

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number: T 59 / 83

**DECISION**  
of the Technical Board of Appeal 3.2.1  
of 28 September 1983

**Appellant:** Ter Beek Hengelo (T.B.H.) B.V.  
Binnenhavenstraat 63  
NL-7553 GH Hengelo  
The Netherlands

**Representative:** Keppels, Willem Richard Engelbertus Gerardus  
Octrooibureau Arnold & Siedsima  
Sweelinckplein 1  
NL-2517 GK The Hague  
The Netherlands

**Decision under appeal:** Decision of Examining Division 094 of the European Patent  
Office dated 2 July 1982 refusing European patent  
application No 79 200 225.5 pursuant to Article 97(1)  
EPC

**Composition of the Board:**

Chairman: G. Andersson  
Member: M. Huttner  
Member: P. Ford

SUMMARY OF FACTS AND SUBMISSIONS

- I. On 2 July 1982, Examining Division 094 of the European Patent Office issued a decision to refuse European patent application No. 79 200 225.5 according to Article 97(1) EPC. The ground for the decision was that there was no inventive step.
- II. The decision was sent to the appellants' representatives by registered letter with advice of delivery. The advice of delivery was not returned to the European Patent Office but, by letter dated 8 June 1983, the appellants' representatives confirmed that they had received the decision and they enclosed a photocopy of the first page of the decision bearing their date stamp "6 July 1982".
- III. By letter dated 2 September 1982, received by the European Patent Office on the same day, the appellants filed an appeal against the decision. The appeal fee was duly paid.
- IV. A Statement of Grounds of the appeal dated 21 December 1982 was received by the European Patent Office on that day.
- V. In the course of a telephone conversation between a member of the Board and the appellants' representatives Munich Office on 30 June 1983, it was explained on behalf of the representatives that they had expected that the Board would set a time limit for the filing of a Statement of Grounds of the appeal. Their attention was drawn to the fact that the wording of Article 108 EPC was printed on the reverse side of EPO Form 2007.1 on which the decision had been communicated to them.

VI. By letter dated 4 July 1983, the Registrar of the Boards of Appeal referred to the Board's understanding of the situation and drew attention to the expiry of the time limit for filing the Statement of Grounds of the appeal on 6 November 1982 and to the possibility of applying for re-establishment of rights under Article 122 EPC.

VII. The said letter was sent to the appellants' representatives' Munich Office by registered post on 4 July 1983 but the appellants' representatives have not replied to it and no application for re-establishment of rights has been filed with the European Patent Office.

#### GROUND'S FOR THE DECISION

1. In conformity with Article 110(1) EPC, a Board of Appeal may not examine whether an appeal is allowable unless the appeal is admissible and, in accordance with Rule 65(1) EPC, if the appeal does not comply with inter alia Article 108 EPC, the Board of Appeal shall reject it as inadmissible unless each deficiency has been remedied before the relevant time limit laid down in Article 108 EPC has expired.
2. The last sentence of Article 108 EPC, provides that a written statement setting out the grounds of appeal must be filed within four months of the notification of the decision appealed from. The date of notification in this case was 6 July 1982. As no such statement was filed within the prescribed period and no application has been made for re-establishment of rights, it follows that the appeal is not admissible.

#### ORDER

For these reasons

it is ordered that

The appeal is rejected as inadmissible.

The Chairman:

The Registrar: