



Aktenzeichen:
Case Number: T 99/82
N° du recours :

ENTSCHEIDUNG / DECISION
vom / of / du 2 August 1982

Anmelder:

Applicant: ~~CUMMINS ENGINE COMPANY, INC.~~

Demandeur :

Stichwort:

Headword:

Référence :

EPÜ / EPC / CBE

Article 108, Rules 65(1) and 67

"Reimbursement of appeal fees"

"Original jurisdiction of Boards of
Appeal"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Technische
Beschwerdekammern

European Patent
Office

Technical Boards
of Appeal

Office européen
des brevets

Chambres de
recours techniques



Case No. T 99/82

DECISION

of Technical Board of Appeal 3.2.2
of 2 August 1982

Applicant:

Cummins Engine Company, Inc.
1000 Fifth Street,
Columbus, Indiana 47201
USA

Representative:

Wilson, Joseph Martin
Withers & Rogers
4 Dyer's Buildings,
Holborn,
London, EC1N 2JT
GB

Issue:

Application for reimbursement
of appeal fee by applicant who
has withdrawn his appeal

Composition of the Board:

G. Andersson, Chairman
P. Ford, Member
K. H. Schügerl, Member

SUMMARY OF FACTS AND SUBMISSIONS

- I. On 7 April 1982, the applicant filed notice of appeal against a decision of an Examining Division of the European Patent Office. The fee for appeal was duly paid. No statement of grounds of the appeal was filed.
- II. ~~By letter dated 17 June 1982, the applicant withdrew~~ the appeal and requested reimbursement of the appeal fee.

REASONS FOR THE DECISION

1. Reimbursement of appeal fees is possible in a case in which no notice of appeal is filed or deemed to have been filed within the time limit prescribed by Article 108 EPC, so that no appeal has ever existed.
2. Reimbursement of appeal fees may be ordered, if such reimbursement is equitable by reason of a substantial procedural violation, in a case in which the department whose decision is contested considers the appeal to be well founded and rectifies its decision in accordance with Article 109 (1) EPC: Rule 67 EPC.
3. Reimbursement of appeal fees may be ordered where a Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation: Rule 67 EPC.
4. The restrictive language of Rule 67 EPC is plainly inconsistent with the idea that a Board of Appeal has a wide discretion to order reimbursement of appeal fees. The terms of other provisions, notably Article 110 (1) and Rule 65 (1) EPC, prevent a Board of Appeal from even considering whether an appeal can be deemed to be allowable until the decision has been taken that the appeal is admissible. Such a decision cannot be taken unless, inter alia, a statement of grounds of appeal has been duly filed, in accordance with Article 108 EPC.

5. It follows that the Board of Appeal must reject the applicant's request for reimbursement of the appeal fee.
6. As the applicant's appeal has been withdrawn, the present decision is given by the Board in the exercise of its inherent original jurisdiction to consider applications made to it in matters arising out of or in connection with the former appeal proceedings.

For these reasons,

it is decided that:

The application for reimbursement of the appeal fee made in the applicant's letter dated 17 June 1982 is rejected.

The Chairman:



The Registrar:

