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D E C I S I O N
of 23 July 2003

Case Number: T 0558/02 - 3.2.4

Application Number: 95934001.9

Publication Number: 0787252

IPC: F02B 75/28

Language of the proceedings: EN

Title of invention:

A dual piston internal combustion engine

Applicant:

Beare, Malcolm J

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. -

Keyword:

"Inadmissibility of a request aimed at the revision of a final decision taken by a Board of Appeal"

Decisions cited:

G 0001/97, T 0315/97

Catchword:

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Case Number: T 0558/02 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 23 July 2003

Appellant: Beare, Malcolm J
"Wynkie Marsh"
Bordertown
S.A. 5268 (AU)

Representative: Burrows, Anthony Gregory
Business Centre West
Avenue One, Business Park
Letchworth Garden City
Hertfordshire SG6 2HB (GB)

Decision under appeal: Decision T 0558/02 of the Board of Appeal 3.2.4
of 14 May 2003.

Composition of the Board:

Chairman: C. A. Andries
Members: T. Kriner
C. Holtz

Summary of Facts and Submissions

I. On 14 May 2003, the Board took a decision to refuse the main request of the Appellant for lack of inventive step, but remitted the case in respect of the Appellant's auxiliary request for further prosecution to the first instance.

II. Before having taken this decision the Board had informed the Appellant in a communication dated 21 February 2003 that its main request was not patentable due to lack of inventive step, and that the Board intended to remit the case to the first instance for further prosecution on the basis of the auxiliary request.

The Appellant responded to this communication in a letter dated 25 April 2003, stating that it disagreed with the Board's opinion regarding the main request, but that it was grateful for the intention of the Board to remit the case "for further prosecution in respect of the Auxiliary Request", adding that it might decide to withdraw the main request and proceed with the auxiliary request, if the Examining Division found it patentable.

Oral proceedings were not requested before the decision of 14 May 2003.

III. After the decision had been taken, with letter of 15 July 2003, the Appellant requested that "the Board give the Applicant, if he so decides, the opportunity of having the case for the Main Request presented at Oral Proceedings", adding that this might involve

withdrawal of the decision of 14 May 2003. The Appellant expressed surprise at the decision, having expected to be able still to decide whether or not to withdraw the main request, if the Examining Division found the auxiliary request allowable.

Reasons for the Decision

1. The Appellant's request for a presentation of its main request at oral proceedings submitted with letter of 15 July 2003 must be interpreted as a request for revision, ie to have the appeal case reopened with respect to at least its main request.
2. The decision of 14 May 2003 means however, that the matter was finally resolved with regard to the main request.

As noted by the Enlarged Board of Appeal in its decision G 1/97 (OJ EPO 2000, 322), the decisions of the Boards of Appeal are not subject to review, and the jurisdictional measure to be taken in response to a request aiming at the revision of a final decision taken by a Board of Appeal should be the refusal of this request as inadmissible (see Order, sections 1 and 2).

3. With respect to this decision of the Enlarged Board of Appeal, and since the procedure for revision under Article 112a EPC 2000 (OJ EPO, Special edition No. 1, 2003) has not yet entered into force (see T 315/97, section 1 of the reasons) the Board cannot reopen the case.

Order

For these reasons it is ordered that:

The request for giving the Appellant the opportunity to present its main request at oral proceedings is rejected as inadmissible.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries