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**Datasheet for the decision
of 25 July 2024**

Case Number: J 0011/20 - 3.1.01

Application Number: 18208783.3

Publication Number: 3705780

IPC: F23N5/10, F23N5/20, F23N5/24,
F24C3/10, F24C3/12

Language of the proceedings: EN

Title of invention:

MAGNET-THERMOCOUPLE SYSTEM FOR THE POSITIVE SAFETY SUPPLY OF
GAS TO BURNERS OR THE LIKE

Applicant:

Castfutura S.p.A.

Headword:

Relevant legal provisions:

EPC Art. 16, 90(5), 108, 109, 113(1), 122, 123(2)
EPC R. 46, 49, 50, 57, 58, 103(1)(a), 126, 139
RPBA 2020 Art. 12(8)

Keyword:

Formal requirements of the patent application documents
Competence of the Receiving Section
Refusal of the application
Interlocutory revision - department of first instance should have rectified decision (yes)
Reimbursement of appeal fee - equitable by reason of a substantial procedural violation
Re-establishment of rights - reimbursement of fee for re-establishment (yes)

Decisions cited:

G 0003/89, G 0011/91, J 0007/83, J 0004/85, J 0033/89,
J 0007/97, J 0018/08, J 0004/09, J 0002/12, J 0005/12,
J 0008/13, J 0011/15, J 0001/18, J 0010/20, T 0012/03

Catchword:

1. In the context of the examination as to formal requirements of the European patent application, the Receiving Section is competent under Rule 58 EPC to identify inconsistencies in the application documents which are immediately apparent from the face of the documents, including whether formal discrepancies are present between amended documents and the documents as originally filed, provided no technical knowledge is required.

2. If a patent application is refused under Article 90(5) EPC, the deficiency on which the decision is based can be remedied at the appeal stage. In such a case the decision refusing the patent application must be rectified pursuant to Article 109 EPC.



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Case Number: J 0011/20 - 3.1.01

D E C I S I O N
of the Legal Board of Appeal 3.1.01
of 25 July 2024

Appellant: Castfutura S.p.A.
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24030 Terno d'Isola (Bergamo) (IT)

Representative: Karaghiosoff, Giorgio Alessandro
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Decision under appeal: **Decision of the Receiving Section of the
European Patent Office posted on 17 January 2020
refusing European patent application
No. 18208783.3 pursuant to Article 90(5) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Bacchin
G. Decker

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Receiving Section refusing the European patent application No. 18 208 783.3 under Article 90(5) in conjunction with Rule 58 EPC.
- II. The European application No. 18 208 783.3 was filed on 28 November 2018 on behalf of Castfutura S.p.A., claiming priority from IT 102017000137767 of 30 November 2017.
- III. On 19 December 2018, the Receiving Section issued a communication pursuant to Rule 58 EPC (Form 1050), inviting the applicant to remedy deficiencies in the application documents within a time limit of two months. The drawings filed with the application documents as Fig. 4 and Fig. 5 did not comply with the requirements of Rule 46(2)(c) and (g) EPC then in force (see point 6. of the Reasons below). It was indicated that, if the deficiencies were not remedied in due time, the European patent application would be refused in accordance with Article 90(5) EPC.
- IV. The appellant filed amended drawings 4A, 4B and 5A, 5B on 18 February 2019.
- V. On 14 March 2019, the Receiving Section issued a communication concerning formal requirements (Form 1120), indicating that the amended drawings submitted on 18 February 2019 were not in agreement with the application documents as originally filed. The appellant was given the opportunity to submit amended documents only to an extent sufficient to remedy the formal deficiencies under Rule 58 EPC. Failure to

submit the documents in due time would lead to refusal of the application pursuant to Article 90(5) in conjunction with Rule 58 EPC. The appellant was also informed that any request for correction of errors under Rule 139 EPC would be decided by the Examining Division during examination proceedings. Original Fig. 5, containing text (the words "Thermocouple", "Gas" and "Valve") and Fig. 5B, as filed on 18 February 2019 with no text, were attached to the communication.

