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Device Diagnostics/Sony, European Patent Office (EPO Board of Appeal), 27 May 2009

Ferry van Looijengoed · Wednesday, May 27th, 2009 · Landmark European Patent Cases

This case concerns a referral to the Enlarged Board of Appeal regarding the interpretation of the term ‘pending application’ in the wording of Rule 25(1) EPC 1973. In the appealed decision from the receiving section, the receiving section held that from the date of the refusal by an examining division an application was no longer pending as long as during the time limit for filing an appeal no appeal is filed. In contrast, the appellant asserted that the term ‘pending application’ should be construed that the pending status of an application only ends when the refusal becomes final.

The Legal Board of Appeal held that the wording of the EPC and the relevant case law of the Boards of Appeal as well as national law cannot provide a conclusive answer as to how the term ‘pending application’ should be interpreted. Hence, the following question was referred to the Enlarged Board of Appeal: is an application which has been refused by a decision of the Examining Division thereafter still pending within the meaning of Rule 25 EPC 1973 (Rule 36(1) EPC) until the expiry of the time limit for filing a notice of appeal, when no appeal has been filed?

The [full summary](#) of this case has been published on [Kluwer IP Law](#).

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