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**Datasheet for the decision  
of 10 September 2009**

**Case Number:** T 0465/09 - 3.2.02

**Application Number:** 04001934.1

**Publication Number:** 1442694

**IPC:** A61B 1/005

**Language of the proceedings:** EN

**Title of invention:**

Composite flexible endoscope insertion shaft with tubular substructure

**Applicant:**

Karl Storz Endovision, Inc.

**Headword:**

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**Relevant legal provisions:**

EPC Art. 108  
EPC R. 101(1)

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

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**Keyword:**

"Missing statement of grounds"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0465/09 - 3.2.02

**DECISION**  
of the Technical Board of Appeal 3.2.02  
of 10 September 2009

**Appellant:** Karl Storz Endovision, Inc.  
91 Carpenter Hill Road  
Charlton, MA 01507 (US)

**Representative:** Heuckeroth, Volker  
Witte, Weller & Partner  
Patentanwälte  
Postfach 10 54 62  
D-70047 Stuttgart (DE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 29 August 2008  
refusing European application No. 04001934.1  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Noel  
**Members:** P. L. P. Weber  
J. Geschwind

## **Summary of Facts and Submissions**

- I. The appellant contests the decision of the Examining division dated 29 August 2008 refusing European patent application No. 04 001 934.1.
  
- II. The appellant filed a notice of appeal received on 10 November 2008 and paid the appeal fee on the same day. In this notice of appeal the appellant requested that the decision be set aside. As an auxiliary measure oral proceedings were requested. The appellant further indicated that a written statement setting out the grounds of appeal would be filed in due time.
  
- III. No statement of grounds of appeal was received nor did the notice of appeal contain anything that might be considered as such statement.
  
- IV. In a communication dated 27 February 2009 sent by registered post with advice of delivery, the board informed the appellant that no statement of grounds of appeal had been received and that it was to be expected that the appeal would be rejected as inadmissible. The appellant was informed that any observations should be filed within two months. According to the acknowledgement of receipt, the appellant received the communication on 02 March 2009.
  
- V. The appellant did neither file observations nor a request of reestablishment in its rights in response to the communication.

## Reasons for the Decision

1. Article 108 EPC requires that a statement setting out the grounds of appeal shall be filed within four months of notification of the decision. Pursuant to Rule 101(1) EPC the appeal shall be rejected as inadmissible if it does not comply with Article 108 EPC.
2. In the present case no document was filed by the appellant which could be regarded as a statement setting out the grounds of appeal. Consequently the appeal has to be rejected as inadmissible pursuant to Article 108 EPC in combination with Rule 101(1) EPC.
3. In the notice of appeal the appellant requested oral proceedings as an auxiliary measure. This means that oral proceedings were requested in case the decision of the examining division could not be set aside on the basis of the grounds still to be provided.

There is no room for interpreting this request as relating to the question of the admissibility of the appeal which is a new procedural situation.

The attention of the appellant was drawn to this new procedural situation in the communication dated 27 February 2009 and it did not request oral proceedings so that the appeal can be dealt with in written proceedings only.

**Order**

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

The appeal is rejected as inadmissible.

The Registrar

The Chairman

D. Sauter

M. Noël