

Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non



Aktenzeichen / Case Number / N° du recours : T 355/86

Anmeldenummer / Filing No / N° de la demande : 82 901 965.2

Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 082 169

Bezeichnung der Erfindung: Safety mechanism for preventing the locking up of  
Title of invention: persons in cabinets  
Titre de l'invention :

Klassifikation / Classification / Classement : E 05 G 1/00, E 05 C 17/58

### ENTSCHEIDUNG / DECISION

vom / of / du 14 April 1987

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

A/S SPAREVIRKE

Einsprechender / Opponent / Opposant :

PALM, HANS ERIK

**Intervenor:**

BINDER, STEEN

Stichwort / Headword / Référence : Notice of opposition/SPAREVIRKE

EPÜ / EPC / CBE Articles 99(1), 133(2)  
Rules 101(1), (4)

Kennwort / Keyword / Mot clé : "Notice of opposition deemed not to have been  
filed - failure to file authorisation of  
representative"

Leitsatz / Headnote / Sommaire



Case Number : T 355 /86

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 14 April 1987

**Appellant :**  
(Opponent)

Palm, Hans Erik  
Maglebytorv 33  
DK-2771 Dragør

**Intervenor:** Binder, Steen  
Mimersgade 111  
DK-2200 København

**Representative :**

Grünecker, Kinkeldey  
Stockmair & Partner  
Maximilianstr. 58  
D-8000 München 22

**Respondent :**  
(Proprietor of the patent)

A/S Sparevirke  
62-64 Kobenmagergade  
DK-1150 København K

**Representative :**

Coleman, Stanley  
Mathys & Squire  
10 Fleet Street  
GB London EC4Y 1AY

**Decision under appeal :**

Decision of the Formalities Section of Directorate  
General 2 of the European Patent Office  
dated 22 July 1986 that a notice of opposition to  
European patent No. 0 082 169 was deemed not to have  
been filed pursuant to Rule 101(4) EPC.

**Composition of the Board :**

**Chairman :** C. Maus

**Member :** P. Ford

**Member :** R. Gryc

### Summary of Facts and Submissions

- I. On 7 October 1985, a European professional representative filed a notice of opposition to European patent No. 0 082 169 in the name of the appellant, a natural person having his residence and principal place of business outside the territory of the Contracting States. The letter accompanying the notice stated that an authorisation of the representative would be sent shortly but in fact no such authorisation was sent.
  
- II. On 17 October 1985, a Formalities Officer of Directorate General 2 of the European Patent Office sent a notice to the representative, drawing attention to the failure to file an authorisation, requesting that it should be filed within a period of three months after receipt by the EPO (on 7 October 1985) of the communication indicating the appointment of a representative and warning the representative that if the authorisation was not filed in due time, the notice of opposition would be deemed not to have been filed, pursuant to Rule 101(4) EPC.
  
- III. By letter dated 11 November 1985, the representative acknowledged receipt of the notice, stated that the authorisation would follow in due course and that the period allowed for filing it was noted.
  
- IV. In a further letter dated 3 January 1986, received on 9 January 1986, the representative stated that an authorisation was now enclosed but was in the name of a different natural person (hereinafter referred to as "the intervenor") and it was requested that the opposition proceedings should be carried on in the changed name. The authorisation form enclosed with this letter was in a material part blank. It gave no name or address of the

person authorising the representative, although signed by the intervenor.

- V. On 28 January 1986, the Head of the Formalities Section of Directorate General 2 issued a Communication pursuant to Rule 69(1) EPC stating that the notice of opposition was deemed not to have been filed, on the ground that the necessary authorisation of the representative had not been filed in due time.
- VI. By letters dated 11 and 13 February 1986, the representative suggested that the authorisation filed should be treated as having been received in due time but he did not explain why it was sought to change the name of the opponent until requested to do so by a brief communication from the Formalities Officer dated 24 April 1986.
- VII. By letter dated 9 May 1986 the representative then explained that the opposition had been filed in the name of an employee of a company making products similar to those described in the European patent but that this employee had now left the company and it had been decided that the opposition should proceed in the name of another "member" (sic) of the company (namely, the intervenor).
- VIII. By the decision under appeal of 22 July 1986, the Formalities Section of Directorate General 2 both rejected the request for the change of the opponent's name and held that the notice of opposition was deemed not to have been filed, pursuant to Rule 101(4) EPC. So far as is material, the decision held that the status of the opponent could not be assigned and that the authorisation by a person not a party to the proceedings could not replace the authorisation required.

IX On 30 September 1986, a different European representative filed a notice of appeal against the decision in the name of and under authorisation from both the appellant and the intervenor. The appeal fee was paid. Authorisation forms signed by each of the individuals concerned were filed on 28 November 1986. The letter accompanying the authorisation forms stated:

"To substantiate the appeal, reference is hereby made to the arguments presented before the Opposition Division. It is respectfully requested to render a decision based on the present status of the file."

### Reasons for the Decision

#### Admissibility of the Appeal

1. Article 107 EPC makes provision as to persons entitled to appeal and to be parties to appeal proceedings in the following terms:

"Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right."

Insofar as the present appeal purports to be in the name of the appellant, it is clearly in conformity with this provision but the intervenor was not a party to the proceedings before the Formalities Section of Directorate General 2 and thus cannot be regarded as entitled to appeal or to be a party to the present proceedings in accordance with Article 107 EPC. Nor can he be regarded as an independent opponent since he never filed or sought to file a notice of opposition in his own name. Accordingly, the attempted intervention by the intervenor in the appeal proceedings has to be rejected. In particular, he is not entitled to be and is not properly named as an appellant.

2. Insofar as the appeal is filed in the name of the appellant it appears to comply formally with Articles 106 to 108 and Rule 64 EPC although the statement of grounds of appeal (quoted in full, paragraph IX above) is of minimal content, since the "arguments presented before the Opposition Division" referred to dealt substantially only with an issue which did not have to be and was not decided by the Formalities Section, namely the late filing of the authorisation filed on 9 January 1986.

#### Allowability of the Appeal

3. It is clear that the present appeal cannot succeed.
  - 3.1 As the appellant has neither a residence nor a principal place of business within the territory of a Contracting State he has to be represented by a professional representative and act through him in, *inter alia*, opposition proceedings (Article 133(2) EPC).
  - 3.2 Rule 101(4) EPC requires that where the appointment of a representative is communicated to the European Patent Office, the necessary authorisation shall be filed within three months after such communication. If such authorisation is not filed in due time, any procedural steps taken by the representative in, *inter alia*, opposition proceedings, shall be deemed not to have been taken.
  - 3.3 Nothing in the EPC or the Implementing Regulations appears to permit express or implied assignment of the status of opponent or the authorisation of a representative who has taken procedural steps in an opposition in the name of one person by another person, except possibly in very special circumstances which do not apply in the present case: e.g.

of mistake corrected under Rule 88 EPC or of succession on death.

- 3.4 Faced with the objection of the Formalities Section (cf. paragraph V above) the appellant's previous representative gave an explanation of the circumstances in which it had been decided to proceed in the name of the intervenor but did not seek to justify in law the action taken. The appellant's present representative merely refers back to the arguments presented by his predecessor and therefore also does not seek to justify in law the action taken. The Board, examining the facts of its own motion, in accordance with Article 114(1) EPC, can find no such justification.
4. It follows that, in conformity with Rule 101(4) EPC, the notice of opposition is deemed not to have been filed. In these circumstances, it is unnecessary for the Board to decide any other issue.

**Order**

**For these reasons it is decided that:**

**The appeal is dismissed.**

**The Registrar:**

**The Chairman:**

**B A Norman**

**C Maus**