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D E C I S I O N
of 31 October 2001

Case Number: T 1061/99 - 3.2.1

Application Number: 87201334.7

Publication Number: 0263536

IPC: B65D 1/32

Language of the proceedings: EN

Title of invention:
Improved collapsible hollow articles and dispensing configurations

Applicant:
COLLAPSIBLE BOTTLE OF AMERICA(A California Limited Partnership)

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 86(3), 96(3), 122
EPC R. 67

Keyword:
"Withdrawal of the appeal"
"Application deemed to be withdrawn"
"Reimbursement of appeal fee (no)"

Decisions cited:
J 0010/93

Catchword:

-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1061/99 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 31 October 2001

Appellant: COLLAPSIBLE BOTTLE OF AMERICA(A California Limited Partnership)
4130 La Jolla Village Drive
Suite 107 - 82
La Jolla, California 92037 (US)

Representative: Eismann, Henning, Dr.
Dr. Berg & Dr. Eismann
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D-60320 Frankfurt am Main (DE)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 27 July 1999 refusing European patent application No. 87 201 334.7 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: F. A. Gumbel
Members: G. E. Weiss
S. Crane
F. J. Pröls
J. Van Moer

Summary of Facts and Submissions

I. The European patent application No. 87 201 334.7 was filed by William Touzani on 14 July 1987. There was no reply to the communication of 27 December 1990 from the Examining Division. The six-month time limit for replying to the communication expired on 8 July 1991 (time limit extended according Rule 85(1) EPC; 6 July being a Saturday). Thus, the application was deemed to be withdrawn on 9 July 1991 pursuant to Article 96(3) EPC.

II. On 6 May 1992 the present appellants, Collapsible Bottle of America (CBA), filed simultaneous requests for recording the transfer of the European patent application and for re-establishment of rights in respect of the unobserved time limit. The Legal Division's decision of 17 May 1993 rejected both requests. CBA filed an appeal against this decision. With decision J 10/93 of 14 June 1996 (OJ EPO 1997, 91) the Legal Board of Appeal set aside the Legal Division's decision on the grounds that there may be residual rights which are transferable even after an application has lapsed, such as, in this case, the right to apply for re-establishment, and that only the Examining Division was competent to decide on re-establishment. Consequently, the European patent application was transferred to CBA, and the case was referred to the Examining Division for a decision on the application for re-establishment of rights.

III. On 20 August 1997 the applicant's representative paid the renewal fees including the penalty fees for the fifth to the eleventh year.

IV. The Examining Division in its decision of 27 July 1999 rejected the application for re-establishment.

V. An appeal with a statement of grounds of appeal was filed by the applicant's representative against the decision of the Examining Division on 28 September 1999, and the appeal fee was paid on 30 September 1999.

VI. On 19 March 2001 the DG2 Formalities Section sent to the applicant's representative a communication pursuant to Rule 69(1) EPC stating that the patent application was deemed to be withdrawn pursuant to Article 86(3) EPC because the renewal fees for the 12th, 13th and 14th years and the associated penalty fees had not been paid on time. In a letter received on 10 May 2001, the applicant's representative replied to this communication in the following terms: "... Nach nochmaliger Überprüfung der Sache vertrete ich den Standpunkt, daß dagegen Einwendungen nicht zu erheben sind. Nach Ablauf der Frist bitte ich, überzahlte Jahresgebühren bzw. Beschwerdegebühren auf mein Konto ..." [Having re-examined the matter I have no objections to raise. On expiry of the time limit please transfer overpaid renewal fees and appeal fees to my account]. In a second letter received on 30 August 2001 the applicant's representative confirmed that the terms used in his previous letter have to be considered as a withdrawal of the appeal.

Reasons for the Decision

1. The appeal complies with Articles 106(1) and 108 EPC and with Rules 1(1) and 64 EPC and is therefore

admissible.

2. In his letter received on 10 May 2001 the applicant's representative indicated that he had no objections to raise following delivery of the communication of 19 March 2001 stating that the patent application was deemed to be withdrawn pursuant to Article 86(3) EPC. This statement is held to constitute withdrawal of the appeal, which was in fact confirmed by the applicant's statement in his second letter received on 30 August 2001. Hence the Examining Division's decision of 27 July 1999 refusing re-establishment of rights is now final. Consequently, the application is deemed to have been withdrawn as from 9 July 1991 (Article 96(3) EPC) and the renewal fees including the penalty fees for the fifth to the eleventh year paid on 20 August 1997 are to be refunded.

3. As the prerequisites under Rule 67 EPC are not met the request of reimbursement of the appeal fee must be rejected.

Order

For these reasons it is decided that:

1. The appeal is considered withdrawn.

2. The application is deemed to have been withdrawn as from 9 July 1991.

3. The renewal fees including the penalty fees for the fifth to the eleventh year paid on 20 August 1997 are to be refunded.

4. The request for reimbursement of the appeal fee is rejected.

The Registrar: The Chairman:

S. Fabiani F. Gumbel