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AR/ 82,293

DECISION
of 7 April 1982
J 01/82

EPC Rules 43 and 88

"Missing drawings" - "Correction of errors in drawings" -

HEADNOTE

If a sheet including two complete Figures is late filed, these cannot be considered incorrect drawings for the purposes of Rule 88 EPC. The late filing of one or more complete Figures is dealt with in Rule 43 EPC.



Case No: J 01/82

DECISION
of 7 April 1982

Appellants:

- 1) TEVA Pharmaceutical Industries Ltd.
Israel Company, of Har Hotsvim,
behind Sanhedria Hamurhevet,
Jerusalem, Israel and
- 2) Yissum Research Development Co.
Hebrew University of Jerusalem
Israel Company of Jerusalem,
Israel

Representative:

Brown, John David
Forrester and Boehmert
Widenmayerstraße 5/IV
D 8000 München 22
Federal Republic of Germany

Decision under appeal:

Decision of the Receiving Section
of the European Patent Office
dated 20 August 1981 rejecting
a request for addition to the
drawings filed on European patent
application No: 811 02218.5 of a
sheet of drawings, by way of
correction.

Composition of the Board:

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

SUMMARY OF FACTS AND SUBMISSIONS

- I. On 25 March 1981, the appellants filed a European patent application which contained one sheet of drawings marked Fig. 1 and Fig. 2. The appellants claimed priority from a patent application filed in Israel on 27 March 1980.

- II. On 24 April 1981, the Office informed the appellants that Figs. 3 and 4 had not been filed, although reference had been made to them on pages 9 and 11 of the description.

- III. On 20 May 1981, the appellants sent a sheet of drawings containing Figs. 3 and 4, and the priority documents. The appellants alleged that the sheet of drawings containing Figs. 3 and 4 had not been filed with the application due to a clerical error. They requested that the original date of filing, i.e., 25 March 1981, be accorded to the whole application. In a subsequent letter dated 19 June 1981, they submitted that the decision whether or not Figs. 3 and 4 should be allowed to be added to the application, with the date of the application, should be deferred until examination.

- IV. By letter dated 16 July 1981, the European Patent Office informed the appellants that Figs. 3 and 4 filed on 20 May 1981 and the references to them in the application would be deemed to be deleted, and that the original date of filing would remain unchanged. On the same date the appellants applied by telex, duly confirmed, for a formal decision that they were entitled to be accorded 25 March 1981 as the filing date and they were also entitled to have Figs. 3 and 4 considered as part of the application.

V. The Receiving Section issued a decision dated 20 August 1981, rejecting the appellants' request on the grounds that in the present case a sheet of drawings, which included Figs. 3 and 4 was missing and that Rule 43 EPC, in conjunction with Article 91 (6) EPC, was applicable. Therefore, Figs. 3 and 4 and the references to them in the application should be deemed to be deleted and the original date of filing would remain unchanged.

VI. On 16 October 1981, the appellants filed an appeal against the decision. Notice of the appeal and the statement of grounds were received by the European Patent Office in due time and the appeal fee was duly paid.

VII. In the statement of grounds, the appellants alleged that the failure to file Figs. 3 and 4 was an error of omission constituting a mistake within the meaning of Rule 88, EPC which made possible its correction, and that the required evidence was unambiguous, as it was provided by the documents in the Office file.

Reasons for the decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC, and is, therefore, admissible.
2. The appellants request application of Rule 88 EPC which, in their submission, makes possible the correction of incorrect drawings and prescribes conditions under which correction may be permitted. In support, the appellants cite two Decisions of the Legal Board of Appeal, namely Case J 19/80 dated 3 February 1981 (Official Journal 3/1981, page 65) and Case J 08/80 dated 18 July 1980 (Official Journal 9/1980, page 293).
3. In Case J 19/80, however, it was held that the failure to present with the application part of a Figure can constitute a mistake, within the meaning of Rule 88 EPC, which can be corrected, provided that prescribed conditions are fulfilled.

In other words, if only a part of a Figure is missing, the missing part is not to be considered as a missing drawing for the purposes of Rule 43 EPC. The incomplete Figure which has been filed may be considered and treated as an incorrect drawing, which can be corrected in accordance with Rule 88 EPC.

4. Rule 43 EPC provides a special remedy in cases of missing drawings and a missing Figure is a missing drawing in the sense of Rule 43. This Rule constitutes a lex specialis as compared with the general dispositions of Rule 88 EPC for correcting errors in documents filed with the European Patent Office. The provisions of Rule 43 EPC are intended to prevent the addition of new subject matter to the application, in conformity with Article 123 (2) EPC. It is clear that this danger exists if one or more complete Figures are missing. Therefore, Rule 43 EPC has to be applied in the present case.

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5. In these circumstances, the Decision of the Receiving Section was correct and must be affirmed.

6. Nothing in this Decision will prejudice the right of the applicants in due course to seek to add Figs. 3 and 4 to the application by way of amendment in accordance with Article 123.(1) EPC and Rule 86 (2) or (3) EPC.

For these reasons,

it is decided that:

The appeal against the Decision of the Receiving Section of the European Patent Office dated 20 August 1981 is rejected.

The Registrar:

The Chairman: