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File No.: T 0576/93 - 3.2.2
Application No.: 86 102 946.0
Publication No.: 0 197 302
Classification: A61B 5/02
Title of invention: Method and apparatus for measuring circulatory
function

D E C I S I O N
of 2 September 1993

Applicant: TERUMO KABUSHIKI KAISHA trading as TERUMO
CORPORATION

Proprietor of the patent:

Opponent:

Headword:

EPC: R. 67

Keyword: "Reimbursement of appeal fee (no); withdrawal of application; no
filing of Statement of Grounds of Appeal"

Headnote
Catchwords



Case Number: T 0576/93 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 2 September 1993

Appellant: TERUMO KABUSHIKI KAISHA
trading as TERUMO CORPORATION
44-1, 2-chome, Hatagaya
Shibuya-Ku
Tokyo 151 (JP)

Representative: Henkel, Feiler, Hänzel & Partner
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Decision under appeal: Decision of the Examining Division of the European Patent Office dated 10 March 1993, notified on 5 April 1993, refusing European patent application No. 86 102 946.0 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: P. Dropmann
Members: M.K.S. Aúz Castro
M.G. Noël

Summary of Facts and Submissions

- I. European patent application 86 102 946.0 was refused by a decision of the Examining Division dated 10 March 1993, notified on 5 April 1993.
Against this decision an appeal was filed on 4 June 1993 and the appeal fee was paid on the same day.
- II. No Statement of Grounds of Appeal was filed.
- III. By letter of 11 June 1993 the application was withdrawn and it was requested that the appeal fee be refunded.

Reasons for the Decision

1. According to Rule 67 EPC an appeal fee shall be reimbursed either in the event of interlocutory revision (under Article 109 EPC), or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

The first alternative of Rule 67 EPC - interlocutory revision - is not relevant in this case and the second one - allowability of the appeal - is not fulfilled, due to the inadmissibility of the appeal because no Statement of Grounds of Appeal was filed. Therefore, there is no basis in Rule 67 EPC for ordering refund of the appeal fee in the present case.

2. The fact that the application was withdrawn after filing the appeal does not have any relevance on the refund of the appeal fee because the withdrawal of an application does not form part of the conditions listed in Rule 67.

3. Also, the fact that the application was withdrawn before the expiry of the prescribed four month period for filing a Statement of Grounds of Appeal (Article 108 EPC) cannot lead to other conclusions. The consequence of the failure to file a Statement of Grounds of Appeal in due time is not that the appeal is without existence but merely that under Rule 65 EPC the appeal must be rejected as inadmissible. Consequently, by virtue of Article 110(1) EPC the appeal cannot be examined by the Board of Appeal in respect of its allowability which, as stated above, is one of the conditions for reimbursement of the appeal fee. Therefore, the Board has no power to order reimbursement of the appeal fee as requested by the Appellant.

4. As the application has been withdrawn and as consequently the appeal is no longer in existence, the present decision is given by the Board in the exercise of its inherent original jurisdiction to consider requests made to it in matters arising out of or in connection with the former appeal proceedings (see case T 41/82, OJ EPO 1982, 256, point 6 of that decision).

Order

For these reasons, it is decided that:

The request for reimbursement of the appeal fee is rejected.

The Registrar:



S. Fabiani

The Chairman:



P. Dropmann