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Aktenzeichen / Case Number / N^o du recours : T 99/88 - 3.2.1

Anmeldenummer / Filing No / N^o de la demande : 85 103 808.3

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 158 901

Bezeichnung der Erfindung:

Title of invention:

Titre de l'invention :

Klassifikation / Classification / Classement : F16C 33/30, F16C 33/62

ENTSCHEIDUNG / DECISION

vom / of / du 19 April 1990

Anmelder / Applicant / Demandeur :

1. Koyo Seiko Co. Ltd
2. Kabushiki Kaisha Toshiba

Patentinhaber / Proprietor of the patent /

Titulaire du brevet :

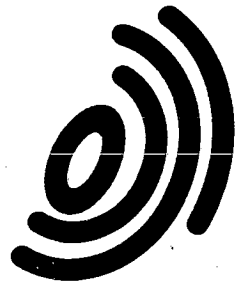
Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPO / EPC / CBE Article 109(1)

Schlagwort / Keyword / Mot clé : "Interlocutory revision"

Leitsatz / Headnote / Sommaire



Case Number : T 99/88 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 19 April 1990

Appellant :

1. Koyo Seiko Co., Ltd.
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Minami-ku, Oosaka-shi
Oosaka, Japan
2. Kabushiki Kaisha Toshiba
72 Horikawa-cho, Saiwai-ku
Kawasaki-shi, Japan

Representative : Henkel, Feiler, Hänzel & Partner
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Decision under appeal : Decision of Examining Division 115
of the European Patent Office dated
13 October 1987 refusing European
patent application No. 85 103 808.3
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : F. Gumbel
Members : M. Ceyte
W. Moser

Summary of Facts and Submissions

- I. European patent application No. 85 103 808.3 filed on 29 March 1985 and published under publication No. 0 158 901 was refused by decision of the Examining Division dated 13 October 1987.

That decision was based on independent Claims 1 and 2 received on 26 August 1987 and independent Claims 3 and 4 received on 16 January 1987.

- II. The Examining Division stated in its decision that independent Claim 1, Claims 2, 3 and Claim 4 in the same category related to different inventions which were not so linked as to form a single general inventive concept. The application accordingly did not comply with the unity of invention requirement of Article 82 EPC.

In the statement of grounds the Examining Division further pointed out that the refusal of the application was based on the single ground of lack of unity under Article 82 EPC. Only by way of "preliminary comments" they also expressed the view that the claimed subject-matter lacked an inventive step (Article 56 EPC).

- III. On 11 December 1987 the Appellant lodged an appeal against this decision, at the same time paying the appeal fee. Together with the Statement of Grounds of Appeal filed on 11 February 1988, he also submitted a new independent Claim 1 and dependent Claims 2 to 5 and complete papers for a divisional application divided out from the present application. New Claim 1 corresponds to Claim 1 received on 26 August 1987, and new Claims 2 to 5 correspond to original Claims 7, 8, 2 and 3, respectively.

The Appellant requested:

- (i) rectification of the impugned decision pursuant to Article 109(1) EPC since the amendments made meet the single ground on which the refusal of the application is based,
- (ii) further prosecution of the present application on the basis of the new Claims 1 to 5.

Reasons for the Decision

1. The appeal is admissible.
2. No objection under Article 82 arises between dependent Claims 2 to 5 and the only independent Claim 1 from which they depend. The claims remaining in the present application therefore clearly comply with the unity of invention requirement.

The Appellant has therefore fully met the single objection on which the refusal of the application is based and notified by the Examining Division in the contested decision.

As outlined in the decision T 139/87 (OJ EPO 1990, 68), an appeal is to be considered well founded if the amendments submitted by the Appellant clearly meet the objections on which the contested decision relies. That there are other objections which have not been removed but which were not the subject of the contested decision cannot preclude the application of Article 109 EPC (cf. point 4, third paragraph of the Reasons).

In the present case, the Examining Division expressed in the contested decision the view by way of "preliminary comments" that the claimed subject-matters also lacked an inventive step. However, the Board does not consider this preliminary opinion as a reasoned statement of grounds for refusing the application on the further ground of lack of inventive step. In fact, the decision did not rely on this additional ground and the Appellant did not comment on inventive step in his Statement.

It is therefore the view of the Board that the contested decision should have been rectified under Article 109 EPC since the single ground of the decision has been removed by appropriate amendments offered by the Appellant, even though the claims might still be open to an objection under Article 56 EPC.

Under these circumstances the Board considers that it is neither necessary nor appropriate to comment on this matter and that it should therefore remit the application and the divisional application in accordance with Article 111(1) EPC to the Examining Division for further prosecution. In this context it will also have to be examined whether present Claim 1, which no longer refers to inner and outer rings having resistance to heat and corrosion (see original Claim 1), contravenes the requirement of Article 123(2) EPC.

In view of the foregoing the appointment of oral proceedings as conditionally requested by the Appellant becomes unnecessary.

Order

For these reasons, it is decided that:

1. The contested decision is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

S. Fabiani
S. Fabiani

The Chairman:

F. Gumbel
F. Gumbel

4.5.90/W. Moser
A. Colpe