

**Internal distribution code:**

- (A) [ - ] Publication in OJ
- (B) [ - ] To Chairmen and Members
- (C) [ - ] To Chairmen
- (D) [ X ] No distribution

**Datasheet for the decision  
of 16 March 2023**

**Case Number:** T 0058/21 - 3.2.06

**Application Number:** 17183648.9

**Publication Number:** 3279439

**IPC:** F01N3/20, B01F3/04, B05B1/34,  
B01D53/00, F02M61/18

**Language of the proceedings:** EN

**Title of invention:**  
SCR DOSER SPRAY ATOMIZATION

**Applicant:**  
Delphi Technologies IP Limited

**Headword:**

**Relevant legal provisions:**  
RPBA 2020 Art. 12(2), 12(4), 12(6)

**Keyword:**  
primary object of appeal proceedings to review decision -  
appeal case directed to requests on which decision was based  
(no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 0058/21 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 16 March 2023**

**Appellant:** Delphi Technologies IP Limited  
(Applicant) Erin Court, Bishop's Court Hill  
St. Michael (BB)

**Representative:** Allain, Michel Jean Camille  
BorgWarner France SAS  
Campus Saint Christophe  
Bâtiment Galilée 2  
10, avenue de l'Entreprise  
95863 Cergy Pontoise Cedex (FR)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 11 August 2020  
refusing European patent application No.  
17183648.9 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Dorfstätter  
J. Hoppe

## **Summary of Facts and Submissions**

- I. An appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the European patent application No. 17 183 648.9.
- II. Together with its statement of grounds of appeal, the appellant filed a sole request consisting of a new set of claims replacing the claims on file.
- III. The appellant requested that the decision under appeal be set aside and a patent be granted based on the request filed with the grounds of appeal.
- IV. The appellant was summoned to oral proceedings. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal the Board indicated that it did not intend to admit the newly submitted request into the appeal proceedings, and that the claims were anyway likely to be found not allowable at least for lack of clarity, lack of novelty and extended subject-matter. The Board also noted that the appellant had neither identified the amendments made in the claims nor provided reasons for submitting the amendments only in the appeal proceedings. The Board further noted that the appellant had not identified the basis of the amendments, nor had it justified why the amendments overcame the objections raised by the examining division.
- V. In a letter dated 31 January 2023 a representative referring to its general authorisation for the applicant, submitted that it did not intend to attend the oral proceedings and requested a final decision.

VI. The oral proceedings took place in the absence of the appellant.

VII. Claim 1 as filed with the statement of grounds of appeal reads as follows:

"A urea-Selective catalytic reduction (SCR) doser (10) adapted to spray, in use, a reagent such as an aqueous urea fluid (R) in a tailpipe of an internal combustion engine, said doser (10) having a body (12) defining an inner volume (S) within which is arranged a valve member (16) adapted to move along a main axis (X) in order to open or to close a valve seat (18) arranged on an inner face (24) of a transverse wall (20) of the body, said valve seat (18) controlling at least one first outlet opening (22) wherein, said first outlet opening (22) extends through said transverse wall from the inner face to an outer face and, the SCR doser (10) further comprising a diffuser plate (32) having a first face (34) and an opposed second face (36), the plate (32) being arranged on the body so that a cavity (C) is defined between the outer face (26) of the transverse wall and the first face (34) of the diffuser plate, said first plurality of restricted spray holes (22) opening in said cavity (C), wherein said diffuser plate (32) is provided on its first face (34) with a recess dug in the thickness of the plate, the first face of the plate being in surface contact with the outer face of the transverse wall, said recess defining the cavity, and, wherein said diffuser plate (32) is provided with a second plurality of spray holes (38) extending through the plate between said first face (34) and said opposed second face (36)."

## Reasons for the Decision

### 1. *Admittance*

The sole request (consisting of claims 1 to 11) submitted with the statement of grounds of appeal is not admitted into the proceedings (Article 12(4), (6) RPBA 2020).

- 1.1 As stated in the Board's communication (see point 1.1), it is the primary object of the appeal proceedings to review the decision under appeal in a judicial manner. Therefore, under Article 12(2) RPBA 2020 a party's appeal case shall be directed to the requests on which the decision under appeal is based. The claims as submitted together with the statement of grounds of appeal do however not correspond to any of the claims on which the examining division based its decision and are thus an amendment according to Article 12(2), (4) RPBA 2020.

In its communication (see point 1.2), the Board further analysed claim 1 of the appellant's sole request and found that it came closest to claim 1 of the first auxiliary request as filed during the oral proceedings before the examining division.

However, its subject-matter has been generalised in the following aspects:

- instead of defining "a first plurality of spray holes (22)", claim 1 defines "at least one first outlet opening (22)" (see lines 8 and 9), a formulation which covers the possibility of a single outlet opening;
- the definition "the spray holes (22) extend parallel to the main axis (X)" has been deleted.

1.2 Also in its communication (see point 1.3), the Board explained that if the request were admitted, the Board would then have to deal with subject-matter that was different to that on which the examining division had decided. It would thus be the Board which had to decide on such subject-matter for the first time, something which went against the primary purpose of the appeal proceedings of reviewing the impugned decision in a judicial manner. The Board noted that Article 12(4) RPBA 2020 did nevertheless allow an appellant to make amendments, but the appellant was then required to identify these and provide reasons for submitting the amendments in the appeal proceedings, i.e. instead of submitting them during examination before the examining division.

As also noted in the Board's communication, the appellant has fulfilled neither of these requirements.

1.3 The Board further explained in its communication that additionally, where amendments were made, it was incumbent on the appellant to identify the basis of the amendments and justify why the amendments overcome the objections raised by the examining division (Article 12(4) RPBA).

As also noted in the Board's communication, neither of these further requirements have been fulfilled.

1.4 Article 12(6) RPBA stipulates *inter alia* that "[t]he Board shall not admit requests ... which should have been submitted ... in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance."

The Board cannot recognise any such justification. Nor was this argued by the appellant.

- 1.5 Under these circumstances the Board avails itself of its discretion under Article 12(4), (6) RPBA not to admit the newly filed sole request.
2. There is thus no admitted request on file. In such a case the patent cannot be maintained and the appeal has to be dismissed.

### **Order**

#### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated