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**Datasheet for the decision
of 20 July 2011**

Case Number: T 1685/08 - 3.2.05

Application Number: 02751307.6

Publication Number: 1414634

IPC: B29C 45/17

Language of the proceedings: EN

Title of invention:

Process and apparatus for injection moulding

Patentee:

Cinpres Gas Injection Limited

Opponent:

GAIN Technologies

Headword:

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Relevant legal provisions:

EPC Art. 108

EPC R. 41(2)(c), 76(2)(a), 152(6) and (8)

Relevant legal provisions (EPC 1973):

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Keyword:

"Authorisation not filed"

"Notice of appeal deemed not to have been filed"

Decisions cited:

T 0323/87

Catchword:

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Case Number: T 1685/08 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 20 July 2011

Appellant: GAIN Technologies
(Opponent) 51515 Celeste Drive
Shelby Township MI 48315 (US)

Representative: Rehders, Jochen
c/o Christophersen & Partner Patentanwälte
Feldstrasse 73
D-40629 Düsseldorf (DE)

Respondent: Cinpres Gas Injection Limited
(Patent Proprietor) Units 1-4 Prosperity Court
Prosperity Way
Midpoint 18
Middlewich
Cheshire CW10 0GD (GB)

Representative: Bayliss, Geoffrey Cyril
Boult Wade Tennant
Verulam Gardens
70 Gray's Inn Road
London WC1X 8BT (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
2 July 2008 concerning maintenance of European
patent No. 1414634 in amended form.

Composition of the Board:

Chairman: W. Zellhuber
Members: H. Schram
M. J. Vogel

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division posted on 2 July 2008 maintaining European patent No. 1 414 634 in amended form. The notice of appeal was signed by Mr Ulrich Christophersen.
- II. The notice of opposition had been filed by Mr Jochen Rehders (c/o Christophersen & Partner) in the name of the appellant on 21 November 2006.
- III. During the opposition proceedings Mr Christophersen had notified the Office by a letter dated 5 July 2007 that the association Christophersen & Partner ("Zusammenschluss 193") had taken over the representation from Mr Rehders.
- IV. The representative of the respondent (patent proprietor) informed the Board by letter dated 19 February 2010 that the appellant in this case, Gain Technologies, might have gone out of business and might therefore no longer be in a position to pursue the appeal.
- V. The representative of the respondent informed the Board by letter dated 10 November 2010 that it had come to his attention that Gain Technologies was not, and never has been a legal entity, but was a trading name registered as an "assumed" name by Plastic Moulded Technologies, Inc.
- VI. In a communication of the Registry of the Board dated 14 December 2010, the representative of the appellant was requested to give notice whether or not the company

and appellant Gain Technologies (still) existed and whether or not he still represented the appellant.

- VII. The representative of the appellant stated by letter dated 16 March 2011 that he had not been the representative of the opponent when the opposition was filed.
- VIII. In a communication dated 1 April 2011, the Board noted that the new representative, Mr Christophersen, and not Mr Rehders himself, had notified the Office by a letter dated 5 July 2007 that his association had taken over all files from Mr Rehders.

The Board expressed its provisional opinion that, since Mr Christophersen was not an appointed representative of the appellant when the opposition was filed (see point VII), at the time Mr Rehders had filed the opposition he was not acting as a member of the association of Christophersen & Partner, but as the sole representative of the opponent.

The Board further noted that Mr Rehders was deemed to be authorised until the termination of his authorisation was communicated to the EPO, cf Rule 152(8) EPC. However, this had not been confirmed by filing of the original and a copy of the authorisation of the new representative, as required by Article 1(2) of the Decision of the President of the European Patent Office dated 19 July 1991 on the filing of authorisations (OJ EPO 1991, 408).

Moreover, since under the circumstances severe doubts existed whether the appellant Gain Technologies was at

present a legal entity (cf Rules 76(2)(a) and 41(2)(c) EPC) and whether the new representative was entitled to act, Mr Christophersen was requested to produce an authorisation within two months after the notification of this Communication, cf Article 1(3) of the Decision of the President of the European Patent Office dated 12 July 2007 on the filing of authorisations (OJ SE 3/2007, 128).

The Board further stated: *"If the authorisation was not in existence at the time the Notice of Appeal was filed, the appeal shall be deemed not to have been filed, cf Rule 152(6) EPC, which stipulates that if a required authorisation is not filed in due time, any procedural steps taken by the representative, other than the filing of a European patent application, shall be deemed not to have been taken, without prejudice to any other legal consequences provided for by this Convention."*

IX. No reply was given within the set time limit to the Board's communication.

Reasons for the Decision

The notice of appeal filed on 1 September 2008 was signed by Mr Christophersen. However, since no authorisation has been filed, there is no proof that the new representative was entitled to act on behalf of the appellant when the notice of appeal was filed.

It follows that the notice of appeal, and therefore the appeal itself is deemed not to have been filed, cf

Rule 152(6) EPC. Consequently, the appeal did not come into existence and the appeal fee must be refunded (see T 323/87, OJ EPO 1989, 343).

Order

For these reasons it is decided that:

1. The appeal is deemed not to have been filed.
2. Reimbursement of the appeal fee is ordered.

The Registrar:

The Chairman:

G. Nachtigall

W. Zellhuber