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D E C I S I O N
of 17 November 2000

Case Number: T 0372/99 - 3.2.5

Application Number: 93100466.7

Publication Number: 0551893

IPC: B41M 5/00

Language of the proceedings: EN

Title of invention:
Receiving element with cellulose paper support for use in thermal dye transfer

Patentee:
EASTMAN KODAK COMPANY

Opponent:
Imperial Chemical Industries PLC
Felix Schoeller Jr. GmbH & Co. KG

Headword:
Dye-receiving element/KODAK

Relevant legal provisions:
EPC Art. 102(3), 106(3), 107, 108
EPC R. 67

Keyword:
"Appeal deemed to have been filed - withdrawal of the appeal - partial reimbursement of the appeal fee refused"

Decisions cited:
T 0041/82, T 0773/91

Catchword:
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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0372/99 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 17. November 2000

Other party: (Opponent 01)
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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 3. February 1999 concerning maintenance of European patent No. 0 551 893 in amended form.**

Composition of the Board:

Chairman: W. Moser
Members: P. E. Michel
A. Burkhart

Summary of Facts and Submissions

I. By an interlocutory decision (Article 106 (3) EPC) delivered orally on 14 January 1999 with the written reasons posted on 3 February 1999, the patent in suit was maintained in amended form (Article 102 (3) EPC).

II. The appellant (opponent 02) lodged an appeal against that decision on 27 March 1999 and paid the appropriate fee at the same time.

III. By a letter sent by telefax on 4 May 1999, the appellant withdrew his appeal and requested a partial reimbursement of the appeal fee. In addition, the appellant submitted that the appeal had been filed inadvertently.

IV. By a communication dated 13 July 1999, the Board informed the appellant, the respondent (patent proprietor) and the party as of right under Article 107 EPC (opponent 01) of its provisional opinion that the request for a partial reimbursement of the appeal fee would probably have to be refused.

Although invited to file observations on the communication within a period of two months, neither the appellant nor the other parties to the appeal proceedings made any comments.

Reasons for the Decision

1. The Board, in the exercise of its inherent original jurisdiction (cf. decision T 41/82 [OJ EPO 1982, 256]), is competent to decide on the request for a partial

reimbursement of the appeal fee.

2. Reimbursement of an appeal fee is ordered by a Board of Appeal:

(i) in a case in which no notice of appeal is filed at all or in which no notice of appeal is deemed to have been filed because of a failure to pay the appeal fee within the time limit under Article 108 EPC, first sentence, so that no appeal has ever existed; or

(ii) where the Board deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation (cf. Rule 67 EPC).

3. In the present case, a notice of appeal was filed and the appeal fee was paid within the time limit under Article 108 EPC, first sentence. Consequently, the appeal is deemed to be filed so that a reimbursement of the appeal fee in whole or in part by virtue of the possibility indicated under point 2 (i) above is to be excluded.

4. Furthermore, the appeal had been withdrawn before a decision on its admissibility and allowability could be given by the present Board, so that a reimbursement of the appeal fee in whole or in part by virtue of the possibility indicated under point 2 (ii) above is also to be excluded (cf. decision T 773/91 of 25 March 1992).

5. Finally, the argument submitted by the appellant that the present appeal was inadvertently lodged is legally

irrelevant.

6. From the above it follows that the appellant's request for a partial reimbursement of the appeal fee has to be refused.

Order

For these reasons it is decided that:

The request for a partial reimbursement of the appeal fee is refused.

The Registrar: The Chairman:

P. Martorana W. Moser