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**Datasheet for the decision  
of 8 July 2008**

**Case Number:** T 0237/07 - 3.4.03

**Application Number:** 01996838.7

**Publication Number:** 1336164

**IPC:** G07F 19/00

**Language of the proceedings:** EN

**Title of invention:**

Procedure for the reliable preparation and execution of the financial settlement of a business transaction between a seller and buyer

**Applicant:**

SAFEPAY Kft

**Opponent:**

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**Headword:**

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**Relevant legal provisions (EPC 1973):**

EPC Art. 108 second sentence, 122

**Keyword:**

"Re-establishment (no)"

**Decisions cited:**

J 0006/90, J 0035/03

**Catchword:**

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Case Number: T 0237/07 - 3.4.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.03  
of 8 July 2008

**Appellant:** SAFEPAY Kft  
1026 Budapest  
Endródi Sándor u. 27/a (HU)

**Representative:** Faber, Miklos  
Advopatent  
Office of Patent and Trademark Attorneys  
Fo u. 19.  
HU-1011 Budapest (HU)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 3 November 2006  
refusing European application No. 01996838.7  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** U. Tronser  
**Members:** E. Wolff  
R. Q. Bekkering

## **Summary of facts and submissions**

- I. The appellant seeks re-establishment of rights with respect to the time limit under Article 108 second sentence EPC for the payment of the appeal fee.
- II. On 3 November 2006 the examining division posted a decision to refuse European patent application 01 996 838.
- III. The appellant filed a notice of appeal against that decision. The appeal fee was received by the European Patent Office on 25 January 2007. In a communication dated 16 February 2007 the registrar of the board informed the appellant of a loss of rights on account of the appeal fee not having been paid within the prescribed time limit, as well as of the possibilities of applying for a decision under Rule 69(2) EPC and of requesting re-establishment of rights. The written statement setting out the grounds of appeal reached the European Patent Office on 23 February 2007.
- IV. On 22 March 2007 the appellant filed a request for re-establishment of rights in respect of the time limit under Article 108 second sentence EPC for the payment of the appeal fee and paid the prescribed fee on 21 March 2007.
- V. The request for re-establishment of rights is supported by the following arguments:

On 15 November 2006, shortly after receipt of the decision under appeal, the representative had a sudden seizure and was immediately hospitalised for urgent

cardiologic treatment. In the following general confusion his assistant failed to note the time limits relating to the filing of an appeal against the decision.

In the course of transferring the documents pertaining to the decision to the deputising person's desk, it was accidentally placed onto a stack of expired folders rather than on the stack containing other incoming letters and faxes.

On 27 December 2006 the temporary assistant found the papers relating to the decision on the wrong stack of files. She tried, unsuccessfully, to contact the deputising person at the time who was, however, in a meeting with a client and could therefore not be reached. She then telephoned the representative who was at that time still in hospital, and informed him of the decision of the examining division. The representative then dictated the notice of appeal, which was faxed to the European Patent Office on the same day.

Owing to the imperfect pronunciation of the assistant and his compromised state of health, the representative misunderstood the text of Article 108 EPC annexed to the decision as read out to him over the telephone by the assistant. The representative understood that the appeal fee had to be paid within four months from the date of notification of the decision. Accordingly the assistant recorded in the time limit register system four months as the time limit for the payment of the appeal fee as well as for the filing of the statement of the grounds of appeal.

On returning to the office on 22 January 2007, the representative realised the error he had made under the influence of the strong medication administered to him in hospital, and paid the appeal fee immediately.

- VI. In reply to the board's first communication, dated 13 August 2007, written statements were submitted as to the structure, staff and time limit monitoring system of the representative's law firm, and affidavits presented of the patent attorney deputising for the representative, the personal assistant and the temporary assistant who replaced the latter on 27 December 2006.

The structure of the representative's firm was described as follows.

The firm was a loose association of seven patent attorneys, all of them professional representatives before the EPO and working mostly individually. In the case of absence of an attorney, another attorney deputised and took charge of the absent attorney's work.

The patent attorneys were assisted in their daily work by personal assistants and other staff members responsible for matters such as annuities, record-keeping, etc. During short term absences the attorney took over the work of his assistant, during longer absences one of the other assistants would do that work. During periods such as holiday periods when several assistants were absent at the same time, other staff members, as so-called temporary assistants, deal with the work of the assistants.

Incoming mail and faxes were checked for time limits by an assistant. Time limits expressly mentioned were entered into a diary book, with two reminders in different colours preceding the expiry of the time limit by 1 month and 2 weeks, respectively. The time limits and the one-month reminders were also marked in the margin of the communication and cross-checked by the patent attorney. Each patent attorney also noted the relevant dates in his personal diary. Other time limits were entered into the diary on instruction from the patent attorney.

