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**Datasheet for the decision
of 9 January 2018**

Case Number: T 1700/15 - 3.2.08

Application Number: 03254727.5

Publication Number: 1391527

IPC: C22C19/05

Language of the proceedings: EN

Title of invention:

Nickel-base alloy

Patent Proprietor:

GENERAL ELECTRIC COMPANY

Opponent:

Siemens Aktiengesellschaft

Headword:

Relevant legal provisions:

EPC Art. 83, 123(2), 123(3)

Keyword:

Decisions cited:

Catchword:



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Case Number: T 1700/15 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 9 January 2018

Appellant: Siemens Aktiengesellschaft
(Opponent) Werner-von-Siemens-Straße 1
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Representative: Kaiser, Axel
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Respondent: GENERAL ELECTRIC COMPANY
(Patent Proprietor) 1 River Road
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Representative: Foster, Christopher Michael
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
7 July 2015 concerning maintenance of the
European Patent No. 1391527 in amended form.

Composition of the Board:

Chairwoman P. Acton
Members: M. Alvazzi Delfrate
Y. Podbielski

Summary of Facts and Submissions

- I. By its decision posted on 7 July 2015 the opposition division found that European patent No. 1391527, in amended form according to auxiliary request 2 then on file, and the invention to which it related met the requirements of the EPC.

The opposition division was of the view that the subject-matter of claim 1 of auxiliary request 2 was novel and inventive and that said request satisfied the requirements of Articles 83 and 123(2) EPC.

- II. Claim 1 of auxiliary request 2 reads as follows:

"A castable weldable nickel-base alloy, wherein the alloy consists essentially of, by weight, 18.5% to 19.5% cobalt, 22.2% to 22.8% chromium, 1.8% to 2.2% tungsten, 1.1% to 1.3% aluminum, 2.2% to 2.4% titanium, 0.9% to 1.45% columbium, less than 0.5% tantalum and Cb + 0.508Ta is 1.15% to 1.45%, 0.002% to 0.015% boron, 0.005% to 0.4% zirconium, 0.08% to 0.12% carbon, with the balance essentially nickel and incidental impurities."

- III. The appellant (opponent) lodged an appeal against that decision in the prescribed form and within the prescribed time limit.
- IV. In the notice of appeal the appellant requested that the decision under appeal be set aside and that the patent be revoked. Oral proceedings were requested as a precautionary measure.

The appellant argued that in the version maintained by the opposition division the Ta content was limited to

less than 0.5%. However, in view of the condition that Nb + 0.508Ta be 1.15% to 1.45%, Nb had to be greater than 0.9%. Hence, the invention was not disclosed for the punctual value 0.9 %. This resulted also in an inadmissible extension. Thus the patent had to be revoked.

- V. In its reply (letter of 15 June 2016) the respondent (patent proprietor) requests that the appeal be dismissed and that the patent be maintained in the amended form agreed by the opposition division. Oral proceedings were requested as a precautionary measure.

The respondent submitted *inter alia* that the condition that Nb + 0.508Ta be 1.15% to 1.45% was satisfied also for 0.9% Nb.

- VI. In the communication dated 14 November 2017 the Board informed the parties that the requirements of Articles 83, 123(2) and (3) appeared to be satisfied.

- VII. With letter dated 22 November 2017 the appellant withdrew its request for oral proceedings.

Reasons for the Decision

1. There is no difficulty in selecting a composition which meets the requirements of claim 1, in particular the conditions on Ta, Nb and Nb + 0.508Ta. Already for this reason the claimed invention is sufficiently disclosed.

Moreover, even considering the specific value of 0.9% Nb, as the appellant did, could not lead to any difficulty in carrying out the invention. Indeed, as correctly pointed out by the respondent, the condition on Nb + 0.508Ta can be satisfied by selecting 0.9% Nb and 0.492% Ta.

Hence, the requirements of Article 83 EPC are satisfied.

2. The requirements of Articles 123(2) and (3) EPC are also satisfied, since claim 1 corresponds to claim 7 as originally filed and to claim 6 as granted.
3. In view of the above, the appeal has to be dismissed. Since the only pending request for oral proceedings is a precautionary request of the respondent, the decision can be issued in writing.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated