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Aktenzeichen / Case Number / N° du recours : J 12/88

Anmeldenummer / Filing No / N° de la demande : 85 902 071.1

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

Bezeichnung der Erfindung: A pump

Title of invention:

Titre de l'invention :

For internal use only. Application will not be published.

Klassifikation / Classification / Classement : A 61M 1/16

ENTSCHEIDUNG / DECISION

vom / of / du 7 November 1988

Anmelder / Applicant / Demandeur : University Court of the University
of St. Andrews

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Forged authorisation/University
of St. Andrews

EPU / EPC / CBE

Schlagwort / Keyword / Mot clé : "Forged authorisation" - "proceedings before
the EPO null and void" - "reimbursement of
fees"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

European Patent
Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : J 12/88

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be published.



D E C I S I O N
of the Legal Board of Appeal
of 7 November 1988

Appellant : University Court of the University of St. Andrews
College Gate, St. Andrews
Tife KY16, 9AJ
Scotland (UK)

Representative : Alan J. Fitzpatrick
4 West Regent Street
Glasgow G2 1RS
Scotland (UK)

Decision under appeal : Decision of the Head of the Receiving Section of
Directorate General 1 of the European Patent Office
dated 5 February 1988 refusing an application for
re-establishment of rights and declaring European
patent application No. 85 902 071.1 as deemed to be
withdrawn.

Composition of the Board :

Chairman : P. Ford

Members : E. Persson

J.C. Saisset

Summary of Facts and Submissions

- I. In its decision of 5 February 1988 the Receiving Section of the EPO declared Euro-PCT application No. 85 902 071.1 deemed to be withdrawn under Article 94(3) EPC, because no request for examination had been made in due time, and rejected an application for the re-establishment of the right to make such a request.
- II. A notice of appeal was filed on 12 April 1988 and the appeal fee was paid in due time. No statement of grounds of appeal was filed.
- III. By letter of 8 June 1988 the Appellant's present representative, Mr. Fitzpatrick, informed the Board that the Appellant did not wish to pursue the appeal and that the Appellant in fact was completely unaware of the proceedings before the EPO in this case. It then turned out that the former representative of the Appellant had acted before the EPO on behalf of the Appellant without being instructed to do so and using a forged authorisation.
- IV. The Appellant has requested reimbursement of the appeal fee.
- V. The former representative of the Appellant has commented upon the situation at the invitation of the Board without disputing the above allegations made by the Appellant.

Reasons for the Decision

The Board is satisfied that in all proceedings before the EPO in this case, the Appellant's former representative acted without any instructions and without filing any valid authorisation. All these proceedings are therefore to be

considered as null and void. Consequently, there has never been a valid European patent application before the EPO. In these circumstances, it follows from general principles of law that all fees paid to the EPO on behalf of the Appellant were never due and must be reimbursed.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside and the Board declares that there has never been any valid European patent application in existence.
2. Reimbursement of the appeal fee as well as all other fees paid to the EPO in the course of the proceedings in this case is ordered.

The Registrar:



The Chairman:

