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Publication in the Official Journal	Yes/No
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Aktenzeichen / Case Number / N° du recours : T 27/86

Anmeldenummer / Filing No / N° de la demande : 82 901 870.4

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

Bezeichnung der Erfindung: Bearing Device for Poker Vibrator

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : F 16 C 19

I N T E R I M

ENTSCHEIDUNG / DECISION

vom / of / du 11 February 1987

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

Dynapac Martin AB

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPO / EPC / CBE Art. 122

Kennwort / Keyword / Mot clé : "Restitutio in Integrum"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt
Beschwerdekammern

European Patent
Office
Boards of Appeal

Office européen
des brevets
Chambres de recours



Case Number : T 27/86

I N T E R I M D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 11 February 1987

Appellant : Dynapac Martin AB
 Box 1103
 S - 171 22 SOLNA

Representative :

Decision under appeal : Decision of Examining Division 115
 of the European Patent Office
 dated 17.07.85 refusing European
 patent application No. 82 901 870.4
 pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : P. Delbecque
Member : G.D. Paterson
Member : M. Liscourt

Summary of Facts and Submissions

I. European patent application No. 82 901 870.4 was filed on 11 June 1982 and was refused by a Decision of the Examining Division dated 17 July 1985. In accordance with Article 108 EPC, the time limit for filing a notice of appeal expired on 27 September 1985. The Applicant sent a letter dated 6 September 1985 which was received on 12 September 1985 and which contained a notice of appeal in accordance with Article 108 and Rule 64 EPC, and a statement of grounds of appeal in accordance with Article 108 EPC. No fee for appeal was paid within two months after the date of notification of the Decision, i.e. by 27 September 1985, and accordingly on 7 February 1986 the Registrar of the Board of Appeals sent a communication to the Applicant pursuant to Rule 69(2) EPC, informing him of this fact, and stating that non-payment of the appeal fee means that the appeal is deemed not to have been filed and will probably be rejected as inadmissible.

It was also stated that the Applicant could request a Decision under Rule 69(2) EPC, and that there was also the possibility of requesting *Restitutio in integrum* under Article 122 EPC.

II. By letter received on 14 March 1986, the Applicant filed a declaration by Mr. Tragardh, manager of the patent department since 1 July 1985, which explained that the non-payment of the appeal fee was an error which had occurred during changes in the payment routines for fees during reorganisation of the patent department. The letter stated that the appeal fee had now been credited to the EPO account. After a further communication dated 20 March 1986 from the Registrar, the Applicant formally applied for re-establishment of his rights under Article 122 EPC by letter dated 26 March 1986 which was filed on 1 April 1986. The

fee for re-establishment of rights and the full amount of the appeal fee were paid on 2 April 1986.

- III. Further information in connection with the application for re-establishment was requested by the Rapporteur in communications dated 21 May and 18 September 1986, and was provided by the Applicant in letters dated 18 June and 7 October 1986, which letters were signed by the person who was manager of the patent department of the Applicant until 1 July 1985 and who still represents the Applicant before the EPO regarding said patent application.
- IV. The Applicant gave the following grounds and set out the following facts as relied upon in support of his request for re-establishment of rights:

The notice of appeal and statement of grounds of appeal were prepared at a time when the patent department was undergoing reorganisation. As part of this reorganisation, the routines for payment of annual fees and other fees to the various national Patent Offices and the EPO were changed. The responsibility for payment of regular fees was transferred to Computer Patent Annuities (CPA).

Under the system which was used prior to this reorganisation, if the then manager of the patent department had put his signature on documents which required a payment of a fee on filing, and forwarded such documents to the secretary, the secretary would prepare a payment order and forward this to the finance department who would make the payment immediately upon receipt of the order. This system applied both to regular payments such as renewal fees and "one-off" payments such as appeal fees, and had been satisfactorily used for many years. The patent department

was responsible for several hundred current cases, and during use of the system not a single payment had ever been missed before.

During the transition period while CPA were taking over the regular payments, the secretary was instructed not to send any orders to the finance department without a specific written instruction. This was to avoid double payment during this transition period in relation to invoices which were received by the patent department but were in respect of regular payments and therefore henceforth to be paid by CPA.

In the case of the present appeal, the prior manager of the patent department made an error, because he forwarded the Decision to refuse and the letter containing the notice of appeal and the statement of grounds of appeal to the secretary, with his signature upon the Decision to refuse as under the old system, but he failed to give a specific written instruction to pay the appeal fee, as required by the new instructions during the transition period.

In accordance with such instructions, the secretary therefore did not send a payment order to the finance department in respect of this appeal fee.

Reasons for the Decision

1. The cause of non-compliance with the time limit for paying the fee for appeal in connection with the filing of the appeal was removed by notification to the Applicant of the communication dated 7 February 1986. Notification is regarded as having taken place on 17 February 1986, in accordance with Rule 78(3) EPC. The application for re-establishment of rights was therefore filed and the appeal fee paid, within two months from the removal of the cause

of non-compliance with the time limit; and the application was filed within the year immediately following the expiry of the unobserved time limit. The application for re-establishment of rights therefore satisfies the formal requirements of Article 122 EPC.

2. In a recent Decision dated 21 October 1986 of the Legal Board of Appeal, (J 2 and 3/86, "Isolated mistake-restitutio/Motorola", to be published in OJ EPO 7/1987), it is stated that "Article 122 EPC is intended to ensure that in appropriate cases the loss of substantive rights does not result from an isolated procedural mistake within a normally satisfactory system".

In the present case the Board is satisfied that the system used in the patent department and the finance department to ensure that a fee such as an appeal fee was paid in due time in connection with the filing of an appeal was normally perfectly satisfactory. At the particular time when this appeal was to be filed, the reorganisation of the patent department and the transfer of regular fee payments to CPA clearly caused a disturbance to this system, and as part of this disturbance the prior manager of the patent department made an error: the secretary having been instructed not to prepare payment orders for the finance department unless specifically instructed in writing so to do, he then forgot to give such specific instructions in writing to the secretary for payment of appeal fee for this appeal. Such a human error is understandable in the special circumstances of the reorganisation of the patent department, with consequent strain upon all concerned.

The Board considers that this was an example of an isolated procedural mistake such as envisaged in the Motorola Decision J2 and J3/86, and that this is an appropriate case

in which relief under Article 122 should be allowed. Accordingly, the Board is satisfied that, in spite of all due care required by the circumstances having been taken by the Applicant, he was unable to observe the time limit for paying the appeal fee in this case. The application for re-establishment of rights is therefore allowed.

Order

For these reasons it is decided that

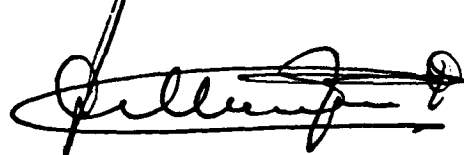
The rights of the Applicant are re-established in connection with the filing of an admissible appeal, and the notice of appeal in the letter dated 6 September 1985 shall therefore be considered as having been filed within two months after notification of the Decision of the Examining Division dated 17 July 1985.

The Registrar



B.A. Norman

The Chairman



P. Delbecq

