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Interlocutory D E C I S I O N of 31 January 2000

Case Number: T 0105/99 - 3.2.2

Application Number: 91119058.5

Publication Number: 0484960

IPC: C21D 8/04

Language of the proceedings: EN

Title of invention:
Cold-rolled steel strip having excellent combined press formability and method of producing same

Patentee:
NIPPON STEPP CORPORATION

Opponent:
Thyssen Stahl AG

Headword:
-

Relevant legal provisions:
EPC Art. 122

Keyword:
"Re-establishment of rights - due care (yes)"

Decisions cited:
J 0002/86, J 0022/97

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0105/99 - 3.2.2

Interlocutory D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 31 January 2000

Appellant: (Opponent)
Thyssen Stahl AG
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D-47166 Duisburg (DE)

Representative:
Werner, Dietrich H., Dr.-Ing.
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Respondent: (Proprietor of the patent)
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Representative:
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Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 26 November 1998 concerning maintenance of European patent No. 0 484 960 in amended form.

Composition of the Board:

Chairman: W. D. Weiß
Members: M. G. Noël
R. T. Menapace

Summary of Facts and Submissions

I. On 26 January 1999 the (sole) opponent filed a notice of appeal against the interlocutory decision of the Opposition Division dated 26 November 1999 in which it was found that the European patent No. 0 484 960 (application No. 91 119 058.5) and the invention to which it relates meet the requirements of the Convention. The appeal fee was paid on the same day. No statement of grounds was filed within the prescribed time limit which expired on 6 April 1999.

II. By a letter received on 5 June 1999 the representative of the appellant (opponent) applied for re-establishment of rights and paid the fee prescribed therefore. The statement of grounds was filed on the same day.

III. In this letter it was stated that the non-observance of the time limit was discovered after the appellant had addressed his representative in the matter of the present appeal proceedings on 12 April 1999. It was then found that the employee, who was responsible for the entering of time limits into the computer system, when entering the time limit for filing the appeal, had omitted to enter simultaneously the time limit for filing the statement of grounds. Said omission was then overlooked by the representative's personal secretary who is entrusted to check independently, as soon as a decision of the EPO is received, whether all related time limits have been correctly noted.

It was further pointed out that both employees have been properly instructed and are experienced and reliable persons, to whom an oversight of this kind had never happened in the past. A search of all files in the representative's office where appealable decisions

of the EPO were received in the same period has shown that all time limits have been correctly noted. How it could happen that both responsible employees overlooked the time limit for filing the statement of grounds in the present case remained a mystery.

IV. Affidavits of each of the responsible employee were presented, wherein they confirm the aforementioned facts and circumstances.

V. By way of argument the representative submitted that it was not foreseeable that those persons would, independently from each other, commit such an error within a system that should ensure a mutual, independent cross-check of the noting and the control of time limits. In accordance with the established jurisprudence of the Boards of Appeal errors, which in spite of a well organised and carefully co-ordinated structure in a representative's offices inexplicably occur, should not adversely affect the party concerned.

VI. None of the parties commented on the communication of 29 July 1999 by which they were informed about the Board's preliminary view on this issue.

IV The opponent's representative requests the re-establishment of rights in respect of the time limit for filing the grounds of appeal.

Reasons for the Decision

1. The request for re-establishment of rights complies with Article 122(2) and (3) EPC and is, therefore, admissible.

2. It is plain that no feasible system for monitoring time limits can ensure with absolute certainty that one-off mistakes never occur. Therefore, if an appellant or its representative can demonstrate that a normally effective system for monitoring time limits - of which an inbuilt regular cross-check is an indispensable element (see recent decision J 22/97) as is the employment of qualified, reliable staff for this task - was in operation at the relevant time in the office in question (see eg decision J 2/86), then an isolated mistake will not result in a irredeemable loss of rights for a party to proceedings before the EPO.

3. In the circumstances of the present case, as explained by the representative and confirmed by the assisting employees in their affidavits, the aforementioned conditions were fulfilled and the Board holds therefore, that the non-observance of the time limit for filing the grounds of the present appeal occurred "in spite of all due care required by the circumstances having been taken" (Article 122(1) EPC) by the appellant's representative.

Order

For these reasons it is decided that:

The appellant's request for re-establishment of rights is allowed and his statement of grounds of appeal filed on 5 June 1999 is to be treated as having been received in due time.

The Registrar:

S. Fabiani

The Chairman:

W. D. Weiß