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**Datasheet for the decision
of 13 November 2019**

Case Number: T 2643/17 - 3.2.03

Application Number: 11003326.3

Publication Number: 2515064

IPC: F28D9/00, F28F3/04

Language of the proceedings: EN

Title of invention:

Heat exchanger

Patent Proprietor:

Senior UK Limited

Opponent:

MAHLE International GmbH

Headword:

Relevant legal provisions:

EPC Art. 123(2), 84, 111(1)
EPC R. 103(1)(a)

Keyword:

Appeal decision - remittal to the department of first instance
(yes)

Reimbursement of appeal fee - substantial procedural violation
(no)

Decisions cited:

Catchword:



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Case Number: T 2643/17 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 13 November 2019

Appellant: Senior UK Limited
(Patent Proprietor) Oakwood Close
Croespenmaen
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Gwent
NP11 3HY (GB)

Representative: Franks & Co Limited
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Brightside Lane
Sheffield S9 2RX (GB)

Respondent: MAHLE International GmbH
(Opponent) Pragstrasse 26-46
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Representative: BRP Renaud & Partner mbB
Rechtsanwälte Patentanwälte
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 17 November
2017 revoking European patent No. 2515064
pursuant to Article 101(3) (b) EPC.**

Composition of the Board:

Chairman	G. Ashley
Members:	C. Donnelly
	D. Prietzel-Funk

Summary of Facts and Submissions

- I. The appeal lies from the decision of the opposition division to revoke the European patent no. 2 515 064.

In its decision the opposition division held that the subject-matter of claim 1 of both the main request and auxiliary request, filed during the oral proceedings held on 12 September 2017, did not meet the requirements of Article 123(2) EPC.

- II. The patent proprietor (hereinafter: the "appellant") filed an appeal against this decision.

The opponent (hereinafter: the "respondent") replied to the grounds of appeal in letter of 27 July 2018.

- III. In a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA), annexed to the summons to oral proceedings, the board informed the parties of its provisional opinion.

- IV. Oral proceedings were held on 13 November 2019. The presentation and withdrawal of requests is detailed in the minutes of the oral proceedings. At the end of the debate the parties confirmed the following requests:

The appellant requested that the decision under appeal be set aside and that the case be remitted to the opposition division for further prosecution on the basis of the claims of the new main request, corresponding to the 5th auxiliary request filed with the grounds of appeal, and that the appeal fee be reimbursed.

The respondent requested that the appeal be dismissed.

V. Claim 1 of the main request reads:

"A cooling plate assembly for cooling a fluid flow using a liquid coolant, said assembly comprising:

a plurality of cooling plates (200), each cooling plate comprising a plurality of fluid conduits (203) through which fluid can flow; and

said cooling plate assembly comprising a fluid inlet region, a fluid outlet region and a heat exchange region;

characterised by,

a set of first coolant channels (407 - 412; 800) arranged between said plurality of cooling plates and positioned immediately adjacent to said fluid inlet region, each of said first coolant channels extending in a direction transverse to a main flow direction of said plurality of fluid conduits, said fluid conduits being sealed from said set of first coolant channels, and each of said first coolant channels allowing a relatively higher coolant flow rate in a direction transverse to a main length of said fluid conduits than occurs in a region further away from said inlet region; and

a second set of coolant channels (501) positioned further away from said inlet region than said set of first coolant channels (407 - 412; 800), wherein a cross sectional area of a said first coolant channel in a direction transverse to a main fluid flow direction in said fluid conduits, is in the range 1.2 to 5 times a cross sectional area of a said second coolant channel in the same direction."

Reasons for the Decision

1. *Main request, Articles 123(2) and 84 EPC*

Claim 1 of the main request is based on a combination of granted claims 1 and 5. The respondent made no objections under Articles 84 and 123(2) EPC and the board also does not have any objections in this respect.

2. *Further prosecution, Article 111(1) EPC*

In view of the fact that the issues of novelty and inventive step have not been addressed in the decision under appeal, the board considers it appropriate to exercise its powers under Article 111(1) EPC to remit the case to the opposition division for further prosecution. Both parties agreed with this course of action.

3. *Reimbursement of the appeal fee, Rule 103(1)(a) EPC*

The appellant requested reimbursement of the appeal fee since it considered that the opposition division's decision to revoke the patent was based on an incorrect interpretation of the disclosure of the application as filed (see grounds of appeal paragraph 15.2). However, under Rule 103(1)(a) EPC reimbursement of the appeal fee shall only be ordered if it is considered equitable by reason of a substantial procedural violation. An incorrect interpretation, even if it were accepted as such, is not a substantial procedural violation. Therefore, the appeal fee will not be reimbursed.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division for further prosecution on the basis of the new main request submitted as the 5th auxiliary request with the statement setting out the grounds of appeal.
3. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated