

Translation

DECISION GIVEN ON 19 DECEMBER 1979

J01/79

*Article 80, 34*

EPC Article 108, first and second sentences, Rules 36 (5) and 65 (1),

"Filing notice of appeal by telegram"

Headnote

"If a notice of appeal is filed by telegram but no document reproducing the contents of the telegram is filed within the prescribed period of two weeks, the appeal will be rejected as inadmissible."

Translation

Appeal No.: J 01/79

D E C I S I O N  
given on 19 December 1979

Appellant: Mr. Frans Vanden Bossche  
Alfons Schneiderlaan 82  
B-2100 DEURNE  
Belgium

Decision under appeal: Decision of the Receiving Section  
dated 8 January 1979, holding that,  
pursuant to Articles 79(3) and 91(4)  
EPC, the appellant's European patent  
application No. 78870002.9 must be  
deemed to have been withdrawn.

Composition of the Board:

- Dr. R. Singer	Chairman
- P. Ford	Member
- L. Gotti Porcinari	Member

## SUMMARY OF FACTS AND SUBMISSIONS

- I. In a Decision dated 8 January 1979, the Receiving Section held that the appellant's European patent application must be deemed to have been withdrawn, as no designation fee had been paid within the prescribed period.

The appellant had paid the application and search fees within the prescribed periods, but no designation fee. He asserted that it had been explained to him by the European Patent Office that designation fees need only be paid within the period of twelve months after filing the application.

- II. The appellant entered an appeal against this Decision, by a telegram which was received by the European Patent Office on 8 March 1979. He confirmed this telegram by a letter which was received on 26 March 1979. The fee for appeal was not paid.

## REASONS FOR THE DECISION

It is first necessary to decide whether this appeal is admissible.

Article 108, first sentence, EPC provides that notice of appeal must be filed in writing at the European Patent Office within two months after the date of notification of the decision appealed from.

Rule 36(5), first sentence, EPC renders it possible to lodge such a document by telegram or telex. The appellant made use of this possibility and filed an appeal by telegram, within the prescribed period, on 8 March 1979.

However, in accordance with Rule 36(5), second sentence, a document reproducing the contents of such a telegram and complying with the requirements of the Implementing Regulations must be filed within two weeks. This period expired on 22 March 1979.

A letter reproducing the contents of the telegram, dated 22 March 1979, was not received at the European Patent Office until 26 March 1979, that is, after the expiry of the period of two weeks.

The telegram must, therefore, be deemed not to have been received, in accordance with the third sentence of Rule 36(5). It follows that no appeal can be considered as having been filed within the period prescribed in the first sentence of Article 108 EPC.

In consequence, this appeal must be rejected as inadmissible, in accordance with Rule 65(1) EPC.

Non-payment of the fee for appeal normally has the result that the appeal is deemed not to have been filed. But this fiction

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does not have to be applied where no valid notice of appeal has been lodged.

As the appeal is inadmissible, in accordance with Article 110(1) EPC it is not possible to examine whether it would be allowable on its merits.

For these reasons,

it is decided that:

The appeal against the Decision of the Receiving Section dated 8 January 1979 is rejected as inadmissible.