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D E C I S I O N
of 9 May 2005

Case Number: T 0323/04 - 3.2.1
Application Number: 01104897.2
Publication Number: 1129881
IPC: B60K 15/04, B60K 15/05
Language of the proceedings: EN

Title of invention:
Device for filling fuel for road vehicles

Applicant:
FIAT AUTO S.p.A.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 109
EPC R. 67

Keyword:
"Interlocutory revision - repayment of appeal fee (no) "

Decisions cited:
-

Catchword:
-



Case Number: T 0323/04 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 9 May 2005

Appellant: FIAT AUTO S.p.A.
Corso Giovanni Agnelli 200
I-10135 Torino (IT)

Representative: Cerbaro, Elena, Dr.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 1 October 2003
refusing European application No. 01104897.2
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Crane
Members: J. Osborne
A. Pignatelli

Summary of Facts and Submissions

I. European patent application No. 01 10 4897.2 was refused with a decision posted 1 October 2003. The Examining Division was of the view that the subject-matter of claim 1 as originally filed lacked novelty with respect to the prior art:

D1: US-A-5 501 607.

II. An appeal was filed against the decision and reimbursement of the appeal fee was requested due to an alleged violation of the provision of Article 113(1) EPC. The Examining Division granted interlocutory revision and remitted the file to the Board of Appeal for a decision on the request for reimbursement of the appeal fee.

III. The procedure before the Examining Division may be summarised as follows:

The Examining Division issued a single communication in which it objected that claim 1 as originally filed lacked novelty with respect to an embodiment of D1. A claimed feature of a "thrust element" was said to be disclosed in D1 by quoting a reference numeral "51". In reply the applicant contested that "51" was a thrust element and furthermore stated: "in addition, in D1 any other thrust element has not been described". Claim 1 remained unchanged.

In the decision the Examining Division maintained that claim 1 lacked novelty with respect to the same embodiment of D1 and indicated that the thrust element

was disclosed as having the reference "51 and/or 41". The Examining Division indicated why it did not accept the applicant's arguments regarding reference "51" and further indicated that an additional thrust member carried a reference "41".

- IV. In the appellant's view the substantial procedural violation arose from the statement made for the first time in the decision that the feature of the thrust element was anticipated by the feature referenced "41" in D1.
- V. In a communication the Board informed the appellant of its provisional opinion that the request for reimbursement of the appeal fee could not be allowed and reasoned why it held that view. In response the appellant declared that it considered the matter closed.

Reasons for the Decision

In the decision the Examining Division maintained its previously communicated objection of lack of novelty based on the same interpretation of D1 whereby the reference "51" represented a thrust element. In also citing the reference "41" it merely strengthened its original argument in response to the applicant's reply including the statement that no other thrust element had been described.

The Board therefore finds that the impugned decision was not based on grounds or evidence on which the applicant did not have the opportunity to present its comments (Article 113(1) EPC). As a result, the

Examining Division's action in issuing the decision did not constitute a substantial procedural violation within the meaning of Rule 67 EPC.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

A. Vottner

S. Crane