

**Internal distribution code:**

- (A)  Publication in OJ  
(B)  To Chairmen and Members  
(C)  To Chairmen  
(D)  No distribution

**Datasheet for the decision  
of 14 January 2008**

**Case Number:** T 1091/07 - 3.2.01

**Application Number:** 03704129.0

**Publication Number:** 1476679

**IPC:** F16H 9/18

**Language of the proceedings:** EN

**Title of invention:**

Three-wheeled vehicle with a continuously variable transmission

**Applicant:**

Bombardier Recreational Products Inc.

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 108

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

-

**Keyword:**

"Form of appeal - in existence (no)"

"Refund of appeal fee (yes)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 1091/07 - 3.2.01

**DECISION**  
of the Technical Board of Appeal 3.2.01  
of 14 January 2008

**Appellant:** Bombardier Recreational Products Inc.  
726 St-Joseph Street  
Valcourt  
Québec J0E 2L0 (CA)

**Representative:** Solf, Alexander  
Patentanwälte  
Dr. Solf & Zapf  
Candidplatz 15  
D-81543 München (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 7 December 2006  
refusing European application No. 03704129.0  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** S. Crane  
**Members:** J. Osborne  
S. Hoffmann

## **Summary of Facts and Submissions**

- I. The appeal is directed against the decision posted 7 December 2006 to refuse European patent application No. 03 70 4129.0.
- II. Notice of appeal was filed on 25 May 2007. The appeal fee was paid on the same day.
- III. In a letter of 25 May 2007 received on the same day the appellant requested reinstatement in the appeal term in accordance with Article 122 EPC 1973 and set out its case in support of this request.
- IV. In a communication pursuant to Article 110(2) EPC 1973 the board indicated its provisional opinion on the request for reinstatement.
- V. With a letter of 19 December 2007 the appellant withdrew its request for reinstatement.

## **Reasons for the Decision**

1. In accordance with Article 108 EPC 2000 "Notice of appeal shall be filed ... within two months of notification of the decision." In the present case the decision to refuse the application was posted on 7 December 2006 so that, in accordance with Rule 78(2) EPC 1973, the notification is deemed to have been made on 17 December 2006. The final date for filing a notice of appeal therefore was 17 February 2007.

2. Since the appellant has withdrawn its request for reinstatement in the term for filing the appeal the date of receipt of the notice of appeal and payment of the appeal fee remains 25 May 2007. The notice of appeal therefore was filed out of time. Similarly, the appeal fee was paid out of time. Under these circumstances the appeal must be deemed not to have been filed pursuant to Article 108, second sentence, EPC 2000.
  
3. If an appeal is deemed not to have been filed there is no legal basis for retaining the appeal fee. The appeal fee therefore 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 shall be reimbursed.

The Registrar:

The Chairman:

A. Vottner

S. Crane