

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 25 November 2016**

**Case Number:** T 0236/15 - 3.5.02

**Application Number:** 07728664.9

**Publication Number:** 2016648

**IPC:** H01R13/24

**Language of the proceedings:** EN

**Title of invention:**

CONNECTION DEVICE FOR ELECTRICAL OR ELECTRONIC CONNECTIONS

**Patent Proprietor:**

Hypertac S.p.a.

**Opponents:**

ODU-  
Steckverbindungssysteme GmbH & Co. KG  
Ferton Holding SA

**Headword:**

**Relevant legal provisions:**

EPC Art. 108, 122

**Keyword:**

Admissibility of appeal - notice of appeal - filed within time  
limit (no)

Re-establishment of rights - all due care (no)

**Decisions cited:**

T 0445/98, J 0021/80

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 0236/15 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 25 November 2016**

**Appellant:** Hypertac S.p.a.  
(Patent Proprietor) Via P.D. Da Bissone 7A  
16153 Genova (IT)

**Representative:** Porsia, Attilio  
Via Caffaro 3/2  
16124 Genova (IT)

**Respondent:** ODU-  
(Opponent 1) Steckverbindungssysteme GmbH & Co. KG  
Pregelstrasse 11  
84453 Mühldorf a. Inn (DE)

**Representative:** Huebner, Stefan Rolf  
sr Huebner & Kollegen  
Prinzregentenplatz 11  
81675 München (DE)

**Respondent:** Ferton Holding SA  
(Opponent 2) Rue Saint-Maurice 34  
2800 Delémont (CH)

**Representative:** Müller Schupfner & Partner  
Patent- und Rechtsanwaltspartnerschaft mbB  
Bavariaring 11  
80336 München (DE)

**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 12 November  
2014 revoking European patent No. 2016648  
pursuant to Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman**            M. Léouffre  
**Members:**            G. Flyng  
                              W. Ungler

## **Summary of Facts and Submissions**

- I. The appeal of the patent proprietor is directed against the decision of the Opposition Division of the European Patent Office posted on 12 November 2014 revoking European patent No. 2 016 648 pursuant to Article 101(2) EPC.
  
- II. Attached to the notice of appeal filed on 30 January 2015, the appellant filed a letter explaining that on 16 January 2015 the representative, who was the sole European Patent Attorney in the representative's office, had been submitted to a surgical operation and was able to return to work only on 30 January 2015. Upon instructions received from the appellant he immediately prepared and filed the notice of appeal. In support of these explanations a medical certificate was submitted.
  
- III. On 13 March 2015 the appellant filed a statement of grounds of appeal.
  
- IV. With a communication dated 16 March 2015 the Board of Appeal informed the appellant that the notice of appeal had not been filed within the time limit pursuant to Article 108, first sentence, EPC and that it was therefore to be expected that the appeal would be rejected as inadmissible. In addition the appellant's attention was drawn to the requirements for requesting re-establishment of rights as laid down in Article 122 EPC and Rule 136 EPC. Reference was made in particular to the requirement to pay the fee for re-establishment of rights.
  
- V. The fee for the request for re-establishment of rights was paid on 26 March 2015.

- VI. With a communication dated 16 November 2015 the Board of Appeal informed the appellant *inter alia* that the notice of appeal was filed and the appeal fee paid on 30 January 2015, i.e. outside the two month term under Article 108 EPC. Thus, since the notice of appeal had not been filed in due time, there was no admissible appeal, unless the appellant's request for re-establishment was allowed. Furthermore, reference was made to the requirement to have taken all due care according to Article 122 EPC and the appellant was invited to clarify within a time limit of two months
- (a) the circumstances surrounding the detection of the illness, in particular to answer the question whether the representative was prevented from filing the notice of appeal after detection of the illness, but before starting the medical treatment, and
  - (b) to answer the questions whether there was any monitoring system in the office of the representative and how the system was handled while the representative was ill, and whether there was anybody available to act as a substitute for the representative at least for urgent cases.
- VII. With a letter dated 23 March 2016 the appellant submitted further explanations limited to technical topics, without providing any reply to the questions raised in the Board's communication relating to re-establishment of rights.
- VIII. With a summons to oral proceedings the appellant was informed that the request for re-establishment of rights was likely to be rejected since the appellant had not provided additional information and/or evidence

showing that the appellant was unable to observe the time limit in spite of having taken all due care required by the circumstances. Furthermore, it was pointed out that if the request for re-establishment was rejected, the appeal would be deemed not to have been filed and the appeal fee would therefore be reimbursed.

- IX. The respondent has requested that both the request for re-establishment or rights and the appeal be rejected as inadmissible.
  
- X. With a fax dated 11 November 2016 the appellant informed the Board that they would not be attending the oral proceedings. Thus, the oral proceedings appointed for 16 November 2016 were cancelled.

### **Reasons for the Decision**

- 1. Admissibility of the appeal
  - 1.1 According to Article 108, first sentence, EPC the notice of appeal has to be filed at the EPO within two months of notification of the decision. The second sentence of this provision stipulates that the notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid.
  
  - 1.2 In the present case the decision under appeal was issued on 12 November 2014. According to the information on file (advice of receipt) the decision was notified to the patent proprietor's representative on 20 November 2014. Thus, according to Rule 126(2) EPC the time limit for filing the appeal expired on 22 January 2015. The notice of appeal was filed and the

appeal fee paid on 30 January 2015, i.e. outside the two month term under Article 108 EPC.

- 1.3 Since the notice of appeal was not filed in due time, there is no appeal in existence (cf. T 445/98), unless the appellant's request for re-establishment is allowed.
  
2. Re-establishment of rights
  - 2.1 Under Article 122 EPC, a request for re-establishment is only to be allowed if the party in question was unable to observe the time limit in spite of having taken all due care required by the circumstances. It is self-evident that sudden illness, over which a person has no control, may excuse that person from having to take measures to ensure that time limits are met (cf. for instance T 1401/05).
  
  - 2.2 In the present case the representative's statement that, because of his illness, he had been forced to discontinue his professional work, does not by itself sufficiently establish that all due care required by the circumstances was taken. With the communication dated 16 November 2015 the Board of Appeal invited the appellant to provide additional information/evidence showing that all due care required by the circumstances had been taken. In particular it was pointed out that there was not sufficient information on file to answer the question whether the illness could be regarded as a "sudden illness". Furthermore, the appellant was invited to clarify within a time limit of two months
    - (a) the circumstances surrounding the detection of the illness, in particular to answer the question whether the representative was prevented from



filing the notice of appeal after detection of the illness, but before starting the medical treatment, and

- (b) to answer the questions whether there was any monitoring system in the office of the representative and how the system was handled while the representative was ill, and whether there was anybody available to act as a substitute for the representative at least for urgent cases.

- 2.3 Since the appellant, who bears the burden of making the case, did not reply to the above communication by providing additional information and/or evidence he failed to show that he was unable to observe the time limit in spite of having taken all due care required by the circumstances. Consequently, the request for re-establishment of rights is to be rejected (Article 122(2), second sentence, EPC).
- 3. Since the appeal is deemed not to have been filed, the appeal fee is to be reimbursed (cf. J 21/80, OJ EPO 1981, 101).

## Order

### For these reasons it is decided that:

1. The request for re-establishment of rights is rejected.
2. The appeal is deemed not to have been filed.
3. The appeal fee is reimbursed.

The Registrar:

The Chairman:



U. Bultmann

M. Léouffre

Decision electronically authenticated