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SUMMARY OF FACTS AND SUBMISSIONS

Case Number: T 81 / 83

DECISION

of the Technical Board of Appeal 3.2.1
relating to re-establishment of rights
of 21 November 1983

Appellant:

Techniplast Gazzada S.r.l.
Via 1°. Maggio, 6
I-Buguggiate (Varese)

Representative:

Notarbartolo, Manfredi
Studio Brevetti e Marchi
Notarbartolo & Gervasi
Viale Bianca Maria, 33
I-20122 Milano

Decision under appeal:

Decision of Examining Division 126
Office dated 11 February 1983
application No 81 830025.3
EPC

of the European Patent
refusing European patent
pursuant to Article 97(1)

Composition of the Board:

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

- I. On 5 April 1983, the applicants for European patent application No. 81 830 025.3 (published under No. 0 035 976) filed notice of appeal, by telex, against a decision of Examining Division 126 dated 11 February 1983. The appeal fee was duly paid.
- II. The telex was received by the EPO on 5 April 1983 but a letter reproducing the contents of the telex was not received until 28 April 1983, although it had been posted by the applicants' representatives in Milan on 11 April 1983, as is evidenced by the post mark on the envelope.
- III. As the letter was not received by the EPO within two weeks from the receipt of the telex the telex has to be deemed not to have been received (Rule 36(5), last sentence EPC) unless the applicants are re-established in their rights pursuant to Article 122 EPC.
- IV. The applicants' representatives were unaware that their letter had not been received in due time until they were notified of the fact by the EPO, by telephone, on 20 June 1983. They applied for re-establishment of rights by letter dated 21 June 1983, which was received by the EPO on 23 June 1983. The applicants' representatives contended that they could reasonably expect that their letter reproducing the telex would be received in due time by the EPO.
- V. The fee for re-establishment of rights was paid to the Italian postal authorities in Milan on 20 June 1983. With their letter dated 21 June 1983, the applicants'

representatives submitted the official Post Office receipt. The EPO did not in fact receive the fee until 1 July 1983.

REASONS FOR THE DECISION

1. An application for re-establishment of rights must comply with Articles 122(2) and (3) EPC. In particular, it must be filed within two months of the removal of the cause of non-compliance with the time limit which has not been observed and it is not deemed to have been filed until after the fee for re-establishment of rights has been paid.
2. However, since it is self-evident that an application for re-establishment of rights cannot be made until the person concerned is aware that it needs to be made, the two months time limit prescribed by Article 122(2) must be interpreted in the present case as running from 20 June 1983, when the appellants' representatives first became aware that their letter posted on 1 April 1983 had not reached the EPO in due time.

It follows that the application for re-establishment of rights was made in due time and can be considered on its merits.

3. The delay in delivery of the applicants' representatives letter posted on 11 April 1983 must be attributed to the postal authorities concerned. The letter was correctly addressed and correctly stamped. It was posted in what should have been sufficient time to reach the EPO on or before 19 April 1983. In the circumstances of the case, the Board is satisfied that all due care required by the

circumstances had been taken by the applicants, through their representatives. It follows that the application for re-establishment of rights can be granted.

ORDER

For these reasons,

it is decided that:

The applicants are restored in their rights and their Notice of Appeal filed by telex on 5 April 1983 is to be considered as having been duly received on that date.

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ME

J. R. G.

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