

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen

**INTERLOCUTORY DECISION
of 5 July 1996**

Case Number: T 0043/96 - 3.5.2

Application Number: 90112566.6

Publication Number: 407848

IPC: H03H 3/00

Language of the proceedings: EN

Title of invention:

Trimming circuit and trimming method performable using such a trimming circuit

Applicant:

TEXAS INSTRUMENTS DEUTSCHLAND GmbH

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 122

Keyword:

"Restitutio in integrum (yes)"

Decisions cited:

J 0005/80, T 0191/82, J 0002/86, T 0179/87

Catchword:

-



Europäisches
Patentamt

European
Patent Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: T 0043/96 - 3.5.2

INTERLOCUTORY DECISION
of the Technical Board of Appeal 3.5.2
of 5 July 1996

Appellant: TEXAS INSTRUMENTS DEUTSCHLAND GmbH
Haggertystrasse 1
D-85356 Freising (DE)

Representative: Schwepfinger, K.-H., dipl.-Ing.
Patentanwälte Prinz und Partner
Manzingerweg 7
D-81241 München (DE)

Decision under appeal: Decision of the Examining Division of the European
Patent Office posted 25 July 1995 refusing
European patent application No. 90 112 566.6
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: B. Schachenmann
M. R. J. Villemin

Summary of Facts and Submissions

- I. The European patent application No. 90 112 566.6 was refused by the Examining Division of the European Patent Office with decision posted on 25 July 1995.
- II. On 28 September 1995 the appellant lodged an appeal against the decision referred to above and paid the appeal fee. However, the statement setting out the grounds of appeal was not received at the European Patent Office until 5 December 1995.
- III. On 13 March 1996 the Registry of the Boards of Appeal issued a communication pursuant to Article 108 and Rule 65(1) EPC informing the appellant that the statement of grounds did not appear to have been filed in due time and that it was expected, therefore, that the appeal would be rejected as inadmissible.
- IV. On 26 April 1996 the appellant's professional representative filed an application for restitutio in integrum in respect of the time limit for filing the statement of grounds (Article 108 EPC, last sentence). The fee for re-establishment of rights was paid at the same time.

In support of this application the representative argued essentially as follows:

The impugned decision was received at the representative's office on 26 July 1995. Immediately upon receipt the two periods provided for in Article 108 EPC for filing the notice of appeal and the statement of grounds were determined and checked by two secretaries

in the representative's office. The dates of 26 September 1995 and 26 November 1995 were written on the cover sheet of the decision and entered into the office calendar used for supervising time limits.

Following the normal practice in the representative's office the time limits were calculated without adding the ten days according to Rule 78(3) EPC. According to this practice the responsibility for files which have entered the ten day period is transferred from the general office supervising system based on the office calendar to the secretary of the attorney handling the case.

In the present case the representative was not yet in possession of instructions from the appellant on 26 November 1995, i.e. on the date noted in the office calendar for filing the statement of grounds. The secretary therefore took the file and placed it in a rack near her desk after having attached a sticker indicating 5 December 1995 (instead of the correct date of 4 December 1995) as the final date of expiry of the time limit. This mistake resulted from an inexplicable error on the part of the secretary. Obviously, when adding the ten days pursuant to Rule 78(3) EPC, she had overlooked that the month of July has thirty-one days rather than thirty days. As a consequence of this error, the statement of ground which had been finished and signed already the day before was not brought to the EPO until 5 December 1995, i.e. one day late.

The secretary has been doing her job as an assistant of the patent attorney for more than twenty years and is therefore very experienced. She is familiar with the regulations of the EPC and, in particular, with the provisions concerning the calculation of time limits.

These facts show that in the representative's office there existed a normally satisfactory system for supervising time limits and that the failure to comply with the time limit under Article 108 EPC, last sentence, was due to an isolated error of an otherwise very reliable secretary.

- V. Evidence in the form of an affidavit of the secretary confirming the facts set out above was submitted together with the application for re-establishment of rights. The representative further filed copies from the office calendar and from the file.

Reasons for the Decision

1. The cause of noncompliance with the time limit was removed by the communication of the Registry of the Boards of appeal dated 13 March 1996 and delivered to the representative on 14 March 1996. The application for restitutio was filed and the corresponding fee was paid on 26 April 1996, i.e. within the two month period of Article 122(2) EPC. It was therefore made in due time.
2. The only issue to be examined is therefore whether the appellant, in spite of all due care required by the circumstances having been taken, was unable to observe the time limit for filing the statement setting out the grounds of appeal pursuant to Article 108 EPC, last sentence.

As was credibly explained by the appellant's representative and confirmed by his secretary, the failure to observe the time limit referred to above was due to an error on her part.

It was one of her tasks to supervise the files for which the time limit noted in the representative's office calender had expired. For such files the responsibility was transferred from the general office supervising system based on the office calendar to the secretary of the attorney handling the case. The Board has no reason to doubt that this was a normally satisfactory system for complying with time limits.

3. The question therefore arises whether the secretary handled the case with all due care required by the circumstances. According to the established case law of the Boards of Appeal (see J 5/80, OJ EPO 1981, 343; T 191/82, OJ EPO 1985, 189) the same strict standards of care are not expected of an assistant as are expected of the appellant or his representative, if the representative has entrusted to the assistant the performance of routine tasks such as posting letters and noting time limits. An error on the part of the assistant made in the course of carrying out such routine tasks is not to be imputed to the representative if it can be shown that a suitable person was entrusted with the tasks to be performed and that this person was properly instructed and supervised.

In the present case it was established to the satisfaction of the Board that the representative's secretary was experienced in the field of patent administration and familiar with the routine tasks she was entrusted with. As the personal secretary of the representative she obviously acted under his direct supervision. The error on her part cannot therefore be imputed to the representative.

4. In assessing whether all due care required by the circumstances has been taken by the secretary, a less strict standard can be applied as follows from the case law referred to above.

In this context it should be borne in mind that, according to the practice of the Boards of Appeal, Article 122 EPC is intended to ensure that in appropriate cases the loss of substantive rights does not result from an isolated procedural mistake within a normally satisfactory system (see J 2/86, OJ EPO 1987, 362; T 179/87, not published in the OJ EPO).

In the circumstances of the present case, the only mistake on the part of the secretary was a miscalculation in connection with the ten day period pursuant to Rule 78(3) EPC. Now matter how this calculating error was made, it qualifies, in the Board's view, as an isolated mistake within an otherwise satisfactory system. It does not therefore result in the loss of substantive rights.

5. In these circumstances the Board is able to conclude that all due care required by the circumstances was taken. It follows that the application for re-establishment of rights can be granted.

Order

For these reasons it is decided that:

The appellant is re-established in his rights in respect of the time limit for filing the statement setting out the ground of appeal.

The Registrar:

The Chairman:

M. Kiehl

W. J. L. Wheeler