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Aktenzeichen / Case Number / N° du recours : T 17/83

Anmeldenummer / Filing No / N° de la demande : 79302938

Publikations-Nr. / Publication No / N° de la publication : 0014292

**Bezeichnung der Erfindung:**

Title of invention:

Method of compounding melt-forming resins and

Titre de l'invention :

mica particles

**ENTSCHEIDUNG / DECISION**

vom / of / du 20 September 1983

Anmelder / Applicant / Demandeur : FORD

Stichwort / Headword / Référence : Debit order II

**EPU / EPC / CBE** Arrangements for deposit accounts

**Leitsatz / Headnote / Sommaire**

*If a submission to the European Patent Office (in this case notice of appeal) states that a debit order for payment of a fee (in this case the fee for appeal) has been issued, this statement may, if need be, itself be considered such a debit order in the absence of any record of the original.*

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number: T 17 / 83

**DECISION**  
**of the Technical Board of Appeal 3.3.1**  
**of 20 September 1983**

**Appellant:**

Ford Motor Company Limited  
Eagle Way, Brentwood, Essex CM13 3BW, England  
et al

**Representative:**

Drakeford, Robert William  
Ford Motor Company Limited  
15/448, Research & Engineering Centre  
Laindon, Basildon, Essex SS15 6EE  
England

**Decision under appeal:**

Decision of Examining Division 013 of the European Patent  
Office dated 25 October 1982 refusing European patent  
application No 79302938.0 pursuant to Article 97(1)  
EPC

**Composition of the Board:**

Chairman: D. Cadman  
Member: O. Bossung  
Member: G. Szabo

T 17/83

### Summary of Facts and Submissions

- I. European patent application No. 79 302 938.0 was refused by decision of Examining Division 013 of the European Patent Office dated 25 October 1982.
- II. On 3 January 1983, the applicant filed notice of appeal against this decision, enclosing a Statement of Grounds and explaining that: "Instructions for payment of the Appeal Fee via our deposit account were sent to you on 24 November 1982".
- III. The EPO could find no record of having received this debit order of 24 November 1982. This raised a point of law, namely whether the cited statement in the notice of appeal could itself be considered such a debit order, and the fee for appeal debited accordingly. As this point of law is resolved only in the present Decision, the deposit account has not yet been debited, but nor has the applicant and deposit account holder been requested to provide evidence that a debit order was indeed issued on 24 November 1982.

### Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 and Rule 64 EPC only if the fee for appeal may be deemed to have been paid in due time. This would be the case if the fee for appeal could be debited on the basis of the statement contained in the notice of appeal.

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2. Questions of admissibility may be decided in an interlocutory decision. The question at issue cannot be held over until the final decision of the appeal, because to date no debit has been effected and under Article 108, 2nd sentence EPC an appeal is not validly filed until the fee for appeal has been paid.
3. In its Decision T 152/82 of 5 September 1983, the Board addressed the question of when a debit order, despite containing errors, may be acted upon in the light of the account holder's clear wishes. Reference is made to that Decision.
4. In the present case, it first of all has to be decided whether the statement in a submission to the EPO (in this case notice of appeal) that instructions for payment of a fee (in this case the fee for appeal) have been issued may itself be considered a debit order in the absence of any record of the original. The answer is yes, because that statement expresses the wish to pay, via debit order, a particular fee, i.e. one in respect of a European patent application in a particular procedural situation, thus if need be itself empowering and instructing the EPO to effect the debit. As there is no record of the debit order, the question of whether it was in fact ever made, or was lost in the post or in the EPO, need not be considered here (there being of course no record of this either).
5. Another matter is the case - which was the subject of Decision J 03/81 dated 7 December 1981 (OJ EPO 1982, 100) - where the holder of a deposit account takes a procedural step for which a fee is payable (in that case: a request for re-establishment of rights) without issuing instructions for payment or mentioning the fee and giving some kind of indication that he wished it to be debited. The mere

fact that when a fee falls due there is a deposit account sufficiently in credit to cover it does not in itself constitute payment, if only because in such a case the account--holder may not know that the fee is due, or may wish to pay in some other way than by debit order. In the present case, however, it is clear from the notice of appeal not only that the applicant knows that the fee is due but also that he wishes to pay it by debit order.

6. Nor does the absence of certain desirable information (e.g. the amount of the fee) constitute an impediment to effecting the debit. In this connection reference is again made to Decision T 152/82 of 5 September 1983. In the present case the "particulars necessary to identify the purpose of the payment" within the meaning of point 6.3 of the Arrangements for deposit accounts (OJ EPO 1982, 15) have been supplied. Although the necessary number of the account to be debited is also missing, this is the sole formal requirement made in the Arrangements for deposit accounts for the issuing of debit orders, and there is no provision for a penalty in the event of failure to comply with it. Such a penalty might perhaps take the form of charging an administrative fee, but not that of regarding the debit order as not having been made, entailing a possible loss of rights. Quite apart from the disproportionate severity of such a penalty, it cannot be ruled out that Rule 88, 1st sentence EPC also applies to debit orders. In most instances, including the present one, the owner's name unambiguously identifies the account, and the number only serves as an additional, most desirable, but not strictly necessary information and double check of identity. Therefore, despite the failure to indicate the account number, the statement in the notice of appeal is to be understood as a debit order for a fee for appeal and acted upon by debiting the amount of the fee in question.
7. As the statement in the notice of appeal may thus be considered a debit order containing the essential particulars and acted upon as such, no evidence and further investigation as to the whereabouts of the actual debit order are

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necessary. The statement in the notice of appeal could be considered a debit order even if the actual debit order had not been despatched due to an oversight on the part of the appellant. As regards the execution of the debit order (*inter alia* regarding the credit balance in the account), Decision T 152/82 of 5 September 1983 applies *mutatis mutandis*.

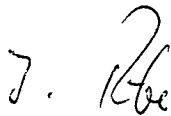
ORDER

For these reasons, it is decided that:

1. The fee for appeal is to be debited on the basis of the statement in the notice of appeal.
2. Subject to this debit, the appeal is found to be admissible.

The Registrar

(Signed: J. Rückerl)



The Chairman

(Signed: D. Cadman)

