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**Datasheet for the decision
of 23 April 2026**

Case Number: T 1770/23 - 3.5.01

Application Number: 16718002.5

Publication Number: 3259729

IPC: G06Q30/06, G08G5/00, G05D1/10,
G01S5/00, B64C39/02

Language of the proceedings: EN

Title of invention:
GUIDANCE SYSTEM AND AUTOMATIC CONTROL FOR VEHICLES

Applicant:
Ricci, Francesco

Headword:
Re-establishment of rights/RICCI

Relevant legal provisions:
EPC Art. 122(1)
EPC R. 136(1), 136(2), 136(4)

Keyword:
Re-establishment of rights - request admissible (no)

Decisions cited:
J 0015/10, T 0324/90, T 1426/14



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Case Number: T 1770/23 - 3.5.01

D E C I S I O N
of Technical Board of Appeal 3.5.01
of 23 April 2026

Appellant:
(Applicant)

Ricci, Francesco
Via Galileo Galilei 7
47822 Santarcangelo di Romagna (IT)

Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 23 May 2023
refusing European patent application No.
16718002.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman N. Glaser
Members: L. Falò
L. Basterreix

Summary of Facts and Submissions

- I. The appeal lies from the examining division's decision of 23 May 2023 refusing the patent application on the grounds that it did not meet the requirements of Articles 84 and 123(2) EPC.
- II. The applicant lodged an appeal on 28 July 2023 and filed a statement of grounds of appeal on 25 September 2023.
- III. With communication dated 4 April 2024 pursuant to Rule 51(2) EPC and Article 2 No. 5 of the Rules relating to Fees, the examining division informed the applicant that the ninth-year renewal fee had fallen due on 29 February 2024 and had not been paid by the due date. The applicant was also informed that the renewal fee could still be paid within six months of said date, provided that an additional fee was also paid within that period. If no payment was made, the legal consequence referred to in Article 86(1) EPC (deemed withdrawal of the application) would take effect at the end of the six-month period.
- IV. The appellant paid the renewal fee and the additional fee on 2 October 2024. The examining division issued a noting of loss of rights pursuant to Rule 112(1) EPC on 9 October 2024 according to which the application was deemed to have been withdrawn under Article 86(1) EPC.
- V. On 12 November 2024, the appellant filed a request for re-establishment of rights. The appellant submitted that, due to a calculation error, the payment had been made on the correct day but in the wrong month,

resulting in a delay of one month. Despite this, all due care required by the circumstances had been exercised.

- VI. On 26 March 2025, the appellant filed an addendum, including detailed responses to the objections raised under Articles 123(2), 84 and 56 EPC and further information complementing this.
- VII. In its communication dated 28 May 2025, the Board expressed its doubts as to whether the request was sufficiently detailed to be considered as setting out the facts on which it was based. Regarding the merits of the request, the Board was of the opinion that exceptional circumstances had not been sufficiently established and that all due care had not been taken by the applicant. Consequently, the Board tended to consider that the request for re-establishment of rights should be rejected and the application remained deemed to have been withdrawn.
- VIII. With the letter dated 18 June 2025 the appellant filed further arguments and additional evidence (Annexes 1 to 7) to support his request for re-establishment of rights.
- IX. In a second communication of 9 December 2025, the Board maintained its view that the request for re-establishment of rights was inadmissible and therefore that the application was deemed to have been withdrawn. The Board also indicated that it intended to discuss only this request at the oral proceedings scheduled on 12 June 2026.
- X. With a letter dated 14 December 2025, the appellant submitted further arguments addressing the

admissibility of the request for re-establishment of rights under Rule 136(2) EPC (Annex 1) and, in view of the purely procedural nature of this issue and the fact that it had been fully addressed on the basis of the written record, requested that the Board decide the matter on the basis of the written submissions on file, and withdrew his request for oral proceedings in the event that the Board decided to issue a decision on the basis of the written submissions.

XI. The appellant's final request was that the request for re-establishment of rights be held admissible under Rule 136(2) EPC and that the proceedings be allowed to continue accordingly.

XII. Following the withdrawal by the appellant of the request for oral proceedings, the oral proceedings scheduled on 12 June 2026 were cancelled and the present decision is issued in writing.

Reasons for the Decision

1. Under Article 122(1) EPC, an applicant for a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-a-vis the European Patent Office shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application or of a request, or the deeming of the application to have been withdrawn, or the loss of any other right or means of redress.

Board's competence to decide

2. According to Rule 136(4) EPC the department competent to decide on the omitted act shall decide on the request for re-establishment of rights. The noting of loss of rights was issued by the formalities officer on behalf of the examining division. At that time, however, the appeal proceedings were pending. Thus the loss of rights resulting from the failure to pay the renewal and additional fees occurred in the course of the appeal proceedings. With the commencement of the appeal proceedings, the competence to decide on the case has moved from the examining division to the Boards of Appeal, therefore this Board is competent to decide on the request for re-establishment of rights (see T 1426/14).

Admissibility of the request for re-establishment of rights

3. The fee for re-establishment of rights was paid on 9 November 2024 and the request was filed on 12 November 2024, i.e. less than two months after the removal of the cause of non-compliance that took place on 9 October 2024, when the applicant became aware of the loss of rights. The requirements of Rule 136(1) EPC are therefore satisfied.
4. According to Rule 136(2), first sentence, EPC, the request must state the grounds on which it is based and set out the facts on which it relies. The letter of 12 November 2024 contains only one paragraph which may be relied upon to fulfil this requirement. It reads: "*Due to a calculation error, the payment was made on the correct day but in the wrong month, resulting in a delay of one month. Despite this, all due care required by the circumstances was exercised, as demonstrated by*

the attached documentation.". Therefore, the question before the Board is whether this paragraph is detailed enough to be considered as setting out the facts on which the request relies.

5. The allegation in this paragraph that the reason for missing the period was a calculation error is a generic statement that does not contain any fact. Indeed, this paragraph lacks any explanation as to, for example, when and under which circumstances this error had occurred, and how due care was nevertheless exercised by the appellant. None of the attached documents (proof of payment of the overdue renewal fee and additional fee and proof of payment of the fee for re-establishment of rights) provided any further information that could serve as a factual basis for the request. The Board thus concludes that the letter of 12 November 2024 does not fulfil the requirement of setting out the facts on which the request relies as set out under Rule 136(2), first sentence, EPC.

6. The appellant provided additional arguments on the admissibility of his request for re-establishment of rights in his last letter dated 14 December 2025. He argued that, in the request for re-establishment of rights filed on 12 November 2024, he set out the cause of non-compliance, namely that the payment was made on the correct day but in the wrong month, leading to a delay of one month, expressly indicated that the non-compliance was not deliberate and occurred despite the appellant's clear intention to maintain the application, and that the single calendrical miscalculation was followed by immediate corrective action. He further submitted that his later submissions, in particular the written observations dated 18 June 2025, merely explained the nature of the

calendrical error, substantiated the existence of a monitoring system and provided evidence supporting facts already relied upon. They did not introduce a new cause of non-compliance, a different sequence of events or any additional factual circumstances beyond those already invoked. These submissions fell therefore within the permissible clarification of facts already relied upon, as recognised by the established case law. Thus the requirement of Rule 136(2) EPC to set out the facts on which the request relies was met.

7. According to established case law (see T 324/90, point 5 of the Reasons), evidence needs not be filed together with the request for re-establishment of rights within the time limit of Rule 136(1) EPC. Rule 136(2), first sentence, EPC does not refer to evidence and, therefore, such evidence may be filed later, if necessary. However, all relevant facts have to be filed with the request for re-establishment of rights and thus within the time limit of Rule 136(1) EPC. It may be permissible to supplement the facts of the request in a later submission not filed within the time limit of Rule 136(1) EPC, provided that the supplementary submissions do not extend beyond the framework of the initial submissions. However, supplementing facts in such a way is subject to the condition that the request itself is sufficiently substantiated within what is required under Rule 136(2) EPC (see J 15/10, point 3.1 of the Reasons). As noted above, this condition is not fulfilled in the present case (see point 5) and therefore the request for re-establishment of rights of 12 November 2024 can't be supplemented by the evidence filed with the letter dated 18 June 2025 to establish that the appellant had committed a single calculation error, corrected it immediately and never had the intention to allow the application to lapse,

specifically by Annex 2 - Screenshot from Outlook calendar showing repeated reminders set for "Pagamento 09 EPO 3259729" between 12 September and 2 October 2024, Annex 6 - Payment receipt for the 10th renewal fee and Annex 7 - Appeal fee. In view of the lack of factual basis in the request of 12 November 2024, these subsequent submissions can't be considered as a permissible clarification of facts already relied upon.

8. Finally, in his letter of 18 June 2025, the appellant referred to several decisions, namely T 166/87, T 828/94, T 30/90, J 5/80, T 1309/05, T 381/93 and J 2/02, to support his argument that in prior cases the Boards of Appeal have accepted similar situations involving individual applicants and/or calendar errors and granted re-establishment of rights. However, these decisions relate to what can be considered as due care taken, particularly in the context of calendar errors, and therefore to the merits of the request for re-establishment of rights. In view of the Board's conclusion in points 5 and 7 regarding the inadmissibility of the present request, the decisions cited by the appellant are not relevant in the present case.
9. For these reasons, the Board concludes that the request for re-establishment of rights is not admissible.

Order

For these reasons it is decided that:

1. The request for re-establishment of rights is rejected as inadmissible.
2. The application is deemed to be withdrawn.

The Registrar:

The Chairman:



T. Buschek

N. Glaser

Decision electronically authenticated