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Aktenzeichen / Case Number / N° du recours : T 484/88 - 3.3.1

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Bezeichnung der Erfindung: Method for producing cold rolled steel sheets
Title of invention: having a noticeably excellent formability
Titre de l'invention :

Klassifikation / Classification / Classement : C21D 9/48

ENTSCHEIDUNG / DECISION

vom / of / du 1 February 1989

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Kawasaki Steel Corporation

Einsprechender / Opponent / Opposant :

01 Hoesch AG
02 Thyssen AG

Stichwort / Headword / Référence : Request disregarded/Kawasaki

EPU / EPC / CBE Rules 67, 68(2)

Schlagwort / Keyword / Mot clé : "Main request disregarded; rejection without reasons; substantial procedural violation"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 484/88 - 3.3.1

D E C I S I O N
of the Technical Board of Appeal 3.3.1
of 1 February 1989

Appellant :
(Proprietor of the patent)

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Other party to the
proceedings:
(Opponent 01)

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Decision under appeal :

Interlocutory decision of the Opposition Division of
the European Patent Office dated 10 August 1988,
concerning maintenance of European patent
No. 0 041 354 in amended form.

Composition of the Board :

Chairman : K. Jahn
Members : C. Payraudeau
R. Andrews

Summary of Facts and Submissions

- I. On 12 March 1987, an Opposition Division of the EPO held oral proceedings in the opposition proceedings entered by two Opponents against European patent No. 41 354.
- II. During the oral proceedings the Patentee requested, as his main request, maintenance of the patent in amended form based on the documents filed with his letter of 5 March 1986.

Additionally, the Patentee presented at the oral proceedings amended claims, which he wished to form the basis of a subsidiary request (point 2 of the Minutes of the oral proceedings).

After deliberation the Chairman of the Opposition Division informed the parties:

that the Opposition Division intended to maintain the patent in the amended form requested in the letter of 5 March 1986 and forming the basis of the main request and that the procedure would be continued in written form.

- III. On 29 January 1988, the Opposition Division communicated to the parties, pursuant to Rule 58(4) EPC, the text in which it was intended to maintain the European patent, this text corresponding to the amended version proposed by the Patentee as his subsidiary request.
- IV. By letter received on 12 February 1988, the Patentee communicated his disapproval of the text and by letter

received on 25 February 1988 one of the Opponents (Opponent II) also communicated his disapproval of the text.

- V. On 10 August 1988, the Opposition Division gave a written interlocutory decision according to which "taking into account the proposed amendments (i.e. those contained in the subsidiary request of the Patentee) the patent meets the requirements of the EPC".
- VI. The Opponent II and the Patentee both appealed from this decision on 20 September and 24 September 1988 respectively.
- VII. The Patentee filed together with his notice of appeal a request for correction of the interlocutory decision on the basis that there was an obvious discrepancy between this decision and the decision given during the oral proceedings.
- VIII. In a further letter addressed to the Board, the Patentee requested that the appeal proceedings be stayed until a final decision has been given on the request for correction of the interlocutory decision.

Reasons for the Decision

1. The appeals comply with Articles 106 to 108 and Rule 64 EPC and are admissible.
2. In the decision under appeal, it is mentioned (page 2) that "In the oral proceedings, amendments were made to Claims 1-3 and pages 3, 4, 5 of the description.

The independent Claims 1 and 2 in their final amended form read as follows: (Claims 1 and 2 of the subsidiary request of the Patentee are then reproduced).

The decision then goes on to examine the allowability of these claims in view of the documents cited by the Opponents and concludes (see point V hereinabove) that the patent (as amended) meets the requirements of the EPC.

3. However, it results clearly from the Minutes of the oral proceedings (see point II hereinabove) that these amendments were only proposed by the Patentee as a subsidiary request.

The Board finds therefore that the Opposition Division, by giving a decision based exclusively on the subsidiary request of the Patentee - erroneously considered as his main request - without having given any reason for the rejection of the actual main request of the Patentee, has transgressed Rule 68(2) EPC which provides that the decisions of EPO which are open to appeal shall be reasoned.

4. For the above reasons, the decision under appeal, which is void and of no legal effect, must be set aside.
5. Since the decision under appeal is set aside, the request of the Patentee for correction of the interlocutory decision under Rule 89 EPC as well as his request for staying the present appeal proceedings are without purpose.
6. The absence of reasons for the rejection of the main request of the Patentee in the decision under appeal constitute a substantial procedural violation which

justifies the reimbursement of the appeal fees of both Appellants under Rule 67 EPC.

Order

For these reasons, it is decided that:

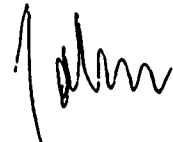
1. The interlocutory decision of the Opposition Division dated 10 August 1988 is set aside.
2. The case is remitted to the Opposition Division for further prosecution.
3. Reimbursement of both appeal fees is ordered.

The Registrar:



F. Klein

The Chairman:



K.J.A. Jahn

*WMA
CP*