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**D E C I S I O N**  
**of 19 November 2001**

**Case Number:** J 0009/01 - 3.1.1

**Application Number:** 00201122.9

**Publication Number:** 1151876

**IPC:** B60D 1/64

**Language of the proceedings:** EN

**Title of invention:**

Device suitable for attaching a socket associated with a  
towing hook to a vehicle

**Applicant:**

Safenat Panéach N.V

**Opponent:**

-

**Headword:**

restitutio in integrum

**Relevant legal provisions:**

EPC Art. 14, 80, 87(1), 113, 122(5)

**Keyword:**

"Re-establishment of rights, all due care (no)"

**Decisions cited:**

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**Catchword:**

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Patentamt**

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Boards of Appeal

Chambres de recours

**Case Number:** J 0009/01 - 3.1.1

**D E C I S I O N**  
**of the Legal Board of Appeal 3.1.1**  
**of 19 November 2001**

**Appellant:** Safenat Panéach N.V.  
c/o Pietermaai 1-7  
Willemstad, Curaçao (AN)

**Representative:** Veldman-Dijkers, Cornelia G.C., Ir.  
Algemeen Octrooibureau  
P.O. Box 645  
NL-5600 AP Eindhoven (NL)

**Decision under appeal:** Decision of Examining Division of the European  
Patent Office posted 9 November 2000 refusing re-  
establishment of rights regarding application  
No. 00 201 122.9 pursuant to Article 122 EPC.

**Composition of the Board:**

**Chairman:** J.-C. Saisset  
**Members:** J. H. P. Willems  
M. J. Vogel

## Summary of Facts and Submissions

- I. European patent application 00 201 122.9 was filed in the Dutch language and was received in the European Patent Office on 28 March 2000. It was filed on behalf of Safenat Panéach N.V., Pietersmaai 1-7 at Willemstad, Curaçao, Netherlands Antilles and claimed a priority of 30 March 1999, on the basis of Dutch national patent application 1 011 699 of that date.
- II. The applicant filed the necessary documents in the English language on 25 April 2000.
- III. In a communication of 9 May 2000 the Receiving Section wrote to the applicant that no priority could be claimed as of 30 March 1999, as that date did not fall within the year preceding the date of filing of the European patent application (25 April 2000).
- IV. With a letter of 28 June 2000, received at the European Patent Office on 5 July 2000, the applicant filed an application for a restitutio in integrum on the basis of Article 122 EPC.

The applicant requested in this application the re-establishment of the right of priority of the European patent application 00 201 122.9, stating that "although it was overlooked that the patent application should have been filed directly in English" all due care required by the circumstances had been taken.

- V. By the decision under appeal of 9 November 2000, the Receiving Section decided that the request under Article 122 EPC for re-establishment of rights in relation to the exercise and benefit of a priority right was refused and that the filing date of the patent application was 25 April 2000.

VI. The applicant filed an appeal against this decision with letter of 19 December 2000, received at the Office on 20 December 2000.

He requested that the decision under appeal be set aside and that the right of priority be acknowledged. The grounds of appeal were filed with letter of 7 March 2001, received at the Office by facsimile on that same day.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The decision under appeal is based on the consideration that Article 122(5) EPC excludes the possibility of a restitutio in integrum in this case because it excludes the applicability of the provisions of Article 122 EPC to the time limit referred to in Article 87(1) EPC, i.e. the 12-months time limit for claiming a right of priority.
3. The appellant contests this motivation, stating that: "we have filed the European patent application within the period of 12 months from the date of filing of the first Dutch patent application but unfortunately in the wrong language."
4. As the Board understands the meaning of this argument, the appellant is contending that he does not want an extension of the time limit of 12 months meant in Article 87(1) EPC (excluded by Article 122(5) EPC), but is seeking the grant of another filing date as meant in Article 80 EPC (not mentioned among the exclusions of Article 122(5) EPC).

5. The Board however does not need to consider this point, as the application for a restitutio in integrum has to fail, even if the view of the appellant in this respect would be right.

The reason for that is that the appellant - although he has strived to do so - has not convinced the Board that all due care required by the circumstances was taken.

6. Both the national application for a Dutch patent (on which the request for priority was based and which was received by the representative of the appellant on 31 March 1999) and the power of attorney (written on stationary of the representative and dated 31 March 1999) state clearly that the applicant is domiciled at Curaçao. As this is an essential data for the answer to the question in what language the European patent application has to be filed (Article 14 EPC), this should not have been missed when all due care was taken as required by the circumstances. After all, when deciding in what language to file a European patent application, this data should actively be looked for.
7. As the appellant has discussed the issue of the due care taken extensively, both in first and in second instance, Article 113 EPC does not require a preliminary communication on this issue and the Board can decide the case forthwith.

**Order**

**For these reasons it is decided that:**

1. The appeal is dismissed.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

S. Fabiani

J.-C. Saisset