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**Datasheet for the decision
of 26 November 2019**

Case Number: R 0011/18
Appeal Number: T 1731/13 - 3.4.03
Application Number: 02013075.3
Publication Number: 1271663
IPC: H01L33/00
Language of the proceedings: EN

Title of invention:

A III nitride film and III nitride multilayer

Applicant:

NGK Insulators, Ltd.

Headword:

Relevant legal provisions:

EPC Art. 112a, 113
EPC R. 106

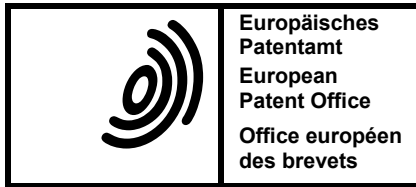
Keyword:

Petition for review - inadmissible
Violation of right to be heard (no)
Objection under Rule 106 raised (no)

Decisions cited:

Catchword:

-



Große Beschwerdekammer
Enlarged Board of Appeal
Grande Chambre de recours

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Case Number: R 0011/18

D E C I S I O N
of the Enlarged Board of Appeal
of 26 November 2019

Petitioner: NGK Insulators, Ltd.
(Applicant) 2-56, Suda-Cho, Mizuho-ku
Nagoya City, Aichi Pref. (JP)

Representative: TBK
Bavariaring 4-6
80336 München (DE)

Decision under review: **Decision of the Technical Board of Appeal**
3.4.03 of the European Patent Office of 8 June
2018.

Composition of the Board:

Chairman: C. Josefsson
Members: D. Rogers
W. Chandler

Summary of Facts and Submissions

- I. The petition for review concerns appeal proceedings T 1731/13 of the Board of Appeal 3.4.03. The appeal was against a decision of the Examining Division.
- II. The appellant will, where appropriate, also be referred to as the "Petitioner" in this decision.
- III. Oral proceedings were held before the Board of Appeal on 8 June 2018. At the end of the oral proceedings the Chairman of the Board announced that the appeal was dismissed.
- IV. During the oral proceedings before the Board of Appeal the appellant submitted three sets of "1st Auxiliary Requests", one at 10:20 hours, one at 10:35 hours and one at 11:00 hours. None of these 1st Auxiliary Requests were admitted into the proceedings.
- V. According to the minutes of the oral proceedings before the Board of Appeal, the admissibility of the 1st Auxiliary Request filed at 11:00 hours was "extensively discussed". The minutes contain the statement that "The appellant formally objects to the non-admittance of the 1st Auxiliary Request filed at 11:00."
- VI. The Petitioner bases its petition on Article 112a(2) EPC, that is that a fundamental violation of Article 113 EPC occurred in that the Petitioner's right to be heard was violated. In its petition the Petitioner asserts that the non-admittance of the 1st Auxiliary Request filed at 11:00 in the oral proceedings before the Board of Appeal, (hereafter "1st Auxiliary

- Request"), was a fundamental violation of Article 113 EPC as this prevented the Petitioner from presenting its arguments on the allowability of the claims of the 1st Auxiliary Request.
- VII. The Petitioner argues that its formal objection, noted in the minutes, to the non-admittance of the 1st Auxiliary Request constitutes an objection in accordance with Rule 106 EPC.
- VIII. As regards the allowability of its petition, the Petitioner argues that the Board exercised its discretion on whether or not to admit the 1st Auxiliary Request incorrectly.
- IX. The Enlarged Board issued a communication setting out its preliminary opinion on the case.
- X. The Petitioner did not file any response to the communication.
- XI. The Petitioner requested that the Enlarged Board set aside decision T 1731/13 and re-open the proceedings before the Board. The Petitioner also requested oral proceedings.
- XII. Oral proceedings were held on 26 November 2019 in the absence of the Petitioner.

Reasons for the Decision

Has the Petitioner complied with Rule 106 EPC?

1. This petition is a petition under Article 112a(2)(c) EPC. A petition under such a ground is only admissible if an objection in respect of the procedural defect was raised during the appeal proceedings and dismissed by the Board of Appeal, except where such objection could not be raised during the appeal proceedings.
2. This is clearly a case where such an objection could have been raised during the appeal proceedings. The Petitioner argues that its "formal objection" noted in the minutes, see point VII above, constitutes such an objection under Rule 106 EPC. The Enlarged Board does not agree. There is no indication that this "formal objection" concerned a violation of the Petitioner's right to be heard, indeed the minutes recount that the admission of the 1st Auxiliary Request was extensively discussed with the Petitioner. This wording merely seems to seek to emphasise the Petitioner's chagrin that its claim request was not admitted.
3. The Enlarged Board hence finds that the petition is inadmissible because of a failure to raise an objection under Rule 106 EPC in the oral proceedings before the Board, thus the question of allowability does not arise.

Order

For these reasons it is decided that:

The petition for review is unanimously rejected as being clearly inadmissible.

The Registrar:

The Chairman:



N. Michaleczek

C. Josefsson

Decision electronically authenticated