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Aktenzeichen / Case Number / N° du recours : W 27/88

Anmeldenummer / Filing No / N° de la demande : PCT/EP 88/00275

Veröffentlichungs-Nr. / Publication No / N° de la publication :

Bezeichnung der Erfindung:
Title of invention:
Titre de l'invention : Determination of ions in fluids

Klassifikation / Classification / Classement : G01N 33/84, C12 Q1/00

ENTSCHEIDUNG / DECISION

vom / of / du 27 September 1988

Anmelder / Applicant / Demandeur : The Flinders University of South Australia

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

PCT Article 17(3)(a), Rules 40.1, 40.2(c), 40.3

Schlagwort / Keyword / Mot clé : "Protest not accompanied by a reasoned statement"

Leitsatz / Headnote / Sommaire

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Case Number : W 27 /88 - 3.4.1
International Application No. PCT/EP 88/00275

D E C I S I O N
of the Technical Board of Appeal 3.4.1
of 27 September 1988

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Subject of the Decision : Protest according to Rule 40.2(c) of the Patent Cooperation Treaty made by the applicants against the invitation (payment of additional fee) of the European Patent Office (branch at The Hague) dated 15 July 1988

Composition of the Board :

Chairman : K. Lederer
Members : C. Payraudeau
C. Black

Summary of Facts and Submissions

I. The Applicant filed international patent application PCT/EP 88/00275 on 2 April 1988.

II. On 15 July 1988, the EPO, acting as International Search Authority (ISA), sent to the Applicant an invitation to pay two additional search fees in accordance with Article 17(3)(a) and Rule 40.1 PCT because it considered that the application did not comply with the requirements of unity of invention, since it contained, besides the invention first mentioned, two additional inventions. Furthermore, the invitation also stated that the Applicant was invited within 30 days from the date of mailing (i.e. by 14 August 1988) to pay the additional fees and that, in accordance with Rule 40.2(c) PCT, such payment could be made under protest.

III. The Applicant paid the search fees for the two additional inventions on 25 July 1988, making clear in an accompanying letter that he was paying these fees under protest. This letter did not however contain a reasoned statement within the meaning of Rule 40.2(c) PCT but only that the Applicant hold the view that the international application complied with the requirement of unity of invention.

IV. Subsequently, the protest has been referred to this Board of Appeal.

Reasons for the Decision

1. In accordance with Article 154(3) EPC and Article 9 of the Agreement between WIPO and EPO under the PCT (cf. OJ EPO

1985, 320), the Boards of Appeal are responsible for deciding on the protest raised by the Applicant.

2. Pursuant to Article 17(3)(a) PCT, the ISA shall establish the international search report on the parts of the international application which relate to the additional inventions, provided the corresponding fees have been paid within the prescribed time limit. In the present case, a time limit of 30 days from the date of mailing has been granted by the EPO, which is consistent with the provisions of Rule 40.3 PCT.

3. Rule 40.2(c) PCT offers the Applicant the possibility to pay the additional fees under protest, "that is, accompanied by a reasoned statement to the effect... that the amount of the required additional fee is excessive". Consequently, if the Applicant wishes to pay the additional fees under protest, these fees must be accompanied by such reasoned statement. Since, according to Article 17(3)(a) and Rule 40.3 PCT, these fees have to be paid within a specified time limit, it is also clear that the protest must be made within the same time limit.

4. As the letter of protest of the Applicant cannot be considered as containing any reasoned statement indicating the grounds on which the Applicant's protest is based but only contains the general indication that the Applicant is of the opinion that the international application complies with the requirement of unity of invention the Applicant's protest under Rule 40.2(c) PCT has to be dismissed as inadmissible.

5. Under these circumstances, the additional fees paid by the Applicant shall not be refunded.

Order

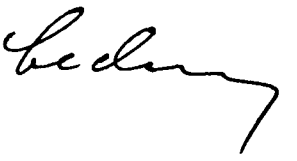
For these reasons, it is decided that:

The protest under Rule 40.2(c) PCT is dismissed as inadmissible.

The Registrar

F. Klein

The Chairman



K. Lederer

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