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**Datasheet for the decision  
of 29 November 2010**

**Case Number:** T 0267/08 - 3.4.01

**Application Number:** 99903888.8

**Publication Number:** 1054705

**IPC:** A61N 1/30

**Language of the proceedings:** EN

**Title of invention:**

A device for iontophoretic administration of drugs

**Patentee:**

HADASIT MEDICAL RESERACH SERVICES & DEVELOPMENT COMPANY, LTD.

**Opponent:**

EYEGATE PHARMA S.A.

**Headword:**

-

**Relevant legal provisions:**

EPC R. 152

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

-

**Keyword:**

-

**Decisions cited:**

G 0002/97, J 0027/94, J 0014/94, J 0005/02, J 0013/90,  
J 0012/94

**Catchword:**

Change of representation; original version of the  
authorisation not filed.



Case Number: T 0267/08 - 3.4.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.01  
of 29 November 2010

**Appellant:** EYEGATE PHARMA S.A.  
(Opponent) 52 Rue Aujan  
FR-92300 Levallois Perret (FR)

**Representative:** Murphy, Colm Damien  
Ipulse  
26 Mallinson Road  
London SW11 1BP (GB)

**Respondent:** HADASIT MEDICAL RESEARCH SERVICES &  
(Patent Proprietor) DEVELOPMENT COMPANY, LTD.  
Kiryat Hadassah  
P.O. Box 12000  
91120 Jerusalem (IL)

**Representative:** Casey, Lindsay Joseph  
FRKelly  
27 Clyde Road  
Ballsbridge  
Dublin 4 (IE)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 15 November 2007  
rejecting the opposition filed against European  
patent No. 1054705 pursuant to Article 102(2)  
EPC 1973.

**Composition of the Board:**

**Chairman:** B. Schachenmann  
**Members:** F. Neumann  
G. Assi

## Summary of Facts and Submissions

- I. On 24 January 2008, a notice of appeal was filed against the decision of the opposition division to reject the opposition against the European patent number EP 1054705. This notice of appeal was filed by Mr Colm Murphy of ipulse on behalf of the opponent Eyegate Pharma S.A.
- II. Throughout the opposition proceedings before the opposition division, the opponent (Eyegate Pharma S.A.) had been represented by Mr Jean-Robert Callon de Lamarck of Cabinet Régimbeau.
- III. On 25 January 2008, Mr Murphy was informed by telephone that a professional representative has to file an authorisation if the EPO has not been notified of the termination of the previous representative's authorisation.
- IV. Later that same day, Mr Murphy confirmed by fax that he had assumed responsibility for the conduct of the appeal proceedings on behalf of Eyegate Pharma S.A. and on 26 February 2008, he faxed "an authorisation signed on behalf of Eyegate Pharma S.A.". This authorisation, signed by Mr Stephen From ("President and CEO") consisted of a letter on notepaper headed "EyeGate Pharmaceuticals, Inc." and bearing the logo "EyeGate pharma". The text confirmed that conduct for the appeal has been transferred to Mr Murphy. This letter contained no reference to the opponent Eyegate Pharma S.A.

- V. On 06 May 2008, both Mr Murphy and Mr Callon de Lamarck were informed of amended entries in the Register of European Patents, the appointment of a representative having been registered as from 25 January 2008.
- VI. The Board issued EPO Form 3047 on 24 November 2008 warning Mr Murphy that the required authorisation had not been provided and inviting him to file an authorisation specifically for **Eyegate Pharma S.A.** within a period of two months. He was warned that it is to be expected that the appeal will be rejected as inadmissible.
- VII. On 28 January 2009, two identical fax communications were received at the EPO both containing a copy of the official EPO Form 1003 signed by Mr Stephen From, this time in his capacity as president of Eyegate Pharma S.A. and authorising Mr Murphy to act on his behalf.
- VIII. On 25 February 2009, the proprietor noted that no evidence of a legal relationship between EyeGate Pharmaceuticals, Inc. and Eyegate Pharma S.A. had been provided. Moreover, it was noted that an original version of the authorisation had not been filed. Furthermore, details of the representative's address and place of business were omitted from EPO Form 1003. It was submitted that the authorisation could not be considered valid.
- IX. A "Noting of loss of rights pursuant to Rule 112(1) EPC" (EPO Form 3061) was issued by the Board on 18 February 2010. It was held that an authorisation fulfilling the necessary requirements had not been

filed and that the notice of appeal was deemed not to have been filed.

- X. In a fax dated 01 March 2010 Mr Murphy provided arguments supporting his case. Moreover, he considered that his right to be heard had been infringed since he considered that a decision had been taken before he had been afforded an opportunity to present his comments.
- XI. The Board issued a further communication on 18 March 2010 explaining that a decision had not yet been taken. The "Noting of loss of rights" simply communicates the loss of rights: a decision is only taken if the party concerned considers the finding of the EPO to be inaccurate and applies for a decision in accordance with Rule 112(2) EPC.
- XII. As a result, on 28 April 2010, Mr Murphy requested a decision in accordance with Rule 112(2) EPC, provided further arguments, requested that the letter of Mr Stephen From of 26 February 2008 be corrected under Rule 139 EPC to clarify that Mr From was signing on behalf of Eyegate Pharma S.A. and requested oral proceedings.
- XIII. On 14 July 2010, the proprietor filed observations and requested oral proceedings.
- XIV. Oral proceedings were held before the Board of Appeal on 29 November 2010.

During the oral proceedings, the Mr Murphy requested (i) correction under Rule 139 EPC of the authorisation filed on 26 February 2008, (ii) that the noting of loss

of rights dated 18 February 2010 be disregarded and (iii) that the authorisation filed on 28 January 2009 be considered as validly filed. As an auxiliary measure, it was requested that the following question be referred to the Enlarged Board of Appeal:

*"a) If an authorisation is filed by facsimile, does the facsimile represent a copy in accordance with the Decision of the President [of the European Patent Office dated 12 July 2007 on the filing of authorisations (OJ Special Edition 3/2007, L1, page 128)];*

*b) If yes, is the European Patent Office obliged in accordance with the Decision to inform the representative that an authorisation has not been filed on the basis that a copy was filed but not the original;*

*c) If the European Patent Office considered a facsimile of an authorisation to be validly filed, can they then after the expiry of the original time limit raise the deficiency retrospectively without providing the representative with an opportunity to correct the deficiency."*

The proprietor requested that the appeal be deemed not to have been filed.

XV. Mr Murphy essentially argued along two different lines.

Firstly, it was argued that the Decision of the President referred to above set out the obligation to inform the new representative if the **original version** of the authorisation is missing. By failing to do so the Board committed a substantial procedural violation.

Secondly, Mr Murphy relied heavily on the principle of the protection of legitimate expectations. It was argued that the invitation to file the authorisation was misleading since the wrong form had been used. Moreover, the Board had sufficient time to issue a warning that the original version of the authorisation had not been filed. The previous indication of 06 May 2008 that the change of representative had been recorded led him to believe that a faxed copy of the authorisation would suffice. The fact that the invitation did not make reference to the need to file an original led him to believe that only the name of the authorising party had to be corrected and not the form in which the authorisation was presented.

XVI. The proprietor submitted that a professional representative should be aware of the procedure for filing an authorisation and the form in which an authorisation should be presented.

## **Reasons for the Decision**

1. *Notation*

1.1 The professional representative who acted for the opponent in the proceedings before the opposition division will be referred to hereinafter as "the previous representative".

1.2 The professional representative who purportedly acted for the opponent in proceedings after the notification

of the decision of the opposition division will be referred to hereinafter as "the new representative".

2. *The prescribed procedure in the present case with respect to the change of representation*

2.1 In the present case, a change of representation was notified by the new representative together with the notice of appeal. The previous representative did not contact the EPO to indicate that his authorisation had terminated.

2.2 In such cases, the procedure to be followed is governed by Rule 152 EPC in combination with the Decision of the President of the European Patent Office dated 12 July 2007 on the filing of authorisations (OJ Special Edition 3/2007, L1, page 128). This decision will be referred to hereinafter as "the Decision of the President L1". The relevant portions of these provisions may be summarised as follows:

Rule 152(1) sets out that the President shall determine the cases in which an authorisation shall be filed.

Rule 152(2) sets out that where a representative fails to file such an authorisation, the EPO shall invite him to do so within a period to be specified.

