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D E C I S I O N
of 23 August 2002

Case Number: T 0749/01 - 3.2.5

Application Number: 94117636.4

Publication Number: 0659588

IPC: B42D 15/10

Language of the proceedings: EN

Title of invention:

Method of manufacturing a card

Patentee:

KABUSHIKI KAISHA TOSHIBA

Opponent:

GIESECKE & DEVRIENT GmbH

Headword:

Lapse of the patent/TOSHIBA

Relevant legal provisions:

EPC Art. 102(2), 134(1)
EPC R. 60(1), 66(1), 78(2), 84

Keyword:

"Continuation of appeal proceedings after lapse of patent (no)
- no request for continuation by the appellant (opponent)
within the period prescribed"

Decisions cited:

T 0329/88

Catchword:

-



Case Number: T 0749/01 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 23 August 2002

Appellant: GIESECKE & DEVRIENT GmbH
(Opponent) Prinzregentenstrasse 159
D-81677 München (DE)

Representative: Klunker, Schnitt-Nilson, Hirsch
Winzererstrasse 106
D-80797 München (DE)

Respondent: KABUSHIKI KAISHA TOSHIBA
(Proprietor of the patent) 72, Horikawa-cho
Saiwai-ku
Kawasaki-shi
Kanagawa-ken 210-8572 (JP)

Representative: Henkel, Feiler, Hänzel
Möhlstrasse 37
D-81675 München (DE)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 16 May 2001
rejecting the opposition filed against European
patent No. 0 659 588 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: W. Moser
Members: P. E. Michel
H. M. Schram

Summary of Facts and Submissions

- I. On 27 June 2001, the appellant (opponent) lodged an appeal against the decision of the Opposition Division dated 16 May 2001, rejecting the opposition against the European patent No. 0 659 588 (the patent in suit) under Article 102(2) EPC, and paid the appeal fee. On 6 September 2001, a statement setting out the grounds of appeal was filed.
- II. By a communication dated 11 April 2002, the Board informed the appellant and the respondent (patent proprietor) that
- (i) it followed from EPASYS ON-LINE UPDATING of the European Patent Office (EPO) that the patent in suit had lapsed with effect for the Contracting States DE, FR and GB, i.e. for all the designated Contracting States, on 1 May 2001, 30 April 2001 and 7 August 2000, respectively, that,
 - (ii) based on Rule 66(1) EPC, Rule 60(1) EPC applied *mutatis mutandis* in appeal proceedings, that,
 - (iii) consequently, the appeal could be continued at the request of the appellant filed within two months as from the notification by the Board of the lapse, that
 - (iv) this time limit could not be extended upon request because it was not a period to be determined by the EPO within the meaning of Rule 84 EPC, and that

- (v) any continuation of the appeal proceedings by the Board of its own motion was excluded under the circumstances.

The appellant was asked to inform the Board whether the present appeal proceedings should be continued.

- III. The appellant refrained from replying within the time limit of two months. However, after having been contacted by the Registry, the representative (Article 134(1) EPC) of the appellant, by a letter received on 11 July 2002, informed the Board that the appellant was not interested in continuing the appeal proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. Rule 60(1) EPC provides that if "the European patent has been surrendered or has lapsed for all the designated States, the opposition proceedings may be continued at the request of the opponent filed within two months as from a notification by the European Patent Office of the surrender or lapse". Rule 66(1) EPC lays down that, unless "otherwise provided, the provisions relating to proceedings before the department which has made the decision from which the appeal is brought shall be applicable to appeal proceedings *mutatis mutandis*".
3. The EPC contains no specific provision concerning continuation of appeal proceedings in case a European patent has been surrendered or has lapsed.

Hence, based on Rule 66(1) EPC, Rule 60(1) EPC applies *mutatis mutandis* to appeal proceedings. It follows *inter alia* that, if the European patent has lapsed for all the designated States, the appeal proceedings may be continued at the request of the opponent and appellant filed within two months as from a notification by the competent Board of the lapse. According to an interpretation *argumentum e contrario* of these provisions, it further follows that the appeal proceedings are to be closed if the appellant and opponent does not submit such a request within the period prescribed (cf. decision T 329/88 of 22 June 1993, not published in the OJ).

4. In the present case, the notification of the lapse within the meaning of Rule 60(1) EPC was sent to the appellant on 11 April 2002. Thus, the period of two months for requesting the continuation of the appeal proceedings ended on Friday, 21 June 2002 (cf. Rule 78(2) EPC). No request for continuation of the appeal proceedings has been submitted during that period. Moreover, from the letter received on 11 July 2002 it clearly follows that the appellant had no intention of submitting a request for continuation of the appeal proceedings within that period. Hence, the appeal proceedings have to be closed (cf. point 3 *supra*).

Order

For these reasons it is decided that:

The appeal proceedings are closed.

The Registrar:

The Chairman:

M. Dainese

W. Moser