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**Datasheet for the decision
of 15 June 2026**

Case Number: T 0029/25 - 3.3.05

Application Number: 19386001.2

Publication Number: 3524664

IPC: C11B1/06, B30B9/02

Language of the proceedings: EN

Title of invention:

BY ROAD MOVABLE LABORATORY PASTING FRUITS WITH OILY FLESH BY
THE METHOD OF HYDRAULIC DIRECT COLD PRESS

Applicant:

Tzanakakis, Stylianos

Headword:

Movable Laboratory/Tzanakakis

Relevant legal provisions:

EPC Art. 108, 122(1)

EPC R. 112, 126, 131, 136(1)

Keyword:

Re-establishment of rights - (no)

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

Decisions cited:

G 0001/18, T 1882/23, T 0231/23, T 1570/20, T 1547/20,
T 1995/19, T 2251/12



Beschwerdekammern

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Case Number: T 0029/25 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 15 June 2026

Appellant: Tzanakakis, Stylianos
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted/electronically
transmitted on 19 July 2024 refusing European
patent application No. 19386001.2 pursuant to
Article 97(2) EPC.**

Composition of the Board:

Chairwoman J. Hoppe
Members: R. Elsässer
G. Glod

Summary of Facts and Submissions

- I. The examining division refused the appellant's application by a decision dated 19 July 2024 based on Rule 137(4), Article 123(2) and Article 84 EPC with respect to claims 1 and 2 as submitted on 9 January 2021. The decision was received by the appellant by postal service on 8 August 2024.
- II. The appellant paid the appeal fee on 1 October 2024. The notice of appeal was received on 7 October 2024. On 4 December 2024 the appellant filed his statement of grounds of appeal using the web filing service of the EPO.
- III. In a communication dated 17 February 2025, a notice of loss of rights pursuant to Rule 112(1) EPC was issued to inform the appellant that the notice of appeal had been filed out of time, with the consequence that the appeal was deemed not to have been filed. The appellant received the communication on 14 April 2025 at the address provided by him at that stage of the proceedings.
- IV. On 13 May 2025, the appellant filed a "*Request for cancellation of EPO's consideration that the Applicant's notice of appeal has been filed out of time*", arguing that the impugned decision had been notified on 8 August 2024 and that filing the appeal on 7 October 2024 had therefore been in time. Moreover, the appellant explained that it had only been possible to put the documentation together on 13 May 2025 due to health problems.

- V. In its communication dated 13 June 2025, the board considered the appellant's arguments provided at that stage of the proceedings and confirmed that the appellant's notice of appeal had been filed out of time.
- VI. In a letter dated 3 July 2025 (received on 9 July 2025), the appellant provided arguments as to why he had not filed his appeal earlier.
- VII. In a letter dated 8 July 2025 (received on 17 July 2025), the appellant requested re-establishment of rights. The fee for re-establishment of rights was paid on 11 July 2025. In his letter, the appellant referred to his poor state of health and argued that he had been misinformed by the correspondence provided by the web contact service of the EPO with respect to determination of the expiry of the time limit for filing the notice of appeal. The appellant also argued that the request for re-establishment of rights would have been filed immediately if he had been informed of the relevant rules of the EPC for determining the expiry of the time limit for filing the notice of appeal in the notice of loss of rights issued by the board on 17 February 2025. Due to his health conditions, it was difficult for him to meet the time limit for filing the notice of appeal, but it would have been met if the replies from the web contact service had been correct. Moreover, despite the appellant's significant health problems, his appeal (notice of appeal and grounds) would have been filed in time if the web contact service had informed him of the method used to calculate the time limit for filing the appeal.

VIII. In its communication dated 6 March 2026, the board considered the appellant's requests and arguments. It informed the appellant that it was not minded to grant the request for re-establishment of rights since the requirements of Article 122(1) EPC and Rule 136(1) EPC were not met and that consequently, the appellant's appeal would be deemed not to have been filed. The board also informed the appellant that it did not consider the appellant's request filed in the examining proceedings to be allowable and that the appellant's further requests in the appeal (which seemed to have been filed as auxiliary requests) were not apt to overcome the objections under Article 123(2) EPC and Article 84 EPC. The appellant was also informed that a decision was to be expected within two months after notification of the board's communication.

IX. In a letter dated 20 March 2026 (received on 24 March 2026), the appellant responded to the board's communication concerning the request for re-establishment of rights. He considered that the notice of loss of rights was "not effectively received" until 23 April 2025. Moreover, the cause of non-compliance was not removed upon receipt of the notice of loss of rights since he was still acting in good faith at that time, relying on information provided by the EPO's web contact service. Neither this information nor the notice of loss of rights indicated the applicable rules for calculating the time limit for filing the notice of appeal. Therefore, he had still believed that the time limit was to be calculated from the actual date of receipt. In view of the appellant's consistent interactions in good faith with the EPO over several years and the misleading information provided by the web contact service, a loss of rights would be disproportionate.

Reasons for the Decision

Since the appellant has not filed a corresponding request, this decision is issued without oral proceedings being held.

The board confirms its preliminary opinion as set out in the communications dated 13 June 2025 and 6 March 2026. The appellant's further submissions in his letter dated 24 March 2026 are not apt to change the Board's findings. Therefore, the board concludes that the appellant's notice of appeal was not filed within the time limit pursuant to Article 108 and Article 131 EPC (see point 2.). The appellant's request for re-establishment of rights is refused as inadmissible due to being filed late (see point 3.). Consequently, the appellant's appeal is deemed not to have been filed (see point 4.).

1. *Decision pursuant to Rule 112(2) EPC*
- 1.1 Pursuant to Rule 112(2) EPC, a party which considers that a notice from a department of the European Patent Office according to a communication sent under Rule 112(1) EPC is inaccurate may, within two months of the communication, apply for a decision on the matter.
- 1.2 The board interprets the appellant's submission received on 13 May 2025 in response to the notice of loss of rights of 17 February 2025 as a request for a decision pursuant to Rule 112(2) EPC.
- 1.3 The appellant received the notice of loss of rights on 14 April 2025. That communication was received at the address provided by the appellant at that stage of the proceedings. Therefore, the appellant filed the request

within the time limit of two months under Rule 112(2) EPC. The request is thus admissible.

1.4 However, the board does not consider the notice of loss of rights of 17 February 2025 to be inaccurate because the appellant's notice of appeal had indeed been filed out of time.

2. *Timeliness of the appellant's notice of appeal*

2.1 As confirmed by the appellant, the impugned decision dated 19 July 2024 was received by postal service on 8 August 2024. Therefore, pursuant to Rules 126 and 131 EPC, the two-month time limit for filing the appeal under Article 108, first sentence, EPC expired on 2 October 2024.

2.2 In this respect it needs to be stressed that an amended version of Rule 126 EPC entered into force on 1 November 2023 with the following wording:

"(1) All notifications by postal services shall be by registered letter.

(2) Where notification is effected in accordance with paragraph 1, the document shall be deemed to be delivered to the addressee on the date it bears, unless it has failed to reach the addressee. In the event of any dispute concerning the delivery of the document, it shall be incumbent on the European Patent Office to establish that the document has reached its destination and to establish the date on which the document was delivered to the addressee. If the European Patent Office establishes that the document was delivered to the addressee more than seven days after the date it bears, a period for which the deemed receipt of that document is the relevant event under

Rule 131, paragraph 2, shall expire later by the number of days by which the seven days were exceeded."

Hence, under new Rule 126(2) EPC, the relevant date for the purpose of applying the notification fiction is the date printed on the document. The previous notification fiction, whereby a document was deemed to have been delivered to the addressee on the tenth day following its handover to the postal services ("ten-day rule"), was abandoned from 1 November 2023.

- 2.3 Hence, in the present case, the relevant date for the purpose of applying the notification fiction is the date printed on the impugned decision document, i.e. 19 July 2024.
- 2.4 Where a document has been delivered exceptionally late, the new safeguard introduced in the last sentence of amended Rule 126(2) EPC applies. More specifically, if notification is contested and the EPO cannot show that a document reached the addressee within seven days of the date it bears, a period triggered by the deemed delivery of that document will be extended by the number of days by which these seven days are exceeded (examples of the calculation under Rule 126(2) EPC can be found in the Notice from the European Patent Office dated 6 March 2023 concerning amended Rules 126, 127 and 131 EPC, in the Official Journal EPO, 2023, A29).
- 2.5 In the present case, the impugned decision was dated 19 July 2024 and it was delivered to the appellant by postal service on 8 August 2024. As this delivery was more than seven days after the date of the impugned decision (19 July 2024 - 8 August 2024 = 20 days), pursuant to Rule 126(2), second sentence, EPC, the two-

month period for filing the appeal pursuant to Article 108 EPC is extended by the number of days by which the seven days were exceeded, i.e. by 13 days (20 days - 7 days = 13 days). Accordingly, the two-month time limit for filing an appeal under Article 108 EPC did not expire on 19 September 2024 but, instead, 13 days later, i.e. on 2 October 2024 (Rules 126 and 131 EPC).

- 2.6 Accordingly, the filing of the notice of appeal on 7 October 2024 did not meet the two-month time limit of Article 108 EPC. It follows that the requirements of Article 108 EPC are not met, meaning that the requirements for an admissible appeal are not fulfilled.

3. *Request for re-establishment of rights*

The appellant's request for re-establishments of rights in respect of the time limit for filing the notice of appeal is rejected as inadmissible because the request was not filed within the time limit pursuant to Article 122(1) EPC and Rule 136(1) EPC.

- 3.1 A request for re-establishment of rights must be filed within two months of the removal of the cause of non-compliance with a time limit vis-à-vis the EPO (Article 122(1) EPC and Rule 136(1) EPC). The request is not deemed to have been filed until the prescribed fee has been paid.
- 3.2 The appellant filed a request for re-establishment of rights in his letter dated 8 July 2025, which was not received at the EPO until 17 July 2025. The fee for re-establishment of rights was paid on 11 July 2025, i.e. more than two months after receipt of the notice of loss of rights on 14 April 2025.

- 3.2.1 The appellant's arguments in his letter dated 20 March 2026 as regards receipt of the notice of loss of rights are not persuasive. Firstly, the notice of loss of rights was indeed received at the address provided at that stage by the appellant. Secondly, even assuming - just for the sake of argument - that the notice of loss of rights was received only on 23 April 2025 (as argued by the appellant), this would not have any bearing on the board's conclusion since, in this case too, the two-month time limit would have already expired when the request was received on 17 July 2025.
- 3.3 Contrary to the appellant's argument, the cause of non-compliance had already been removed when he received the notice of loss of rights.
- 3.3.1 The "removal of the cause of non-compliance" pursuant to Rule 136(1) EPC is to be established objectively on a purely factual basis. As a rule, it occurs on the date on which the person responsible for the application vis-à-vis the EPO becomes aware of the fact that a time limit has not been observed (T 1547/20, Reasons 4.1; T 1995/19, Reasons 6; T 1570/20, Reasons 3). According to the case law of the boards of appeal, the receipt of a communication under Rule 112(1) EPC noting a loss of rights typically establishes awareness that the relevant time limit has not been observed (T 1995/19, Reasons 6; T 2251/12, Reasons 10; T 1882/23, Reasons 2). This also applies if the specific calculation of the time limit and/or the relevant provisions are not presented in the communication in question, as it is sufficient that the party is aware of the fact of non-compliance as such. This is because Rule 136(1) EPC does not refer to the removal of an

error but, instead, to "the removal of the cause of non compliance" (T 231/23, Reasons 17). Hence, it is irrelevant if a party does not trust the information provided or is unaware of the relevant provisions on which the notice of loss of rights pursuant to Rule 112(1) EPC is based. While decisions which are open to appeal are to be reasoned (Rule 111(2) EPC), a standard of this kind is not provided in relation to noting a loss of rights pursuant to Rule 112(1) EPC. This is consistent, since such reasoning can be obtained if a decision under Rule 112(2) EPC is requested. Accordingly, and as stated above, the cause of non-compliance with a time limit is already removed when the person responsible for the application is made aware - by the notice of loss of rights - that the time limit was not observed.

In view of this, the appellant's argument that he was not made aware of the relevant provisions for calculating the time limit for filing an appeal is not relevant when establishing the start of the period under Rule 136(1) EPC.

- 3.3.2 The appellant also argued in his letter dated 20 March 2026 that he did not have a clear and unambiguous understanding that the notice of appeal was considered to have been filed late.

This is not persuasive since the notice of loss of rights dated 17 February 2025 unambiguously set out both that "the notice of appeal has been filed out of time (date of receipt 07.10.24)" and the consequence of this for the appeal: "... the appeal is accordingly deemed not to have been filed." Hence, already at this point in time, the appellant had been made aware of the late filing and thus could and should have requested re-establishment of rights based on his arguments as

regards his health conditions and the allegedly misleading information provided by the EPO's web contact service. Even if the appellant considered that he failed to observe the time limit on account of the information provided by the web contact service and in spite of all due care having been taken, he should not have ignored the notice of loss of rights. Instead, he could and should have provided the related arguments, together with the request for re-establishment of rights and payment of the applicable fee, immediately after receiving the notice of loss of rights. As the appellant only filed a request for re-establishment of rights after expiry of the two-month time limit, the request for re-establishment of rights is to be rejected and the appellant's arguments as regards good faith and protection of legitimate expectations cannot be taken into account. In this respect it is to be noted that alleged procedural violations and/or the principle of the protection of legitimate expectations do not provide a remedy as such and can, accordingly, only be raised via the available legal remedies within the respective time limits.

- 3.4 Hence, the request for re-establishment of rights was not filed within two months of receipt of the notice of loss of rights, meaning that the requirements of Rule 136(1) EPC are not met. In view of this, the request for re-establishment of rights has to be rejected.

4. *Appeal deemed not filed/
reimbursement of the appeal fee*

- 4.1 Since re-establishment in respect of the time limit for filing the notice of appeal is not granted, the time limit for filing the notice of appeal was not met and,

consequently, the legal consequence set out in the notice of loss of rights dated 17 February 2025 is correct, i.e. the appeal is deemed not to have been filed pursuant to Article 108 EPC (G 1/18, OJ 2020, 26, headnote No. 1.(c)). In view of this finding, it is not relevant whether the appellant filed the statement of grounds of appeal in an admissible and timely manner.

- 4.2 The appellant's consideration that rejecting the appeal would be disproportionate in view of his continuous and diligent co-operation with the EPO cannot change the board's conclusion. Instead, the legal assessment of admissibility of an appeal and of a request for re-establishment of rights has to be based on the relevant provisions of the EPC, which provide these remedies only within certain time limits. These time limits are binding and are not subject to the board's discretion or considerations as regards proportionality.
- 4.3 Since the appeal is deemed not to have been filed pursuant to Article 108 EPC, the appeal fee is reimbursed in full (G 1/18, OJ 2020, 26, headnote No. 1.(c)).

Order

For these reasons it is decided that:

1. The request for re-establishment of rights in the time limit for filing the notice of appeal is rejected as inadmissible.
2. The appeal is deemed not to have been filed.
3. The appeal fee is reimbursed in full.

The Registrar:

The Chairwoman:



C. Vodz

J. Hoppe

Decision electronically authenticated