



SUMMARY OF FACTS AND SUBMISSIONS

Case No. T 41/82

DECISION
of Technical Board of Appeal 3.3.1
of 30 March 1982

Applicant: Sandoz AG
Lichtstrasse 35
CH-4002 Basel

Issue: Application for reimbursement of appeal
fee by applicant who has withdrawn his
appeal

Composition of the Board:

D.L.T. Cadman, Chairman
P. Ford, Member
K.J.A. Jahn, Member

- I. On 16 October 1981, the applicant filed notice of appeal against a decision of an Examining Division of the European Patent Office. The fee for appeal was duly paid.
- II. By letter dated 14 December 1981, the applicant withdrew the appeal and requested reimbursement of the appeal fee, in effect relying upon the fact that, as no statement of grounds of appeal had been filed, no substantive work could have been done upon the appeal, and asserting that, although there was no express provision for reimbursement of appeal fees in such circumstances the possibility was not excluded.

REASONS FOR THE DECISION

1. Reimbursement of appeal fees is possible in a case in which no notice of appeal is filed or deemed to have been filed within the time limit prescribed by Article 108 EPC, so that no appeal has ever existed.
2. Reimbursement of appeal fees may be ordered, if such reimbursement is equitable by reason of a substantial procedural violation in a case in which the department whose decision is contested considers the appeal to be well founded and rectifies its decision in accordance with Article 109 (1) EPC: Rule 67 EPC.
3. Reimbursement of appeal fees may be ordered where a Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation: Rule 67 EPC.
4. The restrictive language of Rule 67 EPC is plainly inconsistent with the idea that a Board of Appeal has a wide discretion

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to order reimbursement of appeal fees. The terms of other provisions, notably Article 110 (1) and Rule 65 (1) EPC, prevent a Board of Appeal from even considering whether an appeal can be deemed to be allowable until the decision has been taken that the appeal is admissible. Such a decision cannot be taken unless, inter alia, a statement of grounds of appeal has been duly filed, in accordance with Article 108 EPC.

5. It follows that the Board of Appeal must reject the applicant's submission that the possibility for reimbursement of the appeal fee in the present case is not excluded.
6. As the applicant's appeal has been withdrawn, the present decision is given by the Board in the exercise of its inherent original jurisdiction to consider applications made to it in matters arising out of or in connection with the former appeal proceedings.

For these reasons,

it is decided that:

The application for reimbursement of the appeal fee made in the applicant's letter dated 14 December 1981 is rejected.

The Chairman:

EL Cadman

The Registrar:

[Signature]