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Aktenzeichen / Case Number / N° du recours : T 2/87

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Bezeichnung der Erfindung: Distribution injection pump for diesel engines
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : F 02 M 59/36 F 02 M 41/14

ENTSCHEIDUNG / DECISION

vom / of / du 11 August 1987

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

THE BENDIX CORPORATION

Einsprechender / Opponent / Opposant : ROBERT BOSCH GmbH

Stichwort / Headword / Référence : Telegraphic money order/BOSCH

EPO/EPC/CBE EPC Article 99(1) Rules relating to Fees Article 8(1)

Kennwort / Keyword / Mot clé : "Belated payment of opposition fee" -
"Opposition deemed not filed" - "Telegraphic money order" -
"Re-establishment of rights (not provided for)"

Leitsatz / Headnote / Sommaire

The European Patent Office is under no legal obligation to receive cash payments delivered outside office hours, whether or not it is advised by the payer that such a payment is going to be made.

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 2 /87

D E C I S I O N
of the Technical Board of Appeal 3.2.2.
of 11 August 1987

Appellant :
(Opponent)

ROBERT BOSCH GmbH
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Representative :

Respondent :
(Proprietor of the patent)

THE BENDIX CORPORATION
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Representative :

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Decision under appeal :

Decision of The Formalities Officer of the Registry
of the Opposition Division of the European Patent
Office dated 6 October 1986 declaring that an
opposition was deemed not to have been filed and
that a request for re-establishment of rights was
inadmissible.

Composition of the Board :

Chairman : C. Maus

Members : P. Ford

C. Andries

Summary of Facts and Submissions

- I. Publication of the mention of the grant of European patent No. 0 054 497 to the Respondent appeared in the European Patent Bulletin No. 85/17 dated 24 April 1985. Accordingly, pursuant to Article 99(1) EPC, the period for giving notice of opposition to the patent expired on Friday 24 January 1986. At 5 p.m. on that day (therefore, after the European Patent Office in Munich had closed), an employee of the Appellant sent a telegraphic money order for DM 560 (the amount of the opposition fee) from a Post Office in the Federal Republic of Germany to the EPO. The telegram was received by a Post Office in Munich at 6 p.m. At some time between 8.10 p.m. and 9.50 p.m. an official of the Post Office attempted to deliver the money in cash to the EPO, but his attempt was unsuccessful as no official of the EPO authorised to receive the money and to sign a receipt therefor was on duty. A second attempt to deliver the money on the following morning was unsuccessful, for the same reason, and the money was only handed over during normal office hours on the following Monday morning.
- II. A notice of opposition was sent by the Appellant by telex and received on Friday 24 January 1986 at 6.54 p.m. It contained, inter alia, the statement "Zahlung per telegraphischer Überweisung" ("payment by telegraphic money order"). The telex was duly confirmed in writing as required by Rule 36(5) EPC.
- III. As a notice of opposition is not deemed to have been filed until the opposition fee has been paid (Article 99(1) EPC third sentence) the Formalities Officer of the Registry of the Opposition Division advised the Appellant by letter dated 14 February 1986 that the opposition was deemed not to have been filed, but that a decision under Rule 69(2) EPC could be applied for.

- IV. By letter dated 20 March 1986 the Appellant requested such a decision and, in the alternative, re-establishment of rights under Article 122 EPC. The fee for re-establishment of rights was paid on 22 March 1986.
- V. By the decision under appeal, dated 6 October 1986, the Formalities Officer of the Registry of the Opposition Division of the EPO held that the notice of opposition was deemed not to have been filed since the opposition fee was not paid in time and that the alternative request for re-establishment of rights was inadmissible.
- VI. The Appellant filed notice of appeal against the decision on 26 November 1986. The appeal fee was duly paid and a written statement of the grounds of the appeal was filed in due time on 23 January 1987. The Appellant contended, in particular, that the case was analogous to that of a late received Giro payment which had been favourably considered in Case T 214/83 (OJ EPO 1985, 10). The fact that the EPO had been notified in the telexed notice of opposition that a telegraphic money order was being used to pay the opposition fee, was as effective in assuring the Office that the fee would be paid as a notification that the money was being paid into an account held by the EPO. Furthermore, as this notification had been received on the last day for payment, the Office should be regarded as having in effect refused to accept payment by not having available a person authorised to receive the money. It must be possible for any person to pay a fee at any time up to the end of the last day for payment, irrespective of the opening hours of the EPO. Where the opening hours do not permit this, then, by analogy with Rule 85 EPC (extension of time limits expiring on a day on which the Office is not open for the receipt of documents) time for the payment of

a fee should be extended to the next day in which the Office is open for the receipt of cash payments. Finally, the Appellant contended that a fee could be regarded as paid within the meaning of Article 99(1) EPC once the payer had given up control over the money in favour of the Office.

The application for re-establishment of rights was not pursued in the statement of grounds of the appeal.

- VII. The Registrar of the Boards of Appeal duly sent a copy of the Appellant's statement of grounds of appeal to the Respondent, stating in the covering letter that any submissions in answer must be filed within four months. No such submissions were filed within that period and no application was made for extension of time. The Registrar subsequently ascertained that the copy had been duly received by the Respondent's Representative.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC, and is therefore, admissible.
2. Article 99(1) EPC provides that any person may give notice of opposition to a European patent granted "within nine months" from the publication of the mention of the grant of the patent. It also provides that the notice shall not be deemed to have been filed until the opposition fee has been "paid".
3. It is not in doubt that a person who wishes to give notice of opposition may, in fact, do so at any time up to the end of the last day of the opposition period. The facilities of an automatic night letter box and (as was relevant in the present case) automatic receipt of telex messages ensure

that documents and messages can be received at the EPO in Munich outside office hours and given a date of receipt. Cheques may also be posted in the night letter box.

However, there are no arrangements under which fees can be paid in cash outside office hours. There is nothing in the nature of a "Night Safe" and, in particular, there are no facilities for the issue of receipts for cash outside working hours. Only duly authorised persons may accept cash on behalf of the EPO and they are obliged to give receipts therefor by the European Patent Organisation's Financial Regulations. Furthermore, where cash is delivered by money order through a postal official, as has been very clearly and properly explained in the decision under appeal, German Post Office Regulations require that payment can only be made to an authorised person who must give a valid receipt to the postal official.

4. In the present case, the Appellant must be deemed to have been aware of the opening hours of the Cash Office of the EPO and the office hours in general (both of which have been made known through the Official Journal of the EPO and can be ascertained on enquiry) and that there was no chance that a telegraphic money order sent after such hours could be received on the same day.
5. The Board can find no justification in the EPC or any regulations to say that the EPO is under a legal obligation to receive cash payments delivered outside office hours, whether or not it is advised by the payer that such a payment is going to be made. A fortiori this must be the case where advice of payment is not sent until after office hours. It is not unreasonable that a person who wishes to pay a fee in cash must make arrangements for doing so which are appropriate to the circumstances.

6. The Appellant's argument that there should be an analogy between the present case and that of a payment to a Post Office in favour of a Giro account held by the EPO does not seem to be sound. Both Case T 214/83 (cited above) and the earlier Legal Board of Appeal decision in Case J 26/80 (OJ EPO 1982, 7), referred to at length in Case T 214/83, were concerned with crediting an account and with the concept of entry into an account, referred to specifically in Article 8(1)(a) Rules relating to Fees (RFees). In the case of a money order, Article 8(1)(b) RFees refers specifically to "the date of receipt of the amount of the money order", i.e. the date of receipt by the EPO of the cash.

In the opinion of the Board, the concept of notional crediting to an account cannot reasonably be stretched to allow for recognition of notional receipt of cash on a day earlier than the day of actual receipt.

7. Nor would it seem to be permissible to extend time for cash payment when cash was not delivered in office hours, by analogy with Rule 85 EPC. It is one thing to say that a payment due on a day on which the Office is not open at any time to receive it may be made on the next day on which it is so open. It would be quite another thing to say that a payment tendered after office hours on a day on which the Office was open should be acceptable on the next such day.
8. The Appellant's argument that an opposition fee can be regarded as "paid" within the meaning of Article 99(1) EPC, once the payer has given up control over the money cannot be accepted either. It is clear from the French and English texts of Article 99(1) EPC, which have equal authority with the German text, that "paid" must mean actually paid to the EPO when a cash and not a credit transaction is in question. In the present case, the German Post Office was

not an agent of the EPO for the receipt of the money: it was merely the payer's messenger.

9. For the foregoing reasons, the present appeal must be dismissed.
10. The Appellant has not pursued the application for re-establishment of rights, which is not provided for in the circumstances of the case by Article 122 EPC. The reasoning of the decision under appeal in this respect must be affirmed.

For these reasons, it is decided that:

1. The appeal is dismissed.
2. The fee paid for the opposition and the fee paid for re-establishment of rights are to be refunded to the Appellant.

The Registrar:

The Chairman:

B. A. Norman

C. Maus