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Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

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Chambres de recours



Case Number: T 72 / 83

DÉCISION

of the Technical Board of Appeal 3.3.1
relating to re-establishment of rights
of 21 December 1983

Appellant: The Dow Chemical Company
Midland, Michigan
U S A

Representative: Dipl. Chem. B. Huber
Möhlstr.22
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Decision under appeal: Decision of Examining Division 011 of the European Patent
Office dated 5 October 1982 refusing European patent
application No 79 103 446.5 pursuant to Article 97(1)
EPC

Composition of the Board:
Chairman: D. Cadman
Member: O. Bossung
Member: H. Robbers

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SUMMARY OF FACTS AND SUBMISSIONS

- I. European patent application No. 79 103 446.5, filed on 14 September 1979 and published under No. 0 008 766, was refused by decision of Examining Division 011, dated 5 October 1982. Against this decision, the appellant filed notice of appeal and paid the fee in due time on 2 November 1982. No statement of grounds was received within the prescribed time limit which expired on 15 February 1983. By a letter from the Boards' Registry of 19 May 1983 the attention of the applicants' representative was drawn to this omission. The statement of grounds was then filed on 14 July 1983.
- II. By a letter received on 19 July 1983 the applicants' representative applied for re-establishment of rights and paid the fee prescribed therefor. In this letter it was stated that the employee, who was responsible for the noting and control of time limits, when noting the time limit for filing the notice of appeal, had omitted to note simultaneously the time limit for filing the Statement of Grounds. It was further pointed out that the employee was a suitable person, properly instructed in his tasks in respect of patent law, including the European law. The employee himself, in an affidavit, gave information about his professional experience and explained in particular how the said omission occurred.
- III. The applicants' representative requests the re-establishment of rights in respect of the unobserved time limit or filing the grounds of appeal.

REASONS FOR THE DECISION

1. The application for re-establishment of rights complies with Articles 122(2) and (3) EPC and is, therefore, admissible.
2. As previously held by the Legal Board of Appeal (Case No. J 10/82, OJ EPO 3/1983, 94) "routine tasks such as ... noting time limits" may be entrusted to an assistant of the representative. There is no objection if, after receipt of an appealable decision, the noting of both time limits provided for in Article 108 EPC is ordered to be made by an assistant, independently of whether the representative himself, when filing the notice of appeal, includes in that notice a Statement of Grounds, so that the observation of the second time limit (filing of separate Statement of Grounds) becomes unnecessary. If the noting of both time limits is ordered in advance of the drafting of the notice of appeal, the representative himself need not concern himself with the noting of the second time limit even if he does not include a Statement of Grounds in the notice of appeal.
3. In the circumstances of the present case, as explained by the representative and confirmed by the assisting employee in his affidavit, the Board holds that "all due care required" within the meaning of Article 122(1) EPC had been taken.

ORDER

For these reasons,

it is decided that:

The appellant is restored in his rights and his Statement of Grounds of Appeal filed on 14 July 1983 is to be considered as having been received in due time.

The Registrar:

The Chairman:

J. 126

RP Cadman