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**Datasheet for the decision
of 12 November 2024**

Case Number: T 1114/22 - 3.2.02

Application Number: 12741053.8

Publication Number: 2731500

IPC: A61B5/048, A61B5/145

Language of the proceedings: EN

Title of invention:

PREDICTING THE LEVELS OF SUBSTANCES SUCH AS CORTISOL FROM EEG
ANALYSIS

Applicant:

Gandhi, Krishna

Headword:

Relevant legal provisions:

EPC R. 112(2)

Keyword:

Loss of rights - confirmed

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1114/22 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 12 November 2024

Appellant:
(Applicant)

Gandhi, Krishna
25 Locket Road
Harrow
Middlesex HA3 7ND (GB)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 3 February 2022
refusing European patent application No.
12741053.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: S. Böttcher
N. Obrovski

Summary of Facts and Submissions

- I. The applicant filed an appeal against the decision of the examining division to refuse the application.
- II. In a communication pursuant to Rule 100(2) EPC dated 10 May 2024, the Board gave its reasoned preliminary opinion that the appeal would most likely have to be dismissed. The appellant was informed that a reply to this communication had to be filed within a period of four months, and that failure to reply in due time would result in the application being deemed to be withdrawn under Rule 100(3) EPC.
- III. In a communication dated 31 July 2024, the Board drew the appellant's attention to the fact that it had neither filed a request for oral proceedings nor a reply to the Board's communication dated 10 May 2024. The Board also reminded the appellant of the fact that failure to reply to this communication within a period of four months from notification would result in the application being deemed to be withdrawn under Rule 100(3) EPC, which would also lead to the termination of the present appeal proceedings. The Board further informed the appellant that according to Rule 126(2) EPC, where notification is effected by postal services with registered letter, a document is deemed to be delivered to the addressee on the date it bears, unless it has failed to reach the addressee. The Board further invited the appellant, if it wanted to avoid the aforementioned loss of rights pursuant to Rule 100(3) EPC, to file a reply to the Board's communication dated 10 May 2024, possibly including a request for oral proceedings, before expiry of the

aforementioned time limit of four months.

- IV. On 11 September 2024 at 0:15 hrs (CEST), the appellant filed a response to the communication pursuant to Rule 100(2) EPC.
- V. On 16 September 2024, the Board issued a loss of rights communication pursuant to Rule 112(1) EPC, stating that the application was deemed to be withdrawn under Rule 100(3) EPC due to the appellant's failure to reply in due time to the communication of 10 May 2024 ("date of receipt of your observations: 11.09.2024"). It was further stated in this communication that the appeal proceedings were, subject to the provisions of Rule 112(2) and 135 EPC, terminated. In an additional explanation annexed to this note, the Board explained that the appellant's letter dated 9 September 2024 had been received only on 11 September 2024 at 0:15 hrs.
- VI. The appellant lives in the United Kingdom. In a letter dated 4 November 2024 the appellant requested that the rejection of their appeal submission be reconsidered. The appellant argued that the late submission was caused by a misunderstanding since the communication dated 10 May 2024 did not provide explicit instructions regarding the applicable time zone.

Reasons for the Decision

- 1. Under Rule 112(2) EPC, if the party concerned considers that the finding of a loss of rights is inaccurate, it may, within two months of the communication of loss of rights under Rule 112(1) EPC 1, apply for a decision on the matter.

2. The Board interprets the appellant's letter of 4 November 2024, which was filed within the two-month time limit under Rule 112(2) EPC, as a request for a decision under Rule 112(2) EPC.
3. In her letter of 4 November 2024, the appellant stated that the Board's communication dated 10 May 2024 did not provide explicit instructions regarding the applicable time zone, which led to a misunderstanding by the appellant and caused the late filing. Furthermore, the examiner's mistake had to be addressed and rectified.
4. The Board disagrees. The relevant time for the purpose of the law is the time at the European Patent Office (see T 744/11, Reasons 1.2). The Boards of Appeal of the European Patent Office are located in Haar near Munich. At this location, Central European Time (CET) or Central European Summer Time (CEST) is observed. It is self-evident that time limits set by a Board of Appeal of the European Patent Office relate to the time zone in which this authority is located. Hence, there was no need to explicitly refer to the applicable time zone in the Board's communication.
5. The appellant's further argument about the need to address and rectify the examiner's mistake does not concern the finding of a loss of rights because of the appellant's failure to reply to the Board's communication under Rule 100(2) EPC in due time. Hence, this argument bears no relevance for the present decision, which only concerns the correctness of the notification of loss of rights under Rule 112(1) EPC.
6. In conclusion, the Board confirms the finding in its communication of 16 September 2024 that the reply to

its communication of 10 May 2024 was not filed in due time and that the European patent application is deemed to be withdrawn.

Order

For these reasons it is decided that:

The European patent application is deemed to be withdrawn.

The Registrar:

The Chairman:



A. Chavinier-Tomsic

M. Alvazzi Delfrate

Decision electronically authenticated