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**Datasheet for the decision
of 25 July 2022**

Case Number: J 0004/22 - 3.1.01

Application Number: 06755766.0

Publication Number: 1932333

IPC: H04N1/00

Language of the proceedings: EN

Title of invention:

THE MULTIFUNCTIONAL MOBILE SCANNING DEVICE

Applicant:

THILLAINAYAGAM, Vidhya Rajeswari Gowri

Relevant legal provisions:

EPC Art. 122

EPC R. 136

RPBA 2020 Art. 11 sentence 1

Keyword:

Re-establishment of rights - time limit for filing request for re-establishment - two months of the removal of the cause of non-compliance

Facts established by Board ex officio - ambiguous wording in communication of examining division

Remittal - (yes) - special reasons for remittal - no findings on the merits in appealed decision



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Case Number: J 0004/22 - 3.1.01

D E C I S I O N
of the Legal Board of Appeal 3.1.01
of 25 July 2022

Appellant: THILLAINAYAGAM, Vidhya Rajeswari Gowri
(Applicant) 36 Queen Street
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 27 January 2022 rejecting the request for re-establishment of rights in respect of the time limit for the payment of the renewal fee for the thirteenth year.**

Composition of the Board:

Chairman W. Sekretaruk
Members: F. Bostedt
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examining Division dated 27 January 2022. This decision rejected the appellant's request for re-establishment of rights in respect of the time limit for the payment of the renewal fee for the thirteenth year with surcharge and stated that European patent application No. 06755766.0 was deemed to be withdrawn as of 1 December 2019.
- II. The relevant facts leading to the decision under appeal are as follows.
- (a) The renewal fee for the thirteenth year fell due on 31 July 2018. The applicant was informed that the renewal fee for the thirteenth year had not been paid by the due date but that it could still be paid with a 50% additional fee within six months of the due date.
- (b) The applicant did not pay. The Examining Division issued a notice of loss of rights on 1 March 2019.
- (c) The applicant filed a request for re-establishment of rights on 31 July 2019. The fee for re-establishment of rights was paid on 30 July 2019 together with the thirteenth-year renewal fee including the additional fee.
- (d) The Examining Division issued a communication pursuant to Article 113 EPC dated 29 August 2019. It expressed doubts as to the admissibility and the merits of the request. The Examining Division noted that where the applicant suffers from financial difficulties, the cause of non-compliance could be

removed "on the date on which the applicant gained financial support". It wished to be informed about the date, and clear proof should be provided. The applicant was given a two-month time limit from notification of the communication to file further comments and evidence. The applicant replied to this communication.

- (e) The Examining Division issued a second communication pursuant to Article 113 EPC dated 30 January 2020. It reiterated that to assess the admissibility of the request, the applicant should provide the Examining Division with "the date on which financial support was gained" together with conclusive evidence confirming this date.

III. In the decision under appeal, the Examining Division considered that it had invited the applicant to provide it with the date on which financial support had been gained. However, it had not been informed of this date within the time limit provided in its communication pursuant to Article 113 EPC sent to the applicant on 30 January 2020. For this reason, the Examining Division considered the request for re-establishment of rights inadmissible and therefore had to reject the request.

IV. In her appeal, the appellant claimed that she was not sure what the Examining Division had meant by "financial support". She did not know what kind of evidence was needed to prove that she had gained financial support. She still did not have a regular income if that was what the Examining Division had meant. In 2019, she had not received any financial support but had received some money from her mother's estate. With this money, she had paid the fees. Bank

statements from the relevant period in 2019 were attached to the appeal.

- V. The Board sent out a communication to clarify the issue of "financial support". It informed the appellant that there was a bank statement on file showing the account balance from 17 May 2019 to 16 June 2019 and indicating a significant inflow of funds between those dates. However, this bank statement did not show on which date exactly the money had been received. Therefore, the Board requested that the appellant clarify on which date she had received the money with which she had paid the renewal fee for the thirteenth year and provide the Board with proof of this date by providing, for example, a bank statement to that effect.
- VI. By letter of 1 July 2022, the appellant indicated that she had received the necessary funds on 31 May 2019 (and further funds on 24 June 2019). This was confirmed by a bank statement.

Reasons for the Decision

1. The decision is set aside.
2. The Board has established the relevant facts of its own motion.
 - 2.1 The Board has done so because the appellant claimed in her appeal that it was not clear to her what the Examining Division had meant when asking her about when she had gained "financial support". In the circumstances of the case, this term is indeed not clear. Gaining "financial support" might be understood to be receiving money for her daily living expenses or

- as the appellant put it - receiving a regular income. The question asked by the Examining Division was ambiguous and not precise enough in the circumstances. Indeed, it is not relevant when the applicant received "financial support". What is decisive is on which date the appellant received the monetary funds to pay the renewal fee for the thirteenth year (and the surcharge).

- 2.2 The Board accepts the appellant's submission that she received the necessary funds on 31 May 2019 (and on 24 June 2019), as evidenced by a bank statement.
3. Based on these facts, the Board finds that the request for re-establishment was filed within two months of the removal of the cause of non-compliance.
 - 3.1 For the request for re-establishment to be considered admissible, the requirements of Rule 136(1) EPC must be met. In particular, the request must be filed within two months of the removal of the cause of non-compliance with the period, but at the latest within one year of expiry of the unobserved time limit, Rule 136(1), first sentence, EPC.
 - 3.2 The cause of non-compliance with the period is the appellant's difficult financial situation, which prevented her from paying the renewal fee for the thirteenth year in due time.
 - 3.3 In such a situation, this cause of non-compliance may be considered removed on the day that the appellant had sufficient money to pay the renewal fee.
 - 3.4 The Board considers that the relevant date was 31 May 2019. The two-month period ended on 31 July 2019

(Rule 131(4) EPC). The applicant filed a request for re-establishment of rights on 31 July 2019 and thus within two months of the removal of the cause of non-compliance.

- 3.5 The renewal fee for the thirteenth year fell due on 31 July 2018. The one-year period - referred to as maximum period in Rule 136(1), first sentence, EPC - ended on 31 July 2019 (Rule 131(3) EPC). Therefore, the applicant's request also meets the requirement to file it within one year of expiry of the unobserved time limit.
4. The case is remitted to the Examining Division. The requirement of "special reasons" within the meaning of Article 11, first sentence, RPBA 2020 is met. The Examining Division's decision was based on the finding that the request for re-establishment was inadmissible. No findings were made on the merits of the request. The appellant's submissions on appeal do not enable the Board to take a decision on the merits. These circumstances constitute "special reasons".

Order

For these reasons it is decided that:

The decision under appeal is set aside. The case is remitted to the Examining Division for further prosecution.

The Registrar:

The Chairman:



A. Voyé

W. Sekretaruk

Decision electronically authenticated