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D E C I S I O N
of 11 November 2005

Case Number: T 1026/05 - 3.2.07

Application Number: 97121283.2

Publication Number: 0847849

IPC: B30B 11/12

Language of the proceedings: EN

Title of invention:
Press for moulding clay manufactured articles

Patentee:
Bongioanni Macchine S.p.A.

Opponent:
Favole S.r.l.

Headword:
-

Relevant legal provisions:
EPC R. 67

Keyword:
"Reimbursement of the appeal fee when the appeal is withdrawn
(no) "

Decisions cited:
-

Catchword:
T 0041/82



Case Number: T 1026/05 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 11 November 2005

Appellant: Favole S.r.l.
(Opponent) via Torino, 85
I-12045 Fossano CN (IT)

Representative: Cian, Paolo
Saconney & Cian
Corso Vittorio Emanuele II, 14
I-10123 Torino (IT)

Respondent: Bongioanni Macchine S.p.A.
(Proprietor of the patent) Via G.B. Bongioanni, 13
I-12045 Fossano (Cuneo) (IT)

Representative: Robba, Pierpaolo
Interpatent
Via Caboto 35
I-10129 Torino (IT)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
10 June 2005 concerning maintenance of European
patent No. 0847849 in amended form.

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
C. Holtz

Summary of Facts and Submissions

I. The appellant (opponent I) lodged an appeal against the interlocutory decision of the Opposition Division dated 10 June 2005 maintaining European patent No. 0 847 849 in amended form.

The appeal was filed by fax, dated 4 August 2005. This fax was confirmed through a letter of the same date, and the appeal fee was paid in due time.

II. The appellant requested that
"the decision to maintain the patent in its form as amended during the Opposition Proceedings is set aside to the extent that the subject-matter of the patent is not patentable within the terms of Art. 54 and 56 EPC, and that the patent is revoked, and
in the case in which the Board of Appeal envisages not to accept the request set forth above,
oral proceedings under Art. 116 EPC is allowed to take place".

III. No statement of grounds of appeal was filed.

IV. By fax dated 18 October 2005, the appellant stated that "the appellant withdraws the appeal filed on 4.08.2005". In the same letter it was further requested that the appeal fee be refunded. This fax was confirmed through a letter of the same date.

V. No statement of grounds for the refund of the appeal fee was filed.

Reasons for the Decision

1. *Withdrawal of the appeal*

With the withdrawal of the appeal the appellant withdrew automatically also all its requests on appeal (see paragraph II).

Therefore, no request for oral proceedings remains in the present case, which can be decided without appointing them.

2. *Reimbursement of the appeal fee*

2.1 In the present case the appellant submitted no grounds for the reimbursement of the appeal fee.

2.2 According to Rule 67 EPC, two conditions have to be met for an appeal fee to be reimbursed, where no interlocutory revision (under Article 109 EPC) took place: the appeal must be deemed allowable, and the reimbursement must be deemed equitable by reason of a substantial procedural violation.

Interlocutory revision did not take place.

No objection regarding a procedural violation was raised by the appellant.

Finally, there is no basis in Rule 67 EPC for ordering refund of the appeal fee merely for the reason that the appeal is withdrawn (cf. T 41/82, OJ EPO 1982, 256). The conditions of Rule 67 EPC for reimbursement of the appeal fee are thus not met.

2.3 The present decision was made necessary because of the request for reimbursement of the appeal fee.

Order

For these reasons it has been decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders