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**Datasheet for the decision
of 26 September 2008**

Case Number: T 1426/07 - 3.2.03

Application Number: 00939203.6

Publication Number: 1230049

IPC: B22D 11/04

Language of the proceedings: EN

Title of invention:

Equipment for continuous casting of metal, in particular aluminium

Patentee:

NORSK HYDRO ASA

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 84, 116

EPC R. 103(1)(a)

Relevant legal provisions (EPC 1973):

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Keyword:

"Claims-clarity (yes) - Article 116 EPC confers the right to oral proceedings, but not to have an interview"

"Refund of appeal fee (no)"

Decisions cited:

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Catchword:

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Case Number: T 1426/07 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 26 September 2008

Appellant: NORSK HYDRO ASA
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Representative: Bleukx, Lucas Lodewijk M.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 April 2004
refusing European application No. 00939203.6
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: U. Krause
Members: G. Ashley
K. Garnett

Summary of Facts and Submissions

- I. This appeal lies from the decision of the Examining Division to refuse European patent application EP-A-00 939 203 for failure to comply with the requirements of Article 84 EPC.

The decision was posted by the Examining Division on 14 April 2004; the Appellant (Applicant) filed notice of appeal on 7 June 2004, paying the appeal fee at the same time; a statement containing the grounds of appeal was filed on 10 August 2004.

II. Requests

The Appellant requests that the above decision be set aside and that the patent be maintained on the basis of the set of claims filed on 10 August 2004 together with the grounds of appeal.

The Appellant also requests a refund of the appeal fee, as during the examination, the request for an interview was overlooked by the Examining Division.

III. Claims

- (a) Claim 1, as considered by the Examining Division, reads:

"1. Equipment for continuous, horizontal casting of metal, in particular aluminium, the equipment including an insulated reservoir or pool (2), which is designed to contain liquid metal, and a releasably provided mould (3), which can be removed from the pool (2), with

an insulating plate (19) with holes (25,26) which communicate with the mould, the mould (3) including a preferably circular mould cavity (17) with a wall (12,13) of permeable material for the supply of oil and/or gas, which wall provides primary cooling to the metal being cast and at least one slit or nozzles (16) arranged along the circumference of the cavity for the direct supply of coolant, providing secondary cooling at the metal,
characterised in that
the primary cooling is designed to enable increased or reduced cooling of the metal being cast by controlling the thermal transfer."

(b) Claim 1 filed with the grounds of appeal reads as follows:

"1. Equipment for continuous, horizontal casting of metal, in particular aluminium, the equipment including an insulated reservoir or pool (2), which is designed to contain liquid metal, and a releasably provided mould (3), which can be removed from the pool (2), with an insulating plate (19) with holes (25,26) which forms a communication between the reservoir and the mould, the mould (3) having a mould cavity (17) including a primary cooling section (17) with a circumferential wall (12,13) of permeable material for the supply of oil and/or gas, and a secondary cooling section including at least one slit or nozzles (16) arranged along the circumference of the cavity for the direct supply of coolant,
characterised in that
the insulating plate is provided with a protrusion extending along the wall of the cavity and the length

of the protrusion is selected dependent upon the required primary cooling effect."

Dependent claims 2 to 5 define preferred embodiments of the equipment of claim 1.

Reasons for the Decision

1. The appeal is admissible.
2. *Article 84 EPC*

The Examining Division was of the view that the features "cooling being so designed that it may be increased or reduced" and "controlling by thermal transfer", which appear in the characterising part of claim 1, relate to actions rather than structural features of a piece of equipment. Consequently, it took the view that claim 1 failed to define essential features of the invention, contrary to Article 84 EPC.

Claim 1 filed with the grounds of appeal contains an amended characterising portion that reads:

"1. Equipment for continuous, horizontal casting of metal...
characterised in that the insulating plate is provided with a protrusion extending along the wall of the cavity and the length of the protrusion is selected dependent upon the required primary cooling effect."

The amendment finds support in the application as originally filed (WO-A-01/00353) in dependent claim 2

or in the last paragraph on page 3, and thus meets the requirements of Article 123(2) EPC.

The amended feature now refers to a physical feature of the equipment, namely a protrusion, rather than the manner of cooling the metal being cast by controlling thermal transfer. The protrusion is said to extend along the wall of the cavity and has a length that is functionally defined as being dependent upon the required degree of cooling. These are physical features of the casting equipment, and hence the amendment overcomes the clarity objections of the Examining Division.

3. *Remittal*

The case will, however, have to be remitted to the Examining Division, as there is no decision at first instance as to whether the claimed subject-matter is novel and has an inventive step.

4. *Procedural Violation*

During the proceedings before the Examination Division, the Applicant filed amended claims and requested an interview in the event that the examiner should still consider there to be a lack of clarity (see the letter dated 4 December 2003). It appears that this request was not granted, as the next action from the Examining Division was the dispatch of the decision. The Appellant considers that this amounts to a substantial procedural violation justifying the refund of the appeal fee.

The refusal of a request for an interview with the examiner concerned does not contravene any of the rules of procedure contained in the EPC. Although Article 116 EPC gives every party the absolute right to oral proceedings, it does not confer the right to have an interview. It is for the Examiner to consider whether an interview would serve any useful purpose, and it is apparent that this was not the case here.

Rule 103(1)(a) EPC 2000 (Rule 67 EPC 1973) provides for the refund of the appeal fee where the Board of Appeal deems an appeal to be allowable and such a reimbursement is equitable by reason of a substantial procedural violation. Since it seems that no procedural error has occurred in this case, there is no ground for refund of the appeal fee.

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 examination.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

A. Wolinski

U. Krause