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D E C I S I O N
of 31 January 2006

Case Number: T 0597/05 - 3.2.02

Application Number: 00308759.0

Publication Number: 1195446

IPC: C22C 19/05

Language of the proceedings: EN

Title of invention:

Ni based superalloy and its use as gas turbine disks, shafts,
and impellers

Applicant:

GENERAL ELECTRIC COMPANY

Headword:

-

Relevant legal provisions:

EPC Art. 108

Rules of Procedure of the Boards of Appeal Art. 10a(2)

Keyword:

"Admissibility of the appeal (no)"

Decisions cited:

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Catchword:

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Case Number: T 0597/05 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 31 January 2006

Appellant: GENERAL ELECTRIC COMPANY
1 River Road
Schenectady, NY 12345 (US)

Representative: Szary, Anne Catherine
London Patent Operation
General Electric International, Inc.
15 John Adam Street
London WC2N 6LU (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 15 December 2004
refusing European application No. 00308759.0
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: T. K. H. Kriner
Members: R. Ries
A. Pignatelli

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal, received on 25 February 2005, against the decision of the Examining Division, dispatched on 15 December 2004, on the refusal of the application No. 00 308 759.0. The fee for appeal was paid on 25 February 2005. The statement of grounds of appeal was received on 25 April 2005.

The Examining Division held that the application did not meet the requirements of Articles 52(1), 54(1), 56 and 84 EPC.

- II. In the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 31 at present on file (main request), or alternatively claims 1 to 21 as filed with the statement of grounds for appeal (auxiliary request).

He also requested that oral proceedings take place before any decision to refuse the application is taken.

With respect to the main request, the reasoning in the statement of grounds of appeal consisted only in a statement that the appellant maintained his arguments put forward in his letter of 10 November 2003. As far as the auxiliary request is concerned, he stated that claim 1 was based on previous claims 6 and 31 which the Examiner had indicated to be novel and inventive. No further explanations or reasons for the appeal were given.

III. The Board sent a communication, dated 11 July 2005, informing the appellant that the statement of grounds of appeal deemed not to comply with the requirements of Article 108 EPC in conjunction with Article 10a(2) Rules of Procedure of the Boards of Appeal and that the appeal could be considered to be inadmissible.

With letter received on 26 September 2005, the appellant filed further reasons for the appeal. He did not comment on the communication of the Board. In particular, he did not explain why he filed the new reasons for the appeal only on that point in time.

With the communication dated 12 October 2005, the Board informed the appellant that the reasons for the appeal submitted with the letter received on 26 September 2005 deemed to have been filed outside the time limit under Article 108 EPC and drew the attention of the appellant to the fact that no reasons justifying a re-establishment of rights had been submitted.

With his letter dated 27 January 2006 the appellant announced that he would not attend the oral proceedings which were to be held on 31 January 2006, and requested that a decision be issued based on the written submissions. The appellant pointed out that he disagreed with the Board's view with respect to the admissibility of the appeal. In particular, he considered that in his letter of 10 November 2003 the relevant issues were already addressed and the reference in the statement of grounds to this letter was sufficient. Furthermore, the basis for the claims of the auxiliary request were clearly set out in the statement of grounds of appeal since claim 1 of the

auxiliary request was based on original claim 6 which the examiner had indicated to be novel and inventive in the communication dated 11 February 2003.

In accordance with the provisions of Rule 71(2) EPC, oral proceedings took place on 31 January 2006 without the appellant.

Reasons for the decision

1. According to Article 108 EPC the statement setting out the grounds of appeal have to be filed within four months of notification of the decision of the first instance department and under Article 10a(2) of the Rules of Procedure of the Boards of Appeal, the statement of grounds of appeal shall contain a party's complete case. They shall set out clearly and concisely the reasons why the decision under appeal is challenged or supported and should contain, expressly or by specific reference to material filed in the first instance proceedings, all the facts, arguments and evidence relied on and all requests made.

2. An appeal can be based either on the submissions that the decision under appeal is incorrect or on new requests which overcome the objections contained in the decision of the department of the first instance. The requirements for a sufficient statement of grounds in these two different cases have been worked out by the case law of the Boards of appeal during the years.
 - 2.1 If the appellant submits that the decision under appeal is incorrect, the statement of grounds of appeal must

enable the Board and the other party or parties to understand immediately why the decision is alleged to be incorrect and on what facts the appellant bases his arguments, without first having to make investigations of their own (see T 220/83, OJ EPO 1986, 249, confirmed by many decisions, for example J 22/86, OJ EPO 1987, 280, T 534/89, OJ EPO 1994, 464, and more recently in T 349/00).

A statement of grounds of appeal which merely refers generally to previous submissions is not sufficient because normally a reference to submissions put forward during the first instance procedure, even if taken together with the challenged decision, does not enable the Board to understand immediately which grounds of the decision are alleged to be incorrect and for which reasons. On the contrary, the Board has to interpret and reason on its own in order to find out the arguments of the appellant (see i. a. T 254/88, T 432/88, T 154/90, OJ EPO 1993, 505), T 90/90, T 287/90, T 318/90, T 646/92, T 45/92, T 188/92, T 563/92, T 836/92, T 737/94, T 349/00).

In the present case, the appellant maintained as the main request the claims which had been refused by the Examining Division. Even if he did not explicitly allege that the decision was wrong, the fact that he maintained the refused request can be interpreted as an allegation that the decision was incorrect.

In the statement of grounds of appeal filed within the time limit under Article 108 EPC he generally referred to a letter submitted before the challenged decision was taken. However, in its decision the first instance

department had taken into consideration the arguments put forward by the appellant in this letter and had answered them. The reference to this letter can therefore not explain why the answer of the department of first instance to it is wrong.

Consequently the statement of grounds of appeal does not enable the Board to understand immediately why the decision is alleged to be incorrect.

- 2.2 If the appeal is based on new requests which can also be auxiliary requests, the appellant has to allege that the amended claims overcome the objections on which the decision of the department of first instance is based. The causal link between the amendments and the objections must be either explicitly explained or be immediately recognisable (see for example T 729/90, T 162/97).

In the present case, the appellant filed an auxiliary request with its statement of grounds of appeal. The Board therefore assumes that the appeal was also to be based on new requests to overcome the objections of the contested decision. However, the appellant merely stated on which claims the new claims were based, but did not explain why the amendments overcame the objections of the decision of the Examining Division.

It was also alleged that new claim 1 of the auxiliary request was based on previous claims 6 and 31 which the Examiner had indicated to be novel and inventive. However, the decision of the Examining Division is silent on that point.

The causal link between the amendments and the reasons for the decision was therefore neither explained nor immediately evident.

3. The reasons submitted as an answer to the communication of the Board were filed after the time limit for filing the statement of grounds of appeal had expired and cannot remedy the deficiency.
4. In view of the above findings, the requirements of Article 108 EPC and Article 10a(2) of the Rules of Procedure of the Boards of Appeal are not met, and the appeal is therefore not admissible.

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar

The Chairman

V. Commare

T. Kriner