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Aktenzeichen / Case Number / N^o du recours : T 48/88 - 3.2.1

Anmeldenummer / Filing No / N^o de la demande : 82 902 740.8

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 089 971

Bezeichnung der Erfindung: Pressurised dispensing apparatus

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : B 65 D 83/14

ENTSCHEIDUNG / DECISION

vom / of / du 16 March 1988

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

Rocep-Lusol Holdings Limited

Einsprechender / Opponent / Opposant :

the said Rocep-Lusol Holding Limited

Stichwort / Headword / Référence :

EPO / EPC / CBE Art. 108, Rule 36(5) EPC

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



Case Number : T 48/88 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal
of 16 March 1988

Appellant :
(Proprietor of the patent) Rocep-Lusol Holdings Limited
77 St Vincent Street
Glasgow, G2 5TQ
Scotland
GB

Representative :
Wotherspoon, Graham
FRITZPATRICKS
4 West Regent Street
Glasgow G2 1RS
Scotland
GB

Respondent :
(Opponent) the said Rocep-Lusol Holdings
Limited

Representative : the said Wotherspoon Graham

Decision under appeal : Decision of the Opposition Division of the
European Patent Office dated 10 September 1987
revoking European patent No. 0 089 971 pursuant
to Article 102(5) EPC

Composition of the Board :
Chairman : P.E.M. Delbecque
Members : F. Benussi
 F. Gumbel

Summary of Facts and Submissions

- I. This appeal lies from a decision of the Examining Division (formalities Section) of the European Patent Office dated 10 September 1987, revoking patent application No. 82 902 740.8.
- II. The decision was dispatched by registered letter with advice of delivery to the applicant on the same day it was given. On 20 November 1987, i.e. within the time limit prescribed by Article 108, first sentence, EPC the applicant filed a notice of appeal by telex and paid the fee for appeal.
- III. The appellant stated in his telex that confirmation of this telex would follow, but in fact, no letter confirming the telex of 20 November 1987 has been received by the EPO.

Furthermore, no Statement of Grounds of appeal has ever been received by the EPO.

Reasons for the Decision

1. It is first necessary to decide whether this appeal exists.
2. Article 108, first sentence, EPC, provides that a notice of appeal must be filed in writing at the European Patent Office within two months after the date of notification of the decision appealed from. Rule 36(5), first sentence, EPC renders it possible to lodge an notice of appeal by telegram or telex. The appellant made use of this possibility and filed an appeal by telex, within the prescribed period, on 20 November 1987.

However, pursuant to Rule 36(5), second sentence EPC, a document reproducing the contents of such a telex and complying with the requirements of the Supplementing Regulations must be filed with a given period. This period is laid down by the President of the European Patent Office in Official Journal 1 - 2/88, 33 to be two weeks, which in the present case expired on 4 December 1987.

A letter reproducing the contents of the telex, has never been received at the European Patent Office. The telex must, therefore, be deemed not to have been received, in accordance with the third sentence of Rule 36(5) EPC. It follows that no appeal can be considered as having been filed.

In consequence no appeal has ever existed and the appeal fee ought, therefore, to be reimbursed (cf. T 270/87, not published).

Order

For these reasons, it is decided that:

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

The Registrar

The Chairman

S. Fabiani

P. Delbecque