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**Datasheet for the decision
of 24 May 2017**

Case Number: T 1823/13 - 3.2.07

Application Number: 05808496.3

Publication Number: 1791678

IPC: B24D5/06, B24D7/06

Language of the proceedings: EN

Title of invention:

GRINDING WHEEL

Patent Proprietors:

Sewon Tech Co., Ltd.
Akutt Diamantverktöj & Maskiner A.S.

Opponent:

Scanmaskin Sweden AB

Headword:

Relevant legal provisions:

EPC Art. 52, 54(2)

Keyword:

Novelty - (no)

Decisions cited:

T 1704/06

Catchword:



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Case Number: T 1823/13 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 24 May 2017

Appellant: Scanmaskin Sweden AB
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Representative: Grünecker Patent- und Rechtsanwälte
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Respondent 1: Sewon Tech Co., Ltd.
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Respondent 2: Akutt Diamantverktøj & Maskiner A.S.
(Patent Proprietor 2) Stålfjæra 12
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Representative: Kransell & Wennborg KB
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Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
10 June 2013 concerning maintenance of the
European Patent No. 1791678 in amended form.

Composition of the Board:

Chairman G. Patton
Members: K. Poalas
 I. Beckedorf

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the opposition division maintaining European patent No. 1 791 678 in amended form.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and/or inventive step), Article 100(b) EPC (insufficient disclosure) and on Article 100(c) EPC (unallowable amendments).
- III. The opposition division found that the set of claims filed as fifth auxiliary request during the oral proceedings meets the requirements of the EPC.
- IV. With its statement setting out the grounds of appeal the appellant requested that the decision under appeal be set aside and that the patent be revoked in its entirety. Oral proceedings were requested as an auxiliary measure.

The respondents (patent proprietors) requested that the appeal be dismissed and the patent be maintained as upheld by the opposition division. Oral proceedings were requested as an auxiliary measure.

- V. In its communication pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings, the board gave its provisional opinion concerning *inter alia* the novelty of the subject-matter of claim 1. The corresponding part of said communication, section 8, reads as follows:

"8. As far as it concerns point d) above[novelty of the

subject-matter of claim 1] the Board comments as follows:

8.1 The board follows the appellant arguing that, as no counterpart of the feature of claim 1 that "pressurizing and sintering ... at the same time" exists in D7/D7', the time rank of claim 1 is the filing date of the international application D1' underlying the patent in suit, i.e. 13 September 2005.

8.1 Consequently, the Korean patent D8/D8', granted on the Korean patent application D7/D7' and published before the filing date of the international application, namely on 2 June 2005, constitutes prior art according to Article 54(2) EPC for the patent in suit as maintained.

*8.2 As the international application D1', however, represents an essentially literal translation of D8, the combination of **claims 1 to 3** of the Korean patent D8/D8' seems to be novelty destroying for the subject-matter of claim 1".*

VI. With their submission dated 10 May 2017 the respondents only informed the board that neither they nor their representative will be attending the oral proceedings set for 24 May 2017.

VII. Oral proceedings before the board took place as scheduled on 24 May 2017. Since the duly summoned respondents, as announced with their above-mentioned submission did not attend, the oral proceedings were continued without the respondents in accordance with Rule 115(2) EPC and Article 15(3) RPBA.

Reasons for the Decision

1. Although the respondents did not attend the oral proceedings, the principle of the right to be heard pursuant to Article 113(1) EPC is observed since that provision only affords the opportunity to be heard and, by absenting itself from the oral proceedings, a party gives up that opportunity (see the explanatory note to Article 15(3) RPBA cited in T 1704/06, not published in OJ EPO, see also the Case Law of the Boards of Appeal, 8th edition 2016, section IV.E.4.2.6.d)).

2. *Novelty of the subject-matter of claim 1*
 - 2.1 Under section 8 of its communication pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings the board stated why it considers that the subject-matter of claim 1 lacks novelty, see point V above.

 - 2.2 The above-mentioned preliminary finding of the board has not been commented on nor has it been contested by the respondents during the appeal proceedings, see point VI above.

 - 2.3 As the board sees no reason to reverse its preliminary finding, the board considers that the subject-matter of claim 1 lacks novelty. As a consequence therefrom, the decision under appeal is to be set aside and the patent is to be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



G. Nachtigall

G. Patton

Decision electronically authenticated