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D E C I S I O N
of 1 October 2004

Case Number: T 0060/01 - 3.5.2

Application Number: 89911126.4

Publication Number: 0437474

IPC: G08G 5/00

Language of the proceedings: EN

Title of invention:

Supervision and control of airport lighting and ground movements

Patentee:

Airport Technology in Scandinavia AB

Opponent:

Siemens AG

Headword:

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Relevant legal provisions:

EPC Art. 108, 122, 78(2)

Keyword:

"Application for restitutio in integrum - withdrawn"
"Appeal deemed not to have been filed."

Decisions cited:

J 0021/80, J 0016/82

Catchword:

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Case Number: T 0060/01 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 1 October 2001

Appellant:
(Proprietor of the patent) Airport Technology in Scandinavia AB
Box 1
Frösövägen 3
S-832 01 Frösön (SE)

Representative: Onn, Thorsten
Stockholms Patentbyrå Zacco AB
Box 23101
S-104 35 Stockholm (SE)

Respondent(s): Siemens AG
(Opponent) Postfach 22 16 34
D-80506 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 19 May 2000
revoking European patent No. 0 437 474 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: R. G. O'Connell
Members: M. Ruggiu
 B. J. Schachenmann

Summary of Facts and Submissions

- I. By decision posted on 19 May 2000 the opposition division revoked European patent No. 0 437 474 (application No. 89 911 126.4). According to an advice of delivery the proprietor received the decision on 22 May 2000.
- II. By communication of 25 August 2000 the EPO informed the parties that no appeal against the revocation had reached the files within the time limit for the appeal.
- III. By fax received at the EPO on 24 November 2000 the proprietor gave notice of appeal against the decision referred to above and paid the appeal fee. The fax also contained a statement setting out the grounds of appeal. At the same time the proprietor filed a request for restitutio in integrum in respect of the time limits for filing an appeal (Article 108 EPC) and paid the fee for restitutio (Article 122(3) EPC).
- IV. By communication of 21 March 2001 the Board informed the parties that the appeal could be considered as to the substance only if the request for restitutio in integrum was allowable.
- V. By letter dated 16 May 2001 the opponent requested refusal of the request for restitutio in integrum as the requirement of all due care under Article 122 EPC was not satisfied. Should the Board not grant this request, oral proceedings were requested.
- VI. In a communication dated 13 July 2001 the Board indicated that the request for restitutio appeared not to have been filed within two months from the removal of the cause of non-compliance with the time limit as

required by Article 122(2) EPC. But even if the request for restitutio in integrum were admissible, it appeared that the proprietor had not established that all due care required by the circumstances had been taken.

VII. By letter dated 13 September 2001 the proprietor withdrew the request for restitutio.

Reasons for the Decision

1. According to Article 108 EPC 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. It shall not be deemed to have been filed until after the fee for appeal has been paid.
2. The proprietor does not dispute that, in the present circumstances, the notice of appeal was not filed and the appeal fee was not paid until 24 November 2000, ie after the expiry of the period for filing the appeal on Monday, 31 July 2000 (Rule 78(2) EPC). Instead, the proprietor applied for restitutio in integrum pursuant to Article 122 EPC with respect to this time limit.
3. According to Article 122(1) EPC, a party who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit shall, upon application, have his rights re-established. By withdrawing its application for restitutio in integrum on 13 September 2001, the proprietor therefore accepted the consequences of the non-observance of the time limit specified in Article 108 EPC, first sentence, for filing an appeal. These consequences are that the appeal is deemed not to have been filed (J 16/82, OJ EPO 1983, 262).

4. As there was no appeal in existence, the appeal fee was paid without purpose and must be reimbursed (J 21/80, OJ EPO 1981, 101).

Order

For these reasons it is decided that:

1. The appeal filed against the decision of the opposition division of 19 May 2000 is deemed not to have been filed.
2. Reimbursement of the appeal fee is ordered.

The Registrar:



M. Hörnell

The Chairman:



R. G. O'Connell

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