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Aktenzeichen / Case Number / N° du recours : J 03/85

Anmeldenummer / Filing No / N° de la demande : 83 900 992.5

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Bezeichnung der Erfindung: Using of identical (or similar) pictures of cancercells,
Title of invention: and of identical (or similar) pictures of their natural
Titre de l'invention : fighters, lymphocytes, in game-devices

Klassifikation / Classification / Classement : A 63 F

ENTSCHEIDUNG / DECISION

vom / of / du 19 February 1986

Anmelder / Applicant / Demandeur : Denev Martin

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 122 (1), (2), (3)

"Re-establishment of rights"

Leitsatz / Headnote / Sommaire

**Europäisches
Patentamt**

Beschwerdekammern

**European Patent
Office**

Boards of Appeal

**Office européen
des brevets**

Chambres de recours



Case Number: J 3 / 85

**DECISION
of the Legal Board of Appeal**

**of
19 February 1986**

Appellant:

**Denev, Martin
Box 214
S-133 02 Saltsjöbaden
Sweden**

Representative:

Decision under appeal:

**Decision of the Receiving Section of the
European Patent Office dated 16 November 1984,
rejecting an application for restoration of
rights in respect of European patent application
No. 83 900 992.5.**

Composition of the Board:

**Chairman: P. Ford
Member: F. Benussi
Member: O. Bossung**

Summary of Facts and Submissions

- I. On 16 March 1983, the Appellant filed International application PCT SE 83/00293 claiming priority from an application for a Swedish patent filed on 17 March 1982 and designating nine Contracting States of the European Patent Convention as States for which a European patent was desired.
- II. On 29 September 1983, the International Bureau of the World Intellectual Property Organization published the international application together with the international Search Report.
- III. The period within which the national fee and the designation fees had to be paid thus expired on 19 December 1983 (the 17th was a Saturday) (Article 22(1)(3) PCT; Rule 104b(1) EPC).
- IV. By letter dated 18 January 1984, the Receiving Section drew the Appellant's attention to the fact that he had not paid the fees in question before the expiry of the time limit, but that he still had a period of grace of two months from 19 December 1983, provided that the surcharge pursuant to Rule 85a EPC was paid, failing which his patent application would be deemed to be withdrawn.
- V. On 17 February 1984, the Appellant ordered a Swedish bank to pay the national fee and the designation fee with surcharge but the amount was entered in the EPO's account only on 21 February 1984, one day late.
- VI. By postcard dated February 1984, the Cash and Accounts Department of the EPO requested the Appellant to indicate the nature of the payment and the application number.

- VII. On 8 March 1984, after receiving the postcard from the Cash and Accounts Department, the Appellant, suspecting that the payment had been too late, paid the fee for re-establishment of rights under Article 122 EPC, remitting a cheque payable to the EPO which was received on 12 March 1984 and specifying in a covering letter that the bank had paid the money into the EPO's account too late. With his covering letter, he enclosed a copy of his written instruction to the bank to make an express payment, dated 17 February 1984.
- VIII. By a notification dated 6 June 1984, pursuant to Rule 69(1) EPC, the Receiving Section informed the Appellant that the application was deemed to be withdrawn because the national fee and the designation fees had not been paid within the time limit (Article 22(1) PCT; Rule 104(b) EPC). In the notification, the Receiving Section drew the Appellant's attention to the possibility of re-establishment of rights.
- IX. In a letter dated 10 June, received on 14 June 1984, the Appellant again requested re-establishment of rights and set out grounds therefor, alleging principally that the non-payment was the fault of the bank. He enclosed a second copy of his written instruction to the bank, dated 17 February 1984.
- X. By the Decision under appeal, given by the Receiving Section of the EPO on 16 November 1984, it was held that the application for re-establishment of rights was not admissible on the ground that in his request the Appellant had not stated the grounds on which it was based and set out the facts on which he relied. The Receiving Section further considered that the period of two months from the removal of the cause of non-compliance with the time limit, prescribed by Article 122(2) EPC, first sentence, had to be

calculated from the date of the receipt of the postcard from the Cash and Accounts Department, i.e. in accordance with Rule 78(3) EPC, ten days after dispatch (5 March 1984).

- IX. On 11 January 1985, the Appellant filed a Notice of Appeal against the Decision of the Receiving Section, in which he also set out his grounds of appeal submitting that the decision was wrong in law and contrary to the practice of the EPO. The appeal fee was duly paid on 15 January 1985. The Appellant contended that the starting point of the two month time limit prescribed by Article 122(2) EPC should have been calculated from the date of the communication given pursuant to Rule 69(1) EPC and not - as the Receiving Section held - from the date of the notification of the postcard of the Cash and Accounts Department. Furthermore, he argued that he had sufficiently stated the grounds and facts of his application in his letter dated 8 March 1984.

Reasons for the Decision

1. The appeal complies with Articles 106-108 and Rule 64 EPC and is therefore admissible.

2. In the circumstances of the case, receipt by the Appellant of the postcard from the Cash and Accounts Department can be regarded for the purposes of Article 122 EPC as removal of the cause of non-compliance with the time limit. The Appellant was able to deduce from it that re-establishment of rights would be necessary. Accordingly, his letter dated 8 March 1984 must be regarded as his effective request for re-establishment of rights. It was filed within the time limit prescribed by Article 122(2) EPC.

3. In order to succeed, the Appellant has to establish that he took "all due care" required by the circumstances (cf. Article 122(1) EPC).

However, in his letter dated 8 March 1984, the Appellant says merely that "The Bank was putting the money late in the account and I will claim compensation". He establishes that he gave instructions for an express payment on 17 February 1984 but does not say why he was unable to give instructions before that date, or that the Bank knew or ought to have known that the EPO had to receive the payment on or before 20 February 1984.

The Board considers that although the application for re-establishment of rights was filed in due time, the Appellant did not give a sufficient statement of the facts in his application to establish that, in spite of all due care required by the circumstances having been taken, he was unable to observe the time limit for payment of the national fee and designation fees.

Accordingly, the present application for re-establishment of rights does not comply with the provisions of Article 122(1), (2) and (3) EPC.

5. This point is enough to justify rejection of the appeal.

ORDER

For these reasons,

it is ordered that

the appeal against the Decision of the Receiving Section of the European Patent Office dated 16 November 1984 is dismissed.

The Registrar

J. Rückerl
J. Rückerl

The Chairman

P. Ford
P. Ford

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