VII. The appellant requested re-establishment of rights under Article 122 EPC in respect of the non-observance of the time limit for paying the fee for the appeal against the decision of the examining division (issued on 3 November 2006) refusing the European patent application. He further requested that the decision under appeal be set aside and a patent be granted as follows: Claims 1 - 13, and pages 1 - 8 and 10 - 13 of the description, all submitted with letter dated 3 June 2003, page 9 of the description submitted with letter dated 24 November 2004, and one Figure of drawings as published.

## **Reasons for the decision**

### **1. Re-establishment of rights**

The legal basis is provided by Article 122 EPC 1973 in conjunction with Article 1 point 5 of the decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act Revising the European Patent Convention of 29 November

2000 (OJ EPO, Special Edition 1/2007, page 197).

Inasmuch as, on the one hand, the transitional provisions apply in respect of parties acting before the European patent Office and, on the other hand, the one-year period according to Article 122(2) third sentence EPC 1973 serves to provide legal certainty for third parties (J006/90, points 2.3 and 2.4 of the reasons - OJ EPO 1993, 714; J 35/03 of 4 May 2004, point 6 of the reasons), the relevant time limits are those of Article 122(2) first and second sentence EPC 1973.

- 1.1 The reasoned request for re-establishment of rights and the prescribed fee have been received as required by Article 122(2) and (3) EPC 1973. The request is therefore admissible.
- 1.2 It remains to be decided whether the request is allowable as regards the requirements of all due care prescribed by Article 122(1) EPC 1973.
- 1.3 Despite the fact that in the representative's firm a system of deputising and of monitoring time limits was in place, the time limit for paying the appeal fee was missed.

It is the established jurisprudence of the boards of appeal that re-establishment of rights is intended to ensure that an isolated mistake in an otherwise satisfactory system does not result in an irrevocable loss of rights (see Case Law, 5<sup>th</sup> edition, VI.E.6, especially 6.2.2).

- 1.4 In the present case, the decision refusing the European patent application is dated 3 November 2006. The time

limit for filing the notice of appeal and for paying the appeal fee expired at the end of Monday, 15 January 2007.

- 1.5 The board accepts that the illness of the representative upset the smooth running of his office, especially as both his deputy and his assistant are close members of the representative's family. The board even accepts that the representative's judgement may have been clouded by the effects of the medication he was receiving at the time.
  
- 1.6 However, the failure to meet the two-month time limit under Article 108 second sentence EPC 1973 was the consequence of a malfunctioning deputy system operated in the law firm of the appellant's professional representative. According to the appellant's submissions, in case of absence of a patent attorney one of the other patent attorneys acted as a deputy person and took charge of the absent patent attorneys work. The deputy person acting for the appellant applicant's professional representative was one of his daughters, who is herself a patent attorney.

Hence, a deputy system was in place. It was, however, not organised in a way that would ensure that in case a staff member considered a matter to be urgent, the staff member had the possibility to immediately consult the deputy patent attorney in charge or any other patent attorney available at the office, rather than having to consult the appellant's representative who was at the time unfit for work. In this context it has to be remembered that the events which resulted in the late payment of the appeal fee took place over a month after the representative was taken ill. The only possible



conclusion that can be drawn in these circumstances is that even over a month after hospitalisation of the representative there was no effective system in operation which would have ensured the smooth running of the representative's office in his absence.

1.7 The board wishes to observe that the doctor's certificate also shows that the representative has for some considerable time - several years - been under medical treatment in the same medical institute where he was under observation and received medical treatment between 15 November 2006 and 21 January 2007. That is, despite the known medical condition of the representative and his prolonged treatment, there is no indication that appropriate measures were taken to ensure the proper functioning of the office in the foreseeable event of the representative's absence.

1.8 Thus the appellant has failed to show that "all due care required by the circumstances" within the meaning of Article 122(1) EPC 1973 has been exercised in order to merit re-establishment in respect of the time limit for paying the appeal fee.

1.9 The request for re-establishment of rights under Article 122 EPC 1973 is therefore refused.

Hence the appeal must be considered not to have been lodged.

As there is no appeal in existence, the appeal fee paid late must be reimbursed.

**Order**

**For these reasons it is decided that:**

1. The appeal is deemed not to have been filed.
2. The appeal fee will be refunded.

Registrar

Chair

S. Sánchez Chiquero

U. Tronser