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**Datasheet for the decision  
of 9 April 2013**

**Case Number:** T 1675/11 - 3.3.06  
**Application Number:** 03793834.7  
**Publication Number:** 1546288  
**IPC:** C10G 3/00, C10L 1/08  
**Language of the proceedings:** EN

**Title of invention:**

Diesel fuel composition, comprising components based on biological raw material, obtained by hydrogenating and decomposition fatty acids

**Applicant:**

Neste Oil Oyj

**Opponent:**

-

**Headword:**

Low temperature diesel fuel/NESTE

**Relevant legal provisions:**

EPC Art. 113(1)

**Keyword:**

"Refund of appeal fee - no (no procedural violation)"  
"Fresh case - remittal to department of first instance"

**Decisions cited:**

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**Catchword:**

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Case Number: T 1675/11 - 3.3.06

**D E C I S I O N**  
of the Technical Board of Appeal 3.3.06  
of 9 April 2013

**Appellant:** Neste Oil Oyj  
(Applicant) Keilaranta 8  
FI-00048 Fortum (FI)

**Representative:** Suominen, Kaisa Liisa  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 27 December 2010  
refusing European patent application  
No. 03793834.7 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** P.-P. Bracke  
**Members:** E. Bendl  
J. Geschwind

## Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examining Division to refuse the European patent application no. 03 793 834.7.
- II. The refusal was based on the ground of lack of inventive step of the subject-matter of Claim 1 of the only request on file and referred to the disclosures of documents

D1 = WPI AN 1997-488372 & SE-C-520 633

D2 = US-A-5 705 722.

- III. The Applicant/Appellant filed an appeal against this decision and submitted as the main request a set of claims which was essentially identical to the claims refused by the Examining Division. Furthermore two auxiliary requests were presented.

In the grounds of appeal the Appellant inter alia argued, that document D2 was cited by the Examining Division for the first time in the course of the oral proceedings, which was considered to be a severe procedural violation.

- IV. In appeal procedure the Board raised an objection with regard to novelty of the claimed subject-matter on the basis of

D3 = WO-A-01/49812,

a document referred to in the application-in-suit. As a consequence, the Appellant withdrew the main request and the first auxiliary request.

V. Claim 1 of the second auxiliary request, which forms the basis of the present decision, reads as follows:

"1. Fuel composition for diesel engines, characterized in that the fuel composition consists of:

a) 0.1-99 % by volume of a hydrocarbon component free of aromates or a mixture of hydrocarbon components free of aromates, produced from biological raw material originating from animal fats by hydrogenating fatty acids and/or fatty acid esters to give a hydrocarbon, which is isomerized, said isomerized hydrocarbon having a turbidity point lower than  $-30^{\circ}\text{C}$  and a cetane number higher than 60;

b) 0 - 20 % by volume of components containing oxygen, selected from the group consisting of aliphatic alcohols, ethers, fatty acid esters, water, and mixtures containing the same;

both components a) and b) being mixed as an emulsion or dissolved in diesel components based on crude oil and/or fractions from Fischer-Tropsch process."

Claims 2 to 4 are dependent on the precedent claims.

VI. The Appellant requests that the decision of the Examining Division be set aside, that the appeal fee be refunded and the case be remitted to the department of

first instance for continuation of examination on the basis of the second auxiliary request.

## **Reasons for the Decision**

1. *Request for the refund of the appeal fee*
  - 1.1 It is established practice of the Boards of Appeal that, in case a document is presented to a party for the first time at oral proceedings, the party should, **at its request**, be granted an adjournment or else new oral proceedings should be appointed to give the party the opportunity to comment.
  - 1.2 In the present case, according to the text of the decision and the minutes of the oral proceedings, no such request was made.
  - 1.3 Thus, the Board cannot detect that a severe procedural violation with regard to the requirements of Art. 113(1) EPC has taken place. A refund of the appeal fee is consequently not justified.
2. *Remittal to the department of first instance*
  - 2.1 In appeal proceedings a prior art document not referred to so far was cited by the Board. As a consequence thereof the Appellant has withdrawn two of the requests and has maintained a set of claims not examined in examination phase. Thus, an entirely fresh case has been presented.

In addition the Appellant has requested remittal of the case to the department of first instance.

- 2.2 Taking into account these specific circumstances and in order not to deprive the Appellant of the opportunity to have the case examined by two instances, Appellant's request for remittal of the case is granted.

### **Order**

#### **For these reasons it is decided that:**

The case is remitted to the department of first instance with the order to continue examination based on the claims of the second auxiliary request submitted with the letter of 27 April 2011.

The Registrar

The Chairman

D. Magliano

P.-P. Bracke