

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N° du recours : J 4/87

Anmeldenummer / Filing No / N° de la demande : 85 115 799.0

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until publication of
the application.

Veröffentlichungs-Nr. / Publication No / N° de la publication :

Bezeichnung der Erfindung: Improvements relating to amusement arcade machines
Title of invention: for use in amusement and/or gaming as the like
Titre de l'invention :

Klassifikation / Classification / Classement : G 07 F 17/34

ENTSCHEIDUNG / DECISION

vom / of / du 2 June 1987

Anmelder / Applicant / Demandeur : ELTON FABRICATIONS

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Delay in post/ELTON

EPO/EPC/CBE Articles 75, 80, 87, Rules 24, 83, 85

Kennwort / Keyword / Mot clé : "Loss of priority from postal delay"

Leitsatz / Headnote / Sommaire

In the event of an unforeseeable postal delay causing non-compliance with a time limit, if Rule 85(2) EPC (relating to general interruption or subsequent dislocation in the delivery of mail in a Contracting State) is not applicable so as to extend the time limit, the EPO has no discretion to extend it.



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D E C I S I O N
of the Legal Board of Appeal
of 2 June 1987

Appellant : ELTON FABRICATIONS LIMITED
21A Cemetery Road, Southport
Merseyside, PR8 6RH
Great Britain

Representative : Denmark, James
c/o Bailey Walsh & Co.
5 York Place
Leeds LS1 2SD
Yorkshire

Decision under appeal : Decision of the Receiving Section of
the European Patent Office dated
18 September 1986.

Composition of the Board :

Chairman : P. Ford
Member : G.D. Paterson
Member : E. Persson

Summary of facts and submissions

- I. The documents comprising the European patent application were posted in the UK on 4 December 1985, addressed to the EPO in Munich, and were received there on 11 December 1985. In accordance with Rule 24(2) EPC, the EPO issued a receipt for the documents, which stated that the date of receipt of the application was 11 December 1985. The application claimed priority from 8 December 1984.

- II. By letter dated 9 January 1986, the Appellant's representative stated that as the application had been posted from the UK on 4 December 1985, there must have been an interruption in the mail between the UK and Munich, and he requested an extension of time under Rule 85 EPC.

- III. In a Notice of the President of the EPO dated 21 January 1986, (OJ EPO 2/1986, p. 62), it was stated that there was a general interruption in the delivery of the mail in the United Kingdom in the period from 15 November to 5 December 1985 inclusive, within the meaning of Rule 85(2) EPC. Thus time limits expiring within that period were extended to 6 December 1985, pursuant to Rule 85(2) and (3) EPC.

- IV. By a communication dated 17 April 1986 the Appellant was informed that the European patent application was deemed to have been filed on 11 December 1985, and that the President's Notice dated 21 January 1986 could not be applied.

- V. By letter dated 3 June 1986 the representative contested this view. A Decision was issued by the Receiving Section on 18 September 1986, in which it was stated that neither Rule 85(2) EPC or any other provision of the EPC allows an individual extension of time in case of delayed delivery of

mail; and that since the Notice of the President could not be applied to the application, it must receive a filing date of 11 December 1985.

VI. The Appellant filed a Notice of Appeal on 5 November 1986, and duly paid the appeal fee. In his statement of grounds of appeal filed on 10 December 1986, the Appellant submitted essentially as follows:

(1) The application papers were dispatched in good time in the normal course of post to reach the European Patent Office by 9 December 1985 (the final day for claiming priority, 8 December 1985 being a Sunday).

(2) If the application papers had been sent to the British Patent Office the application would have been awarded the filing date of 5th December 1985 regardless of the actual date of arrival at the British Patent Office (the representative's office does not use the British Patent Office for filing EPO applications except in extreme emergencies, as the British Patent Office cannot accept filing fees and therefore filing applications at the British Patent Office is not satisfactory because of the requirement to file the cash in a different office).

(3) Unless reasonable consideration is given to circumstances such as the present, applicants who have to mail application papers from countries remote from the EPO are unfairly disadvantaged.

(4) There is nothing in the EPO which prevents the EPO from allowing discretion in genuine cases such as the present where the applicant may suffer hardship due to exceptional delays in the post.

