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D E C I S I O N
of 7 October 1999

Case Number: T 0574/99 - 3.2.1
Application Number: 93610038.7
Publication Number: 0575286
IPC: B65D 65/40, B65D 81/20

Language of the proceedings: EN

Title of invention:

Backing board for packaging of food products and machinery for producing same

Applicant:

Larsen, Steen

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 108, third sentence
EPC R. 65(1)

Keyword:

"Inadmissibility of the appeal - no substantiation"

Decisions cited:

T 0220/83, T 0145/88, T 0154/90

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0574/99 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 7 October 1999

Appellant: Larsen, Steen
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 28 December 1998
refusing European patent application
No. 93 610 038.7 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Gumbel
Members: M. Ceyte
J. Willems

Summary of Facts and Submissions

- I. European patent application No. 93 610 038.7 (publication number 0 575 286) was refused by a decision of the Examining Division posted 28 December 1998.

The reason for the refusal was that amended claim 1, from which a feature was excised does not meet the requirements of Article 123(2) EPC.

- II. On 25 February 1999, the appellant (applicant) lodged an appeal against this decision, with the appeal fee being paid at the same time.

The notice of appeal is drafted as follows:

"European patent application No. 93 610 038.7. Steen Lassen.

We refer to your communication of 30 December 1998, and we hereby

appeal

your decision in this case, the associated official fee already having been paid."

- III. On 28 April 1999 the appellant further filed by telefax, a document entitled "Appeal Brief" which reads:

"The examining division has refused to accept a re-casting of the application which is very clearly based

on the original content of the application. We contest this decision, because we find it clearly wrong, based on arguments already brought forward. We wish to obtain an appeal decision based on these arguments, which will not, then, have to be repeated here."

- IV. In a communication of the Board dated 14 July 1999, it was held that the document headed "Appeal Brief" did not apparently meet the requirements of Article 108 EPC and the respective case law, since it contains no specific reasons as to why the decision under appeal should be set aside.

In the Appellant's reply, it was said that the purpose of the appeal was merely to provide "a legal basis for filing a divisional application". It was also suggested that the present case could be that exceptional one, where the arguments submitted during the examination proceedings are sufficient to understand that the subsequent refusal decision is clearly wrong.

Reasons for the Decision

1. Article 108 EC, last sentence requires a written statement setting out the grounds of appeal.

Thus the question which arises is whether the above document entitled "Appeal Brief" complies with this requirement.

It is the established case-law of the Boards of Appeal that a written statement of grounds of appeal should state the legal and factual reasons as to why the

decision under appeal should be set aside (see e.g. decisions T 220/83 OJ EPC 1986, 249, T 145/88 OJ EPO 1991, 251 and T 154/90 OJ EPO 1993, 505, points 1.2 to 1.2.3).

This is not the case here: Firstly, the appeal brief says that the refusal decision is "clearly wrong" without stating specific reasons why this decision is wrong. Secondly, it only makes a general reference to the applicant's arguments submitted before the refusal decision was issued. Thus as held in the above decision T 154/90 (point 1.2.2 of the reasons), the applicant has left it entirely to the Board to conjecture why the applicant considers the refusal decision to be defective. It is precisely this situation which according to the established case-law of the Boards of Appeal the requirement that grounds for appeal be filed is designed to prevent.

2. As stated in its communication, the Board is unable to find in the examination file a minimum of reasoning as to why the excision of the feature in question does not contravene Article 123(2) EPC.

Having regard to the contents of the Appellant's reply (see point IV above) the Board sees no reason to deviate from this view.

3. Therefore, in the Board's judgement the appeal brief does not comply with Article 108 EPC, last sentence and thus the appeal is to be rejected as inadmissible in accordance with Rule 65(1) EPC.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel