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**Datasheet for the interlocutory decision
of 16 November 2011**

Case Number: T 0065/11 - 3.5.03

Application Number: 05022410.4

Publication Number: 1648196

IPC: H04R 23/00

Language of the proceedings: EN

Title of invention:

Devices and transducers with cavity resonator to control 3-D characteristics/harmonic frequencies for all sound/sonic waves

Applicants:

Ramenzoni, Daniele
Chiesi, Andrea
Bianchi, Gianandrea

Headword:

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Relevant legal provisions:

EPC Art. 122(1)
EPC R. 136(1)(4), 101

Relevant legal provisions (EPC 1973):

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Keyword:

"Re-establishment of rights in respect of the time limit for filing the notice of appeal (by department of 1st instance) - null and void"

Decisions cited:

T 0473/91, T 1024/02

Catchword:

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Case Number: T 0065/11 - 3.5.03

I N T E R L O C U T O R Y D E C I S I O N
of the Technical Board of Appeal 3.5.03
of 16 November 2011

Appellant I: Ramenzoni, Daniele
(Applicant 1) Viale I Maggio, 29/B
I-43036 Fidenza (IT)

Appellant II: Chiesi, Andrea
(Applicant 2) Viale Paolo Toschi, 5
I-43100 Parma (IT)

Appellant III: Bianchi, Gianandrea
(Applicant 3) Localita Gabriellini 148
I-43032 Bardi (IT)

Representative: Lunati & Mazzoni S.r.L.
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Decision under appeal: Decision of the Formalities Officer of the
European Patent Office posted 6 December 2010
to allow the request for re-establishment of
rights.

Composition of the Board:

Chairman: A. S. Clelland
Members: A. J. Madenach
R. Menapace

Summary of Facts and Submissions

- I. The appeal fee having been paid on 9 August 2010, a notice of appeal against the decision of the examining division dated 16 June 2010 refusing the European patent application no. 05022410.4 was prepared by the appellants' representative for being delivered, together with documents concerning the European patent applications no. 06425710.8 and 10425236.6, the notice and the documents all being dated 28 July 2010, to a recognized delivery service (Rule 133 (1) EPC); a Fedex Envelope with Lettera di Vettura (way bill) no. 793767036588 and addressed to the Office was dispatched on the same day.
- II. The documents concerning the other two patent applications reached the Office's files; however the notice of appeal did not.
- III. A reasoned request for re-establishment of rights accompanied by a copy of the notice of appeal dated 28 July 2010 was filed on 30 September 2010 and the required fee was paid on the following day.
- IV. A statement setting out the grounds of appeal and accompanied by a set of 15 "New Claims" was filed on 18 October 2010.
- V. On 6 December 2010 a "Decision to allow the request for re-establishment of rights (Rule 136(4) EPC)" was issued by the Formalities Officer for the Examining Division.

Reasons for the decision

Re-establishment of rights

1. Pursuant to Rule 136(4) EPC the department competent to decide on the omitted act shall decide on the request for re-establishment of rights. It follows that the board of appeal has exclusive jurisdiction over a request for *restitutio in integrum* as regards a time limit relating to the appeal itself. The department of first instance not being competent to decide on a (notice of) appeal, an Examining Division's or a Formalities Officer's decision to re-instate the appellants into their rights (Article 122(1) EPC) concerning the filing of the notice of appeal is null and void (decision T 473/91).
2. The time limit for filing the notice of appeal under consideration expired on 26 August 2010. As the request for *restitutio* was filed on 30 September 2010, that is less than two months later, the time limits pursuant to Rule 136 (1) EPC have been observed.
3. As to the circumstances responsible for the lacking notice of appeal there are (only) two possibilities: Either the notice of appeal was actually received by the Office together with the other documents in the Fedex envelope and went missing on the internal route to the file, in which case the relevant time limit was actually observed. Or, when the Fedex envelope addressed to the Office was prepared at the representative's office, the notice of appeal was not put in that envelope. In contrast to an oversight of the time limit itself, such a handling error would have

to be considered, in the absence of any indication to the contrary, as an isolated mistake of a kind which, realistically, cannot be excluded in spite of all due care required by the circumstances (cf. decision T 1024/02 and many others)

Admissibility

4. Apart from the deficiency underlying the request for re-establishment of rights the appeal complies with the provisions referred to in Rule 101 EPC.

Order

For these reasons it is decided that:

1. The decision to allow the request for reestablishment of rights (Rule 136(4) EPC) dated 6 December 2010 and taken by the Formalities Officer for the Examining Division is declared null and void.
2. The appellants' request for re-establishment of rights in respect of the time limit for filing the notice of appeal is allowed with the effect that the notice of appeal is deemed to have been filed in time.
3. The appeal is admissible.

The Registrar:

The Chairman:

G. Rauh

A. Clelland