DECISION of 5 Januar 2006

Case Number: T 0702/05 - 3.2.2
Application Number: 95942539.8
Publication Number: 0796057
IPC: A61B 5/05

Language of the proceedings: EN

Title of invention: Optical techniques for examination of biological tissue

Applicant: NON-INVASIVE TECHNOLOGY, INC.

Opponent: -

Headword: -

Relevant legal provisions: EPC Art. 108 EPC R. 67

Keyword: "Withdrawal of appeal" "Reimbursement of appeal fee (no)"

Decisions cited: -

Catchword: -
Case Number: T 0702/05 - 3.2.2

DECISION
of the Technical Board of Appeal 3.2.2
of 5 January 2006

Appellant: NON-INVASIVE TECHNOLOGY, INC.
4014 Pine Street
Philadelphia, PA 19104 (US)

Representative: Wagner, Karl H., Dipl.-Ing.
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Decision under appeal: Decision of the Examining Division of the European Patent Office posted 23 November 2004 refusing European application No. 95942539.8 pursuant to Article 97(1) EPC.

Composition of the Board:
Chairman: T. Kriner
Members: M. Noel
A. Pignatelli
Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal, received on 1 February 2005 against the decision of the Examining Division dispatched on 23 November 2004 on the refusal of the application No. 95 942 539.8. On 1 February 2005 the appeal fee was paid.

II. With letter received on 3 February 2005, the appellant requested to disregard the Notice of appeal received on 1 February 2005 and to refund the appeal fee.

Reasons for the Decision

1. The notice of appeal and the appeal fee have been filed within the time limit provided for by Article 108 EPC. The appeal is therefore considered to have been filed.

2. With his declaration on 3 February 2005, however, the appellant withdraw his appeal. The appeal procedure is therefore closed without a substantive decision.

3. According to Rule 67 EPC, the appeal fee shall be reimbursed in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation. In the present case, the conditions provided for by Rule 67 EPC are not fulfilled. The request for reimbursement of the appeal fee is therefore to be refused.
Order

For these reasons it is decided that:

1. The appeal procedure is closed.

2. The request for reimbursement of the appeal fee is refused.

The Registrar: 

The Chairman:

V. Commare 

T. Kriner

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