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**Datasheet for the decision  
of 21 November 2012**

**Case Number:** T 1660/12 - 3.2.06

**Application Number:** 09009013.5

**Publication Number:** 2145723

**IPC:** B23Q 1/62, B23Q 5/40, B23B 3/00

**Language of the proceedings:** EN

**Title of invention:**  
A cross slide for a turning machine

**Applicant:**  
Gildemeister Italiana S.p.A.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 108  
EPC R. 99(2), 101(1)

**Keyword:**  
"Admissibility of appeal - appeal sufficiently substantiated  
(no) "

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1660/12 - 3.2.06

**DECISION**  
of the Technical Board of Appeal 3.2.06  
of 21 November 2012

**Appellant:** Gildemeister Italiana S.p.A.  
(Applicant) Via Donizetti, 138  
I-24030 Brembate Sopra (IT)

**Representative:** Mayer, Hans Benno  
de Dominicis & Mayer  
Piazzale Marengo 6  
I-20121 Milano (IT)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 21 February 2012  
refusing European patent application  
No. 09009013.5 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman:** M. Harrison  
**Members:** M. Hannam  
W. Sekretaruk

## Summary of Facts and Submissions

- I. The appellant (applicant) filed a notice of appeal against the decision of the examining division to refuse European patent application No. 09009013.5.
- II. In its decision the examining division found that the application had been amended such that it contained subject-matter extending beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC. Further, the basis for the amendments in the application as filed had not been indicated, contrary to the requirement of Rule 137(4) EPC.
- III. In its grounds of appeal, the appellant referred to the decision under appeal and reiterated the first item in the reasons for the decision, as follows:

"The applicant showed during the examination phase an unusually strong unwillingness to cooperate with the Examining Division, failing to identify the amendments made in claim 1 and to explain their basis in the application as filed, despite several attempts of the Examining Division to clarify this essential point."

It then stated that, in response to various official communications, it had filed the following during the examination proceedings:

a new claim;

a "copy of the new claims with reference number 1-7";

and

pages "5, 6 and 7 of the original disclosure, indicating clearly the basis of these amendments deriving from the disclosure".

The appellant then cited a further passage from the decision under appeal as follows:

"the further passages do not form a basis for any of the numbered group of features."

The last paragraph of the grounds of appeal reads:

"It is enclosed to this communication copy of the new claim proposed with reference numbers 1,2,3,4,5,6,7 and the corresponding pages of the description on which these characteristics are based".

The grounds of appeal closes with the sentence

"examination of the preceding information is kindly requested".

The appellant's request was understood to be a request to set aside the decision under appeal and to grant a patent based on the claims of the request refused before the examining division.

- IV. The Board issued a summons to oral proceedings including a communication containing its provisional opinion regarding the appeal. It stated that there were serious doubts as to the admissibility in regard to whether the requirements of Rule 99(2) EPC were fulfilled, in particular because no reasons had been provided as to why the decision of the examining division, based on both Article 123(2) EPC and Rule 137(4) EPC, should be overturned. Nor were any facts, evidence or arguments provided beyond those already at the disposal of the examining division.

- V. In its letter of 18 October 2012, the appellant did not address the issue of admissibility but instead reiterated what it had stated in the grounds of appeal, adding that it contested, with regard to the first item of the reasons for the decision that "this argumentation does not correspond to the truth". It was also added that neither the official representative nor a representative of the appellant would attend the oral proceedings.
- VI. Oral proceedings were held on 21 November 2012 at which, as notified, the appellant was not present.

### **Reasons for the Decision**

#### 1. *Admissibility*

- 1.1 The appeal is inadmissible (Rule 101(1) EPC) for failure to comply with the requirements of Article 108 EPC and Rule 99(2) EPC.
- 1.2 Regarding the statement setting out the grounds of appeal mentioned in Article 108 EPC, Rule 99(2) EPC defines 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'.

The requirements of Rule 99(2) EPC, when complied with, enable the Board to understand why the appellant believes the impugned decision is incorrect and

provides the necessary evidence in support of its opinion.

The appellant's statement of grounds of appeal however provides no arguments in support of its case, nor does the notice of appeal contain anything which could be regarded as such. As a matter of substance, the letter constituting the grounds of appeal did not even contain the minimum of reasoning in support of the appeal; the evidence submitted is solely confined to reiterating small parts of the decision and the correspondence exchange, all of which was previously available to the examining division.

- 1.3 A first ground of refusal before the examining division was that the application had been amended such that it contained subject-matter extending beyond the content of the application as filed, contrary to the requirement of Article 123(2) EPC. The examining division argued comprehensively why the amendments to claim 1 were not to be found in the application as filed (items 2 and 3 of the "Grounds for the decision"). No evidence or counter-argument to this finding was provided by the appellant with its grounds of appeal. The mere filing of the same annotated claim and description pages as were filed before the examining division is manifestly unable to provide the required indication of facts and evidence to enable the Board to understand why the impugned decision should be set aside.
- 1.4 A second ground of refusal was the appellant's failure to indicate the basis for the amendments to claim 1 in the application as filed, contrary to the requirement

- of Rule 137(4) EPC. No further indication, beyond that already presented to the examining division, was given in the grounds of appeal. Thus, also regarding this ground of refusal, there is no indication of facts and evidence which could enable the Board to understand why the impugned decision should be set aside.
- 1.5 Consequently, for each of the grounds of refusal, it has been left to the Board to ascertain for itself the facts substantiating the alleged compliance with Article 123(2) EPC and Rule 137(4) EPC. This, however, is just what the requirement to 'indicate the facts and evidence on which the appeal is based' is designed to prevent.
- 1.6 Although in its letter of 18 October 2012 the appellant again reiterated the first item of the reasons for the decision and contested that "this argumentation does not correspond to the truth", this cannot alter the Board's finding on admissibility, since it does not relate to an explanation of why, when considering the grounds of appeal, the appeal should be considered admissible.
- 1.7 In regard to the duly summoned appellant being absent at oral proceedings, it is noted in accordance with Article 15(3) of the Rules of Procedure of the Boards of Appeal (RPBA), that the appellant is to be treated as relying on its written case.
- 1.8 Since no reasons, facts or evidence can be identified in the grounds of appeal to support setting aside the decision impugned, and nothing contained in the notice of appeal could be regarded as such, the appeal does

not comply with Article 108 EPC and Rule 99(2) EPC and must 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. Patin

M. Harrison