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**Datasheet for the decision
of 28 November 2025**

Case Number: T 0700/25 - 3.4.01

Application Number: 18771903.4

Publication Number: 3603346

IPC: H05B47/105, H05B45/46,
H05B47/19, G06F3/14, G09G3/32,
H05B45/36

Language of the proceedings: EN

Title of invention:
LED APPARATUS WITH INTEGRATED POWER SUPPLY AND A METHOD OF
EMPLOYING SAME

Applicant:
10644137 Canada Inc.

Headword:
Reimbursement of the appeal fee

Relevant legal provisions:
EPC Art. 64(1), 97(3), 107, 113(2), 121, 122
EPC R. 36(1), 71a(1), 103(1)(b)

Keyword:

Decisions cited:

G 0001/09, G 0001/10, G 0001/18, G 0002/19, J 0012/86,
J 0028/03, J 0010/12, J 0001/24, T 0041/82, T 0773/91



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Case Number: T 0700/25 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 28 November 2025

Appellant: 10644137 Canada Inc.
(Patent Proprietor) 30 Autumn Circle SE
Calgary, Alberta T3M 0J6 (CA)

Representative: Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS The Hague (NL)

Decision under appeal:

Composition of the Board:

Chairman P. Scriven
Members: B. Noll
L. Bühler

Summary of Facts and Submissions

- I. On 6 February 2025, the Examining Division issued a decision to grant European patent 3 603 346, based on European patent application 18771903.4.
- II. The mention of the grant of the patent was issued in European Patent Bulletin 10/2025 of 5 March 2025 (page 1386).
- III. On 20 March 2025, the patent proprietor filed a notice of an appeal of the decision of 6 February 2025 and also paid the appeal fee.
- IV. On 17 April 2025, the patent proprietor filed European patent application 25171268.3, as a divisional application of the earlier patent application 18771903.4.
- V. The date of the mention of the grant of European patent 3 603 346 was deleted, in European Patent Bulletin 18/2025 of 30 April 2025 (page 1348).
- VI. On 6 May 2025, the patent proprietor withdrew their appeal.
- VII. By communication dated 8 August 2025, the Board raised an issue regarding the ground for reimbursement of the appeal fee.
- VIII. The patent proprietor submitted their comments on 7 October 2025.

- IX. The patent proprietor requested, as their main request, that the appeal fee be reimbursed based on Rule 103(1) (b) EPC, that the application go back to its granted state, and that a communication informing them of the new date of the mention of the grant be issued. Alternatively, as an auxiliary request, the patent proprietor requested that the application/patent go back to its granted state and the appeal fee be refunded. They also requested oral proceedings "in the unexpected and unforeseen event that the Boards, or the Examining Division, would contemplate refusing the application or otherwise deny the patent to return to granted state."
- X. The Board took its decision in written procedure.

Reasons for the Decision

Power of the Board to decide on ancillary matters

1. The withdrawal of an appeal immediately terminates the proceedings as to its merits (without a decision as to substance), but the Board still has the power and duty to decide on the reimbursement of the appeal fee, as an ancillary matter (T 41/82 *Reimbursement of appeal fees*, OJ EPO 1982, 256, point 6; J 12/86 *Shell cutter*, OJ EPO 1988, 83, point 5; and T 773/91).

Oral proceedings not required

2. In its communication dated 8 August 2025, the Board indicated that it intended to take a decision on the reimbursement of the appeal fee in written proceedings. By letter dated 7 October 2025, the patent proprietor requested oral proceedings "in the unexpected and unforeseen event that the Boards, or the Examining Division, would contemplate refusing the application or otherwise deny the patent to return to granted state." However, since the appeal proceedings regarding the grant of the patent are terminated as to substance, there is no basis on which the Board could order reopening the examination proceedings in respect of the underlying application, or on which the Examining Division could do so of their own motion. Therefore, the condition is not met. The conduct of oral proceedings is, moreover, neither necessary nor expedient. The Board was, therefore, in a position to decide in writing (Article 12(8) RPBA).

Two possible grounds for reimbursing the appeal fee

3. According to Rule 103(1)(b) EPC, the appeal fee is reimbursed if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired, and both conditions are satisfied. However, the appeal fee is also reimbursed if it was paid for no valid reason, e.g. if the appeal is deemed not filed (see G 1/18 *Formation du recours*, OJ EPO 2020, 26). This second basis for reimbursement takes precedence over the first, because the reimbursement of the appeal fee must only be based on an explicit legal basis, if there is a valid reason for the payment of the appeal fee.

Therefore, preliminary to the reimbursement of the appeal fee under Rule 103(1)(b) EPC, the Board has to assess whether an appeal was validly filed or not.

Is restoring the "pendency" of an application a valid reason for filing an appeal against a decision to grant?

4. The patent proprietor argued that the appeal fee should be reimbursed on the basis of Rule 103(1)(b) EPC. They relied on decision J 1/24 *Divisional patent application* and argued that the EPC had no provision restricting appeals, by the patent proprietor, of the decision to grant a patent. Such an appeal could, therefore, not be seen as clearly inadmissible. The date of the mention of the grant of the patent had been cancelled, which distinguished both the present case and J 1/24 from J 28/03 *Divisional application/ERICSSON INC*, OJ EPO 2005, 597. The more recent decision J 1/24 took precedence over J 28/03. Decision G 2/19 OJ EPO 2020, 87, related to a different situation, namely the filing of an appeal, by a third party, of a decision to grant a patent, for the purpose of removing allegedly unclear claims. Moreover, in the present case, the patent proprietor was adversely affected by the decision to grant the patent. Claim 6 of the patent had an antecedent issue, which was, unfortunately, only discovered after grant.
5. The Board is not persuaded by the patent proprietor's arguments.
6. As regards the alleged deficiencies in the granted claims as reason for filing the appeal, their correction was not pursued and cannot, therefore, after closure of the appeal proceedings as to substance,

retroactively justify the filing of an appeal. Rather, it follows from the case history and the patent proprietor's reliance on decision J 1/24, that they intended to restore "pendency" of the application, in order to file a divisional application under Article 76 EPC.

7. The Board is of the view that an appeal of the Examining Division's decision to grant a patent, in order that the application again become "pending", within the meaning of Rule 36(1) EPC, is manifestly inadmissible and does not provide a valid reason for the payment of the appeal fee. The Board follows, in this regard, the rationale of decision J 28/03, and not that of decision J 1/24. In the Board's view, there is no basis for the appellant's contention that the more recent of the two decisions necessarily takes precedence. As will be explained below, the Board's view is also in line with the rationale of decisions G 2/19 and G 1/09 *Pending application/SONY*, OJ EPO 2011, 336.
8. As has been acknowledged by the Enlarged Board of Appeal in decision G 2/19, an appellant's entitlement under Article 107, first sentence, EPC is a fundamental pre-condition for filing an appeal (point 3). According to the Enlarged Board of Appeal, an appeal filed by a person who has no standing to do so is a manifestly inadmissible appeal (point 5).
9. One of the two conditions giving rise to an entitlement to appeal is that the appellant is adversely affected by the contested decision. However, an applicant is not adversely affected by a decision to grant that accedes to the applicant's requests. Therefore, such an

applicant is not entitled under Article 107, first sentence, EPC to appeal such a decision.

10. While it is correct, as pointed out by the patent proprietor, that decision G 2/19 dealt with a situation in which the first condition for being entitled to file an appeal (i.e. being a party to the proceedings in which a decision was taken) was not met, the rationale of this decision undoubtedly also applies if the second condition is not met. Therefore, contrary to the Patent proprietor's view, the factual difference does not matter.

11. Contrary to decision J 1/24, an appeal of a decision to grant cannot be assumed validly to exist. An application proceeds to grant only on condition that the applicant has agreed to the text, under Article 113(2) EPC (Rule 71a(1) EPC; see also G 1/10 *Request to correct patent/FISHER-ROSEMOUNT*, OJ EPO 2013, 194, point 6). Consequently, an applicant appealing a decision to grant must justify their entitlement to appeal and set out why that decision is not in conformity with the applicant's requests or why it otherwise negatively affects them. Therefore, there is a presumption, that an applicant is not entitled under Article 107, first sentence, EPC to appeal a decision to grant, if their appeal is withdrawn before the filing of any statement of grounds of appeal, since no reasons have been given justifying their entitlement to appeal. Moreover, the appeal being withdrawn, the decision to grant becomes effective. Therefore, a withdrawal of an appeal of the decision to grant, before the filing of a statement of grounds of appeal, confirms that the appeal was filed by an applicant not entitled to appeal under Article 107, second sentence,

EPC. Hence, such an appeal is manifestly inadmissible and filed without legitimate reason.

12. To the extent that an appeal of a decision to grant is filed in order that the application be again "pending", within the meaning of Rule 36(1) EPC (compare G 1/09, point 4.3), it seeks relief for a grievance which the EPC not only does not recognise but, in fact, excludes as a subject of appeal under Article 107 EPC, first sentence, EPC. It is constant case law that Rule 36(1) EPC does not establish a time-limit open to re-establishment of rights or further processing under Articles 121 or 122 EPC (see e.g. J 10/12 *Pendency of earlier patent application*). The filing of an appeal of a decision to grant a patent based on the earlier application attempts to circumvent the deliberate lack of a legal remedy for restoring the pending status within the meaning of Rule 36(1) EPC. Such an appeal is a clearly inadmissible means of redress and has no suspensive effect (G 2/19, point 6).

13. The present view is in line with the rationale of decision G 1/09. If no appeal of a decision to grant is filed on the day before the publication of the grant in the European Patent Bulletin, the application underlying the patent is no longer pending within the meaning of Rule 36(1) EPC (G 1/09, point 4.3.2 with reference to Articles 97(4) EPC 1973 [Article 97(3) EPC 2000] and Article 64(1) EPC 1973 [and 2000]). The suspensive effect of a subsequent appeal cannot remove these effects, since this would amount to cancellation of the contested decision (see J 28/03, points 12 and 13). Indeed, the resumption of examination proceedings is the relief sought by the appeal of the decision to grant, provided that this decision negatively affects the appellant. The retraction of the publication of the

mention of grant can, therefore, only be ordered if the Examining Division rectifies its decision to grant under Article 109 EPC or if the appeal is allowed by the competent Board. However, in each case, the filing of a statement of grounds setting out the reasons is necessary to accede to the appellant's requests. Thus, the suspensive character of an appeal of a decision to grant is not a reason *per se* to retract the publication of the mention to grant a patent independently of interlocutory revision under Article 109 EPC.

14. In the present case, the decision to grant was issued on 6 February 2025 and the mention of the grant of the patent was published on 5 March 2025. An appeal of the decision to grant was filed on 20 March 2025 and withdrawn on 6 May 2025, after the filing of a divisional application. In view of these circumstances and the above considerations, the Board is of the view that the appeal is a clearly inadmissible attempt to seek redress that is not available; so the purported appeal has no effect. Consequently, the appellant's main request is refused and the Board orders reimbursement of the appeal fee on grounds that it was paid without reason.

Order

For these reasons it is decided that:

The appeal fee is reimbursed.

The Registrar:

The Chairman:



D. Meyfarth

P. Scriven

Decision electronically authenticated