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**Datasheet for the decision
of 7 April 2016**

Case Number: T 2385/12 - 3.2.06

Application Number: 03752512.8

Publication Number: 1546015

IPC: B66B1/46, B66B5/02

Language of the proceedings: EN

Title of invention:

ELEVATOR EQUIPPED WITH EMERGENCY MEDICAL DEVICE

Patent Proprietor:

Physio-Control, Inc.

Opponent:

INVENTIO AG

Headword:

Relevant legal provisions:

EPC Art. 114(2)
EPC 1973 Art. 54, 56
RPBA Art. 13(1)
EPC R. 103(1)(a)

Keyword:

Late filed request before opposition division reverting to
claims as granted - abuse of procedure (no)

Reimbursement of appeal fee - (no)

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

T 0064/85, T 0123/85

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 2385/12 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 7 April 2016

Appellant: INVENTIO AG
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 12 October 2012 rejecting the opposition filed against European patent No. 1546015 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
M.-B. Tardo-Dino

Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition to European patent No. 1 546 015. In support of its request to set aside the decision and revoke the patent, the following documents were cited:

D1 US-A-5 655 625
D3 US-A-4 482 032
D7 US-A-5 319 812
D13 DE-A-196 49 552

II. The appellant further requested that the appeal fee be reimbursed due to the opposition division having committed a substantial procedural violation in admitting a late filed request at oral proceedings based on the claims as granted.

III. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that a procedural violation appeared not to have occurred and that the claims as granted appeared to be novel and to involve an inventive step over the cited prior art.

IV. Oral proceedings were held before the Board on 7 April 2016, at the end of which the requests of the parties were as follows:

The appellant requested that the decision under appeal be set aside and that the European patent No. 1 546 015 be revoked. It also requested that the main request not be admitted and the appeal fee be reimbursed due to a substantial procedural violation in that the opposition division had accepted the patent proprietor reverting

to the granted claims such that the appellant was disadvantaged.

The respondent (patent proprietor) requested that the appeal be dismissed or that the patent be maintained on the basis of the auxiliary request filed with the letter of 9 July 2013.

V. Claim 1 of the main request reads as follows:

"A method comprising:
providing a control unit (36) for controlling the operation of an elevator cab,
receiving emergency medical input signifying an emergency medical situation at a floor of a building;
overriding regular operation of an elevator cab that carries an emergency medical device in response to receiving the input; and
directing the elevator cab to that floor."

VI. The appellant's arguments may be summarised as follows:

Admittance of main request:

The proprietor's request reverting to the claims as granted was an abuse of procedure and thus should not be admitted. The request filed at oral proceedings before the opposition division was not only late but also a surprise since these claims had not been defended at any stage in the proceedings. This disadvantaged the appellant through hearing the arguments for the first time at oral proceedings. Reverting to the claims as granted was allowed only under specific conditions (see T64/85 and T123/85) which were not met in the present case. There should be a point at which previous requests are surrendered, prohibiting the return to this subject-matter.

The claims as granted were also not convergent with the previous requests on file, which was a requirement placed on late filed requests in the Guidelines. The claims of previous requests had each been made in the form of a main request which had then been replaced by a different main request, each of which had been more limited than the last and more limited than the granted form, influencing how the opposition division interpreted restrictions into the granted claims. The opposition division had also issued an opinion with its summons, in which, specifically, the remaining issues to be discussed were stated, such that the opponent had no reason to prepare for such a request being filed.

Novelty:

D1 disclosed all features of claim 1, since the fire cab's 'regular operation' comprised waiting for an emergency call in the parked, non-emergency condition. This condition was then overridden in response to an emergency. The novelty attack based on D7, although made for the first time during oral proceedings before the Board, should be admitted since D7 clearly disclosed all features of claim 1. The regular operation of the elevator cab of D7 as a bathroom was overridden in order to provide emergency medical assistance as a medical cab on receipt of an emergency input.

Inventive step:

The subject-matter of claim 1 lacked an inventive step when starting from D1 and combining this either with the general knowledge of the skilled person or with the teaching of D3 or D13. The fire cab of D1, when returning to the fire floor in its regular operation after a fire emergency, could be overridden in the event of e.g. fresh emergency medical input such that

the lift's occupants would go as fast as possible to the floor where they were needed. The objective problem of increasing availability to assist in medical emergencies after a fire was thus solved in an obvious manner. A common-sense approach starting from D1 also enabled the subject-matter of claim 1 to be reached without involving an inventive step.

The attack starting from D7 and combining this with the general knowledge of the skilled person or with the teaching of D3 or D13 should be admitted since the relevance had only recently become apparent in preparing for the oral proceedings. The regular operation of D7 was using the elevator as a bathroom, the overriding being the use of the elevator as a mobile first aid facility. Overriding of the door lock was disclosed in D7 which provided the hint for overriding of the regular bathroom use of the elevator cab. The subject-matter of claim 1 thus lacked an inventive step, whereby overriding of the regular operation was obvious either through the general knowledge of the skilled person or through the teaching of D3 or D13.

VII. The respondent's arguments may be summarised as follows:

The main request should be admitted. There had been no abuse of procedure; the proprietor had been hoping to facilitate a speedy resolution to the objections by filing amended main requests during the opposition proceedings, yet had specifically indicated that it believed the granted claims to be allowable (response to opposition dated 18 October 2011). All amended requests before the opposition division had been supported with the same arguments with respect to

novelty and inventive step to those for the claims as granted, such that no extra burden had resulted from the reversion to the granted claims, which had anyway been attacked when filing the notice of opposition. The subject-matter of claim 1 was novel over both D1 and D7. Both documents failed to disclose regular operation of the elevator cab being overridden in response to receiving emergency medical input.

The new inventive step attack starting from D7 should not be admitted; merely becoming aware of a possible attack when preparing for oral proceedings was insufficient reason for it to be admitted. Regular operation of the elevator cab in D7 comprised both use as a bathroom and use as a mobile first aid facility, such that no overriding was disclosed. Overriding of a lock did not present a credible hint to overriding regular operation of the elevator cab as a whole. Thus, there was no *prima facie* case showing that inventive step was lacking.

The subject-matter of claim 1 involved an inventive step when starting from D7 and combining this either with the general knowledge of the skilled person or with the teaching of D3 or D13. When the bathroom of D7 was in use, a 'not available' indication was displayed dissuading an observer from overriding its instantaneous operation. In preference to overriding the lock of the bathroom, other options for responding to a medical emergency were more credible, such as using the stairs for access to the emergency.

Reasons for the Decision

1. Admittance of main request
 - 1.1 According to G7/93 (see point 2.6), albeit in relation to a different situation concerning the Rule 51(6) EPC communication in examination proceedings, it is not the function of a board of appeal to review all the facts and circumstances of the case as if it were in the place of the department of first instance. A board of appeal should only overrule the way in which a department of first instance has exercised its discretion if the board concludes that it has applied the wrong principles, or not taken account of the right principles, or has acted in an unreasonable way.
 - 1.2 In the present case, the opposition division admitted a new auxiliary request at oral proceedings comprising the claims as granted, with the reasoning that the request did not introduce any new aspect which had not already been taken into account by the opponent in the notice of opposition. The opposition division had also allowed the opponent a break of 25 minutes to prepare its response to the late filed request, whereupon the opponent had indicated its readiness to present its objections.
 - 1.3 The fact that the opponent had not indicated an inability to respond to the late filed auxiliary request is key to the Board finding that the opposition division exercised its discretion reasonably and that the right to be heard was respected. Even if the late filed request was a surprise for the opponent, as contended, after the 25 minute break the opponent indicated its readiness to present its objections and gave no suggestion that it required more time. In view of the opponent's readiness to respond to the late filed request after the break and given the fact that

essentially the same arguments concerning novelty and inventive step had been offered by the proprietor in relation to the more limited requests, it is not established that the opponent was disadvantaged by the admittance of the late filed request. The originally filed opposition was, by its nature, filed against the claims as granted, such that the opponent, when faced with the request based on the claims as granted, simply had to refresh its recollection of the specific objections already on file.

- 1.4 No procedural abuse can be ascribed to the patent proprietor, as alleged by the appellant, under the circumstances of the present case, as seen in the following paragraphs.

Firstly, the objection raised against the claims of the request on file (prior to those as granted having been filed) related to added subject-matter under Article 123(2) EPC, such that reverting to the claims as granted clearly overcame this objection and can be seen as an appropriate response thereto.

Secondly, despite serially filing a new main request twice in response to objections raised to previous requests, at no juncture did the proprietor unequivocally surrender the claims as granted, in fact specifically maintaining that it considered the granted claims as allowable but filing amended requests which may have expedited the procedure.

Thirdly, the suggestion that the proprietor was deliberately attempting to mislead the opponent is not supported by any evidence and remains a speculation. The proprietor's requests at each stage of the proceedings were in response to objections raised to

the previous main request on file and, specifically when reverting to the claims as granted, represented a response to overcome an objection to the previous main request under Article 123(2) EPC.

1.5 The opponent's suggestion that there should be a point at which previous requests are surrendered prohibiting the return to this subject-matter is not accepted. Such a prescriptive formula, providing concrete guidance on when requests can be filed, is not foreseen within the EPC, particularly in view of the exercise of discretion provided to the EPO in Article 114(2) EPC, through which facts and evidence not submitted in due time may be disregarded. It would also be against the general principle that a surrender of a right cannot be presumed. It is furthermore noted that instances where discretion may be exercised by a department of the EPO have not been formulated in a concrete manner since the particular way in which the discretion may be exercised is necessarily dependent on the specific circumstances of the case in hand. There may indeed be instances where reverting to the claims as granted at a late stage of an opposition procedure would be seen as an abuse of procedure and such a request would thus not be admitted, yet the present specific circumstances indicate this not to be the case.

1.6 The opponent's argument that abuse of procedure was evidenced by the claims as granted not being convergent with previous requests on file was not convincing. The passage of the Guidelines requiring convergent claims (H-III, 3.3.1.2) states that the requests should 'normally represent a convergent development'. It is thus clear that this is not an absolute requirement and is also subject to the discretion of the department in deciding whether to admit such non-convergent claims.

In the present case, the opposition division evidently saw the convergence requirement as unnecessary, the detailed reasoning however not being given. The Board however notes that the above passage of the Guidelines would logically apply to claims filed for the first time (and also seen by the opponent for the first time) at a late stage, rather than the present situation where the proprietor reverted to claims previously on file (in this case the claims as granted).

- 1.7 The opponent's further argument, that the claims of previous requests had been more limited than the granted form, influencing how the opposition division then interpreted the granted claims, is mere conjecture. Whilst it is indeed true that previous requests had been more limited, indeed with reference to the normal operation of an elevator in relation to reacting to calls at various floors, the opposition division's opinion on the claims as granted was on the wording of these claims and these claims alone. No evidence exists that the opposition division interpreted the claims as granted in a manner more restricted than that warranted by the very wording of the granted claims, such that this objection is not supported by the only reasoning given in the decision, which refers instead to normal operation excluding being 'resting in a parking position'.

- 1.8 The opponent further argued that reverting to claims as granted was allowed only under specific conditions (see for example T64/85 and T123/85) which were not met in the present case. Whilst it is true that each of the above cases disclosed specific circumstances under which the reversion to granted claims was found to be acceptable, drawing a corollary that there are no other circumstances under which reverting to granted claims

was possible is not accepted. The discretion in admitting or not of late filed requests is, according to Article 114(2) EPC, left to the discretion of the responsible authority. In the present case that authority was the opposition division, and in view of the specific circumstances, as detailed in points 1.3 to 1.7 above, it reasonably exercised its discretion to admit a late filed request based on claims as granted.

- 1.9 For the above reasons, the opposition division is found to have exercised its discretion both in accordance with the right principles and in a reasonable way. The main request is thus admitted into the present appeal proceedings.

Main request

2. Novelty (Article 54 EPC 1973)

The subject-matter of claim 1 is novel over D1.

- 2.1 D1 discloses the following features of claim 1:
- a method (col.1, line 60 - col.2, line 4) comprising providing a control unit (17) for controlling the operation of an elevator cab (F),
 - receiving emergency medical input signifying an emergency medical situation at a floor of a building;
 - directing the elevator cab (F) to that floor.
- This much is also accepted by both parties.

D1 fails to disclose:

- overriding regular operation of an elevator cab that carries an emergency medical device in response to receiving the input.

Of importance is how 'regular operation' is understood. For the fire cab F, regular operation can be understood

as pertaining to what the fire cab is designed to do when operating in a regular mode, and thus includes the entirety of:

- awaiting an emergency signal in the single landing 20;
- moving to an elevator shaft for exchanging with a 'normal' cab;
- moving to the emergency floor; and
- returning to the single landing 20 to await a further signal.

It thus follows that D1 lacks an overriding of this 'regular operation' since all parts of the fire cab's operation as disclosed in D1 are considered to comprise its regular operation, not merely a single element of its operation. Although the claim itself is broad, as also argued by the appellant, this does not allow simply isolated items of the fire cab's operation to be selected as constituting 'regular operation' and equated with claim 1.

The fire cab's intended operative function clearly includes responding to an emergency situation, not simply awaiting an emergency signal on the single landing 20. The opponent argues that regular operation of the fire cab could be solely sitting stationary awaiting an emergency signal, yet this appears to be a very artificial interpretation of the expression 'regular operation' since sitting stationary is rather only one aspect of its regular operation.

2.2 D1 thus fails to disclose an overriding of regular operation, i.e. the normal operation as discussed above, of an elevator cab, such that the subject-matter of claim 1 is novel over D1 (Article 54 EPC 1973).

2.3 Admittance of D7

The new line of novelty attack based on D7 is not admitted into the proceedings since D7 does not *prima facie* unambiguously disclose all features of claim 1.

2.3.1 D7 had not been included in the appellant's arguments on novelty prior to the oral proceedings and thus involved an amendment to its case. According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. For the introduction of such a new attack during the oral proceedings, the Board would at least have to be presented with a case that novelty of the subject-matter of claim 1 was highly likely to be prejudiced, at least *prima facie*, otherwise the procedural economy of the appeal proceedings would be adversely affected.

2.3.2 It is undisputed that D7 discloses the following features of claim 1:

- a method comprising providing a control unit (27) for controlling the operation (col. 4, lines 3 to 6) of an elevator cab (14),
- receiving emergency medical input signifying an emergency medical situation at a floor of a building (col. 5, line 67 to col. 6, line 19);
- directing the elevator cab (14) to that floor.

D7 however *prima facie* fails to disclose the feature of overriding regular operation of an elevator cab that carries an emergency medical device in response to receiving the input.

D7 discloses the operation of the elevator as both a mobile bathroom and a mobile first aid facility, such

that its regular operation comprises both of these functions. Therefore, at least *prima facie*, the regular operation of the elevator is not disclosed to be overridden at any time in response to emergency medical input, the response being part of its regular operation.

2.3.3 The opponent's assertion that the regular operation of the elevator cab in D7 solely comprises the operation as a bathroom is not persuasive. Col. 5, lines 67 to 68 discloses the operation of the elevator as a mobile first aid facility in such a way that this function is clearly not secondary to its operation as a bathroom, rather as a function of equal importance. Therefore, the operation as a mobile first aid facility is to be considered as part of the regular operation of the elevator, this regular operation thus *prima facie* not being overridden in D7 in response to an emergency.

2.3.4 It follows, therefore, that D7 fails *prima facie* to prejudice novelty of the subject-matter of claim 1. The Board thus exercised its discretion under Article 13(1) RPBA not to admit the appellant's novelty attack based on D7 into the proceedings.

3. Inventive step (Article 56 EPC 1973)

3.1 D1 in combination with the knowledge of the skilled person

3.1.1 As found under point 2.1 above, D1 fails to disclose the following feature of claim 1:
- overriding regular operation of an elevator cab that carries an emergency medical device in response to receiving the input.
Starting from D1 and with this differentiating feature

in mind, the objective technical problem to be solved may be seen as to increase the availability of the elevator to assist in medical emergencies after a fire. The response of the fire cab after a fire is clearly described from col. 7, line 23 to col. 8, line 65 and comprises a single procedure taking the fire cab back to the fire floor. There is no suggestion that this procedure may be overridden. Furthermore, col. 11, lines 51 to 61 discloses the commandeering of a second elevator cab in order to provide medical emergency response whilst the fire cab is responding to the fire emergency. The skilled person would see this response as the obvious, and indeed disclosed, way of responding in order solve the formulated objective problem.

