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**Datasheet for the decision
of 19 January 2026**

Case Number: T 0549/24 - 3.2.04

Application Number: 15866272.6

Publication Number: 3226734

IPC: A47K3/022, A47K3/06

Language of the proceedings: EN

Title of invention:

A BATHING APPARATUS WITH RECYCLING SYSTEM

Applicant:

Johnson & Nicholson (M) SDN BHD

Headword:

Relevant legal provisions:

EPC Art. 122

Keyword:

Re-establishment of rights - (yes)

Decisions cited:

J 0022/92, T 1477/17, J 0005/80, T 0283/01, T 0516/09

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 0549/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 19 January 2026

Appellant:
(Applicant)

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted on 29 September
2023 rejecting the request for re-establishment
of rights under Article 122 EPC.**

Composition of the Board:

Chairman

A. Pieracci

Members:

G. Martin Gonzalez
K. Kerber-Zubrzycka
J. Wright
T. Bokor

Summary of Facts and Submissions

I. The appeal was filed by the applicant against the decision of the examining division to reject the request of the appellant for re-establishment of rights.

II. Overview of examination proceedings - Acts relevant to this appeal:

On 14 October 2019 the examining division issued a communication under Rule 71(3) EPC. The time limit to reply expired on 24 February 2020. No reply was filed within the given time limit.

On 14 April 2020, the examining division issued a Rule 112(1) EPC communication indicating that the application was deemed to be withdrawn under Rule 71(7) EPC, the time limits for both a request for decision under Rule 112(2) EPC and further processing under Article 121 EPC expiring two months after notification of the communication, i.e. on 24 June 2020. No remedy was pursued by the applicant.

On 14 April 2021, the current professional representative, Agile IP, filed a request under Article 122 EPC for re-establishment of rights in respect of the missed time limit for requesting further processing set out in the division's Rule 112(1) EPC communication. The corresponding fee was paid, the reasons filed and the omitted acts - namely filing the translations, paying the grant and printing fee, and the further processing fee - completed.

In its decision, the examining division found the request under Article 122 EPC to be admissible but not allowable. The division could not conclude that the appellant (applicant) had acted with all due care required by the circumstances within the meaning of Article 122(1) EPC. The division found no evidence of a satisfactory monitoring system for Mr R.'s activities, the company's CEO assistant, and no evidence of an effective substitution system for Mr C., the company's CEO, given his poor health at the relevant time.

III. The factual situation, relevant to the present appeal, as submitted to the examining division shortly before the oral proceedings before the division:

On 1. April 2018, Mr. R. was employed by the company as personal assistant to Mr. C, the company's CEO (see witness statement of Ms. S. filed on 12. September 2023, points 4, 5), due to the latter's age and deteriorating health.

As of 1 February 2020, Mr R. was placed in charge of the applicant's patent portfolio. During 2020, Mr C.'s health deteriorated further, and he left all patent matters to Mr R., relying on him to inform him of any changes, payments, or time limits. Mr C. regularly enquired about the status of the applicant's patents through phone calls and occasional visits to the office (see witness statement of Ms S., point 10).

On 14 April 2020, the Office issued the communication under Rule 112(1) EPC cited above, with the time limit for remedial action expiring on 24 June 2020, to which the applicant failed to respond.

On 26 March 2021, Mr R., using a private email address (the Gmail account), stating that he was acting "on behalf of Johnson & Nicholson (M) Sdn Bhd. and that he was assigned to handle the case", contacted the current European representative Agile IP to enquire whether the present application could be re-established (see witness statement of Ms S., appendix 4).

Subsequently, on 31 March 2021, Mr R. contacted Agile IP again, this time from his actual company email address, placing Mr C. in copy and attributing the loss of rights to their Malaysian agent (Adastra) - the applicant Johnson & Nicholson (M) SDN BHD is a Malaysian company (see witness statement of Ms S., appendix 5).

On 13 April 2021, Mr C. contacted Agile IP directly, explaining that he had discovered that the failure to meet the time limit was due to Mr R.'s negligence. He informed Agile IP that a "Show of Cause Letter" had been issued to Mr R. and instructed Agile IP to initiate restoration proceedings for the lapsed patents (see witness statement of Ms S., point 14 and appendix 6). Authorisation was given to Agile IP on the same day.

On 14. April 2021, Agile IP filed the request for re-establishment of rights, which is the subject of these proceedings.

On 27. April 2021, Mr. C. questioned Mr. R. in a formal disciplinary proceedings. During the meeting, it emerged that Mr R. had created a private Gmail account (the Gmail account) under his own name, without the knowledge or authorisation of the company, mimicking an official company email address. He had used this

account to replace his official company email when corresponding with foreign patent agents. As a result, all such correspondence bypassed the company's servers, effectively concealing it from Mr C. and the company. Mr R. admitted that he had failed to monitor the renewals of several patents (see witness statement of Ms S., points 17 and 18).

On 28 April 2021, Mr R. returned two laptops and a SIM card belonging to the company and immediately left the office. From that day onwards, he failed to respond to messages sent to his personal mobile number, which he ultimately deactivated. Consequently, the company filed a police report against Mr R. on 8 June 2021 (see witness statement of Ms S., points 19 and 20).

- IV. On 29 September 2023 the examining division rejected the applicant's request for re-establishment of rights as unallowable. This is the decision under appeal.
- V. Summary of the evidence and arguments presented in appeal.

The appellant states in their grounds that according to another employee of the applicant, Mr. H., new information concerning the applicant's portfolio has come to light. According to Mr.H., Mr R. deliberately concealed information and either failed to update, or falsely marked as updated, IP records relating to renewal time limits - not only in Europe, but also in jurisdictions including Australia, the Philippines, Vietnam, Malaysia, and Singapore (see statement of grounds, points 2-8). No evidence in support of the above has been submitted by the appellant.

The appellant also states that the company (the applicant's company) maintained an extensive monitoring system for managing their patent portfolio. This system involved an online spreadsheet editor, functionally similar to Google Sheets, used to track the portfolio. The spreadsheet was regularly updated with action points and time limits notifications. In addition, weekly face-to-face meetings were held with the responsible person, when Mr C. was present (see points 9-14 of the statement of grounds; spreadsheet evidence in appendix A7, marked confidential).

The appellant thus submits that Mr. R. intentionally failed to update information to reflect the most up-to-date data and simultaneously concealed vital information by creating his "unauthorized" email account. This deliberate act led to the loss of crucial data and seriously undermined the effectiveness of the applicant's monitoring system. The breakdown only occurred during the last few months of Mr. R.'s employment. The monitoring system operated effectively throughout the rest of his tenure (see grounds, points 14-16).

- VI. The appellant's request for oral proceedings was conditional upon the board intending to maintain the contested decision. As this condition is not met and the board sees no reason to hold oral proceedings, the case is decided in writing.

- VII. Although not explicitly stated, the board interprets the appellant's requests as seeking the setting aside of the decision under appeal and the allowance of the request for re-establishment of rights.

Reasons for the Decision

1. For the reasons below, the board finds that the appeal is allowable.
2. In its decision, the examining division found the request under Art 122 EPC to be admissible (see appealed decision sections 15-18). The applicant, Johnson & Nicholson (M) SDN BHD, is a Malaysian company. At the relevant time, communication with the EPO involved a Malaysian agent and a European representative. The division found that the Malaysian agent (Adastra) and the then European representative (Cameron IP) had acted with all due care (see appealed decision sections 22-26).

Having reviewed the examining division's assessment on these points, the board finds no reason to depart from its findings.

3. However, while the division found that the Malaysian agent and the European representative had acted with all due care, it could not conclude that the applicant had done so. It found no evidence that the applicant had a satisfactory monitoring system for the activities of Mr. R., the assistant in charge of the patent portfolio, and also no effective substitution system for Mr. C., the company's CEO and person bearing ultimate responsibility that was suffering of deteriorating health.
 - 3.1 Pursuant to Article 122(1) EPC, a precondition for the re-establishment of rights is that the applicant for a European patent was unable to observe a time limit in spite of all due care required by the circumstances having been taken.

The Boards of Appeal have consistently held that whether the condition of "all due care" has been fulfilled must be assessed in view of the circumstances of the individual case as a whole (see Case Law of the Boards of Appeal, 11th edition, 2025 (CLB), section III.E.5.2 "General comments on due care").

According to the case law due care is considered to have been taken if non-compliance with the time limit results either from exceptional circumstances or from an isolated mistake within a normally satisfactory monitoring system (CLB, *ibid*).

- 3.2 The relevant circumstances of the present case involve the health-related limitations of the applicant's CEO, Mr C., his delegation of responsibilities concerning patent matters to his assistant, Mr R., and the latter's alleged incorrect behaviour.
 - 3.2.1 Case law relevant to these circumstances:
 - 3.2.2 Regarding the standard of care required of the applicant, it is established that while professional representatives are held to a high standard of legal precision, applicants - particularly laypersons - are not expected to meet the same level. Nonetheless, once procedural responsibility has been assumed, even non-professionals must take all reasonable steps that a diligent person would take (see CLB, III.E.5.5.1.a); T 1477/17; J 22/92).
 - 3.2.3 As regards illness, several board decisions have held that where a significant number of time limits must be monitored, due care generally requires that an effective system for staff substitution be in place, or

at least that reasonable arrangements are made for the absence due to illness of a person responsible for monitoring time limits (see CLB, III.E.5.4.5).

- 3.2.4 The delegation of routine tasks to assistants is permissible under established case law but must be accompanied by appropriate supervision as well as selection and instruction. As confirmed in J 5/80, the requirement of "all due care" encompasses such supervision (see also CLB, III.E.5.5.4, subsections a) and b)(iv)). This includes the implementation of an independent cross-check or monitoring system.

This obligation applies not only to professional representatives but also to applicants themselves (see T 283/01) - particularly where the applicant is a company of sufficient size.

- 3.2.5 Finally, regarding deception by an assistant, T 516/09 involved misconduct by an assistant to a professional representative. The board found that re-establishment was not justified. The standard of "all due care" under Article 122 EPC had not been met, as the monitoring system relied too heavily on trust in staff and lacked cross-checks or safeguards to detect errors. This allowed the assistant to act inappropriately and unchecked over an extended period. Despite repeated warning signs - such as unexplained extension requests, a missing file, and the absence of client instructions - the representative failed to intervene or escalate the issue. The board concluded that these deficiencies showed a lack of reasonable supervision.

- 3.3 Turning to the facts of the present case:

3.4 The examining division stated in point 33 of the appealed decision that it was unclear whether the applicant had in place a staff substitution system for the applicant's CEO, Mr C., in view of his deteriorating health. However, Mr C. was not entirely prevented from carrying out his professional duties. While his condition did limit his ability to perform certain tasks, it did not render him completely incapable.

To address this situation, Mr C. engaged Mr R. as his personal assistant to support him in the performance of his duties by managing patent matters as of 1 February 2020. Mr R. had been employed by the applicant since 1 April 2018 as personal assistant to Mr C. Starting off doing administrative work, he carried out his instructions and responsibilities well enough to be given charge of the applicant's patents based on the trust he earned (witness statement of Ms S. of 12 September 2023, points 4-6). Even during the most severe phase of his illness, Mr C. regularly contacted Mr R. by telephone and made occasional short visits to the office to inquire about the status of the applicant's patents (see witness statement of Ms S., point 10). The board considers that, in the circumstances of the present case, a complete substitution of Mr C. was not necessary to satisfy the required standard of due care.

On the contrary, the board regards this as a reasonable arrangement in the case of illness of the responsible person, as it served to compensate for the limitations resulting from Mr C.'s medical condition and allowed him to remain in a position to continue performing his functions, thus complying with the applicable standard of due care.

3.5 Regarding the supervision of Mr R., the examining division noted that the applicant appears to be at least a medium-sized enterprise with operations in New Zealand, Malaysia, and Singapore (see point 28 of the appealed decision). It correctly concluded that such an enterprise is not exempt from implementing an independent cross-check or control mechanism.

The division found that Mr R. had sole responsibility for the applicant's patent portfolio from 1 February 2020, including time limit monitoring. From that point, there appeared to be no effective oversight to ensure time limits were met or official communications properly handled. It thus concluded that due care required a control mechanism capable of detecting and correcting any failure to act, which the applicant had not established.

However, new evidence submitted on appeal contradicts this finding. The applicant maintained a comprehensive monitoring system, including an online spreadsheet editor (functionally equivalent to Google Sheets) for tracking the portfolio - confirmed by the board upon reviewing Appendix A7 (confidential). This spreadsheet was regularly updated with action points and time limits reminders. This new evidence supplements the facts already on file without extending the framework of the previous submissions, and are thus found admissible by the board (see CLB III.E.5.1 and cases cited therein, J 5/94, J 19/05, T585/08 r.9, and also T 1874/23 r.21).

In addition, weekly face-to-face meetings were held with the responsible person whenever Mr C. was present (see points 9-14 of the statement of grounds). As noted

in point 10 of Ms S.'s witness statement, these continued during the most severe phase of Mr C.'s illness, in the form of regular phone calls and short office visits.

The board is therefore satisfied that Mr C. exercised all due care under the circumstances, including selecting, instructing and supervising his assistant.

- 3.6 The board is convinced that, as submitted by the appellant, the missed time limits resulted from incorrect behaviour of Mr R. The board also finds that, even when set up and operated properly, a monitoring system cannot be expected to prevent a time limit being missed due to an assistant's behaviour being so gravely incorrect, as in the current case. The examining division did not assess whether this behaviour justified re-establishment of rights. It merely stated that "[T]he examining division does not consider that this matter alters the assessment set out above that the applicant did not operate a satisfactory monitoring system" (see section 32 of the appealed decision).

In the board's opinion the disruption caused by Mr. R's behaviour constitutes exceptional circumstances justifying re-establishment under Article 122 EPC.

According to the appellant, Mr R. deliberately concealed information - going so far as to create a private email account to bypass the company's servers - and either failed to update or falsely marked IP records relating to renewal time limits. As a result, Mr C. was kept unaware of certain time limits, despite having exercised all due care, as established above, since Mr R.'s intentional deception was designed to

also bypass the cross-check controls put in place by Mr. C.

At the board's request, the appellant filed the police report and the show of cause letter (both confidential) mentioned in points 14, 19 and 20 of Ms S's affidavit. This evidence leaves the board in no doubt that Mr R's incorrect conduct occurred as described.

- 3.7 The board is aware of the reasoning in T 516/09, ruling that misconduct by an assistant to a professional representative did not justify re-establishment. The board in that case had found that due care had not been taken.

However, the circumstances of T 516/09 differ meaningfully from those in the present case. In that decision, the professional representative delegated responsibility to an assistant but failed to perform an effective follow-up, relying instead on passive signals such as responses from clients or third parties (see p. 5, first paragraph: "... in general after he has given instructions to the assistant he does not check the file any further but waits until a reaction on his action is given by the client or a third party"). The board found this approach insufficient, particularly given the representative's expertise and duty to maintain rigorous oversight in IP matters.

By contrast, Mr C., acting in his capacity as the applicant's CEO (and not as a professional representative), implemented a system for tracking time limits using an online spreadsheet tool and actively monitored its operation. This system included cross-checks and regular updates with Mr. R. Unlike the representative in T 0516/09, Mr C.'s core

responsibilities did not centre on patent administration, and he could not reasonably be expected to detect deliberate deception designed to circumvent internal controls. The present case therefore does not present the supervisory deficiencies identified in T 0516/09.

4. The board therefore concludes that the conduct of Mr C., the applicant's CEO, met the standard of all due care required by the circumstances, while Mr. R's behaviour, which led to the missed time limits, constitutes exceptional circumstances which justify the grant of re-establishment. The board sees no manifest reason to override the examining division's finding that both the Malaysian agent (Adastra) and the former European representative (Cameron IP) acted with the required due care. Accordingly, re-establishment of rights under Article 122 EPC is justified - contrary to the examining division's conclusion.

5. As the board finds that the missed time limit occurred despite all due care being taken, and that the omitted act was completed within the applicable time limit (see section 3 of the appealed decision), the appealed decision must be set aside, and re-establishment of rights under Article 122 EPC is to be granted.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**

2. **The appellant is re-established in their rights.**

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated