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**Datasheet for the decision  
of 2 July 2025**

**Case Number:** J 0006/24 - 3.1.01

**Application Number:** 23159849.1

**Publication Number:** 4212870

**IPC:** G01N29/07, G01N29/11,  
G01N29/34, G01N33/00

**Language of the proceedings:** EN

**Title of invention:**

DETECTION OF BLOCKAGE IN A POROUS MEMBER

**Applicant:**

MSA Technology, LLC

**Headword:**

Substantial procedural violation

**Relevant legal provisions:**

EPC Art. 109(2), 122

EPC R. 136(2)

Guidelines for examination E-VIII, 3.3

**Keyword:**

Substantial procedural violations (yes); re-establishment of rights for filing of appeal; refund of appeal fee; refund of re-establishment fees; refund of fee for further processing

**Decisions cited:**

**Catchword:**



**Juristische Beschwerdekammer**  
**Legal Board of Appeal**  
**Chambre de recours juridique**

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Case Number: J 0006/24 - 3.1.01

**D E C I S I O N**  
**of the Legal Board of Appeal 3.1.01**  
**of 2 July 2025**

**Appellant:** MSA Technology, LLC  
(Applicant) 1000 Cranberry Woods Drive  
Cranberry Township PA 16066 (US)

**Representative:** Holzwarth-Rochford, Andreas  
Jones Day  
Nexttower  
Thurn-und-Taxis-Platz 6  
60313 Frankfurt am Main (DE)

**Decision under appeal:** **Decision of the Receiving Section of the  
European Patent Office posted on 3 July 2023  
refusing European patent application No.  
23159849.1 pursuant to Article 90(5) EPC or Rule  
163(6) EPC.**

**Composition of the Board:**

**Chairman** I. Beckedorf  
**Members:** D. Rogers  
M. Blasi

## **Summary of Facts and Submissions**

I. The Receiving Section issued a decision refusing the application due to a failure to designate the inventor. This decision was made on 3 July 2023. This decision was erroneous because the inventor had in fact been designated.

II. From the EPO's file the following course of events can be reconstructed:

On 14 November 2023, the applicant made an enquiry concerning its application that led the EPO to realise that its decision of 3 July 2023 refusing the application was wrong.

The applicant, however, failed to file a timely appeal against the refusal decision of 3 July 2023.

On 21 December 2023, the Receiving Section informed the applicant that the EPO's records showed that the applicant had been notified of the 3 July 2023 refusal and that the Receiving Section could not retract this decision.

The applicant's request for re-establishment of rights into the time limits for filing the notice of appeal and the statement of grounds of appeal was received on 12 January 2024 (accompanied by debit orders for two fees for re-establishment of rights for the two time-limits). As an auxiliary measure, a request for re-establishment of rights was made in respect of the time limit for requesting further processing (accompanied by a debit order for a third fee for re-establishment of

rights). The omitted acts, including the filing of a notice of appeal and a statement of grounds of appeal, and all payments (appeal fee and fee for further processing) were also received on this date.

Exactly three months after receipt of the notice of appeal and the statement of grounds of appeal and the request for re-establishment, on 12 April 2024, the Receiving Section completed internal Form 2701 (non-public) in which it is indicated that interlocutory revision was allowable. No indications were made in respect of the refund of the appeal fee, although a request for its reimbursement was filed.

Internal form 1317 indicates that the re-establishment requests were considered admissible but does not indicate whether they were also considered allowable.

According to internal information, the Board is informed that EPO Form 1145 ("Decision to allow the request for re-establishment of rights") has been loaded into the file (but not sent).

### **Reasons for the Decision**

1. From the file there appear to be several substantial procedural violations:
  - a. The application was refused in error because the designation of inventor had been duly filed within the applicable time limit.

- b. No decision on re-establishment of rights has been issued.
  - c. A decision on the interlocutory revision was taken on the last day of the three-month period under Article 109(2) EPC. For some reason, however, it was not processed, i.e. the applicant was not informed, nor was a decision on the refund of the appeal fee (to be ordered in view of the substantial procedural violation) taken.
2. In order to allow interlocutory revision a positive decision on the re-establishment of rights in accordance with Article 122 and Rule 136(2) EPC is required, in other words a decision that the applicant has filed its appeal on time (see Guidelines for Examination at the EPO, E-VIII, 3.3).
  3. In the light of the above, the Board therefore makes a positive decision on re-establishment of rights. This has the consequence that the appeal is admissible.
  4. The Board further decides to set aside the 3 July 2023 decision, that is to allow the appeal.
  5. The Board, in view of the substantial procedural violations, allows the reimbursement the appeal fee and orders the two related fees for re-establishment of rights (for the main request, i.e. re-establishment into the time limits for filing the notice of appeal and the statement of grounds of appeal).
  6. The Board further orders the reimbursement the third fee for re-establishment of rights and the fee for further processing as they relate to the auxiliary request which does not have to be considered.

## Order

### For these reasons it is decided that:

- 1) The appellant is re-established into the time limits for filing the notice of appeal and the statement of the grounds of appeal.
- 2) The decision under appeal is set aside.
- 3) The reimbursement of the appeal fee is ordered.
- 4) The reimbursement of the three fees for re-establishment of rights is ordered.
- 5) The reimbursement of the fee for further processing is ordered.
- 6) The case is remitted to the Receiving Section for further prosecution.

The Registrar:

The Chairman:



C. Eickhoff

I. Beckedorf

Decision electronically authenticated