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**Datasheet for the decision
of 12 May 2017**

Case Number: T 2012/16 - 3.2.07

Application Number: 11165951.2

Publication Number: 2361725

IPC: B24D99/00

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 R. 99(2), 101(1)

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(no)

Decisions cited:

T 2077/11, T 0039/12, T 0123/15

Catchword:



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Case Number: T 2012/16 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 12 May 2017

Appellant:
(Patent Proprietor 1)

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Appellant:
(Patent Proprietor 2)

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(Opponent)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 17 June 2016
revoking European patent No. 2361725 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman R. Cramer
Members: K. Poalas
 V. Bevilacqua

Summary of Facts and Submissions

- I. The patent proprietors (appellants) lodged an appeal against the decision of the opposition division revoking the European patent No. 2 361 725.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of inventive step), Article 100(b) EPC (insufficient disclosure) and on Article 100(c) EPC (unallowable amendments).
- III. The opposition division found that the ground for opposition according to Article 100(c) EPC holds against claim 1 of the patent as granted.
- IV. With their statement setting out their grounds of appeal the appellant requested that the decision under appeal be set aside and that the case be remitted to the opposition division for a decision on novelty and inventive step and that the patent be maintained as granted. As an auxiliary measure they requested oral proceedings.

The opponent (respondent) requested that the appeal be rejected as inadmissible, or in the alternative, that the appeal be dismissed. As an auxiliary measure it requested oral proceedings.

- V. In its communication pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings set for 12 May 2017, the Board gave its provisional opinion concerning the admissibility of the present appeal. The corresponding part of said communication, section 3, reads as follows:

"3. As far as it concerns point 2a) above the board expresses the following preliminary opinion:

The board considers that the present appeal is to be rejected as being inadmissible. Rule 99(2) EPC requires that the statement of grounds of appeal "shall indicate the reasons for setting aside the decision impugned". If the statement of grounds of appeal does not comply with this provision, the appeal shall be rejected as inadmissible (Rule 101(1) EPC). According to board of appeal case law on Rule 99(2) EPC, if the appellant submits that the decision under appeal is incorrect, then the statement setting out the grounds of appeal must enable the board to understand immediately why the decision is alleged to be incorrect and on what facts the appellant bases its arguments, without first having to make investigations of its own. There must be a causal relationship between the arguments in the statement of grounds of appeal and the reasons given in the decision under appeal (Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.E.2.6.3 a)). The statement of grounds of appeal discusses none of the reasons given in the decision under appeal, but repeats to a large extent the arguments given in the reply to the notice of opposition. Thus the statement of grounds of appeal is effectively equivalent to a reference to the reply to the notice of opposition. According to the established case law, merely referring to one's own submissions in the earlier proceedings cannot normally replace an explicit account of the legal and factual reasons for the appeal (Case Law of the Boards of Appeal of the EPO, 8th edition 2016, IV.E.2.6.4 a)). A statement of grounds of appeal that merely repeats arguments given in the reply to the notice of opposition can as a rule not be considered to contain arguments as to why the decision under appeal

is incorrect (cf. T 2077/11, T 39/12, T 123/15)".

- VI. With their submission dated 10 May 2017 the appellants only informed the board that neither they nor their representative will be attending the oral proceedings set for 12 May 2017.
- VII. Oral proceedings before the Board took place as scheduled on 12 May 2017. Since the duly summoned appellants, as announced with their above-mentioned submission did not attend, the oral proceedings were continued without the appellants in accordance with Rule 115(2) EPC and Article 15(3) RPBA.

Reasons for the Decision

1. Although the appellants did not attend the oral proceedings, the principle of the right to be heard pursuant to Article 113(1) EPC is observed since that Article 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. *Admissibility of the appeal*
 - 2.1 Under section 3 of its above-mentioned communication the Board stated why it considers that the present appeal is to be rejected as being inadmissible.
 - 2.2 The above-mentioned preliminary finding of the Board has not been commented on nor has it been contested by the appellants during the appeal proceedings, see point

VI above.

2.3 As the Board sees no reason to reverse its preliminary finding, the present appeal is to be rejected as being inadmissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



L. Malécot-Grob

R. Cramer

Decision electronically authenticated