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**Datasheet for the decision
of 24 June 2025**

Case Number: T 0381/23 - 3.4.03

Application Number: 07798759.2

Publication Number: 2033285

IPC: H01T13/32, H01T13/39

Language of the proceedings: EN

Title of invention:

SPARK PLUG WITH FINE WIRE GROUND ELECTRODE

Patent Proprietor:

Federal-Mogul Ignition LLC

Opponent:

Reininger, Jan Christian

Relevant legal provisions:

RPBA 2020 Art. 13(2)

EPC Art. 113(2)

Keyword:

Amendment after summons - exceptional circumstances (no) -
cogent reasons (no) - taken into account (no)
Basis of decision - text withdrawn by patent proprietor -
patent revoked



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0381/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 24 June 2025

Appellant: Federal-Mogul Ignition LLC
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
19 December 2022 concerning maintenance of the
European Patent No. 2033285 in amended form.**

Composition of the Board:

Chairman	E. Mille
Members:	A. Böhm-Pélissier
	J. Thomas

Summary of Facts and Submissions

- I. The patent proprietor's and opponent's appeals are against the interlocutory decision of the opposition division that patent EP 2 033 285 and the invention to which it relates are found to meet the requirements of the EPC taking into account the amendments made by the patent proprietor during the opposition proceedings according to the then new auxiliary request 1 filed on 6 May 2016.
- II. Reference is made to the following **documents**:
- E5 = US 2006/181185 A1
E6 = US 6 307 307 B1
- III. The board issued a detailed communication under Article 15(1) RPBA. In this communication, the board preliminarily concluded that the then main request and all then auxiliary requests except then auxiliary request 18 did not meet the requirements of Article 123(2) EPC and that the subject-matter of claim 1 of all then auxiliary requests was neither new nor inventive in view of documents E2 and / or E5.

Requests

- IV. The **appellant patent proprietor** (here: patent proprietor) requests that the interlocutory decision of the opposition division be set aside and the patent be maintained according to either the (new) main request or the (new) first auxiliary request filed with letter of 23 April 2025 in response to the board's communication under Article 15(1) RPBA, or one of the (new) second to fourth auxiliary requests filed with

letter of 23 May 2025 also filed in response to the board's communication under Article 15(1) RPBA.

All previous requests on file (previous main request and previous auxiliary requests 1 to 18) were withdrawn.

At the end of the oral proceedings the patent proprietor withdrew its appeal.

V. The **appellant opponent** (here: opponent) requests that the decision under appeal be set aside and that the patent be revoked. Moreover, it requests that the new main request and new first to fourth auxiliary request not be admitted into the proceedings under Article 13(2) RPBA.

VI. **Claim 1** of the **new main request**

(labelling (1a), (1b), ... as inserted by the opponent and by the board, highlighting was added by the board and corresponds to features added/deleted with respect to the previous main request, in [square] brackets the alleged basis provided by the patent proprietor is indicated, this also applies to the auxiliary requests)

*"(1a) A spark plug (10) for a spark-ignited internal combustion engine, said spark plug (10) comprising:
a generally tubular ceramic insulator (12);
a conductive shell (24) surrounding at least a portion of said ceramic insulator (12), said shell (24) including at least one ground electrode (26);
(1b) a center electrode (48) disposed in said ceramic insulator (12), said center electrode (48) having an upper terminal end and a lower sparking end (50) in opposing relation to said ground electrode (26) with a*

with a {sic} spark gap (54) defining the space therebetween;
said ground electrode (26) extending from an anchored end (56) adjacent said shell (24) to a distal end (58) adjacent said spark gap (54);
(1c) said ground electrode (26) including a ledge (59) formed on said distal end (58), said ledge (59) having at least one inset planar surface (60);
(1d) a sparking tip (62, 162, 262) located on said distal end (58) of said ground electrode (26), said sparking tip (62, 162, 262) having a base end (64) attached to said inset planar surface (60) of said ledge (59); and
(1e) ~~characterized in that,~~
said inset planar surface (60) completely covering said base end (64) of said sparking tip (62, 162, 262) and extending outwardly therefrom to provide an exposed peripheral interface,
(1f) and
characterized in that,
said sparking tip (62, 162, 262) has the shape of a cylinder, [all figures]
and is oriented parallel to said center electrode (48)
[Figures 1 to 8, 10 and 11],
(E) said ledge (59) includes an inset back wall (70) intersecting said inset planar surface (60), said inset back wall (70) having a contour along a length thereof and a cross-section profile, [claim 2 as granted]
(I) wherein said inset back wall (70) is substantially orthogonal to said inset planar surface (60)
[claim 3 as granted]."

