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**Datasheet for the decision
of 23 January 2015**

Case Number: T 1753/13 - 3.2.04

Application Number: 08105055.1

Publication Number: 1990516

IPC: F02B53/00

Language of the proceedings: EN

Title of invention:
Split-cycle four stroke engine

Patent Proprietor:
Scuderi Group LLC

Opponent:
Golibrodski, Bernard

Headword:

Relevant legal provisions:
EPC R. 76(2) (c), 77(1)

Keyword:
Admissibility of opposition - (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1753/13 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 23 January 2015

Appellant: Golibrodski, Bernard
(Opponent) Le Pré de la Cour - La Thymerale
26230 Chamaret (FR)

Respondent: Scuderi Group LLC
(Patent Proprietor) 1111 Elm Street
West Springfield, MA 01089 (US)

Representative: Harding, Andrew Philip
Forresters
Skygarden
Erika-Mann-Strasse 11
80636 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 18 June 2013
concerning the inadmissibility of the opposition
filed against European patent No. 1990516
pursuant to Rule 77 EPC.**

Composition of the Board:

Chairman A. de Vries
Members: S. Oechsner de Coninck
C. Heath

Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal, received on 14 August 2013, against the decision of the Opposition Division dated 18 June 2013 by which it rejected the opposition against European patent No. 1990516 as inadmissible, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 25 October 2013.

II. The appellant requested that the decision be set aside and the patent revoked.

The respondent (proprietor) requested that the appeal be dismissed.

Both parties requested oral proceedings.

III. After carefully examining the notice of opposition as filed, the decision under appeal, and the arguments presented on appeal, the Board summoned the parties to oral proceedings, and in the Annex to the Summons gave the following preliminary opinion:

" 5. The reason for finding the opposition inadmissible was, see section reasons on pages 2 and 3, that the notice of opposition did not clearly set out its lines of argument (novelty, inventive step and sufficiency of disclosure) "such that a defence is possible". This "lack of any clear structure in the arguments ... put an undue burden on the Proprietor". This is understood to refer to the requirement of Rule 76(2)(c) EPC that a notice of opposition shall contain in addition to a statement of the grounds "an indication of the facts and evidence presented in support of these grounds". If this requirement is not fulfilled the opposition is

rejected under Rule 77 (1) EPC. Indeed from the notice of appeal, page 1, penultimate paragraph and the explanations that follow on pages 2 and 3, this is how the appellant has understood the decision.

According to established jurisprudence, see e.g. the Case Law of the Boards of Appeal of the EPO, 7th edition, 2013 (CLBA hereinafter), section IV.D.3.2, the requirement to indicate facts and evidence - the substantiation of an opposition ground raised - means that for at least one ground that indication of the facts and evidence is sufficient for the patentee and the opposition to properly understand on an objective basis, and without the need to make further investigations, the case made against the patent. This requirement of substantiation should be distinguished from the strength of the case, i.e. is irrespective of whether it is wrong or right.

6. The opposition runs over 13 pages, and clearly identifies the opposed patent that the opponent refers to as D1. The opposition brief appears to mention three issues. First, that the technology does not work, second, that it is not novel, and third, that it is not inventive. In order to appreciate the contents of the opposition brief for an analysis of its admissibility, relevant parts of the opposition brief are reproduced below. .

7. One of the Appellant-Opponent's main concerns is that the patented invention is dangerous and does not work. The arguments in this respect are the following:

3- This OPPOSITION concerns the COMPLETE patent EP. 1. 990.

516.B1 :

- a) PROCESS : • belongs , ONLY , to the EP. 1. 290. 326. B 1
- priority : june 2000

b) TECHNOLOGY : • completely NON ADAPTED to VERY



GREAT DANGERS due to a WRONG RUNNING

CONCEPTION

- it is a VERY DANGEROUS TECHNOLOGY

CONCEPTION , which TRANSFORMS the i.c.e. INTO AN EXPLOSIVE

BOMB.

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3.4- crossover valve opening/closure : after such a DREADFUL sequence :

- - the complete circuit contains a “ REAL MESS ” of HOT combustion gas , burning particles , fuel droplets , unburnts , air , : **an**

EXCELLENT EXPLOSIVE GAS MIXING .

- - the “ D.1 ” TECHNOLOGY DOES NOT WORK : the additional air CANNOT BE , PROPERLY , INTRODUCED INTO THE COMBUSTION FIRE GAS PHASE , AS PRECISELY SPECIFIED IN MY OPPOSITION document “ Doct : 3, parag . 1. 5. 1. 3 ” regarding the patent EP.1. 925. 795 description which is IDENTICAL to the present D.1 description.

4- My OPPOSITION to the patent D.1.1. (EP. 925. 795. B1.)

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-A- when the crossover valve (cv158-stem 156) opens while the combustion is on stream , the COMBUSTION FIRE GAS PHASE , VIOLENTLY , INVADES the crossover passage from that opened valve , down to the compression cylinder 166 . Such an event occurs , even within a VERY SHORT TIME !

B- why ?

- pressure gradient : combustion FIRE GAS HIGH PRESSURE is , about FOUR TIMES HIGHER than the additional compressed air from the compressor discharge.
- the check valve (ck 146) is NOT ADAPTED , (NO FIRE GAS TIGHTNESS TO THE FIRE GAS CONDITIONS) .

C- consequently :

- the complete process line contains high pressure/temperature Burning particles , fuel droplets , air ,....: DREADEFUL EXPLOSIVE MIXING .
 - the "D.I"TECHNOLOGY DOES NOT WORK : the additional Air CANNOT BE PROPERLY INTRODUCED INSIDE THE The COMBUSTION FIRE GAS PHASE .
- Those BIG PROBLEMS are IDENTICAL TO the EP 1 925 795 PROBLEMS : both patents have SAME DESCRIPTION, DRAWINGS , PREFERRED FIGURES ,.....

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3- CONCLUSION :

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because their modifications are not possible .

6.6- claim 8 :

a)- the overlap with the combustion , starts the VERY BIG PROBLEMS regarding the WRONG D.1 TECHNOLOGY CONCEPTION.

b)-recently , J have developed that VERY BIG PROBLEMS DUE TO VERY DANGEROUS and NON ADAPTED TECHNOLOGY CONCEPTION in one file requested by the E.P.O. (Communication dated 17.09.2010) for completing my OPPOSITION to the patent EP.1.925.795.B.1 (D.1.1)

c)- Result : the " D.1 " TECHNOLOGY (identical to the D.1.1. TECHNOLOGY)MUST BE COMPLETELY MODIFIED , in order to be in FULL COMPLIANCE^{with}the A. P. I. Official Specifications , which MUST BE asked by the " D.1 " author.

...

• b)- its TECHNOLOGY IS NOT ADAPTED to that patent :

VERY GREAT DANGER DUE TO THE OPENING OF THE CROSSOVER VALVE IN FRONT OF THE COMBUSTION FIRE GAS PHASE : VERY HIGH DREADFUL DANGER !!!!

- SUCH A SEQUENCE PERFORMS :

A- the i. c. e. CANNOT WORK : the additional compressed air flowrate CANNOT BE INTRODUCED INSIDE THE

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FROM THE CROSSOVER VALVE TO THE COMPRESSOR
CYLINDER .

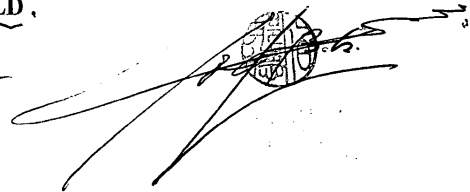
→ { - Result : VERY GRAVE POTENTIAL DANGER OF EXPLOSION
AT ANY TIME , ALL ALONG THE PROCESS STREAM LINE ,
DOWN TO THE COMPRESSOR.

• c)- as all i. c. e. are " PUBLIC ENGINES " ALL OVER THE
→ { WORLD " , THE PATENT EP. 1. 990. 516. B1 , MUST BE
CANCELLED , IN ORDER NO ENGINE BE CONSTRUCTED
ACCORDING TO SUCH A VERY DANGEROUS/DREADFUL
PATENT TECHNOLOGY .

• d) IF THE E. P. O. DOES NOT CANCEL the patent EP. 1. 990.
516. B1, IT WILL BE COMPLETELY RESPONSIBLE IN CASE
OF ANY ACCIDENT AT ANY TIME / PLACE / ALL OVER
THE WORLD .

• e) - that is why , J REPEAT AGAIN : the INTERNATIONAL
SAFETY MUST BE RESPECTED BY ANYBODY , ANY
INSTITUTE , ANY OFFICE , , ANY AUTHORITY , , that
is why the patent EP. 1. 990. 516. B1 MUST BE CANCELLED .

→ { Such a patent conception is ONE TOO MUCH DREADFUL DANGER
OF LIVES (to death). C O N S E Q U E N T L Y , IT MUST BE
FORBIDDEN ALL OVER THE WORLD ,



It does not appear to be disputed that the above statements can be interpreted as an argument for insufficient disclosure of the patent.

The decision under appeal (page 2, 2nd paragraph) held that the assertion that the claimed engine is known yet cannot work (because dangerous in operation) did not constitute a clearly reasoned objection under Article 100(b). Indeed, the opposition brief as cited above does not appear to claim that it would be impossible to construct the machine based on the information in the patent. To the contrary, the main concern appears to be its "wrong conception" which is "very dangerous" in that when constructed the claimed machine will explode.

According to established jurisprudence, see CLBA, II.C. 8 an objection of lack of sufficient disclosure presupposes that there are serious doubts substantiated by verifiable facts that the patent does not disclose the invention sufficiently clearly and completely for it to be carried out by the skilled person, Article 100(b) EPC. The burden of proof lies on the opponent to establish that a skilled reader of the patent using his common general knowledge would be unable to carry out the invention. Thus he must give the reasons why the machine cannot be set up and operated according to the information contained in the patent. The fact that a design concept may be wrong (due to a cross-over valve operation as asserted under A) on page 5/14) and as a result poses a risk of explosion does not lead to the logical conclusion that the claimed invention cannot be carried out. This fact cannot of itself, in the Board's provisional opinion, raise doubts, let alone serious ones, that the invention has been insufficiently disclosed. In other words, the above-

cited parts of the opposition brief do not appear to be a reasoned opposition with respect to Art. 100b) EPC.

8. It appears undisputed that section 6 of the statement of grounds (reproduced below) concerns arguments against novelty/inventive step (wherein D2 refers to US 4 506 634):

6.1 - they are in addition to my " 2010 file "

6.2- claim 1 :

1) from lines 23 to 30 : it is , only , a short description of one technology ,
equivalent to the " D.2 " one .

There is NO INVENTIVE CREATIVITY from D.1.

The INVENTION BELONGS , ONLY , to D.2.

2)- line 31 : there are TWO BIG PROBLEMS :

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PHASE, VIOLENTLY , INVADES THE CROSSOVER PASSAGE (HIGH PRESSURE / TEMPERATURE , EXPLOSIVE Compounds, . . .) DUE TO THE CROSSOVER VALVE OPENING .

- Please , read my **OPPOSITION** file Doct : 3 parag 1.5.1.3 regarding the patent EP. 1. 925. 795 of which the **DESCRIPTION** is **COMPLETELY IDENTICAL** to the present patent EP. 1. 990. 516 **DESCRIPTION** .

. b) pressure chamber 148 : J CANNOT ACCEPT THAT COMPRESSED AIR BUFFER TANK , because it is THE COPY OF MY OWN RESERVOIR No 10 (my patent D.3 =EP 1 290 326.B1) .

3)- lines 31 , 32 : fuel injection : **NOTHING NEW** , compared to the patent " D.2 " and **MANY OTHER** i.e.e. patents .

4)- conclusion :

- * - there is NO INVENTION in claim 1 : the invention belongs to D.2 from 1985 . It is , now , in "the public technicity field " .
- * - the check valve ck 146 MUST BE REPLACED : **NON ADAPTED** for the i.e.e. **DREADFUL VERY DANGEROUS,....RUNNING CONDITIONS**,which are mentioned from he claim 8 to the claim 12.
- * - the pressure chamber 148 is NOT ACCEPTABLE ;
COPY OF THE : D.3 compressed air RESERVOIR No 10 .

6.3- claim 2 : as , already demonstrated in my **ANNEX 1** :

a) there is **NO INVENTION IN THE " D.1 " patent , claim 2 .**



It is obvious that the fuel added to the compressed air , or to the

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compressed air-fuel mixture (when an additional fuel content is necessary)
at the end , of the crossover passage is equivalent to ALL OTHER i.c.e.

There is NO INVENTION in those lines 34 , 35 .

c) it is OBVIOUS , AS WELL , THAT THE FUEL INJECTION STARTS
ONLY . WHEN THE CROSSOVER VALVE OPENS , IN ORDER TO

.....

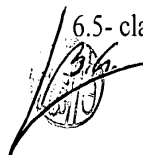
Note : explosions in reciprocating compressors occur like that , because of too
high compression ratio / temperatures, etc , for NON adapted
lubricant compounds / qualities .

e)- CLAIM 2 : NO NOVELTY , NO INVENTION , it is ,already, in “ the
public technicity field ”.

6.4- claims 3,4,5 .

- there is nothing to be added to my ANNEX 1 ,in 2010 .

- NO INVENTION to D,1 : only one TDC phasing extention compared to
D.2 . That TDC phasing was , already studied by the D.2 author in
1985 : PRIORITY .