- VI. From a note of a telephone consultation of 5 July 2019, it appears that a formality officer contacted the office of the appointed representative and, in the absence of the latter, spoke to an assistant. The assistant was informed that no reply to the communication of 14 March 2019 had been received by the EPO. The assistant confirmed that the communication had been received.
- VII. On 10 July 2019, amended drawings were filed in compliance with the invitation of 14 March 2019. Fig. 4A, 4B, 5A identical to those already filed on 18 February 2019 were re-filed and Fig. 5B was filed with the text as in original Fig. 5.
- VIII. On 14 August 2019, a communication pursuant to Article 113(1) EPC was issued by the Receiving Section, in which it was explained that the amended drawings filed on 10 July 2019 were submitted outside the time limit given in the communication of 14 March 2019 (Form 1120), this having expired on 24 May 2019. Reference was made *inter alia* to the telephone conversation on 5 July 2019 during which an assistant in the representative's office confirmed that the communication of 14 March 2019 had been received. The deficiency was thus not duly remedied and the Receiving

Section intended to refuse the application. The appellant was given the opportunity to file comments within a period of two months, before a decision on the refusal of the patent application was taken. A decision to refuse would have been open to appeal and/or re-establishment of rights.

- IX. From a further note of a telephone conversation of 9 October 2019, it appears that the representative tried to contact the formality officer who signed the first telephone note. The representative complained that the Receiving Section had abused its competence by issuing the communication dated 14 March 2019 (Form 1120) and that the representative was not aware of the fact that the amended drawings submitted on 10 July 2019 had been filed after expiry of the time limit given in said communication.
- X. On 24 October 2019, the appellant filed a request for re-establishment of rights and paid the relevant fee. By separate submission on the same date the appellant provided comments in reply to the communication under Article 113(1) EPC and requested a decision of the Receiving Section on those issues.
- XI. The decision of the Receiving Section to refuse the patent application pursuant to Article 90(5) EPC was issued on 17 January 2020.
- XII. In the appealed decision, the Receiving Section indicated as sole reason for the refusal of the application the fact that the deficiency noted by the Receiving Section in the communication under Rule 58 EPC dated 14 March 2019 was not corrected in due time. The possibility to file an appeal and/or a request for re-establishment of rights were indicated as remedies.

XIII. A notice of appeal was filed and the appeal fee was paid on 12 March 2020. On the same day, the appellant filed again a request for re-establishment of rights and paid the relevant fee as a precautionary measure. The statement of grounds of appeal was filed on 1 June 2020.

XIV. In their statement of grounds of appeal, the appellant made in essence the following submissions:

- (a) The statement of grounds of appeal was filed in good time due to the Covid-related extension of time limits;
- (b) The communication of the Receiving Section dated 14 March 2019 (Form 1120) appeared not to have been received by the appellant;
- (c) That communication exceeded the competences of the Receiving Section because it was not merely related to formal aspects of the drawings but addressed their content, thus substantive matters which are normally in the competence of the Examining Division. This fact amounted to a procedural violation.
- (d) A further serious violation was committed by the EPO in providing information on a procedural non-compliance leading to a severe loss of rights to an assistant by means of an informal telephone call, rather than to the duly appointed representative with an official communication. Informing, in a informal manner, the assistant instead of the duly appointed professional

representative, prevented the latter from the possibility to correctly react.

- (e) These arguments had already been brought to the attention of the Receiving Section with the letter dated 24 October 2019, in reply to the communication under Article 113(1) EPC. However, they remained disregarded and the Receiving Section issued the appealed decision.

- XV. The appellant requests that the decision of the Receiving Section be set aside and that the appeal fee and the fees for re-establishment of rights be reimbursed, on account of an alleged severe procedural violation.

Oral proceedings are requested as an auxiliary measure.

Reasons for the Decision

Decision in written proceedings

1. The present decision is taken in written proceedings as a direct decision in accordance with Article 12(8) RPBA, without holding oral proceedings.
2. The case is ready for decision following what the appellant seeks with their appeal. Thus, there is no need to hold oral proceedings, which were requested only for the case the board intended to reject the appeal or to maintain the decision under appeal. In reaching this conclusion, the appellant's extensive submissions have been duly taken into consideration.