The Decision of the President L1 states that in cases of a change of representation, and where the EPO has not been notified of the termination of the previous representative's authorisation, *"the new representative must file, together with the notification of his appointment, an individual authorisation (original and*



*one copy) or a reference to a general authorisation already on file. If he does not, he shall be requested to do so within a period to be specified by the European Patent Office."*

2.3 Consequently, in the present case, the EPO is obliged to request the representative to file an individual authorisation or a reference to a general authorisation within a specified period. An individual authorisation must be filed as an original and one copy.

3. *Did the EPO follow the prescribed procedure?*

3.1 With the telephone consultation of 25 January 2008, the new representative was informally requested by a formalities officer of the EPO to file an authorisation. No time limit was set.

3.2 In response to this informal request, the new representative filed a statement by fax on 26 February 2008. This statement was written on notepaper bearing the letterhead "EyeGate Pharmaceuticals, Inc." and a logo "EyeGate pharma" and was signed by Mr Stephen From ("President + CEO") confirming that responsibility for the conduct of the appeal had been transferred to the new representative. Following receipt of this statement, the change of representative was entered in the Register of European Patents with effect from 25 January 2008 and both the previous representative and the new representative were informed accordingly.

3.3 Having realised that the above-mentioned statement had not been signed in the name of the registered opponent, the Board - using EPO Form 3047 - informed the new

representative that the required authorisation had not been provided and requested that an authorisation from the named opponent, namely from Eyegate Pharma S.A., be filed. A two-month time limit was set for filing any observations to this communication.

3.4 The Board accepts that EPO Form 3047 which was used to communicate this information was the incorrect form. Instead of indicating that the sanction for not providing the required authorisation would be that any procedural steps taken by the representative shall be deemed not to have been taken (in accordance with Rule 152(6) EPC), EPO Form 3047 made reference to Article 108 EPC and Rule 101(1) EPC and stated that the appeal would be rejected as inadmissible. Nevertheless, the Board is of the opinion that the invitation was clear and that the action called for was unmistakable. Whether or not the correct sanction was identified is - at least in this respect - immaterial.

3.5 The new representative submitted that the information contained in EPO Form 3047 was misleading because none of the provisions cited in Rule 101(1) EPC with which the appeal shall comply concern the filing of an authorisation.

3.6 However, the Board is convinced that the request provided on EPO Form 3047 to file an authorisation, this time in the name of the opposing party, did not contain any misleading information in this respect. What was required of the new representative was to file an authorisation in the name of the opponent. The instruction on the form was unambiguous, it fulfilled the legal obligation under Rule 152(2) to invite the

representative to file a (valid) authorisation and it was indeed effective, insofar as it prompted the representative to file a copy of the authorisation, albeit by fax. Thus, the Board considers that the prescribed procedure has been followed.

4. *Interpretation of the Decision of the President L1*

4.1 The new representative was convinced that the Decision of the President L1 places an obligation on the EPO to explicitly request the filing of an original if this has not been submitted. Specifically, it was argued that if the new representative did not file an individual authorisation **in an original version** and one copy thereof, then it is this missing act which the Decision of the President L1 obliges the EPO to draw attention to.

Since the EPO has never requested the filing of an original, either in respect of the authorisation filed on 28 February 2008 or in respect of the authorisation filed on 28 January 2009, the new representative was of the opinion that the EPO did not comply with the Decision of the President L1 and did not fulfil its legal obligation to request the filing of an original. Consequently, it was submitted that the Board had committed a substantial procedural violation.

4.2 The Board cannot agree that the Decision of the President L1 should be read in the sense indicated by the new representative. The Decision reads "[...] *the new representative must file, together with the notification of his appointment, an individual authorisation (original and one copy) or a reference to*

*a general authorisation already on file. If he does not, he shall be requested to do so within a period to be specified by the European Patent Office.*" This provision must be read in the light of Rule 152(2) EPC which sets out that where a representative fails to file an **authorisation** (when required to do so by the President), the EPO shall invite him to do so within a period to be specified. Thus, the Decision L1 merely amplifies the provisions of Rule 152(2) EPC. The Board is convinced that the Decision of the President L1 unambiguously indicates that if the new representative does not file an individual **authorisation** as prescribed then he shall be requested to do so within a specified period. These provisions suggest neither that the invitation to file an authorisation should explicitly refer to all formal requirements of an authorisation nor that the professional representative should repeatedly be given the opportunity to comply with these requirements. In the present case, where only a copy of the authorisation was filed in response to the invitation under Rule 152(2) EPC to file an authorisation, this means that the EPO is under no legal obligation to additionally request the filing of the original.

- 4.3 The alleged ambiguity in the Decision of the President L1 was the basis for the proposed referral of questions (a) and (b) to the Enlarged Board of Appeal (see Facts and Submissions, paragraph XV above). However, as shown, the Board is of the opinion that the Decision of the President L1 is itself clear and that a "uniform application of the law" is not at stake in this respect. There is therefore no basis on which to refer such questions.

5. *Legitimate expectations*

5.1 The new representative submitted that the invitation of 24 November 2008, which read "the required authorisation has not been provided. An authorisation should be filed for EyeGate Pharma S.A. SPECIFICALLY", made no reference to the need to file an original. This led him to believe that the naming of the opponent was the only defect with the authorisation. He mistakenly concluded that only the name of the authorising party had to be corrected and not the form in which the authorisation was presented. If a missing original had been a problem, then the EPO should have drawn attention to this deficiency.

Referring to decision G 2/97 of the Enlarged Board of Appeal, the new representative was of the opinion that the principle of protection of legitimate expectations required that "communications addressed to applicants must be clear and unambiguous, i.e. drafted in such a way as to rule out misunderstanding on the part of the addressee." The fact that the invitation of 24 November 2008 made no reference to the necessity to file the original version of the authorisation meant that the EPO did not act in accordance with the legitimate expectations of the user.

5.1.1 The Board is of the opinion that this detail should not have to be spelled out to a professional representative: as the proprietor has insisted, the filing of a valid authorisation for Eyegate Pharma S.A. must, of necessity, entail the filing of the original, and a professional representative should know this.

The Board considers that it should be sufficient to simply request that an authorisation be filed. The acceptable form of the authorisation is derivable from the Decision of the President L1. Moreover, the Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile (OJ Special Edition 3/2007, A3, page 7, Article 3) states that after the filing of an application, documents filed subsequently **with the exception of authorisations** and priority documents may be filed by facsimile. Furthermore, the Guidelines for Examination in the European Patent Office, Part A, Chapter IX, 2.5 makes clear that **authorisations may not be filed by fax**. So it should be clear to a professional representative that a fax filing of an authorisation will not be accepted.

- 5.2 However, the new representative further argued that the conduct of the EPO on a previous occasion had misled him into believing that the filing of an authorisation by fax would be sufficient. In particular, with letter of 06 May 2008 both the new representative and the previous representative were notified that the appointment of a representative had been recorded in the Register of European Patents as from 25 January 2008. This was the date on which the new representative informed the EPO by telephone that he had taken charge of the case; on that occasion, the supporting documentary evidence had only been filed by fax. With reference to decisions J 27/94 and J 14/94 of the Legal Board of Appeal, the new representative argued that he had derived a legitimate expectation from this course

of action and that the EPO could not now contradict its earlier conduct of the proceedings. He maintained that if the EPO had registered the change of representative in spite of the fact that the original version of the authorisation was missing, then he could not now be expected to realise just how indispensable the original version was and he could not now be expected to provide an original version when requested to file an authorisation; the path he took was to be expected in view of the history of the case.

- 5.2.1 It would appear to the Board that the formalities officer at that time overlooked the requirement that an original version must be filed and apparently due to this oversight, recorded the change of representative despite the missing original. The Board acknowledges that a change of representative should not have been registered without the necessary documentation having been filed in the prescribed form. Indeed, the fax filed by the new representative on 26 February 2008 was deficient in two aspects: the authorisation was not made out by the opponent and an original copy of the authorisation was not provided.

Nevertheless, and although the present Board would normally not employ such strong language, the Board follows the position adopted by the Legal Board of Appeal in decision J 5/02. Here, it was held that even if the EPO provided a professional representative with incorrect information, in his capacity as professional representative, he should not have come to the conclusion that the relevant legal provisions are no longer applicable. If he did not realise that the information was incorrect, he was guilty of a

fundamentally inexcusable ignorance of the law; if he did realise it was incorrect, he was not misled (reasons, section 3.2).

5.2.2 Given that professional representatives must be expected to be acquainted with all notices published by the EPO which are relevant to patent practice, the new representative should have realised that the relevant provision - in this case, the Decision of the President L1 - explicitly requires an original copy of the authorisation to be filed and that the Decision of the President A3 forbids filing of authorisations by fax. The fact that the new representative was previously notified that the change of representative had been registered as of 25 January 2008 should not have misled him into believing that a faxed version of an authorisation would suffice. Only a "fundamentally inexcusable ignorance of the law" (J 5/02) could lead him to this conclusion. The further invitation of 24 November 2008 to file an authorisation had to be understood as an invitation to file an authorisation in the prescribed form, irrespective of any previous experience which may suggest otherwise.

5.2.3 With regard to the question (c) which the new representative requested be referred to the Enlarged Board of Appeal (see Facts and Submissions, paragraph XV above), the Board considers that the manner in which this question is worded does not accurately reflect the situation encountered in the present case. Although a facsimile of the authorisation was (mistakenly) accepted by the EPO, a new request - with a time limit - was issued by the Board. In response to this request, a valid authorisation should have been filed in the



prescribed form. The Board therefore sees no reason to refer question (c) to the Enlarged Board of Appeal.

As a result, and with reference to the conclusion of paragraph 4.3 above, none of the proposed questions need to be referred to the Enlarged Board of Appeal.

5.3 With reference to decision J 13/90, the new representative was of the opinion that, in accordance with the principle of good faith, a warning of the failure to provide the original should have been issued, particularly in view of the fact that sufficient time remained for the deficiency to be corrected within the corresponding time limit.

5.3.1 In decision G 2/97 the Enlarged Board had to consider whether the principle of good faith imposes an obligation on the Board to inform the appellant of failure to pay the appeal fee when the notice of appeal was filed so early that the appellant could react and pay the fee in time, even though there was no indication from which it could have been inferred that the appellant would otherwise miss the time limit for payment of the fee.

The Enlarged Board held that "*the appellant could not reasonably have expected a warning that the appeal fee was missing because there was **no readily identifiable indication** in the appellant's notice of appeal **which would have made a clarification or reminder necessary.***" (reasons, section 3.4, emphasis added).

Citing J 12/94, the Enlarged Board held that "*[t]he protection of legitimate expectations also requires the*

*EPO to warn the applicant of any loss of rights if such a warning can be expected in all good faith. This presupposes that **the deficiency can be readily identified by the EPO** within the framework of the normal handling of the case at the relevant stage of the proceedings and that the user is in a position to correct it within the time limit" (reasons, section 4.1, emphasis added).*

*Furthermore, "[u]sers of the European patent system have the responsibility to take all necessary steps to avoid a loss of rights." The Enlarged Board saw "no justification for the suggestion that the principle of good faith imposes an obligation on a board to warn a party of deficiencies within the area of the party's own responsibility" (reasons, section 4.2).*

- 5.3.2 It has to be assumed that a professional representative is familiar with all procedural requirements and knows the form in which an authorisation should be presented.

*Applying the finding of the Enlarged Board in G 2/97, the current Board was under no obligation to warn a party of deficiencies in this respect, the party itself having the responsibility to take all necessary steps to avoid a loss of rights. Responsibility for filing a valid authorisation cannot be devolved to the Board.*

- 5.3.3 However, the Board has nevertheless considered whether the deficiency could have been readily identified by the EPO within the framework of the normal handling of the case at the relevant stage of the proceedings and therefore whether it would have been appropriate to expect a warning in all good faith.

A copy of the requested authorisation was received by fax on 28 January 2009, seven days before expiry of the two-month time limit set in the invitation of 24 November 2008. There was no readily identifiable indication in the accompanying letter of 28 January 2009 that the representative did not intend to file the original version of the authorisation within the next seven days. Since the filing of an original is obligatory, the Board could only assume that the original was on its way. The deficiency could not be readily identified by the EPO within the framework of the normal handling of the case at the relevant stage of the proceedings; the deficiency only became clear once the time limit had expired and no original had been filed.

However, this leads to the further question of whether, knowing that authorisations may not be filed by fax, the EPO should, on receipt of the faxed version, have alerted the new representative to the fact that authorisations may not be filed by fax and that the original had not yet been filed. In the opinion of the Board, in view of the fact that clear instructions exist in two separate Decisions of the President and in the Guidelines for Examination, it is perfectly legitimate for the Board to await the arrival of the original version: this is after all the only way in which an authorisation can be validly filed.

- 5.3.4 Failure to explicitly request an original after the fax copy had been received cannot therefore be seen to be an omission on the part of the EPO.

5.4 Thus, the Board considers that the principle of protection of legitimate expectations cannot be relied upon in the present case and that the filing of the authorisation in the prescribed form lies within the area of the representative's own responsibility.

6. *Additional Arguments*

6.1 The new representative further alleged that the EPO no longer enforces one of the requirements of the Decision of the President L1 in that a **copy** of the authorisation is no longer required. It was argued that "the EPO is not entitled to discriminate or place greater emphasis on one aspect of the requirements for filing authorisations to the detriment of an applicant/appellant that fails to comply with another of said requirements".

It is not necessary to take a position on this allegation since the Decision of the President A3 clearly forbids the filing of authorisations by fax. Whether or not the EPO now systematically dispenses with the need to file a copy of the authorisation is immaterial since the filing of an authorisation by fax (as performed by the new representative) is not allowable anyway.

6.2 The new representative drew attention to the fact that Mr Stephen From, as President and CEO of Eyegate Pharmaceuticals, Inc., can execute documents on behalf of both Eyegate Pharma S.A. and EyeGate Pharmaceuticals, Inc. It was submitted that if the Board had any doubts concerning the legal entity for which Mr From was signing, then evidence should have been requested to

confirm that Mr From was in fact signing as President of Eyegate Pharma S.A.

In the present case, it is immaterial who signed the authorisation and in what capacity. The problem remains that no original version of the authorisation has been filed. Whether or not evidence had been requested and/or filed to show that Mr From was indeed authorised to sign on behalf of the opponent Eyegate Pharma S.A., changes nothing in respect of the filing of an original.

The request for correction of the authorisation under Rule 139 EPC does not change this fact since the original version has never been filed and it is this deficiency which leads to the current finding.

- 6.3 The new representative also argued at length that his right to be heard had been violated since the "Noting of loss of rights pursuant to Rule 112(1) EPC" (EPO Form 3061) of 18 February 2010 was issued before he had been given an opportunity to comment on the objections.

This allegation derives from a fundamental misunderstanding of the procedure. Rule 112(1) EPC sets out that *"If the European Patent Office notes that a loss of rights has occurred [...], it shall communicate this to the party concerned."* EPO Form 3061 is used to communicate this finding. Under Rule 112(2) EPC, *"[i]f the party concerned considers that the finding of the European Patent Office is inaccurate, it may, within two months of the communication under paragraph 1, apply for a decision on the matter. The European Patent*

*Office shall take such decision only if it does not share the opinion of the party requesting it [...]*".

Thus, the "Noting of loss of rights pursuant to Rule 112(1) EPC" does not constitute a decision: the decision is only taken if requested by the party concerned. Moreover, the procedure set out in Rule 112 EPC has a built-in mechanism to guarantee that the party concerned will be able to present his comments before a decision is issued.

The right to be heard has therefore not been violated in the present case.

7. In view of the fact that the original version of the authorisation has not been provided, the question of whether the authorisation inadequately identified the new representative due to an alleged omission of his address details, as submitted by the proprietor, may be left open.
8. To conclude, the required authorisation was not filed. The legal consequence of this is that the procedural steps taken by the new representative are deemed not to have been taken (Rule 152(6) EPC). Consequently the notice of appeal is deemed not to have been filed and an appeal does not exist. In the absence of an appeal, there is no basis for payment of the appeal fee which is therefore reimbursed.
9. The Board is aware that this decision may appear particularly formalistic and disproportionately harsh. Indeed, the consequences of what may appear to a

relatively trivial oversight are, in the present case, fatal for the appeal.

However, the Board emphasises that the filing of an authorisation as prescribed by the Decision of the President L1 is of fundamental importance for establishing whether the EPO is dealing with the entitled representative person. The previously registered representative in this case had, at no time in the procedure, notified the EPO that he had relinquished his responsibility for the case. In the absence of any such notification, the EPO cannot continue prosecution of the proceedings with another named representative unless it has been conclusively shown that the new representative is indeed authorised to act for the party concerned. The only evidence that the EPO accepts in this respect is the original version of the authorisation. No other documentation will do.

**Order**

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

1. The notice of appeal of 24 January 2008 is deemed not to be filed.
2. The appeal fee is reimbursed.

The Registrar:

The Chairman:

R. Schumacher

B. Schachenmann