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**Datasheet for the decision  
of 25 July 2008**

**Case Number:** T 0924/07 - 3.3.06

**Application Number:** 03795444.3

**Publication Number:** 1493479

**IPC:** B01D 39/20

**Language of the proceedings:** EN

**Title of invention:**  
Honeycomb structure

**Applicant:**  
IBIDEN CO., LTD

**Opponent:**  
-

**Headword:**  
Honeycomb structure/IBIDEN

**Relevant legal provisions:**  
EPC Art. 123(2)

**Relevant legal provisions (EPC 1973):**  
EPC Art. 111(1)

**Keyword:**  
"Compliance with the requirements of Article 123(2) EPC: yes"  
"Remittal: yes"

**Decisions cited:**  
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**Catchword:**  
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Case Number: T 0924/07 - 3.3.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.06  
of 25 July 2008

**Appellant:**

IBIDEN CO., LTD.  
1, Kandacho 2-chome  
Ogaki-shi  
Gifu 503-8004 (JP)

**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 28 December 2006  
refusing European patent application  
No. 03795444.3 pursuant to Article 97(1) EPC  
(1973).

**Composition of the Board:**

**Chairman:** P.-P. Bracke  
**Members:** L. Li Voti  
J. Van Moer

## Summary of Facts and Submissions

- I. This appeal lies from the decision of the Examining Division to refuse European patent application no. 03 795 444.3, relating to a columnar honeycomb structural body.
- II. In its decision, the Examining Division found that the then pending amended claims contravened the requirements of Article 123(2) EPC.

In particular, it found that the wording of claim 1 reading: "...a group of large-capacity through holes, **with one end of said structural body being sealed** and a group of small-capacity through holes, **with the other end of said structural body being sealed...**" and that of claim 2 reading "**...one of said through holes located at said chamfered corner portion has...**" were not supported by the content of the application as originally filed.

- III. An appeal was filed against this decision by the Applicant (Appellant).
- IV. Following the Board's communications, the Appellant submitted with the letter of 15 April 2008 three sets of amended claims to be considered as main request and as first and second auxiliary requests, respectively. With a further letter dated 4 July 2008 the Appellant submitted two amended versions of claim 1 of the set of claims submitted previously as main request to be considered as basis for the new main request and first auxiliary request, respectively, and amended versions of each claim 1 of the sets of claims submitted

previously as first and second auxiliary requests to be considered as basis for the new second and third auxiliary requests, respectively.

V. Claims 1 and 2 of the set of 11 claims according to the main request read, respectively, as follows:

"1. A columnar honeycomb structural body comprising:

a plurality of through holes placed in parallel with one another in the length direction; and a wall portion that separates the plurality of through holes from one another and which also forms a circumferential portion of said honeycomb structural body, wherein said plurality of through holes comprises:

a group of large-capacity through holes, with one end thereof being sealed so as to cause the total of areas of cross-section perpendicular to the length direction to become relatively greater; and

a group of small-capacity through holes, with the other end thereof being sealed so as to cause the total of areas of said cross-section to become relatively smaller, and said circumferential portion of the columnar honeycomb structural body has one or more corner portions, each of which is chamfered."

"2. The columnar honeycomb structural body according to claim 1, wherein each part of said wall portion constituting said corner portion has an R-chamfered portion and/or a C-chamfered portion on the side forming a wall portion of a through hole positioned at a corner portion."

Dependent claims 3 to 9 refer to particular embodiments of the claimed columnar honeycomb structural body, claim 10 to an aggregate-type honeycomb structural body formed by combining a plurality of columnar honeycomb structural bodies as claimed and claim 11 to a use of such honeycomb structural bodies.

VI. The Appellant submitted in writing *inter alia* that

- claims 1 and 2 according to the main request had been redrafted in the attempt to define clearly the subject-matter of the claimed invention without contravening Article 123(2) EPC;

- in particular, paragraph 70 of the description as published contained support for the final wording of claim 1 reading "...said circumferential portion of the columnar honeycomb structural body has one or more corner portions, each of which is chamfered.";

- claim 2 had been rendered dependent on claim 1;

- claims 3 and 4 had been amended by defining the through holes located at the chamfered corner portions;

- moreover, the wordings of claims 3, 4 and 6 had been brought into agreement with those of the preceding claims;

- amended claim 10 found support in the original claim 10 read in combination with paragraph 46 of the description as published.

- VII. In the communication of 19 February 2008 the Board had informed the Appellant *inter alia* that it did not appear appropriate to deal with the issues of novelty and inventive step, since the decision under appeal had been based on the grounds of not compliance with the requirements of Article 123(2) EPC only.
- VIII. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims according to the main request (claim 1 as submitted with the letter of 4 July 2008 and claims 2 to 11 as submitted with the letter of 15 April 2008) or, in the alternative, on the basis of any of the sets of claims according to the first, second or third auxiliary requests (claim 1 of any of these requests having been submitted with the letter of 4 July 2008 and the remaining claims corresponding to those according to the main request, first auxiliary request and second auxiliary request, respectively, all of them submitted with letter of 15 April 2008).

## **Reasons for the Decision**

### 1. *Main request*

#### 1.1 Article 123(2) EPC

The Board notes that claims 1 and 2 according to the main request do not contain any longer the wordings found by the department of first instance to contravene the requirements of Article 123(2) EPC (see points II and V above).

By considering the original documents of the application (reference being made hereinafter to the published application EP-A-1493479), the Boards finds that:

- the wording of claim 1 according to the main request finds support in the original claim 1; paragraphs 23, 24, 52, 62 and 70; and figure 1a;
- the wording of claim 2 finds support in the original claim 2; paragraphs 30, 32 and 63; and figure 1a;
- the wordings of claims 3 to 9 and 11 are supported by the original claims 3 to 9 and 11, respectively;
- the wording of claim 10 finds support in the original claim 10, paragraph 46 and figure 2.

Therefore, the Board concludes that the claims according to the main request comply with the requirements of Article 123(2) EPC.

2. *Remittal*

In the present case the decision under appeal was based on the ground of not compliance with the requirements of Article 123(2) EPC only.

The Board thus finds that in order not to deprive the Appellant of the opportunity to argue the remaining issues at two instances it is appropriate in the present case to make use of its powers under Article 111(1) EPC to remit the case to the department of first instance for further prosecution.

**Order**

**For these reasons it is decided that:**

The decision under appeal is set aside.

The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:

P. Cremona

P.-P. Bracke