- 3.1.2 The opponent's contention that the fire cab of D1, when returning to the fire floor in its regular operation after a fire emergency, could be overridden in the event of fresh emergency medical input is not seen as an obvious modification to what is disclosed in D1. The return of the fire cab to the single landing 20 after an emergency is disclosed in considerable detail from col. 7, line 23 to col. 8, line 65, such that the skilled person would not consider overriding this process without considerable guidance. A teaching away from such a solution is indeed suggested in D1 due to the disclosure of a second elevator cab being available should both a fire emergency and a medical emergency require simultaneous response (see col. 11, lines 51 to 61). The appellant did not indicate any disclosure in D1 which would guide a skilled person to carrying out an alteration of the fire cab control in D1 to perform the suggested operation, or indeed that such would be a readily available option.

3.1.3 In addition it is noted that D1 discloses a very specific way of responding to an emergency, through the substituting of a passenger carrying elevator cab with a dedicated fire cab. This has the consequence that the alternative 'common-sense' approach to reaching the subject-matter of claim 1 when starting from D1, as argued by the appellant, is very much a hindsight-based approach and thus cannot be considered obvious to the skilled person, specifically because it simply ignores the aforementioned disclosure of D1.

3.1.4 As a consequence the subject-matter of claim 1 involves an inventive step when starting from D1, given the problem to be solved and taking account of the general knowledge of the skilled person.

3.2 D1 in combination with the teaching of D3 or D13

3.2.1 The same conclusion applies when starting from D1, given the problem of increasing the availability of the elevator to assist in medical emergencies after a fire, and combining this with the teaching of D3 or D13. Whilst D3 and D13 do indisputably disclose an overriding of the regular operation of the elevators therein when an emergency response is required (D3: col. 3, lines 21 to 35; D13: col. 2, lines 2 to 6), the documents provide no hint of how to modify the method known from D1, in which a dedicated fire cab responds to the emergency need as part of its regular operation, in a way which would allow the skilled person to arrive at the subject-matter of claim 1 without the exercise of inventive skill.

3.2.2 Consequently, the subject-matter of claim 1 involves an inventive step when starting from D1, given the problem to be solved and considering the technical teaching of

D3 or D13.

3.3 Admittance of attack based on D7

The new line of inventive step attack based on D7 was admitted into the proceedings since *prima facie* it appeared to disclose a starting point more promising than D1 and showed definite promise in the formulation of an inventive step attack, not least since (as opposed to D1) it did not require a separate fire cab to be set into operation and itself contained medical equipment which could be used in an emergency. Also, whilst D7 had not previously been used as a starting point for an inventive step attack against claim 1, it had been used in the grounds of appeal in combination with D1 to attack inventive step of the subject-matter of claim 12 (a system claim for performing the method of claim 1).

3.3.1 The inventive step attack starting from D7 comprised an amendment to the appellant's case and its admittance was thus at the Board's discretion according to Article 13(1) RPBA.

3.3.2 When considering a situation in which the bathroom of D7 is in use and a medical emergency arises, the scenario of fire department personnel overriding the lock of the bathroom in order to commandeer the lift for responding to the medical emergency also appears to represent a further indicator for attacking the presence of an inventive step in the subject-matter of claim 1.

3.3.3 The proprietor's argument that no overriding of regular operation was disclosed in D7 was not accepted. The disclosed overriding of the lock *prima facie* suggested

that overriding of the regular operation of the elevator cab may be obvious to the skilled person reading the document.

3.3.4 As a consequence of *prima facie* presenting a promising starting point and potentially being of such a nature that it appeared highly likely to prejudice maintenance of the patent, the Board exercised its discretion and admitted the new inventive step attack starting from D7 into the proceedings (Article 13(1) RPBA).

3.4 D7 in combination with the knowledge of the skilled person

3.4.1 As found under point 3.3.2, although D7 discloses overriding for a particular purpose, D7 fails to disclose the following feature of claim 1:
- overriding regular operation of an elevator cab that carries an emergency medical device in response to receiving the input.

Based on this differentiating feature, the objective technical problem may be seen as to improve the availability of the elevator cab for an emergency medical situation.

3.4.2 The scenario presenting the starting point from D7 is that the elevator cab is occupied in its function as a mobile bathroom (i.e. part of its regular operation) when emergency medical input is received. The overriding of regular operation would require the overriding of the elevator cab lock in order to gain access to the elevator cab and utilise it for providing medical assistance.

3.4.3 The appellant's proposed scenario of fire department personnel overriding the elevator cab lock on a floor

where the emergency was not located, in order to access the cab and use it to ride to the medical emergency in order to use the emergency equipment specifically contained in the cab, is however unrealistic in view of the other seemingly more straightforward possible courses of action in the event of a medical emergency, as also mentioned by the respondent. Firstly, the necessity of overriding a lock on a bathroom door when the bathroom is in use is counter-intuitive to typical human behaviour in such circumstances, whereby alternative actions to breaking-into the bathroom would be preferred. This might include simply using alternative access to the location of the medical emergency via stairs or even using an alternative elevator (if present). Indeed, alternatively to overriding of the door lock by the fire department personnel, nothing points to the fact that the bathroom user would not be in a position to open the door in response to a request, which would consequently not necessitate the door lock to be overridden. Therefore the very particular scenario proposed, in order to render the subject-matter of claim 1 obvious when starting from D7, is not only extremely specific (requiring the bathroom to be occupied on a different floor than the medical emergency when the medical emergency arises and the door lock then needing to be overridden due to some inability or unwillingness of the bathroom user who cannot open the door), but also requires action of personnel which is not considered reasonable in such circumstances (i.e. breaking-in to an occupied bathroom when other alternative courses of action are immediately available), and therefore is not considered obvious to the skilled person.

3.4.4 The appellant's line of argument, that the disclosure of overriding of the door lock provided the hint for

overriding of the regular bathroom operation of the elevator cab as required by the claim, was not persuasive. The action of overriding the door lock itself is a highly questionable action for fire department personnel in the particular scenario described by the appellant, as found in point 3.4.3 above. Furthermore, to reach the subject-matter of claim 1, after having overridden the door lock to gain access to the elevator, the elevator would have to be used to reach the floor at which the medical emergency was to be found. Such a commandeering of the mobile bathroom when it is in use is not considered a course of action to which the skilled person would be obviously guided if trying to solve the objective technical problem. The scenario envisaged by the appellant is thus considered to be rather artificial and related more to actions which would have to be carried out, merely with hindsight, to arrive at the subject-matter of the claim, rather than based on an objective approach to inventive step driven by specific indications in the prior art teaching a skilled person a route towards the invention.

3.4.5 As a consequence the subject-matter of claim 1 involves an inventive step when starting from D7, given the problem to be solved and considering the general knowledge of the skilled person.

3.5 D7 in combination with the teaching of D3 or D13

3.5.1 The same conclusion applies when starting from D7, formulating the technical problem as above and considering the teaching of D3 or D13, as was argued by the appellant. Whilst D3 and D13 do disclose an overriding of the regular operation of the elevators when an emergency response is required, the documents

provide no hint of how to modify the method known from D7, in which the regular operation of a mobile bathroom suited to mobile first aid response could be modified so as to override the regular operation, and thus reach the subject-matter of claim 1 without the use of inventive skill for similar reasons as given above.

3.5.2 Consequently, the subject-matter of claim 1 involves an inventive step when starting from D7, given the problem to be solved as stated by the appellant and combining this with the teaching of D3 or D13.

3.6 In summary, therefore, the subject-matter of claim 1 involves an inventive step (Article 56 EPC 1973) over the prior art cited and the arguments presented.

4. Refund of appeal fee

4.1 According to Rule 103(1)(a) EPC, the appeal fee shall be reimbursed *inter alia* where the appeal is allowable, if such reimbursement is equitable by reason of a substantial procedural violation. In the present case, lacking an allowable appeal, this condition for reimbursement is not met. The request for refund of the appeal fee is therefore refused.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated