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**Datasheet for the decision
of 24 October 2006**

Case Number: T 1187/06 - 3.5.02

Application Number: 01110759.6

Publication Number: 1160956

IPC: H02K 5/24

Language of the proceedings: EN

Title of invention:

Motor compressor and cooling apparatus using the same

Applicant:

SANYO ELECTRIC CO., LTD.

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 108, 110

EPC R. 65(1), 67

Keyword:

"Admissibility of appeal - no"

"Reimbursement of appeal fee - no"

Decisions cited:

T 0041/82

Catchword:

-



Case Number: T 1187/06 - 3.5.02

D E C I S I O N
of the Technical Board of Appeal 3.5.02
of 24 October 2006

Appellant:

SANYO ELECTRIC CO., LTD.
5-5, Keihan-Hondori 2-chome
Moriguchi-shi, Osaka (JP)

Representative:

Glawe, Delfs, Moll
Patentanwälte
Postfach 26 01 62
D-80058 München (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 17 February 2006
refusing European application No. 01110759.6
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: M. Rognoni
E. Lachacinski

Summary of Facts and Submissions

- I. The appeal contests the decision of the examining division of the European Patent Office refusing European patent application No. 01 110 759.6. The decision was dispatched by registered letter with advice of delivery on 17 February 2006. The applicant (appellant) filed the notice of appeal on 19 April 2006 and paid the appeal on the same day.

- II. In the notice of appeal, the appellant requested "to set aside the decision and to grant the patent". As an auxiliary request the appellant asked for oral proceedings. The notice of appeal, however, contains nothing that could be regarded as a statement of grounds but simply announces that "the appeal arguments will be filed within the term prescribed in Art. 108 EPC".

- III. By a communication dated 7 August 2006 sent by registered letter with advice of delivery, the Registry of the Board informed the appellant that no statement of grounds of appeal appeared to have been filed and that it was to be expected that the appeal would be rejected as inadmissible pursuant to Article 108 EPC in conjunction with Rule 65(1) EPC. Furthermore, the Registry drew the appellant's attention to the possibility of filing a request for re-establishment of rights under Article 122 EPC, and to the provision that any observations had to be filed within two months from notification of the Registry's communication.

- IV. By letter dated 11 August 2006, the appellant's representative informed the Board that the appellant did not intend to file a written statement of grounds of appeal, and requested that the appeal fee be refunded.
- V. By letter dated 19 September 2006, the appellant stated that the appeal was hereby withdrawn and that the request for refund of the appeal fee was maintained. The appellant further pointed out that the appeal had become inadmissible and void because the statement of grounds of appeal had not been filed in due time.

Reasons for the Decision

Admissibility of the appeal

1. As correctly observed by the appellant in the letter dated 19 September 2006, the appeal has to be rejected as inadmissible since no written statement setting out the grounds of appeal was filed within the prescribed time limit.

Since the appeal is inadmissible, the appellant's withdrawal of the appeal dated 19 September 2006 is to be construed as a declaration of the appellant's intention not to apply to have his rights re-established under Article 122 EPC, and not to maintain his request for grant of the patent or for oral proceedings.

Reimbursement of the appeal fee

2. Once a notice of appeal has been properly filed and the fee for appeal has been paid in accordance with the first two sentences of Article 108 EPC, the appeal fee may only be reimbursed under the explicit conditions specified in Rule 67 EPC and in particular where the Board deems an appeal to be allowable if reimbursement is equitable by reason of a substantial procedural violation.

As pointed out in paragraph 4 of T 41/82 (OJ 1982,256), the terms of other provisions, notably Article 110(1) and Rule 65(1) EPC, prevent a Board of Appeal from even considering whether an appeal can be deemed to be allowable until the decision has been taken that the appeal is admissible. Such a decision cannot be taken unless, *inter alia*, a statement of grounds of appeal has been duly filed, in accordance with Article 108 EPC.

3. In the result, since the appeal is to be rejected as inadmissible because the statement of grounds was not filed in due time, a prerequisite for reimbursement of the appeal fee has not been fulfilled and consequently the appeal fee cannot be reimbursed.

Order

For the above reasons it is decided that:

1. The appeal is rejected as inadmissible.
2. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

U. Bultmann

W. J. L. Wheeler