

0/134/87

PATENTS ACT 1977

Linda  
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IN THE MATTER OF an application by  
Friedrich-Karl Migowski for restoration  
of European Patent No. EP 0408572

## DECISION

The renewal fee in respect of the seventh year of the patent fell due on 18 February 1995. The fee was not paid by that date or during the further six months allowed under Section 25(4). The patent therefore lapsed on 18 February 1995. The time limit set by Rule 41.1(a) for filing an application for restoration was 18 September 1996. Whilst Form 16/77 was received on 16 September 1996, the fee was not received until 19 September, thus giving the date of filing as 19 September. An official letter issued on 30 October 1996 informing Mr Migowski that the application was out of time and could not be allowed to proceed. The letter also explained that extension of the time limit was possible only under Rule 100. After considering evidence filed on this point by Mr Migowski an official letter issued on 3 December refusing the request for extension, the view being that no evidence of fault within the Office had been supplied. The matter came before me at a hearing held on 24 April 1997. Mr Migowski was accompanied by Mrs Christine Davies who acted as translator. Mr Sim attended on behalf of the Patent Office.

It is important to bear in mind that the hearing was about the admissibility of the filing of Form 16/77, not about the merits or otherwise of any case for restoration. The evidence comprises photocopies of an authorisation of a transaction which indicates that Mr Migowski authorised a credit transfer to the Patent Office on 16 September 1996 and that the account of his solicitor was debited by the amount on 17 September. This was for an immediate transfer, known as a "flash transfer". Thus, Mr Migowski contested that payment of the fee took place in due time.

During the hearing it emerged that such "flash transfer" systems mean that the transfers are virtually instantaneous. That is, one account is credited as the other is debited. Therefore, the fee could have been with the Patent Office's bank, the Bank of England, on the due date, though not credited to the Patent Office account until 18th. I took the view that since the Bank is the agent of the Office when handling such transfers, a delay within the Bank transferring the fee to

the Patent Office account would allow me to use Rule 100 and accept the filing. Rule 100 allows the Comptroller to amend a time limit if there has been an irregularity of procedure attributable wholly or in part to an error, default or omission on the part of the Patent Office. If such cannot be demonstrated then the Comptroller cannot amend the time limit. I therefore adjourned the hearing to allow Mr Migowski to obtain further evidence and to allow the Patent Office time to conduct further investigation as to what happened to the transaction between the 17th and 19th September 1996.

Mr Migowski has provided evidence from his bank, Kreissparkasse Calw, that the transfer was executed on the day it was authorised, namely the 16 September.

I accept that this is so. However, further investigation by the Patent Office brought to light that the flash transfer took place via the Midland Bank and not directly to the Bank of England. The Midland Bank did not forward the fee until 19 September, the same day as this was credited to the Patent Office account.

I have a great deal of sympathy with Mr Migowski. He took steps to effect payment before the due date, though dangerously close to it. Whilst the role and authorisation of the Midland Bank in this matter is unclear, there is no doubt that the Midland Bank was not acting on behalf of the Patent Office. Therefore, I cannot interpret Rule 100 in Mr Migowski's favour and the request for an extension is refused.

Any appeal against this decision must be logged within six weeks of the date of this decision

dated *the fourth* day of August 1997.

R J MARCHANT  
Assistant Comptroller  
Acting for the Comptroller

RMER63