6.5- claims 6, 7 :


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6.7- claims 9, 10, 11 :

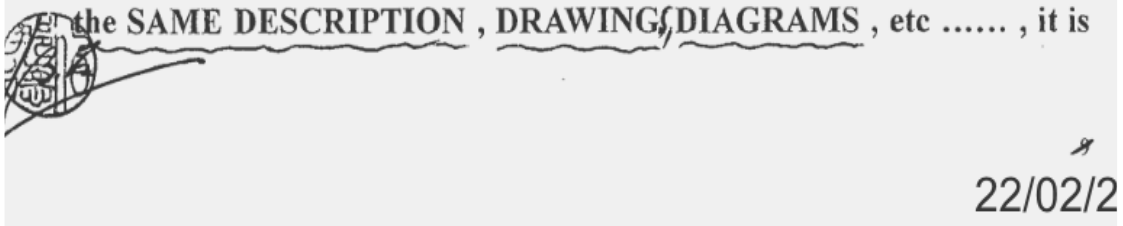
a) those 3 claims **CANNOT BE ACCEPTED** : they are the “concretization” of the
VERY DANGEROUS claim 8 :

A- PROCESS : IDENTICAL TO the EP. 1. 290. 326. B.1

PROCESS : PRIORITY dating back to june 2000.

...

c) both patents EP. 1. 990. 516 B1 and EP. 1 . 925. 795. B1 , HAVING GOT
 the SAME DESCRIPTION , DRAWING, DIAGRAMS , etc , it is



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→ { **OBVIOUS THAT MY TECHNICAL OPPOSITION TO EP. 1. 925. 795.
 B1 , IS FULLY VALID TO THE PRESENT EP. 1. 990. 516. B1 AS
 WELL .**

d) please , read my OPPOSITION DOCUMENTS “ Doct : 1b , 2, 3 .” to the EP.


1. 925. 795. B1 : THEY MUST BE APPLIED to the EP. 1. 990. 516. B1 :

both those patents have got the SAME IDENTICAL COMPLETE
DESCRIPTION .

For claim 12:

6.9- claim conclusion :

a) -the claim PROCESS : BELONGS , ONLY , to the EP. 1. 290. 326. B1

 (D.3) patent.


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- that PROCESS is , already , in “ the public technicity field.”

.....

{ -3- the present patent EP. 1 . 990 . 516 . B1 CANNOT BE MAINTAINED
AS A GRANTED patent :

- a)- its PROCESS is the EP. 1. 290. 326. B1 PROCESS.

The statement of grounds argues that these passages specify sufficiently clearly both a lack of novelty vis-a-vis D2 and D3, as well as obviousness over the same documents.

The Board is provisionally of a different opinion.

It notes that firstly the above passages do not appear to make a clear distinction between novelty and inventive step. A clear structure that might assist the reader in concluding which parts might refer to novelty

and which to inventive step is not apparent. No where is it expressly stated that all features of claim 1, which is relatively complex, are known from either of the two documents D2, D3 mentioned in this passage, let alone that for each feature a relevant passage in the respective documents is cited is identified. Only selected features are addressed and only in broad references to the prior art. The only specific references to claim features made in the opposition brief are the inlet valve 146 and the pressure chamber 148, two features that are not in the characterising part. Chamber 148 is said to be "a copy" of the Appellant-Opponent's own patent D3 (point 6.2. 2)b) Further, there is a broad assertion that the claim features in lines 23 - 30 of the B1 publication (part of the claim which includes the characterising portion) are "equivalent" to D2 (point 6.2. 1). The crossover valve that is part of the characterising portion is only addressed as to its potential danger (ck 146, point 6.2. 2)a)) but no prior art is cited. The reference to "lines 31, 32: fuel injection" would appear to the characterising portion of claim 1, which however does not mention fuel injection.

In as far as inventive step is concerned there does not appear to be any indication of how the claimed invention might differ from the prior art, much less why such a difference might be obvious.

Finally, the arguments refer to the process being the same (as in the cited documents); however, the patent has no process claims.

The net result is that, in the Board's provisional opinion, the arguments lack structure and coherency, and are without any clear and complete evidentiary

basis. The Board is thus at a loss to understand the case being made in the opposition brief against novelty and inventive step, indeed it is unclear even whether both are at issue."

- IV. With letter dated 27 November 2014 the respondent (proprietor) informed the Board that he would not be attending the oral proceedings.

With letter dated 22 January 2015, the Board was informed that the appellant's representative would also not attend the oral proceedings, and that he was no longer representing the appellant.

- V. Oral proceedings were duly held on 23 January 2015 in the absence of both parties. After deliberation, the Board decided to dismiss the appeal.

Reasons for the Decision

1. The appeal is admissible.
2. The Board in its preliminary opinion (as above) set out in detail why it agreed with the decision under appeal that the opposition was inadmissible and the appeal should be dismissed.
3. After the Board had communicated its preliminary opinion to the parties, no further arguments were made by either of them. Neither has the Board upon its deliberation found any cogent reasons why it should come to a conclusion different from the one expressed in its preliminary opinion.
4. The Board therefore decided to dismiss the appeal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated