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**Datasheet for the decision  
of 4 November 2024**

**Case Number:** T 2066/22 - 3.2.06

**Application Number:** 13811179.4

**Publication Number:** 2941544

**IPC:** F01D25/24, F02C7/28, F04D29/08

**Language of the proceedings:** EN

**Title of invention:**  
SEALING ARRANGEMENT FOR AXIALLY SPLIT TURBOMACHINES

**Patent Proprietor:**  
Nuovo Pignone S.r.l.

**Opponent:**  
KSB SE & Co. KGaA

**Headword:**

**Relevant legal provisions:**  
EPC Art. 84

**Keyword:**  
Claims - clarity (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

Case Number: T 2066/22 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 4 November 2024**

**Appellant:** KSB SE & Co. KGaA  
(Opponent) Johann-Klein-Straße 9  
67227 Frankenthal (DE)

**Representative:** Behr, Wolfgang  
Lorenz Seidler Gossel  
Rechtsanwälte Patentanwälte  
Partnerschaft mbB  
Widenmayerstraße 23  
80538 München (DE)

**Respondent:** Nuovo Pignone S.r.l.  
(Patent Proprietor) Via Felice Matteucci 2  
50127 Florence (IT)

**Representative:** Illingworth-Law, William Illingworth  
Baker Hughes  
245 Hammersmith  
Chalk Hill Road  
London W6 8DW (GB)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
28 July 2022 concerning maintenance of the  
European Patent No. 2941544 in amended form.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** T. Rosenblatt  
J. Hoppe

## Summary of Facts and Submissions

- I. The appellant (opponent) filed an appeal against the interlocutory decision of the opposition division in which it was found that European patent No. 2 941 544 in an amended form, according to an auxiliary request 2, met the requirements of the EPC.
- II. Claim 1 of auxiliary request 2 as found allowable, reads as follows:

*"An axially-split turbomachine comprising:  
a casing (3) comprised of a first casing portion (5) with a first contact surface and a second casing portion (7) with a second contact surface;  
a sealing arrangement between said first casing portion (5) and said second casing portion (7);  
a rotor (15) arranged for rotation in said casing, said rotor comprising a shaft (17) and at least one impeller (19) mounted on said shaft (17);  
at least one shaft passageway (23) through the casing, the shaft (17) extending through said passageway (23);  
wherein said sealing arrangement comprises a linear sealing member (35), extending between the first contact surface and the second contact surface, and at least one sealing ring portion (39) surrounding said at least one shaft passageway (23);  
characterized in that said at least one sealing ring portion (39) and said linear sealing member (35) form a continuous sealing body;  
and  
said linear sealing member (35) having a circular cross-section or an elliptical cross-section and the at least one sealing ring portion (39) having a*

*cross-section similar to or identical to the cross-section of said linear sealing member (35)."*

III. The parties were summoned to oral proceedings before the Board.

IV. In a subsequent communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the Board informed the parties of its preliminary opinion in the present case. The Board stated *inter alia* the following:

*"2. The appellant requests to set the decision under appeal aside and revoke the patent. From the substance of its reply to the statement of grounds of appeal, the respondent's sole request can only be understood to be rejection of the appeal, i.e. maintenance of the patent in amended form with the claims of auxiliary request 2 underlying the impugned decision. No request for maintenance of the patent in any other form has been made.*

*3. The Board considers that the appeal should be allowed and the patent revoked.*

*4. Amended claim 1 of auxiliary request 2 is considered not to meet the clarity requirement of Article 84 EPC. The Board agrees with the appellant that it is at least not clear where the border should be drawn between cross-sections which are similar and those which are not similar to a circular or elliptical shape. For example, the question as to whether square (or other polygonal) cross-sections could be considered similar to a circular cross-section does not have a clear answer. The reasoning and arguments given by the*

*opposition division ("intuitively understandable") and by the respondent ("entirely clear to a person skilled in the art") are mere statements without any underlying explanation.*

*Likewise, whilst the opposition division considered that the form in which the seal cross-section had to be considered was the "unloaded" form, the Board may question whether this is the case, not least since claim 1 defines inter alia a sealing arrangement extending between the first contact surface and the second contact surface, as well as a shaft extending through the passageway (which is formed when the casing halves are put together). This would correspond to the loaded situation."*

*[5. ...]*

*6. In regard to the respondent's request to hold the oral proceedings in form of a video conference and the arguments submitted by the appellant for holding the oral proceedings in person, the Board intends to hold the oral proceedings in person (see also Reasons 45 of G 1/21)."*

- V. By letter dated 28 October 2024, the respondent (patent proprietor) withdrew its request for oral proceedings and stated that it assumed the oral proceedings were to be cancelled, but if they were not, it would not attend the oral proceedings. The respondent did not submit any comments of a substantive nature.
- VI. The oral proceedings were cancelled.
- VII. The requests of the parties taken from the written submissions are the following:

The appellant requested that the decision under appeal be set aside and the European patent be revoked.

The respondent requested that the appeal be dismissed.

### **Reasons for the Decision**

1. Contrary to the conclusions reached by the opposition division, the Board finds the subject-matter of claim 1 to lack clarity (Article 84 EPC).

In its communication pursuant to Article 15(1) RPBA, see above IV., point 4, the Board gave its provisional opinion as to why it could not follow the conclusions of the opposition division and the arguments of the respondent submitted in response to those of the appellant in their statement of grounds of appeal.

The respondent did not submit any counter-arguments. The Board therefore has no reason to deviate from its provisional opinion, which is consequently confirmed herewith.

2. Absent any set of claims complying with the requirements of the EPC, the patent has to be revoked (Article 101(3)(b) EPC).

## 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:



D. Grundner

M. Harrison

Decision electronically authenticated