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**Datasheet for the decision
of 5 November 2020**

Case Number: T 0468/18 - 3.2.04

Application Number: 11151817.1

Publication Number: 2354507

IPC: F02D41/24, F02D41/14, F02D41/00

Language of the proceedings: EN

Title of invention:
A method of controlling a diesel engine

Patent Proprietor:
Deere & Company

Opponent:
Deutz AG

Headword:

Relevant legal provisions:
EPC Art. 108 sentence 3
EPC R. 99(2)

Keyword:
Admissibility of appeal - statement of grounds indicating the reasons for setting aside the impugned decision (no)

Decisions cited:

T 0220/83, T 2077/11

Catchword:



Beschwerdekammern

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Case Number: T 0468/18 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 5 November 2020

Appellant: Deutz AG
(Opponent) Ottostrasse 1
51149 Köln (DE)

Respondent: Deere & Company
(Patent Proprietor) One John Deere Place
Moline, IL 61265 (US)

Representative: John Deere GmbH & Co. KG
Global Intellectual Property Services
John-Deere-Straße 70
68163 Mannheim (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 3 January 2018
rejecting the opposition filed against European
patent No. 2354507 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman A. de Vries
Members: S. Hillebrand
T. Bokor

Summary of Facts and Submissions

- I. The appeal was filed by the Opponent against the decision of the opposition division to reject the opposition filed against the patent in suit (hereinafter "the patent").
- II. In its response to the grounds of appeal, the respondent pointed out that in their statement of the grounds of appeal the Appellant repeats literally their notice of opposition.
- III. In a communication according to Article 15(1) RPBA 2020, see section 1, "Admissibility of appeal", the Board gave the following negative preliminary opinion on the admissibility of the appeal.

"It is established jurisprudence that the admissibility of an appeal is to be examined ex officio, CLBA V.A. 2.7. In the present case, the Board has doubts that the statement of grounds indicates any reasons for setting aside the decision impugned as required by Rule 99(2) EPC, i.e. that it indicates the legal or factual reasons, on which the case for setting aside the decision is based in a manner sufficiently clear and concise to enable the Board and the Respondent-Proprietor to understand immediately why the decision was alleged to be incorrect (see T0220/83).

1.1 The statement of grounds does not seem to address any of the main reasons for the opposition's divisions decision, and in particular not the detailed findings with regard to the separate embodiments disclosed in D1, according to which each embodiment realises some

steps of claim 1, but none of them all of the steps.

1.2 Apart from the few additions addressed below, the statement of grounds seems to be identical to the notice of opposition and can therefore not be considered to contain arguments as to why the decision under appeal is incorrect (see T2077/11).

1.2.1 When dealing with D1 in the section "Fehlende Neuheit", the Appellant-Opponent has added a passage of D1 (column 4, line 50 onwards) without any indication as to which step of claim 1 or which argument of the Opposition Division it should relate. Furthermore, on the top of page 6 of the decision under appeal, this passage has already been assessed as disclosing the step "matching a fuel flow with an airflow going to the engine during said period of time" for the first embodiment of D1.

1.2.2 When dealing with D2 in the section "Fehlende Neuheit", the Appellant-Opponent has added an argument with regard to the feature "stoichiometric" without addressing the basic objection of the Opposition Division that D2 does not form part of the prior art according to Article 54(2), (3) EPC.

1.2.3 In the section "Mangelnde Ausführbarkeit des Anspruchs 1", the Appellant-Opponent has added an argument on obviousness (last line of page 7) and a new objection with regard to clarity and/or feasibility of the term "stöchiometrisches Niveau" on page 7, line 55 of the description of the contested patent. Both additions do not seem to deal neither with the actual question of *sufficiency of disclosure* of the method of *claim 1*, nor with the corresponding positive reasoning

of the Opposition Division.

1.3 In summary, the Board has currently doubts that the appeal is admissible and meets the requirements of Article 108 and Rule 99 EPC."

- IV. Oral proceedings were held before the Board on 5 November 2020 in the form of a videoconference, in which all parties took part. The Appellant did not present arguments on the admissibility of the appeal, either in writing or during the oral proceedings.
- V. The Appellant (Opponent) requests that the decision under appeal be set aside and that the patent be revoked.

The Respondent (Proprietor) requests that the appeal be dismissed or, in the alternative, that the patent be maintained on the basis of one of auxiliary requests filed with his reply to the appeal.

Reasons for the Decision

- 1. In its communication pursuant Article 15(1) RPBA 2020, the Board indicated its competence to examine the admissibility of the appeal *ex officio* and detailed why the statement of the grounds of appeal appeared to not comply with the requirement that the reasons for setting aside the decision impugned shall be indicated. Since the Appellant did not counter this preliminary assessment, and having considered it anew, the Board sees no reason to deviate from its opinion.

2. The Board holds the appeal to be inadmissible as it does not comply with the provisions of Article 108, 3rd sentence in conjunction with Rule 99(2) EPC, for the reasons stated in its communication (see point III above).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated