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**Datasheet for the decision
of 28 October 2025**

Case Number: T 0914/24 - 3.3.05

Application Number: 11807755.1

Publication Number: 2646588

IPC: C22C37/06, C22C37/10, F16D65/12

Language of the proceedings: EN

Title of invention:
BRAKE DISC FOR A DISC BRAKE

Patent Proprietor:
Brembo S.p.A.

Opponent:
SAF-HOLLAND GmbH

Headword:
Brake Disc/Brembo

Relevant legal provisions:
EPC Art. 100(c), 123(2)

Keyword:
Grounds for opposition - added subject-matter (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0914/24 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 28 October 2025

Appellant: Brembo S.p.A.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 8 May 2024
revoking European patent No. 2646588 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman P. Guntz
Members: G. Glod
R. Elsässer

Summary of Facts and Submissions

I. The patent proprietor's (appellant's) appeal concerns the opposition division's decision revoking European patent EP 2 646 588 B1. The patent as granted and auxiliary requests 1 to 4 were found not to meet the requirements of Article 123(2) EPC. Auxiliary request 4 was not maintained in the appeal proceedings.

II. Claim 1 of the impugned patent (main request) reads as follows (the amendments compared to claim 1 as filed are underlined):

"1. Brake disc for a disc brake, comprising a braking band made in a cast iron comprising carbon, silicon, manganese, molybdenum, chromium, the cast iron having a composition wherein the percentage in weight of carbon C% is from 3.70 to 3.85%, the percentage in weight of silicon Si% is from 1.30 to 1.40%, the percentage in weight of manganese Mn% is from 0.60 to 0.70%, the percentage in weight of molybdenum Mo% is less than 0.10%, the percentage in weight of chromium Cr% is from 0.10 to 0.30%, wherein the cast iron comprises optionally copper in a percentage in weight from 0.20 to 0.30%, the balance being iron and wherein the percentage in weight of carbon equivalent Ceq is from 4.13 to 4.38 where Ceq = C% + Si%/3."

In claim 1 of auxiliary request 1 the upper limit of the range for copper has been amended to 0.35%.

In claim 1 of auxiliary request 2 the optional feature "*wherein the cast iron comprises optionally copper in a percentage in weight from 0.20 to 0.30%*" has been deleted from claim 1 and added as dependent claim 8.

In claim 1 of auxiliary request 3 the optional feature "*wherein the cast iron comprises optionally copper in a percentage in weight from 0.20 to 0.30%*" has been deleted from claim 1 without it being added as a dependent claim.

- III. For each of these requests, the appellant argued that the subject-matter of claim 1 was directly and unambiguously derivable from the application as filed. The description mentioned specific effects for each of the components C, Mn, Mo, Si and Cr. The only optional element mentioned was Cu. The cast iron related to a high-performance brake disc. It was evident to the skilled person that the cast iron composition did not contain any further components.
- IV. The respondent's (opponent's) main arguments are reflected in the Reasons for the Decision given below.
- V. The appellant requested that the decision under appeal be set aside and that the opposition be rejected, and alternatively that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 3 underlying the impugned decision.

The respondent requested that the appeal be dismissed. If one of the requests was found to meet the requirements of Article 123(2) and (3) EPC, remittal to the opposition division was requested.

Reasons for the Decision

1. Article 123(2) EPC

The main point of debate was whether the feature "*the cast iron having a composition*" in combination with "*the balance being iron*" is directly and unambiguously derivable from the application as filed.

The parties agreed that claim 1 excludes elements not explicitly mentioned in the claim. The open formulation originally disclosed in claim 1 is now restricted to a closed composition. It is established case law that an open formulation present in the application as filed does not automatically provide a basis for a closed formulation (Case Law of the Boards of Appeal of the EPO, 11th edition, 2025, II.E.1.15).

In the case in hand claim 1 of the application as filed relates to a brake disc comprising a braking band made in a cast iron comprising carbon, silicon, manganese, molybdenum and chromium in the indicated ranges (for the complete wording of claim 1, see point II). Such an open formulation, albeit without any limitation to the amount of the ingredients, is also found in paragraph [0022] of the application as filed.

The skilled person understands from the description as filed, in particular paragraphs [0044] to [0048], that the combination of the components carbon, silicon, manganese, molybdenum and chromium in the cast iron is essential and allegedly provides some benefits. Copper is mentioned as a further possible ingredient (paragraph [0029]), but no mention is made of its role in the composition. Carbon, silicon, manganese, molybdenum and chromium are apparently the elements

relevant for obtaining high-performance brake discs [paragraph [0049]). It is evident that in a cast iron composition the main ingredient is iron. The key question is whether the application as filed unambiguously discloses a composition made only of carbon, silicon, manganese, molybdenum, chromium, iron and possibly impurities.

The understanding that carbon, silicon, manganese, molybdenum and chromium in the amounts claimed in claim 1 of the application as filed are essential for obtaining the desired effects, and that the rest of the composition is not critical, does not contradict the original disclosure. In particular, the application as filed does not provide any indication that it is imperative that ingredients other than those explicitly mentioned be excluded (except for impurities) from the cast iron in order to obtain the desired high-performance brake discs. The application as filed does not contain any examples which would support the understanding that the cast iron should only contain carbon, silicon, manganese, molybdenum, chromium and iron. No emphasis is put on such a restricted interpretation in the application as filed. Such a restricted understanding is at least not in line with the disclosure in paragraphs [0022] and [0052].

The skilled person would consequently derive that other elements besides those mentioned in the claim are not excluded *a priori*.

Therefore, the board concludes that the skilled person does not consider there to be an unambiguous disclosure with respect to the allowed ingredients. Consequently, the current closed composition cannot be accepted as

being directly and *unambiguously* derivable from the application as filed.

The main request does not fulfil the requirements of Article 123(2) EPC and must fail.

Auxiliary request 1

2. Article 123(2) EPC

In this request only the amount of the optional feature (copper) has been amended. Therefore, the objection raised with respect to the main request under Article 123(2) EPC is still applicable.

Consequently, the requirements of Article 123(2) EPC are not met and auxiliary request 1 is not allowable either.

Auxiliary request 2

3. Article 123(2) EPC

In this request the presence of copper ("0.20 to 0.35%") has been formulated as dependent claim 8.

This does not alter the situation compared with the main request.

Consequently, the requirements of Article 123(2) EPC are not met and auxiliary request 2 is not allowable either.

Auxiliary request 3

4. Article 123(2) EPC

Any mention of an optional presence of copper has been entirely deleted from this request.

However, the objection raised above with respect to the main request is still applicable. Consequently, the requirements of Article 123(2) EPC are not met and auxiliary request 3 is not allowable either.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



C. Vodz

P. Guntz

Decision electronically authenticated