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**Datasheet for the decision
of 1 September 2020**

Case Number: T 2432/17 - 3.2.07

Application Number: 05803668.2

Publication Number: 1984117

IPC: B02C25/00, B02C2/00

Language of the proceedings: EN

Title of invention:

A METHOD FOR CONTROLLING A CRUSHER AND A CRUSHER

Patent Proprietor:

Metso Minerals, Inc.

Opponent:

thyssenkrupp Industrial Solutions AG

Headword:

Relevant legal provisions:

EPC Art. 54(1), 54(2), 113(1), 116(1)

RPBA 2020 Art. 12(8), 15(1)

EPC R. 103

Keyword:

Decision in written proceedings without oral proceedings -
(yes)

Novelty - (no)

Decisions cited:

Catchword:



Beschwerdekammern

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Chambres de recours

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Case Number: T 2432/17 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 1 September 2020

Appellant: Metso Minerals, Inc.
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Representative: Berggren Oy, Tampere
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Respondent: thyssenkrupp Industrial Solutions AG
(Opponent) ThyssenKrupp Allee 1
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Representative: Patentanwälte Walther Hinz Bayer PartGmbB
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 September
2017 revoking European patent No. 1984117
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: V. Bevilacqua
A. Pieracci

Summary of Facts and Submissions

I. The patent proprietor (appellant) lodged an appeal within the prescribed period and in the the prescribed form against the decision of the opposition division revoking the European patent No. 1 984 117.

II. The appellant requested

that the decision under appeal be set aside
and
that the patent be maintained as granted.

1. The respondent (opponent) requested

that the appeal be dismissed.

2. The following document referred to in the appealed decision is mentioned in the following:

D1: WO 87/05828 A1.

III. **Granted claim 1** reads as follows (those features which according to the appellant allegedly constitute novelty are emphasised in bold by the Board):

"A method for controlling a crusher (11) comprising a first crushing member (5) and a second crushing member (6) defining a crusher setting (S) of a crushing cavity (7) into which material to be crushed is being fed, the method comprising:

- measuring continuously instantaneous load on the crusher;

- recording instantaneous load peaks exceeding a predetermined target level for the load peaks;
- keeping track of the number of the load peaks exceeding the predetermined target level during predetermined periods of time;

the method being further characterized by:

- controlling loading of the crusher on the basis of the number of the load peaks experienced by the crusher during the predetermined periods of time, wherein

the loading of the crusher is decreased if the number of the load peaks exceeds a predetermined value during a predetermined period of time, and wherein

the loading of the crusher is increased again if the number of the load peaks does not reach another predetermined value during a predetermined period of time."

- IV. According to the appealed decision, D1 explicitly disclosed all the features of granted claim 1 with the exception of the last one (in bold above). These last features were however found to be implicitly disclosed because since the control device 11 of D1 strives to maintain the crushing head 3 in a position in which the load on the crusher is 100%, the head 3 will be raised after a certain unknown while provided that the number of the pressure surges does not reach a predetermined sum.

The subject-matter of claim 1 was therefore considered not new (Article 54(1) and(2) EPC) over D1.

V. The appellant specifically contested the above assessment of the opposition division. This was because according to D1 the loading on the crusher was increased by raising the crushing head only as a reaction to the wear thereof. D1 did not disclose any link between raising the crushing head and the detection of pressure surges.

The subject-matter of claim 1 was therefore new.

VI. The respondent supported the contested findings of the opposition division.

VII. In its communication pursuant to Article 15(1) RPBA, annexed to the summons for oral proceedings set for 7 September 2020, the Board gave its provisional opinion on the above arguments of the appellant. The corresponding parts on pages 3 and 4 of said communication read as follows:

"1. D1 - Lack of novelty

The Board fully concurs with point 2.1 of the appealed decision, according to which the subject-matter of claims 1 and 12 lacks novelty over the content of the disclosure of document D1.

The only distinguishing feature identified by the appellant, namely that

"the loading of the crusher is increased again if the number of the load peaks does not reach another predetermined value during a predetermined period of time"

is also necessarily present in the method and in the crusher disclosed in this document.

A skilled reader would not understand from D1 that the only situation in which the crushing head is raised is when wear is detected.

According to D1, the control device 11 strives to maintain the crushing head 3 in a position in which the load on the crusher is at a predetermined optimal value (100%, see page 4, lines 2-4).

To do that the control system raises the crushing head, as described at page 4, lines 5-12, until this load is reached, and it lowers it when cakes are detected (see page 4, lines 29-35).

The crushing head is then necessarily raised again as soon as the load on the crusher becomes less than optimal, irrespective of the reasons therefor.

An interpretation of D1 according to which the crusher would only raise the head to compensate for wear does not make technically sense, firstly because the control device 11 of D1 only senses load variations, and cannot measure wear directly, and secondly because in this case the crusher would run the risk to run dry ("Leerlauf"), when, for example, the cakes are released (page 4, lines 29-33).

As a consequence of the above, a skilled person would understand directly and unambiguously from D1 that the loading of the crusher is increased again (by lifting the crushing head) if the number of the load peaks does not reach another predetermined value during a predetermined period of time."

VIII. With its submission dated 14 August 2020 the appellant informed the Board that they would not be attending the planned oral proceedings. The appellant made no observations on the content of the Board's communication.

Reasons for the Decision

1. Procedural aspects

The case is ready for decision which is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA 2020 and with Articles 113 and 116 EPC.

The principle of the right to be heard pursuant to Article 113(1) EPC is observed since that provision only affords the opportunity to be heard and that the parties' submissions are fully taken into account.

With letter dated 14 August 2020, the appellant withdrew their original request for oral proceedings and announced their intention not to participate in the oral proceedings, to which the parties had been duly summoned and which are herewith cancelled.

Since the withdrawal was not declared within the period provided for in Rule 103(4)(c) EPC, the appellant cannot benefit from a reimbursement of the appeal fee at 25%.

As far as the respondent requested oral proceedings pursuant to Article 116(1) EPC, this request is auxiliary to their main request that the appellant's appeal be dismissed and that the revocation of the patent in suit be upheld. Thus, since the respondent's main request is followed by the Board, the aforementioned auxiliary request remains procedurally inactive.

2. Lack of novelty of claim 1
 - 2.1 Under the section 1 of its above-mentioned communication the Board stated why it considers that granted claim 1 lacks novelty over the content of the disclosure of D1, see point VII. above.
 - 2.2 The above-mentioned preliminary finding of the Board has not been commented on nor has it been contested by the appellant during the appeal proceedings, see point VIII. above.
 - 2.3 Under these circumstances, the Board - having once again taken into consideration all the relevant aspects concerning said issues - sees no reason to deviate from its above-mentioned finding.
 - 2.4 The appellant therefore failed to convincingly demonstrate that the appealed decision to revoke the patent was not correct.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated