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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 130 / 83

DECISION

of the Technical Board of Appeal 3.3.1

of 8 May 1984

Appellant: Redland Technology Limited
Redland House
Reigate
Surrey
England

Representative: Mayes, Stuart David
BOULT, WADE & TENNANT
27, Furnival Street
London EC4A I PQ
England

Decision under appeal: Decision of Examining Division 028 of the European Patent Office dated 3 March 1983 refusing European patent application No 80301710.2 pursuant to Article 97(1) EPC

Composition of the Board:

Chairman: D. Cadman
Member: P. Ford
Member: K. Jahn

SUMMARY OF FACTS AND SUBMISSIONS

I. By virtue of the provisions of Rule 78(3) EPC the decision under appeal is deemed to have been notified to the appellants' representative on 13 March 1983. The last day for filing a notice of appeal and paying the appeal fee accordance with Article 108 EPC was, therefore, 13 May 1983.

II. On or about 29 April 1983, the appellants' representative caused a notice of appeal and a debit order (in duplicate) for the appeal fee to be prepared in his office. He signed them but by error they were not dispatched to the EPO. The fact that they had not been dispatched was not discovered until about 18 May 1983. They were immediately sent under cover of a letter requesting re-establishment of rights. The fee for re-establishment of rights was duly paid. The documents sent were received by the EPO on 20 May 1983. A Statement of Grounds of the Appeal was filed on 12 July 1983.

III. In response to a letter from Technical Board of Appeal 3.3.1 dated 9 August 1983, the appellants' representative filed written statement from himself and one of his partners,in support of the application for re-establishment of rights,on 10 October 1983.

IV. In a further communication from the Board dated 20 December 1983, the Board indicated that even after consideration of the statements filed, it was unable to come to a conclusion favourable to the appellants on the request for re-establishment of rights, although it was prepared to give the appellants the opportunity of arguing the case for re-establishment of rights in oral proceedings if they so desired.

V. By letter dated 28 February 1984, another partner in the firm to which the appellants' representatives belong stated that he had investigated the case and was waiting for a secretary employed by the firm to return to work after a period of illness so that he could obtain evidence from her to submit with other additional evidence.

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IV. Additional evidence, in the form of Statutory Declarations from the two partners who had already made written statements and from the secretary, were filed on 15 March 1984. The additional evidence made it clear that for some inexplicable reason the decision under appeal was never seen by the representatives' progress department, so that the normal reminder system, which should have ensured that a check was made to see that the notice of appeal was filed in time, did not function. Prior to leaving his office to travel abroad on 29 April 1983 one of the partners, who had the file of the case for the purpose of checking the signed notice of appeal and debit order, stored the file away without noticing that the signed documents were still in it. The partner concerned was working under very considerable time pressure on that day. The very experienced secretary concerned also failed to appreciate that the notice of appeal and debit order had not been put in the mail. If the reminder system had operated, the other partner would subsequently have been made aware of the need to take action, in spite of the absence of his colleague; the file would have been examined and the signed documents found and dispatched in sufficient time to reach the EPO by the due date.

REASONS FOR THE DECISION

1. The present application for re-establishment of rights was made in due time and the relevant fee has been duly paid.

2. The delay in filing the notice of appeal and the debit order for the appeal fee was clearly due not only to the failure of the appellants' representatives' partners and staff to see that the documents were posted on 29 April 1983 but also to a malfunction of the representatives' reminder system.

3. Every request for re-establishment of rights has to be examined on its own particular facts and the European Patent Office has to be satisfied that all due care required by the circumstances has been taken. If a proper reminder system is instituted by a representative, in order to guard against the consequences of

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oversight in a busy office, this is in itself strong prima facie evidence of the taking of care by the representative.

4. In the present case, on the evidence submitted, the Board takes the view that the reminder system used was a proper system and should have been adequate to prevent loss of rights by the appellants. In these circumstances, the Board is satisfied that all due care required by the circumstances was taken. It follows that the request for re-establishment of rights can be granted.

ORDER

For these reasons,

it is decided that:

The appellants are restored in their rights and their notice of appeal and debit order are to be treated as having been duly received on or before 13 May 1983.

The Registrar

p.p.

The Chairman