VII. Claim 1 of **new auxiliary request 1** differs essentially from claim 1 of the main request in that

1) the following feature was added at the end of feature (1d):

(D) *and disposed in surface-to-surface contact with the inset planar surface (60) of said ledge (59)* [paragraph [0009] of the originally filed description];

2) "attached" is amended by "attached by resistance welding" [paragraph [0039] of the originally filed description];

3) "sparking tip" is replaced by "high performance metallic sparking tip" in features (1d) and (1e) [paragraph [0009] of the originally filed description].

VIII. Claim 1 of **new auxiliary request 2** differs from claim 1 of auxiliary request 1 in that feature (1g) is added:

(1g) *said inset planar surface (60) being orthogonal to an axial direction of said sparking tip (62, 162, 262)* [Figures 1 to 8, 10 and 11].

IX. Claim 1 of **new auxiliary request 3** differs from claim 1 of auxiliary request 2 in that the features are arranged in a different order.

X. Claim 1 of **new auxiliary request 4** differs from claim 1 of auxiliary request 2 in that feature (1f) is exchanged by feature (1f')

(1f') *said high performance metallic sparking tip (62, 162, 262) has the shape of a cylinder, and is ~~oriented parallel to~~ arranged coaxial with said center electrode (48)* [Figures 1 to 8, 10 and 11].

XI. The arguments of the patent proprietor as far as they are relevant for this decision can be summarized as follows:

The new requests are to be admitted into the proceedings under Article 13(2) RPBA, because a completely new and surprising interpretation by the board was given in its communication under Article 15(1) RPBA with respect to document E5 which represents exceptional circumstances.

XII. The arguments of the opponent as far as they are relevant for this decision can be summarized as follows:

The new requests are not to be admitted into the proceedings under Article 13(2) RPBA, because the passages of the communication under Article 15(1) RPBA referred to by the patent proprietor only repeat arguments provided by the opponent earlier in the proceedings. Therefore, these arguments could and should not surprise the patent proprietor.

Reasons for the Decision

1. Admission of new main request and new auxiliary requests 1 to 4 (Article 13(2) RPBA)

1.1 The patent proprietor considers that the newly filed requests should be admitted into the proceedings, because a completely new and surprising interpretation by the board was given in its communication under Article 15(1) RPBA with respect to document E5 (section 5.3 of said communication) which represented exceptional circumstances.

The patent proprietor does not provide further arguments or details which features have been reinterpreted in document E5 or why it considers that surprising new interpretations have been put forward by the board.

1.2 The opponent considers that no surprising situation was visible in the board's communication under Article 15(1) RPBA. It could not identify any exceptional circumstances which would justify the late filed requests being admitted into the proceedings under Article 13(2) RPBA, because the board refers in the sections cited by the patent proprietor to arguments provided by the opponent earlier in the proceedings.

1.3 The board agrees with the opponent. According to Article 13(2) RPBA, "*[a]ny amendment to a party's appeal case made after ... a communication under Article 15, paragraph 1, shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned*".

1.4 In section 5.3 of its communication under Article 15(1) RPBA the board referred exclusively to arguments provided previously by the opponent in the first instance proceedings and in the appeal proceedings. Therefore, these arguments could and should not surprise the patent proprietor. The patent proprietor could not indicate which features have been reinterpreted in document E5 or why it considers that surprising new interpretations have been put forward by the board.

- 1.5 Consequently the board cannot find any exceptional circumstances, which have been justified with cogent reasons by patent proprietor, which would justify an admission of the new main request and new auxiliary requests 1 to 4 into the proceedings.
- 1.6 Consequently, none of the newly filed requests are admitted into the proceedings (Article 13(2) RPBA).
- 1.7 Therefore, there are no claim requests on file, because all other requests (previous main request and previous auxiliary requests 1 to 18) were withdrawn (Article 113(2) EPC).

2. Conclusion

"The European Patent Office shall ... decide upon ... [an] European patent only in the text ... agreed, by ... the proprietor of the patent" (Article 113(2) EPC). Since there is no such valid set of claims to which the patent proprietor has consented (previous main request and previous auxiliary requests 1 to 18 were withdrawn, new main request and new auxiliary requests 1 to 4 were not admitted into the proceedings), the patent must be revoked (Article 101(2) EPC and Article 113(2) 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:



S. Sánchez Chiquero

E. Mille

Decision electronically authenticated