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13

Aktenzeichen / Case Number / N° du recours : T 70/86
Anmeldenummer / Filing No / N° de la demande : 83 201 051.6
Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 099 608

Bezeichnung der Erfindung:
Title of invention: Device for displaying three-dimensional images
Titre de l'invention :

Klassifikation / Classification / Classement : H 04 N 9/60

ENTSCHEIDUNG / DECISION

vom / of / du

22 August 1987

Anmelder / Applicant / Demandeur :

N.V. Philips' Gloeilampenfabrieken

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Restitutio/Philips

EPO / EPC / CBE Article 122(1)

Kennwort / Keyword / Mot clé : Restitutio in integrum/all due care

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 70 /86

D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 22 August 1987

Appellant : N.V. Philips' Gloeilampenfabrieken
Groenewoudseweg 1,
5621 BA Eindhoven (NL)

Representative : Koppen, Jan
Internationaal Octrooibureau B.V.
Prof. Holstlaan 6
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Decision under appeal : Decision of Examining Division 058
of the European Patent Office dated
24.09.1985 refusing European patent
application No. 83 201 051.6
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : van den Berg, P.K.J.
Members : Payraudeau, C.V.
van Voorthuizen J.A.H.

Summary of Facts and Submissions

- I. European patent application No. 83 201 051.6 (published under No. 099 608) was refused by a decision of the Examining Division 058 of the European Patent Office dated 24 September 1985.
- II. By letter dated 15 November 1985 and received at the EPO on 19 November 1985, one of the professional representatives appointed to act for the Appellant filed a notice of appeal against the decision of the Examining Division together with a Statement of Grounds. This letter did not make any reference to payment of the fee for appeal and the fee was not paid at the time.
- III. By registered letter dated 6 March 1986, the Registrar of the Board of Appeal notified the Appellant of the loss of rights which resulted from the omission of payment of the appeal fee.
- IV. Following this communication, an application for re-establishment of rights (Article 122 EPC) was filed on 24 March 1986 and the appeal fee and the fee for re-establishment of rights were paid simultaneously.
- V. In the annexed grounds, the Appellant's representative explained that he had come from England to a Patent Attorney's Office in The Netherlands on 4 November 1985 to assist with a backlog of work; that, due to these circumstances, he had been going through a period of great adjustment and that this was the reason why he had overlooked the payment of the appeal fee. Moreover, although the said Office in the Netherlands had a defined procedure for filing appeals and payment of the appeal fees, he was not aware of it, due to his recent arrival.

VI. In a Communication dated 11 August 1986, the Rapporteur of the Board of Appeal drew the attention of the Appellant to a former decision given by the technical Board of Appeal 3.4.1 on 11 June 1985 (case T 287/84, OJ EPO 11/1985, p. 333) according to which "in considering whether all due care required by the circumstances has been taken, the word "all" is important and for the purpose of Article 122(1) EPC, the circumstances of each case must be considered as a whole". In the present case, although the error made by the representative could, in view of the circumstances, possibly have been considered as understandable, it did not appear that all due care had been exercised in that the Appellant's representative had not been previously informed of the procedure for filing appeals established in the Office where he was employed, precisely in order to ensure that such personal errors are discovered in time. Consequently, the Rapporteur was of the opinion that the Board would not consider that the conditions of Article 122(1) had been met.

VII. In his answer to this communication, the Appellant's representative did not submit any new evidence or arguments but only asked the Board to render its decision on the merits of the case.

Reasons for the Decision

1. The present application for re-establishment of rights complies with the requirements of Article 122(2) and (3) EPC; it is therefore admissible.
2. It appears that the Appellant's representative was placed in a position of responsibility in circumstances where it was conceivable that he might make some mistakes. Nevertheless, and although the international character of the Office employing the representative must be presumed to

have facilitated internal communication, the representative was not informed of the procedure provided for in that Office (such procedure is customary in Patent Attorney's offices) precisely to prevent or correct such errors as the non-observance of a time limit.

3. For those reasons, it cannot be held that all the due care required in the circumstances within the meaning of Article 122(1) EPC was exercised. Therefore re-establishment of rights in respect to the failure to meet the time limit for payment of the appeal fee cannot be granted.
4. As there is no appeal in existence, the Appellant is entitled to a refund of the appeal fee paid on the 24 March 1985.

Order

For these reasons, it is decided that:

The application for re-establishment of rights is refused.

The appeal fee is to be refunded.

The Registrar:

The Chairman:

F. Klein

P.K.J. van den Berg