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**Datasheet for the decision
of 7 October 2019**

Case Number: T 0767/18 - 3.5.04

Application Number: 13716288.9

Publication Number: 2839662

IPC: H04N9/73, H04N9/67

Language of the proceedings: EN

Title of invention:

METHOD FOR WHITE BALANCE OF AN IMAGE CONSIDERING THE COLOURING
OF THE MOTOR VEHICLE

Applicant:

Connaught Electronics Ltd.

Headword:

Relevant legal provisions:

EPC Art. 108 sentence 1, 108 sentence 2
EPC R. 99(1) (b), 99(1) (c)

Keyword:

Debit order for payment of appeal fee - valid means for filing
notice of appeal (no)
Existence of appeal (no)
Reimbursement of appeal fee (yes)

Decisions cited:

G 0001/18, J 0019/90, J 0016/94, T 0041/82, T 0275/86,
T 0371/92, T 0778/00

Catchword:



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Case Number: T 0767/18 - 3.5.04

D E C I S I O N
of Technical Board of Appeal 3.5.04
of 7 October 2019

Appellant: Connaught Electronics Ltd.
(Applicant) Dunmore Road
Tuam, County Galway (IE)

Representative: Jauregui Urbahn, Kristian
Valeo Schalter und Sensoren GmbH
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 27 November
2017 refusing European patent application
No. 13716288.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman C. Kunzelmann
Members: T. Karamanli
A. Dumont

Summary of Facts and Submissions

- I. In its decision posted on 27 November 2017, the examining division refused European patent application No. 13 716 288.9 pursuant to Article 97(2) EPC.
- II. On 6 February 2018, the appeal fee was paid by means of an electronically filed debit form. Said form cited the above application number, and contained the name and address of the representative of the applicant.
- III. By a communication dated 28 March 2018, the registrar of the board informed the appellant that it appeared from the file that the notice of appeal had not been filed but the appeal fee had been paid and that it was therefore to be expected that the appeal would be rejected as inadmissible pursuant to Article 108, first sentence, EPC in conjunction with Rule 101(1) EPC. The appellant was also informed that any observations had to be filed within two months from notification of the communication. No reply was received.
- IV. By a communication dated 22 January 2019, the board informed the appellant that, in view of the jurisprudence of the Boards of Appeal (e.g. decision T 778/00, OJ EPO 2001, 554), the mere payment of an appeal fee did not constitute a valid means of filing an appeal, and issued its reasoned preliminary opinion that no notice of appeal had been filed in the present case.

The board also referred to then pending case G 1/18 in which, in accordance with Article 112(1)(b) EPC, the President of the European Patent Office had referred the following point of law to the Enlarged Board of Appeal:

"If notice of appeal is filed and/or the appeal fee is paid after expiry of the two-month time limit under Article 108 EPC, is the appeal inadmissible or is it deemed not to have been filed, and must the appeal fee be reimbursed?" (OJ EPO 2018, A71)

The board noted that the questions referred to the Enlarged Board of Appeal did not apply exactly to the present case but that the finding of the Enlarged Board of Appeal on the referred questions might - partly - also apply to the present case. Therefore, the board considered it appropriate to suspend the present appeal proceedings until the Enlarged Board of Appeal had issued its opinion in case G 1/18.

- V. No reply was received to the board's communication.

Reasons for the Decision

1. The Enlarged Board of Appeal has issued its opinion G 1/18 dated 18 July 2019 (to be published in the OJ EPO). Hence, there is no longer any reason to suspend the present appeal proceedings.
2. Pursuant to Article 108, first sentence, EPC, notice of appeal has to be filed within two months of notification of the decision. According to Article 108, second sentence, EPC, notice of appeal is not deemed to have been filed until the fee for appeal has been paid.
3. In the present case, the appeal fee was paid by means of an electronically filed debit form on 6 February 2018 and, therefore, within the two-month period under Article 108, first sentence, EPC which, in accordance

with Rule 131(2), (4) EPC in combination with Rule 126(2) EPC, expired on 7 February 2018.

4. Article 108, first sentence, in conjunction with Rule 99(1) EPC prescribes the content of the notice of appeal. Pursuant to Rule 99(1)(b) and (c) EPC, the notice of appeal must contain an indication of the decision impugned, and a request defining the subject of the appeal, respectively. For a notice of appeal to be valid it must at least contain an explicit declaration of the wish to contest a particular decision by means of an appeal (see T 371/92, OJ EPO 1995, 324, point 3.5 of the Reasons).
5. In the present case, it is undisputed that only a debit order was filed within the two-month period under Article 108, first sentence, EPC and that no other document was filed after that period.
6. The debit order does not explicitly refer to any decision, nor does it contain a request defining the subject of the appeal. A request that an appeal fee be debited together with an application number cannot be a substitute for an explicit and unequivocal statement expressing the definite intention to contest an appealable decision (see decisions J 19/90, J 16/94, OJ EPO 1997, 331, point 4 of the Reasons, and T 778/00, OJ EPO 2001, 554, point 2.2 of the Reasons). Payment of the appeal fee may at the most imply that the appellant intends to file an appeal because, once an appeal fee is paid, it remains free to decide whether or not it wishes to lodge an appeal (see T 371/92, loc. cit., point 3.6 of the Reasons, and T 778/00, loc. cit., point 2.3 of the Reasons). It follows that payment of the appeal fee does not in itself constitute the notice of appeal required to institute appeal proceedings (see

T 778/00, loc. cit., point 2.4 of the Reasons, referring to several further decisions).

However, in decision T 275/86 the board held that payment with EPO Form 4212 05.80 should be accepted as a notice of appeal since it contained essentially the same information as was required in a notice of appeal within the meaning of Rule 64 EPC 1973. As correctly pointed out in decision T 778/00, decision T 275/86 remains an isolated ruling and subsequent case law has followed decision J 19/90 (see T 778/00, loc. cit., point 2.4 of the Reasons).

7. It follows from the above that the debit order in the present case does not constitute the notice of appeal required to institute appeal proceedings. Nor is there any other document on file which contains anything that could be regarded as notice of appeal. Nor has the applicant submitted that notice of appeal was filed in the present case. The board therefore concludes that the decision of the examining division has not been appealed at all. It also follows that the legal fiction of Article 108, second sentence, EPC that notice of appeal is not deemed to have been filed until the fee for appeal has been paid does not apply in the present case.
8. Since there is no appeal in the present case, the fee for appeal never fell due and thus was paid without a legal basis. The appeal fee paid has therefore to be reimbursed (T 41/82, OJ EPO 1982, 256, point 1 of the Reasons; see also G 1/18, Conclusion 3).

Order

For these reasons it is decided that:

1. No appeal has been filed.
2. The reimbursement of the fee for appeal is ordered.

The Registrar:

The Chairman:



K. Boelicke

C. Kunzelmann

Decision electronically authenticated