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Aktenzeichen / Case Number / N^o du recours : J 24/87

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Bezeichnung der Erfindung: Use of inflatable (fillable) funnel-like
Title of invention: constructions for concentration of wind power in
Titre de l'invention : wind power systems

Klassifikation / Classification / Classement : F03D 1/04

ENTSCHEIDUNG / DECISION

vom / of / du 6 November 1987

Anmelder / Applicant / Demandeur : Denev, Martin

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPO / EPC / CBE Article 108, Rules 65(1), 67

Kennwort / Keyword / Mot clé : "Appeal fee not paid - no appeal has ever
existed"
"Reimbursement of appeal fee"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

European Patent
Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : J 24/87



DECISION
of the Legal Board of Appeal
of 6 November 1987

Appellant : Denev, Martin
Box 214
S-133 02 Saltsjöbaden
SUEDE

Decision under appeal : Decision of the Head of Formalities
Section of Directorate General 2
dated 4 February 1987

Composition of the Board :

Chairman : P. Ford
Members : R. Schulte
G.D. Paterson

Summary of Facts and Submissions

- I. The Appellant filed an Euro-PCT application on 30 December 1980.
- II. The renewal fee for the sixth year fell due on 31 December 1985. Payment was not made by the due date, therefore a reminder was sent to the Applicant on 30 January 1986 stating that the fee could still be validly paid with an additional fee according to Article 86(2) EPC.
- III. In spite of the notice drawing attention to Article 86(2) EPC the sixth renewal fee and the additional fee were not paid. Consequently, a communication under Rule 69(1) EPC was dispatched to the Applicant on 12 August 1986 confirming that the application is deemed to be withdrawn pursuant to Article 86(3) EPC.
- IV. The Applicant filed a request for re-establishment on 8 October 1986 and paid the fee for this request. He explained that he paid by mistake the renewal fee for another application. By a communication of 2 October 1986 the Applicant was invited to pay the sixth renewal fee and the additional fee and to submit further comments.
- V. By decision dated 4 February 1987 the request for re-establishment was refused because the Applicant failed to file further comments and did not pay the renewal fee.
- VI. Against this decision the Applicant filed a notice of appeal without paying the appeal fee. He stated that he did not pay the renewal and additional fee because in his opinion there was no application existing after the communication of 12 August 1986.

- VII. With the letter dated 29 September 1987 the Registry drew the Appellant's attention to the fact that he did not pay the appeal fee. Consequently, the appeal would be deemed not to have been filed.
- VIII. In answering the letter of 29 September 1987 the Appellant sent a copy of a paying slip which shows that he paid 2,630 SEK as appeal fee on 23 October 1987.

Reasons for the Decision

1. Pursuant to Article 108 EPC the 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, but the Notice shall not be deemed to have been filed until after the fee for appeal has been paid.
2. The impugned decision was sent to the Applicant by registered letter on 4 February 1987. According to Rule 78(3) EPC the letter is deemed to have been delivered to the addressee on the tenth day following its posting, that means on 14 February 1987. Within the two month period of Article 108 EPC the Appellant filed the Notice of Appeal only. The appeal fee was not paid before 14 April 1987; in fact it was paid more than half a year later on 23 October 1987. The consequence is that pursuant to Article 108, second sentence, EPC the Notice of Appeal shall not be deemed to have been filed.
3. The appeal fee must be reimbursed as there is no appeal in existence because the filed Notice of Appeal is deemed not to have been filed.

Order

For these reasons, it is decided that:

1. The Notice of Appeal is deemed not to have been filed.
2. Reimbursement of appeal fee is ordered.

The Registrar

The Chairman

J. Rückerl

P. Ford