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Anmeldenummer / Filing No / N° de la demande 83 201 490.6

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Bezeichnung der Erfindung: Method of and device for determining the  
Title of invention: distribution of radiation attenuation in a  
Titre de l'invention : body section

Klassifikation / Classification / Classement : G06F 15/20

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**ENTSCHEIDUNG / DECISION**

vom / of / du 12 January 1988

Anmelder / Applicant / Demandeur : N.V. Philips' Gloeilampenfabrieken

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ/EPC/CBE Article 108, Rules 36(5) and 83

Kennwort / Keyword / Mot clé : "Notice of Appeal by telex not confirmed within  
the time limit prescribed by Rule 36(5) EPC -  
no appeal has ever existed"  
"Reimbursement of appeal fee"

Leitsatz / Headnote / Sommaire

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**D E C I S I O N**  
of the Technical Board of Appeal 3.5.1  
of 12 January 1988

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

**Representative :** Faessen, Louis Marie Hubertus  
International Octrooibureau B.V.  
6 Prof. Holstlaan  
NL-5656 AA Eindhoven (NL)

**Decision under appeal :** Decision of Examining Division 065  
of the European Patent Office  
dated 17 February 1987 refusing  
European patent application  
No. 83 201 490.6 pursuant to  
Article 97(1) EPC

**Composition of the Board :**

**Chairman :** P.K.J. Van den Berg  
**Members :** E. Persson  
W.J.L. Wheeler

## Summary of Facts and Submissions

- I. The appeal lies from a decision of the Examining Division 065 of the European Patent Office dated 17 February 1987 refusing patent application No. 83 201 490.6. The decision was dispatched by registered letter with advice of delivery to the applicant on the same day it was given. On 27 April 1987, i.e. within the time limit prescribed by Article 108, first sentence, EPC in conjunction with Rule 78(3) EPC, the applicant filed a notice of appeal by telex and paid the fee for appeal. By a letter dated 11 May 1987 and received by the EPO on 12 May 1987 the contents of the telex were confirmed. A statement of grounds of appeal was later filed within the time limit prescribed by Article 108, third sentence, EPC in conjunction with Rule 78(3) EPC.
- II. By a communication dated 20 May 1987 the Formalities Officer of the Examining Division informed the applicant that the above letter confirming the telex of 27 April 1987 had not been filed within the time limit (two weeks) prescribed by Rule 36(5) EPC but one day too late and that, therefore, the telex was deemed not to have been received. The applicant was furthermore asked to confirm that the appeal fee should be refunded.
- III. In response to this communication, the applicant, by a letter dated 17 June 1987, referring to the general provisions on the calculation of time limits contained in Rule 83(2) EPC, submitted that the disputed confirmation letter had been received "nicely in time" by the EPO so that the appeal procedure was duly started. Consequently, the offer to refund the appeal fee was declined. The Formalities Officer, by a letter dated 17 July 1987, further explained his position maintaining the view expressed in his communication of 20 May 1987.

IV. By a communication dated 25 September 1987 the Rapporteur of the Board of Appeal for this case drew the attention of the applicant to the interpretation given to the provisions of Rule 83 EPC by the Boards of Appeal in previous decisions concluding, provisionally, that the two week's time limit prescribed by Rule 36(5) EPC in this case actually seemed to have expired on 11 May 1987. The applicant was invited to comment on this communication within two months but did not respond.

#### Reasons for the Decision

1. The question at stake in this case is apparently whether or not the confirmation letter of 11 May 1987 received by the EPO on 12 May 1987 complies with the requirement of Rule 36(5) EPC (in its wording before 1 October 1987; cf. OJ EPO 1987, 274, 323) that a telex must be confirmed by a document reproducing its contents and filed "within two weeks as from the receipt of such ... telex". If this document is not filed in due time, the telex shall, according to the same Rule, be deemed not to have been received.
2. How to calculate the time limit of two weeks provided for in Rule 36(5) EPC is governed by the provisions of Rule 83 EPC. According to paragraph 2 of that Rule computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided. And in paragraph 5 of the same Rule it is prescribed that when a period is expressed as one week or a certain number of weeks, it shall expire in the

relevant subsequent week on the day having the same name as the day on which the said event occurred.

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3. The relevant event forming the basis for the calculation of the period of two weeks provided for in Rule 36(5) EPC was in this case the receipt by the EPO of the telex containing a notice of appeal on 27 April 1987, which was a Monday. Starting the computation on the following day, the said period of two weeks thus expired on Monday, 11 May 1987, which means that the applicant in fact had two full weeks at his disposal. This interpretation is fully in line with the decisions of the Legal Board of Appeal in cases J 09/82 (OJ EPC 1983, 57) and J 22/85 (not yet published), although in these cases the periods in question were expressed in months.
4. Consequently, and since the confirmation letter of 11 May 1987 was filed only on Tuesday, 12 May 1987, the telex shall, in accordance with Rule 36(5) EPC, be deemed not to have been received. Thus, no appeal has ever existed and the appeal fee ought, therefore, to be reimbursed (cf. T 41/82, OJ EPO 1982, 256, and T 43/87, not published).

#### Order

For these reasons, it is decided that:

1. The notice of appeal is deemed not to have been received and there is no appeal in existence.
2. Reimbursement of the appeal fee is ordered.

The Registrar:

S. Fabiani

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The Chairman:

P.K.J. Van den Berg