

Case Name:

[APPLICANT V. EUROPEAN PATENT OFFICE](#)

Decision Date:

3 August 2017

Jurisdiction:

EUROPEAN PATENT ORGANISATION

Abstract:

The applicant failed to pay the required fees during the international phase, which became apparent only after the national phase entry. As result, the international application was deemed withdrawn. In accordance with PCT Article 24(1)(ii), the European Patent Office (EPO) informed the applicant that the application could not be processed in the European phase since the application was considered withdrawn in the international phase and indicated that the time limit for requesting review of the receiving Office (RO) findings under PCT Articles 24(2) and 25(2)(a) has expired.

On appeal, the applicant asserted that once an application validly enters the European phase, it is unaffected by possible deficiencies in the international phase that become apparent later on. Furthermore, the applicant argued that the EPO's further processing such as recording of applicant transfers and agent changes as well as its receipt of renewal fees over seven years suggested to the applicant that the application was still pending. Thus, the applicant asserted that it could have reasonably assumed the EPO exercised its discretion under PCT Article 24(2) to maintain the effect of the international application despite its deemed withdrawal.

The Board of Appeal determined that the loss of rights under PCT Article 24(1)(ii) in the international phase cannot be remedied in the national phase. The Board further noted that the RO has no time limit under PCT Article 14(3)(a) to notify the applicant of the deemed withdrawal for non-payment of fees. Accordingly, the Board regarded the European entry as non-effective. Moreover, the Board found that even if the applicant had requested review under PCT Article 25(2), it would not apply here because the RO decision was not the result of an error but the result of the applicant's non-payment of fees, which is undisputed.

Regarding the review under PCT Article 24(2), the Board found that national law governs the time limit for requesting such review (consistent with PCT Article 48(2)(a)), and under the European patent law, no time limit bars the applicant from invoking the protection of legitimate expectations. Nevertheless, the Board found the principle of protection of legitimate expectations could not apply to the applicant(s) here since the applicant(s) failed to act in good faith when, *inter alia*, it ignored the RO's invitation to pay the relevant fees.

PCT Legal References:

- Article 14(3)(a)
- Article 24(1)(ii)
- Article 24(2)
- Article 25(2)(a)
- Article 48(2)(a)