

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 8 August 2006**

Case Number: T 1039/03 - 3.2.02

Application Number: 95912425.6

Publication Number: 0713972

IPC: F04B 27/08

Language of the proceedings: EN

Title of invention:

Swash plate for a swash plate type compressor

Patentee:

TAIHO KOGYO CO., LTD., et al

Opponent:

Delphi Technologies, Inc.

Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 84

Keyword:

"Inventive step (yes) - after amendment"

Decisions cited:

-

Catchword:

-



Case Number: T 1039/03 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 8 August 2006

Appellant: Delphi Technologies, Inc.
(Opponent) P.O. Box 5052
Troy, Michigan 48007 (US)

Representative: Schmidt, Christian
Manitz, Finsterwald & Partner GbR
Postfach 31 02 20
D-80102 München (DE)

Respondents: TAIHO KOGYO CO., LTD.
(Patent Proprietors) 65, Midorigaoka 3-chome
Toyota-shi
Aichi 471-8671 (JP)

KABUSHIKI KAISHA TOYODA
Jidoshokki Seisakusho
1, Toyoda-Cho, 2-Chome
Kariya-Shi
Aichi-Ken 448 (JP)

Representative: Wise, Stephen James
c/o RAWORTH, MOSS & COOK
Raworth House
36 Sydenham Road
Croydon
Surrey CR0 2EF (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
28 July 2003 concerning maintenance of the
European patent No. 0713972 in amended form.

Composition of the Board:

Chairman: S. Chowdhury
Members: R. Ries
E. Dufrasne

Summary of Facts and Submissions

- I. The mention of the grant of European patent No. 0 713 972 on the basis of European patent application No. 95 912 425.6 was published on 9 February 2000.
- II. The granted patent was opposed by the present appellant (DELPHI TECHNOLOGIES, Inc.) on the grounds that the subject matter of the product claims 1 to 11 did not involve an inventive step (Articles 100(a) and 56 EPC).
- III. With its decision posted on 28 July 2003, the opposition division held that, taking into account the amendments made by the patent proprietors (TAIHO KOGYO CO., Ltd and KABUSHIKI KAISHA TOYODA JIDSHOKKI SEISAKUSHO) during the opposition proceedings, the patent and the invention to which it relates met the requirements of the EPC.
- IV. The appellant (opponent) lodged an appeal, received at the EPO on 26 September 2003, against the decision of the opposition division and the appeal fee was paid on the same day. A statement setting out the grounds of appeal was received at the EPO on 8 December 2003 in which revocation of the patent in its entirety was requested. Specifically, the subject matter of product claim 1 (and of claims 2 to 7 dependent thereupon) was held to lack clarity and an inventive step.

Process claims 8 to 14 as maintained by the opposition division were, however, not objected to by the appellant in its statement of grounds of appeal.

V. To meet the requests of the parties, oral proceedings took place on 8 August 2006, at the end of which the following requests were made:

The appellant (opponent) requested that the decision under appeal be set aside and that the European patent No. 0 713 972 be revoked.

The respondent (patent proprietor) requested that the patent be maintained on the basis of the main request (claims 1 and 2) filed during the oral proceedings.

Claim 1 of the main request reads as follows:

"1. A method for forming a copper-lead alloy sliding layer on an iron-based or aluminum-based material of a swash plate of a swash-plate type compressor, comprising the steps of:

preparing a first powder mainly composed of copper and containing less than 3% by weight of lead or being free of lead; preparing a second powder mainly composed of copper and containing from 3 to 40% of lead, and being coarser than the first powder;
spraying the first powder and the second powder on the iron-based or aluminium-based material; and,
melting the first powder but essentially not melting the second powder, whereby a sprayed layer is formed on the swash plate."

Claim 2 refers to a preferred embodiment of the process set out in claim 1.

Reasons for the Decision

1. The appeal is admissible.
2. Amendments; Article 123(2), (3) EPC

The wording of claim 1 corresponds to that of process claim 8 of the set of claims maintained by the opposition division (claim 12 in the form as granted and also claim 12 as originally filed) but additionally includes the term (in bold letters): "...aluminum-based material of a **swash plate of a** swash plate type compressor..." This amendment has a basis in the whole patent specification and is in particular found in the description, paragraph [0001], first sentence.

Dependent claim 2 corresponds with process claim 9 of the set of claims held allowable by the opposition division and corresponds to claim 13 as granted (claim 13 as originally filed). For consistency with claim 1, the wording "...**type compressor**..." has been deleted in claim 2.

Consequently, there are no formal objections to claims 1 and 2 with respect to Articles 123(2), (3) EPC.

3. *Clarity; Article 84 EPC*

At the oral proceedings, claims 1 and 2 were not objected to by the appellant as regards clarity, nor does the Board have any objections in this respect. The

requirements of Article 84 EPC are, therefore, satisfied.

4. *Novelty and inventive step; Article 52(1) EPC*

4.1 The question of novelty has not been an issue, either in the opposition or in the appeal proceedings. Hence, there is no need to deal with this question in more detail.

4.2 Turning to the issue of inventive step, no objections or arguments have been brought forward by the appellant-opponent in support of lack of inventive step of the method claims 12 and 13 in the form as granted in the opposition proceedings, or of claims 1 and 2 (claims 8 to 11 maintained by the opposition division) in the appeal proceedings. Also at the oral proceedings, no further arguments or comments on that point were presented by the appellant.

5. Having evaluated the technical contents disclosed in the cited documents and considering that the opponent did not question the matter of inventive step of the claimed method, the Board sees no reason to question the patentability of the subject matter set out in claims 1 and 2 under Article 52(1) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the first instance with the order to maintain the patent on the basis of the main request (claims 1 and 2) filed during the oral proceedings and any necessary consequential amendment to the description.

The Registrar:

The Chairman:

V. Commare

S. Chowdhury