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Datasheet for the decision of 12 May 2015

Case Number: T 1471/12 - 3.3.05

Application Number: 08015197.0

Publication Number: 2105197

IPC: B01D53/94, B01J23/58, B01J35/00, B01J35/04, B01J37/02

Language of the proceedings: EN

Title of invention:
Honeycomb structure and exhaust gas treatment apparatus

Applicant:
Ibiden Co., Ltd.

Headword:
Honeycomb/IBIDEN

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - allowable (yes)

Decisions cited:

Catchword:

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Case Number: T 1471/12 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 12 May 2015

Appellant: (Applicant)	Ibiden Co., Ltd. 1, Kandacho 2-chome Ogaki-shi, Gifu 503-8604 (JP)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 27 December 2011 refusing European patent application No. 08015197.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Raths
Members:	J.-M. Schwaller
	P. Guntz

Summary of Facts and Submissions

I. This appeal lies from the decision of the examining division to refuse European patent application No. 08 015 197.0 on the ground that claim 1 of both requests then on file infringed the requirements of Article 123(2) EPC.

Claim 1 of the main request underlying the decision read as follows:

"*1. A honeycomb structure comprising plural pillar honeycomb units and an adhesive layer joining the honeycomb units together, the honeycomb units include an inorganic particle and an inorganic binder and have a plurality of cells which cells are separated by cell walls in a manner to extend in a longitudinal direction from a first end face to a second end face thereof, wherein a noble metal catalyst and a nitrogen oxide (NOx) storage catalyst are supported on the cell walls, an amount of the noble metal catalyst supported on the cell walls decreases from the first end face side to the second end face side, while the NOx storage catalyst is applied entirely along the cell walls, and on the cell walls, the amount of the noble metal catalyst at the first end face side differs from the amount of the noble metal catalyst at the second end face side.*"

II. In its decision, the examining division held in particular that the following features in above claim 1 had no basis in the application as filed:

- the honeycomb units include an inorganic particle and an inorganic binder;

- while the NOx storage catalyst is applied entirely along the cell walls.

III. With its statement of grounds of appeal dated 7 May 2012, the appellant filed three sets of amended claims as a main request and as auxiliary requests 1 and 2, with claim 1 of the main request reading as follows:

"1. A honeycomb structure comprising plural pillar honeycomb units and an adhesive layer joining the honeycomb units together, the honeycomb structure includes an inorganic particle and an inorganic binder and has a plurality of cells which cells are separated by cell walls in a manner to extend in a longitudinal direction from a first end face to a second end face thereof, wherein a noble metal catalyst and a nitrogen oxide (NOx) storage catalyst are supported on the cell walls, an amount of the noble metal catalyst supported on the cell walls decreases from the first end face side to the second end face side, while the NOx storage catalyst is applied entirely along the cell walls, and on the cell walls, the amount of the noble metal catalyst at the first end face side differs from the amount of the noble metal catalyst at the second end face side."

IV. In a communication dated 1 September 2014, the board raised in particular the following objections with respect to amended claim 1 of the main request:

- The feature "*while the NOx storage catalyst is applied entirely along the cell walls*" had no basis in the application as filed (Article 123(2) EPC;

- The feature "*on the cell walls, the amount of the noble metal catalyst at the first end face side differs from the amount of the noble metal catalyst at the second end face side*" was redundant and caused the claims to lack conciseness (Article 84 EPC).

V. With letter of 12 December 2014, the appellant submitted *inter alia* a set of new claims, with claim 1 reading (*differences with claim 1 of the main request underlying the decision indicated by the board by means of bold font and strike-out*):

"*1. A honeycomb structure comprising plural pillar honeycomb units and an adhesive layer joining the honeycomb units together, the honeycomb* ***structure*** *include****s*** *an inorganic particle and an inorganic binder and ha****s*** *a plurality of cells which cells are separated by cell walls in a manner to extend in a longitudinal direction from a first end face to a second end face thereof, wherein a noble metal catalyst and a nitrogen oxide (NOx) storage catalyst are supported on the cell walls, an amount of the noble metal catalyst supported on the cell walls decreases from the first end face side to the second end face side, while the NOx storage catalyst is ~~applied entirely along the cell walls, and on the cell walls~~* ***supported on each cell by impregnating the honeycomb unit,*** *~~and on the cell walls, the amount of the noble metal catalyst at the first end face side differs from the amount of the noble metal catalyst at the second end face side~~.*"

VI. The appellant requested that the contested decision be set aside and that the application be examined on the basis of these new claims.

Reasons for the Decision

1. Main request - Allowability of the amendments

1.1 The board notes that the features that the examining division held to have no basis in the application as filed are no longer recited in the claimed subject-matter.

1.2 Furthermore, the amendments made to claim 1 at issue have a basis as follows in the application as filed:

- The feature "*the honeycomb units include an inorganic particle and an inorganic binder and have a plurality of cells*" has been replaced by the feature "*the honeycomb **structure** includes an inorganic particle and an inorganic binder and has a plurality of cells*". This latter feature finds its basis in claim 1 as filed;

- The feature "*the NOx storage catalyst is applied entirely along the cell walls*" has been replaced by the feature "*the NOx storage catalyst is **supported on each cell by impregnating the honeycomb unit***". This latter feature is based on the passage at page 23, lines 15 to 19 of the application as filed.

The other features in claim 1 have a basis in claims 1, 2 and 12 as filed.

It follows that the subject-matter of claim 1 at issue no longer extends beyond the content of the application as filed.

1.3 Dependent claims 2 to 10 have a basis in claims 3 to 11 as filed, respectively, and claim 11 has a basis in claim 13 as filed.

1.4 It follows that the set of claims submitted with letter of 12 December 2014 meets the requirements of Article 123(2) EPC.

2. Since the reasons that led to the refusal of the application no longer apply, the board exercises its discretion under Article 111(1) EPC and remits the case to the examining division for further prosecution.

3. For the board, during further examination of the case, the amended feature "*an amount of the noble metal catalyst supported on the cell walls decreases from the first end face side to the second end face side*" should be changed to read "***the*** *amount of the noble metal ...*" in order to avoid any misinterpretation of the claimed subject-matter.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution on the basis of the claims 1 to 11 filed with letter of 12 December 2014.

The Registrar: The Chairman:

K.Götz-Wein G. Raths

Decision electronically authenticated