limit of two months. This time limit expired with no action having been taken by the appellant to remedy the deficiency.

Thus the board must reject the appeal as inadmissible.

3. As the appeal is being rejected as inadmissible, the board is not required to consider whether it is allowable (Article 110(1) EPC) and therefore makes no comments on the merits of the appeal.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar: The Chairman:

G. Magouliotis C. Andries