Reasons for the Decision

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

Date of filing

2. Article 75(1) EPC sets out where a European patent application may be filed: either directly at the EPO, in Munich or The Hague, or (if the law of a Contracting State permits) at a competent authority of that State. In the present case, the Appellant chose to file the European patent application at the EPO in Munich.
3. Rule 24(1) EPC provides that "the European patent applications may be filed either directly or by post". In the present case the Appellant chose to file the European patent application by post from the UK to the EPO in Munich.

Rule 24(2) EPC provides that the authority where an application is filed shall mark the relevant documents with the date of their receipt. The effect of Rule 24 EPC was considered in Decision J 18/86 dated 27 April 1987 of the Legal Board of Appeal "Filing Date/Zoueki", and it is there stated that "Rule 24 EPC provides, on its proper interpretation, a comprehensive and self-sufficient system in accordance with which the EPO can determine the date of filing of a European patent application, wherever it is filed". It is further stated that "There is nothing in the EPC which enables the EPO to accord a date of filing for such an application, other than the date of receipt of such documents at the competent authority, ...". Decision J 18/86 was dealing with an application which had been filed at the UK Patent Office as a competent authority under Article 75(1)(b) EPC, but the above statement applies

equally to an application filed directly at the EPO at Munich. Article 80 EPC provides that "The date of filing of a European patent application shall be the date on which (certain listed) documents are filed by the applicant....". In the present case documents in accordance with Article 80 EPC were filed on 11 December 1985, and consequently the filing date is 11 December 1985. The EPC does not permit of any other date to be accorded to this application.

The submission in paragraph VI(2) above does not assist the Appellant. In fact, as stated above, the Appellant chose to send the application to Munich rather than to the UK Patent Office (for the reason which he explains). But even if the European application had been sent to the UK Patent Office (by first-class post), in accordance with the Decision in Case J 18/86 the filing date would have been the actual date of receipt at the UK Patent Office, not the 5 December 1985 by reason of UK Patents Rule 97, as submitted by the Appellant.

In view of the provisions of the EPC discussed above, if an applicant wishes his application to be accorded a particular date of filing, he must ensure that application documents in accordance with Article 80 EPC are actually received at the EPO itself or at a competent national authority by that date.

Claim to priority

4. As to the claiming of priority, Article 87(1) EPC provides, for the purpose of filing a European patent application, a right of priority during a period of twelve months from the date of filing of the first application for the same invention. In the present case a UK application for the

same invention had been filed on 8 December 1984. In accordance with Rule 83(4) EPC, the twelve month period expired on 8 December 1985, but as that day was a Sunday, in accordance with Rule 85(1) EPC, the time limit for claiming priority was extended so as to expire on 9 December 1985.

Rule 85(2) EPC provides for extension of a time limit if it "expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Contracting State or between a Contracting State and the EPO"; in such a case the time limit is extended to the day following the end of the period of interruption or dislocation. In the present case there was a period of interruption in the delivery of mail in the united Kingdom between 15 November and 5 December 1985, as stated in the Notice of the President of the EPO dated 21 January 1986. In accordance with Rule 85(2) and (3), any time limit expiring during that period was extended to 6 December 1985, for parties as defined in the Notice. But, as explained above, the twelve month time limit which applied in the present case expired on 9 December 1985 in accordance with Rule 83(4) EPC, which is outside the period of interruption of mail specified in the President's Notice. In the Board's judgement, there is nothing in Rule 85 EPC which provides the EPO with the power to extend further the twelve month time limit for claiming priority which applied in the present case.

5. The Appellant has submitted (cf. para. VI(4) above) that there is nothing in the EPC which prevents the EPO from exercising discretion in cases of exceptional delay in the post. However, as a matter of law the EPO has no general discretion such as suggested by the Appellant. The EPO can only exercise discretion if the power to do so can be derived from the EPC. The only provision in the EPC which

enables a time limit to be extended because of delays in the mail is Rule 85(2) EPC, and, as explained in paragraph 4 above this Rule cannot be applied in the present case. There is nothing else in the EPC which provides the EPO with the power to extend the time limit for claiming priority in the event of an unforeseeable postal delay, such as occurred here. In the absence of such power, the Decision of the Receiving Section rightly held that no extension of the twelve month period provided by Article 87(1) EPC was possible.

Thus the Board is unable to allow this appeal.

Order

For these reasons it is decided that:

The appeal is dismissed, and the Decision of the Receiving Section dated 18 September 1986 is confirmed.

The Registrar:

The Chairman

J. Rückerl

P. Ford