Admissibility of the appeal

3. The appeal is admissible.
4. The statutory period for the filing of the notice of appeal and the payment of the appeal fee pursuant to Article 108 EPC is clearly met.
5. This applies *mutatis mutandis* to the period for filing the statement setting out the grounds of appeal because of the extension of the statutory periods according to the Notice from the European Patent Office dated 1 May 2020 (cf. OJ EPO 2020, A60, see also the case law summarised in J 10/20, Reasons 1.12-1.20).

Applicable law

6. In the following any reference made to Rules 46, 49, 50, 57 EPC is intended to the text of the provisions as applicable until 31 January 2023 (see decision of the President of the European Patent Office dated 25 November 2022 on the presentation of application and other documents, in OJ EPO 2022, A 113). The Board, however, considers that the findings of the present decision are not affected by the changes introduced with the provisions in force as of 1 February 2023.

Competence of the Receiving Section - whether the Receiving Section acted ultra vires

7. In the statement of grounds of appeal, the appellant objects that the Receiving Section committed a substantial procedural violation by exceeding its competences when issuing the communication concerning formal requirements dated 14 March 2019 (Form 1120, see point V. above, in the following "the Communication"). According to the appellant, the Receiving Section addressed substantive matters in the Communication, properly belonging to the competence of the Examining Division.
- 7.1 In particular, the appellant submits that the question whether information was lacking in the revised drawing Fig. 5B, as compared to the originally filed Fig. 5, did not pertain to a formal matter relating to the quality of the drawing but to its content and thus to a question to be assessed under Article 123(2) EPC, which properly belonged to the responsibility of the Examining Division.
- 7.2 There was no legal basis in the EPC for the Receiving Section to raise a deficiency with regard to a lacking textual indication in amended drawings. On the contrary, the EPC requires that drawings must not contain text matter, except for few short keywords, if indispensable to understand the drawings (Rule 46(2)(j) EPC). In addition, the description already contains an explanation of the drawings, so that also for this reason no objection should have been raised.
8. The Board does not find these arguments convincing and considers that the Communication was instead within the responsibility of the Receiving Section.

9. According to Article 16 EPC, the Receiving Section is responsible for the examination on filing and the examination as to formal requirements of the European patent application.
- 9.1 In this framework, as further detailed by Article 90 in conjunction with Rules 55 to 60 EPC, the Receiving Section must ensure that the documents making up the application, i.e. request, description, claims, drawings and abstract, meet the requirements of Rule 49(1) to (9) and (12) and, with regard to the drawings, the requirements of Rule 46 EPC (all in the version applicable until 31 January 2023, see point 6. above) to the extent necessary to allow electronic and direct reproduction in an unlimited number of copies and reasonably uniform publication of the application under Rule 68(1) EPC. When assessing the quality of the application documents, the Receiving Section must ensure the discernibility of all details originally disclosed in the documents received on the date of filing.
10. It is established case law of the Boards of Appeal that the responsibilities of the Receiving Section do not involve any technical examination of the patent application. Thus, it is not within the Receiving Section's competence to decide on a request for correction, necessitating a technical examination, rather the decision on the correction must be left to the Examining Division (see J 5/12, Reasons 8; J 7/97, Reasons 8.1; J 33/89, Reasons 4, J 4/85, Headnote 3 and Reasons 9).
- 10.1 With regard to the drawings, the question of what exactly the figures in the drawings show with respect

to the claimed invention is not part of the formal examination before the Receiving Section. Rather, it is the responsibility of the applicant to determine the scope of the disclosure by selecting a readable version of the application documents, including the figures reproduced in the drawings. This also implies that an analysis by the Receiving Section going beyond the points to be examined on filing under Rules 46 and 49(1) to (9) and (12) EPC is impermissible. In particular, it is not permissible to allow the filing of improved drawings resulting in a disclosure which could not be found in the original version of the application; nor could the applicant be compelled to change the drawings and so sacrifice a disclosure which, in their view, could only take this form (see J 4/09, Reasons 2).

11. The Board takes the view that also pointing to discrepancies between amended documents, filed to remedy a deficiency under Rule 58 EPC and the originally filed ones, is encompassed by the competence of the Receiving Section under Article 16 EPC to examine formal requirements of European patent applications, namely the requirements under Rule 58, second sentence, EPC (*"The description, claims and drawings may be amended only to an extent sufficient to remedy such deficiencies"*) and under Rule 137(1) EPC (*"Before receiving the European search report, the applicant may not amend the description, claims or drawings of a European patent application unless otherwise provided"*).

This is also fully consistent with the examination of the application documents to verify formal correspondence between parts of the description and between the description/claims and the drawings made in

the context of missing parts of the description or missing drawings within the meaning of Rule 56 EPC. This is undisputedly a responsibility of the Receiving Section and it does not involve the content of the application in the sense that it does not require any technical knowledge (cf. J 2/12, Reasons 9).

12. The Board agrees with the appellant that the Receiving Section should not draw the applicant's attention to any deficiencies in the *content* of the application.

12.1 In the present case, however, the deficiency noted in the Communication is of a purely formal nature and does not involve any assessment in terms of which disclosure can be taken from the drawings.

The Receiving Section did not do anything more than checking that the amended drawings submitted on 18 February 2019 corresponded to those originally filed. It was immediately apparent that Fig. 5B did not contain the text present in Fig. 5. To appreciate this, it was not necessary to have any notion of the meaning of the words "Thermocouple", "Gas" and "Valve", or to understand what is contained in the description with regard to the drawings, or what the drawings originally filed in fact illustrate. Indeed, contrary to the appellant's submissions, the Receiving Section did not object that "information was lacking", thus suggesting a possible extension of subject-matter, but merely indicated that the amended drawings were not in agreement with the documents as originally filed.

12.2 The Receiving Section expressly drew the appellant's attention to the possibility of filing a request for correction of the application documents under Rule 139 EPC and, acknowledging its limited competence, to the

fact that any such request is subject to the decision of the Examining Division.

12.3 The Board therefore cannot share the appellant's view that the deficiency raised by the Receiving Section did not have a legal basis in the EPC, rather it belonged to the examination of the formal requirements of the application, within the meaning of Rules 57 and 58 EPC.

12.4 The appellant's further argument that the Receiving Section did not act in accordance with the instructions contained in the Guidelines for examination before the EPO, Part A-III, 16.1, is also not justified in the light of the present circumstances. This Guidelines section, in the 2019 version as applicable at the relevant time, states that it is not the Receiving Section's responsibility to point to deficiencies related to the content of the application, namely those under Rule 46(2)(i) and (j) and to question the inclusion of tables in the claims under Rule 49(9), fourth sentence, EPC (as applicable until 31 January 2023, see point 11. above).

Rule 46(2)(i) and (j) EPC state:

(i) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. Reference signs to features shall be consistent throughout the application.

(j) The drawings shall not contain text matter. Where indispensable to understand the drawings, a few short keywords, such as "water", "steam", "open", "closed" or "section on AB", may be included. Any such keywords shall be placed in such a way that, if required, they

can be replaced by their translations without interfering with any lines of the drawings.

Rule 49(9), fourth sentence, EPC states:

The claims may contain tables only if their subject-matter makes the use of tables desirable.

- 12.4.1 It is evident that the provisions referred to in this Guidelines section actually pertain to the content of the application documents, which would necessitate a technical understanding of the description, claims and drawings and that their assessment requires for instance to establish which reference signs are not mentioned in the description and claims; or if reference signs are consistent throughout the application; or again if text matter is indispensable to understand the drawings; or if the subject-matter of the claims makes the use of tables desirable.
- 12.4.2 A deficiency related to these provisions may, under the circumstances, require a request for correction under Rule 139 EPC in order to be remedied and such a correction may be effected only within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from all of the documents as filed (see G 3/89 and G 11/91, both Headnote 1).
- 12.4.3 The deficiency pointed to by the Receiving Section instead did not relate to any of these provisions, in particular with regard to Rule 46(2)(j) EPC, cited by the appellant. The Receiving Section did not question whether text matter was indispensable to understand the drawings. Rather, as can be seen from the reference to

Rules 137(1) and 58 EPC in the Communication, the Receiving Section raised an objection under these provisions.

13. It is therefore concluded that, in the context of the examination as to formal requirements of the European patent application, the Receiving Section is competent under Rule 58 EPC to identify inconsistencies in the application documents which are immediately apparent from the face of the documents, including whether formal discrepancies are present between amended documents and the documents as originally filed, provided no technical knowledge is required.
14. The Communication thus was issued within the Receiving Section's competences and no procedural violation was committed in this respect.

Whether the deficiency has been remedied and interlocutory revision should have been granted

15. The procedure established by the EPC for the examination as to formal requirements of a patent application provides that, where the EPO notes that there are deficiencies which may be corrected, it must give the applicant an opportunity to correct them within two months by issuing a corresponding invitation pursuant to Article 90(4) in conjunction with Rule 58 EPC. If any deficiency noted under Article 90(3) EPC is not corrected, the patent application is refused unless the EPC provides a different legal consequence (Article 90(5) EPC). The applicant is notified of this decision (Rule 111 EPC). Since further processing for failure to observe the time limit under Rule 58 EPC is

ruled out (Rule 135(2) EPC), the applicant may request re-establishment of rights or may appeal.

16. According to this procedure, as clarified in decision J 18/08 (Reasons 4 and 6), when an application is refused under Article 90(5) EPC, if an appeal is filed against such a refusal, the board of appeal has to examine whether the deficiency noted has been corrected or not. Thus the deficiency on which the decision under Article 90(5) EPC is based can be corrected at the appeal stage. In application of this procedure in J 18/08 the Board considered allowable the correction on appeal of the missing appointment of a professional representative.

16.1 The situation differs from the one where the non-observance of a time limit automatically leads to the application being deemed to be withdrawn, so that the legal consequence automatically ensues when an act required within a specific time limit is not performed, without any decision to be taken concerning the refusal of the application (Rule 112(1) EPC). Under this procedure, deficiencies cannot be corrected, but result in the re-examination of the loss of rights communication (see also J 18/08, Reasons 5).

16.2 The practice of the Receiving Section, based on this procedure and following the cited case law, has been to rectify its decision refusing an application under Article 90(5) EPC, if an appeal is filed and the deficiency is remedied at the appeal instance and to forward the appeal to the boards of appeal as far as the request for reimbursement of the appeal fee is concerned (see also *Neumann in Singer, Stauder, Luginbühl, EPÜ*, 9th edition 2023, Art. 90, note 59, as

well as *Ehlers* in Benkard, *EPÜ*, 4th edition 2023, Art. 90, note 130).

16.3 This practice has also been endorsed by the later case law.

16.4 In J 11/15 and J 1/18, both cases concerning a deficiency of the drawings in the application as filed, the Board confirmed that the Receiving Section correctly rectified its decision to refuse the application pursuant to Article 109 EPC, as the deficiency had been remedied on appeal. It also confirmed that no justification was present for reimbursing the appeal fee, in the absence of any procedural violation by the Receiving Section (see J 11/15, Reasons, third paragraph, and J 1/18, Reasons 5 and 6). The deficiency having been remedied late and no means of redress having been filed, the Receiving Section was empowered to issue the refusal decision at expiry of the time limit given under Rule 58 EPC (see in particular J 1/18, Reasons 5).

Similar conclusions were reached in J 8/13, in which the deficiency related to the size of the characters of the application documents according to Rule 49(8) EPC.

17. In the present case, at the time the appeal was filed, the deficiency had already been remedied, albeit late, with the filing of the correct drawings on 10 July 2019. Thus, the ground for refusal of the application had been remedied.

17.1 Therefore, the Receiving Section should have actually granted interlocutory revision in accordance with Article 109 EPC.

17.2 The Board cannot see any reasons why in the present case the procedure and the established practice of granting interlocutory revision was not followed and for this reason alone the decision under appeal is to be set aside and the refusal of the application must be reversed.

18. In addition, other than in the above mentioned cases, the appellant had also filed a further means of redress for re-establishment of rights on 24 October 2019 before the appealed decision was issued (see point X. above). In that request the appellant submitted reasons for the late correction of the deficiency, in particular it was contested that the Communication had been received by the appellant (point 2. of the third page of the request for re-establishment of rights).

The same objection was submitted in reply to the Receiving Section's communication under Article 113(1) EPC inviting the appellant to provide their comments (see letter of 24 October 2019, point 3. of the first page and point 2. of the second page of the reply).

However, no consideration was given to this fundamental fact, on which the Receiving Section based the decision to refuse the application. Indeed the request for re-establishment of rights was not considered at all.

19. In view of the conclusion drawn above, the Board does not need to address whether these facts provide a further reason for setting the appealed decision aside. However, proper consideration is to be given when addressing whether a substantial procedural violation was committed, which would justify reimbursement of the appeal fee.

Reimbursement of the appeal fee

20. According to Rule 103(1)(a) EPC, reimbursement of the appeal fee shall be ordered where the board of appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation. A substantial procedural violation is an objective deficiency affecting the entire proceedings in the sense that the rules of procedure have not been applied in the manner prescribed in the EPC to the detriment of a party (see e.g. J 7/83, Reasons 12; T 12/03, Reasons 4.2).

21. In the present case, the appellant based their request for reimbursement in essence on several allegations: firstly that the Communication appeared not to have been received by the appellant, secondly that the Communication exceeded the competences of the Receiving Section, thirdly that information on a procedural non-compliance leading to a severe loss of rights had been given to an assistant by means of an informal telephone call, and finally that the decision to refuse the application was issued despite all these arguments had already been brought to the attention of the Receiving Section in reply to the communication under Article 113(1) EPC.

22. The Board concurs with the case law mentioned above according to which if a deficiency is remedied late, i.e. after expiry of the time limit given under Rule 58 EPC, refusal of the application is justified and can only be rectified by means of appeal. Under such circumstances reimbursement of the appeal fee is not

equitable, in the absence of substantial procedural violation.

23. However, in the present case, the Board sees at least a substantial procedural violation in the fact that the Receiving Section disregarded the objection of lack of receipt of the Communication, and gave no consideration to the request for re-establishment of rights.

The lack of receipt of the Communication had been disputed by the appellant - in addition to the statement of grounds of appeal - before the appealed decision was issued, both in the request for re-establishment of rights and in reply to the communication under Article 113(1) EPC.

24. In the event of any dispute concerning the delivery of a document, the EPC provides that it is incumbent on the EPO to establish that the document has reached its destination and to establish the date on which the document was delivered to the addressee (Rule 126(2) EPC, both as applicable at the relevant time and in the current version as applicable from 1 November 2023).

25. The Board does not disregard that according to the file, in particular upon consideration of the telephone note dated 5 July 2019 (see point VI. above), during which the assistant of the appellant's representative apparently gave the information that the Communication had actually been received, there was at least uncertainty on this fact.

26. In the Receiving Section's communication under Article 113(1) EPC, by reference to the telephone conversation, the assumption that the Communication had actually been received by the professional

representative is taken as a given fact. However there is no trace in the file that this telephone note had also been formally notified to the professional representative, giving him the chance to take position on this fact before it being taken into account in the communication under Article 113(1) EPC.

27. In addition, although the appellant had contested the receipt of the Communication on 24 October 2019 in a timely and formal manner (see point X. above), the Receiving Section made no attempt to initiate a postal investigation, as prescribed by Rule 126(2) EPC. Such investigation would still have been possible at that time, since 7 months had passed from the notification of the Communication (14 March 2019).
28. By simply disregarding the appellant's submissions, the Receiving Section violated the right to be heard under Article 113(1) EPC. It is a well established principle that this right requires not only than an opportunity to present comments is given, but also that these comments are actually taken into due consideration in the decision (see Case Law of the Boards of Appeal of the EPO, 10th edition, 2022, III.B.2.4.2).

This violation is of a substantial nature since it affected the reasons on which the appealed decision was taken, namely the assumption that the Communication was received by the appellant and thus the deficiencies under Rule 58 EPC were not corrected in due time (see point XII. above). The appellant was given no other choice than filing the appeal.

29. In view of these circumstances, the Board considers that reimbursement of the appeal fee is equitable.

30. Since the appeal is allowed and the appeal fee to be reimbursed, the request for re-establishment of rights is without object and there is no need to remit the case to the first instance for a decision on it. It also follows that the fees paid twice for the requests for re-establishment of rights were paid without a legal basis and are to be reimbursed.

Conclusion

31. In view of the above considerations the Board decides to set the appealed decision aside, to remit the case to the department of first instance for continuation of the proceedings and to order reimbursement of the appeal fee and of the fees paid for re-establishment of rights.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.
3. The appeal fee and the fees for the request for re-establishment of rights are reimbursed.

The Registrar:

The Chairman:



N. Michaleczek

I. Beckedorf

Decision electronically authenticated