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**Datasheet for the decision
of 10 March 2016**

Case Number: T 2160/11 - 3.2.06

Application Number: 06706086.3

Publication Number: 1851420

IPC: F01M1/16, F01M1/02, F01M3/04,
F16N13/04

Language of the proceedings: EN

Title of invention:

METHOD AND APPARATUS FOR LUBRICATING CYLINDER SURFACES IN
LARGE DIESEL ENGINES

Applicant:

Hans Jensen Lubricators A/S

Headword:

Relevant legal provisions:

EPC Art. 108
EPC R. 99(2), 101(1)

Keyword:

Admissibility of appeal -
appeal sufficiently substantiated (no)

Decisions cited:

Catchword:



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Case Number: T 2160/11 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 10 March 2016

Appellant: Hans Jensen Lubricators A/S
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Representative: Nielsen, Leif
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Fredens Torv 3A
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 16 May 2011
refusing European patent application No.
06706086.3 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
M.-B. Tardo-Dino

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the European application No. 06706086.3. It requested that the decision be set aside and a patent be granted according to a main request or in the alternative according to one of auxiliary requests 1 and 2.
- II. In its decision, the examining division held that the subject-matter of claim 1 of the main request before it lacked an inventive step (Article 56 EPC). As regards the auxiliary request before it, the examining division found that a basis for the subject-matter of claim 1 was lacking in the passage cited by the applicant in support of the amendments, and further that a feature of the claim of the main request had been removed thus making the claims a non-convergent development. It thus refused its consent to the auxiliary request under Rule 137(3) EPC.
- III. The Board issued a summons to oral proceedings and a subsequent communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) containing its provisional opinion, in which it indicated *inter alia* that the appeal may be inadmissible due to the statement of grounds of appeal failing to indicate the reasons for setting aside the decision impugned (Rule 99(2) EPC). It furthermore indicated that the claims of all requests appeared not to meet *inter alia* the requirements of Article 84 EPC.
- IV. With letter of 5 February 2016 the appellant indicated that it would not participate in the oral proceedings and that these should be conducted based on the written

submissions which had already been filed.

V. Oral proceedings were held before the Board on 10 March 2016 in the absence of the appellant. The requests of the appellant thus remained as already stated in writing, namely that the decision under appeal be set aside and a patent be granted on the basis of the main request or in the alternative according to one of auxiliary requests 1 or 2, all filed with the statement of grounds.

VI. Claim 1 of the main request reads as follows:

"A method for lubricating the cylinder faces in large diesel engines, particularly marine engines, including at least one lubricating apparatus (3) with several reciprocating pumps (4) connected with and each feeding several separate lubricating points (6) disposed in the cylinder linings (7), wherein the lubricating oil portion from a given pump stroke to one or more lubricating points (6) is regulated, as a central electronic control of the stroke of the reciprocating pump is established, characterised in that the method comprises regulating the lubricating oil portion alternately between various lubricating points (6) in different cylinders which are lubricated by using one or more lubricating apparatus (3)."

Claim 1 of auxiliary request 1 corresponds to claim 1 of the main request save for the characterising portion which reads:

"characterised in that the method comprises controlling the supply to the lubricating points alternately and in arbitrary sequence in one cylinder and/or in different cylinders by suitable algorithms in the electronic control unit, the

method including setting a pump stroke to zero for thereby skipping a lubricating stroke for one or more lubricating points."

Claim 1 of auxiliary request 2 corresponds to claim 1 of the main request save for the characterising portion which reads:

"characterised in that change of the stroke of the reciprocating pump is performed at a time between lubricating strokes of the lubricating apparatus (3) and is initiated by an index signal for completed controlled feeding of lubricating oil from the lubricating apparatus."

VII. The appellant's statements concerning the decision under appeal are:

'In our opinion, the applicant's arguments in connection with the auxiliary claim have not been properly dealt with during the oral proceedings. For theses (sic) reasons, we find the appeal justified.

However, for simplicity and clarity, we will in the following present the cited prior art in detail and take offset in the original PCT claims for presenting a main request as well as auxiliary requests for the claims'.

The remaining 18 pages of the statement of grounds of appeal do not include any reference to the impugned decision, being directed solely to the cited prior art and the novelty and presence of an inventive step in the subject-matter of the claims of the main request and the auxiliary requests 1 and 2 of the appeal.

Reasons for the Decision

1. Admissibility

An appeal is to be rejected as inadmissible (Rule 101(1) EPC) if it is not substantiated, in the sense that it does not indicate the reasons for setting aside the impugned decision, contrary to the requirements of Article 108 EPC, third sentence, in conjunction with Rule 99(2) EPC.

- 1.1 Article 108 EPC, third sentence, in conjunction with Rule 99(2) EPC stipulates that in the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based. In line with established case law of the Boards of Appeal this is understood to mean that the arguments have to be presented in such a way as to enable the Board to understand immediately why the impugned decision is alleged to be incorrect, and on what facts the appellant bases its arguments, without first having to make investigations of its own (see e.g. Case Law of the Boards of Appeal, 7th ed. 2013, IV.E.2.6.3).
- 1.2 In the present case, the decision of the examining division held that the subject-matter of claim 1 of the main request lacked an inventive step and refused its consent to admittance of the auxiliary request (Rule 137(3) EPC).
- 1.3 In its statement setting out the grounds of appeal (hereafter referred to as 'the grounds'), the appellant has presented no reason indicating why the conclusions of the examining division are incorrect. As regards the decision in respect of the main request, no specific reference to this whatsoever can be found in the

grounds. Indeed, the sole reference at all to the impugned decision in the grounds reads, 'In our opinion, the applicant's arguments in connection with the auxiliary claim have not been properly dealt with during the oral proceedings. For these reasons, we find the appeal justified.'

Even if the expression 'auxiliary claim' is held to refer to the auxiliary request, the above reference from the grounds provides absolutely no indication of why the decision with respect to the auxiliary request was considered incorrect i.e. why consent should not have been refused in accordance with Rule 137(3) EPC, given the two objections made by the examining division in that regard.

- 1.4 The grounds of appeal might perhaps be sufficient in this regard if the claims of at least one of the requests deprives the decision of its legal basis and this is immediately recognisable.
 - 1.4.1 Claim 1 of the respective new main request and auxiliary requests 1 and 2 fail in this respect. They were filed with the grounds of appeal yet without any comment whatsoever as to how they remedied the deficiencies identified in the impugned decision. The claims of each request are also comprehensibly different to those decided upon by the examining division such that it is not immediately evident how any one of these requests cause the legal basis of the decision to be removed. The mere filing of these requests can therefore not overcome the deficiency as regards the appeal being insufficiently substantiated.
- 1.5 In its communication pursuant to Article 15(1) RPBA, the Board questioned the admissibility of the appeal (see

item 2). At no point in the appeal proceedings, and notably not since issuing this preliminary opinion, has any argument supporting the admissibility of the appeal been presented by the appellant.

- 1.6 In conclusion, therefore, the Board finds that the appeal is not substantiated, contrary to the requirements of Article 108 EPC, third sentence, in conjunction with Rule 99(2) EPC. It must therefore be rejected as inadmissible (Rule 101(1) EPC).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated