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**Datasheet for the decision
of 18 July 2024**

Case Number: T 0893/24 - 3.2.06

Application Number: 18709595.5

Publication Number: 3634845

IPC: B62M9/131, F16H55/30

Language of the proceedings: EN

Title of invention:
CHAINRING

Patent Proprietor:
Miranda & Irmão Lda.

Headword:

Relevant legal provisions:

EPC Art. 109
EPC R. 103(1) (a), 103(6)

Keyword:

Interlocutory revision - reimbursement of appeal fee (no)

Decisions cited:

T 2282/17, T 0075/91

Catchword:



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Case Number: T 0893/24 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 18 July 2024

Appellant: Miranda & Irmão Lda.
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Representative: FREISCHEM & PARTNER
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Decision under appeal: Decision of the examining division of
12 September 2023, rectified with decision of
interlocutory revision of 05 February 2024, but
request for reimbursement of the appeal fee not
allowed

Composition of the Board:

Chairman M. Harrison
Members: P. Cipriano
S. Ruhwinkel

Summary of Facts and Submissions

I. The appellant (patent proprietor) requested reimbursement of the appeal fee concerning its appeal against the decision of the examining division of 12 September 2023 rejecting its request for limitation of European patent 3 634 845.

II. The decision to grant European patent 3 634 845 was issued on 22 April 2021.

III. With letter of 25 March 2022, the appellant filed a request for limitation adding the following feature to claim 1:

"each tooth of the second group (13') extends in the central plane of the sprocket and has protrusions on opposite positions of its lateral faces"

and the following feature to the independent method claim (added passage underlined):

"the profile of each tooth (13') of the second group is formed so that it extends in the central plane of the sprocket and has protrusions on opposite positions of its lateral faces".

IV. By decision of 12 September 2023, the examining division rejected the request for limitation on the grounds that the requirements of Article 123(2) EPC were not met.

V. On 16 October 2023, the appellant submitted a notice of appeal against the decision of 12 September 2023. The statement of grounds of appeal was filed on 11 January 2024.

- VI. With its rectification order dated 5 February 2024, the examining division granted interlocutory revision. The appellant's request for reimbursement of the appeal fee was, however, considered not allowable and was therefore forwarded to the Board of Appeal.
- VII. The appellant reasoned its request for reimbursement of the appeal fee as follows:

Reimbursement was equitable by reason of a substantial procedural violation, as the examining division failed to provide adequate reasoning in the appealed decision. The Examining Division did not even try to assess what a skilled person would derive directly and unambiguously, using common general knowledge, from the original application documents. The examining division arbitrarily picked a feature (front protrusion on the left side and rear protrusion on the right side) that was described in the context of describing the feature added to the claim and then asserted that no passage was found in the description where other alternatives were directly or non-directly disclosed. There was no justification for examining other features than those the applicant wanted to include in the amended claim. The skilled person clearly and unambiguously derived from the original application documents that the positions (left or right) of the front and rear protrusions were not relevant in the context of the invention.

The assertion by the examining division that no passage was found in the description where other alternatives were directly or non-directly disclosed was obviously wrong and further evidence for the fact that the examining division had failed to assess what a skilled

person would derive directly and unambiguously, using common general knowledge, from the original application documents. Figures 4 and 5 of the drawing clearly showed the rear lateral protrusions on the left side when viewed in the direction of rotation 10 and the front lateral protrusion on the right side. These positions of the protrusions were also mentioned in the original description, page 7, lines 7 - 13. This positioning was the opposite of the positioning shown in Figure 6.

Reasons for the Decision

1. The present decision is issued in written proceedings in accordance with Article 12(8) RPBA and Articles 113 and 116 EPC. The appellant has not requested oral proceedings and the case is ready for decision on the basis of the appellant's written submissions and the other documents on file.
2. According to Rule 103(6) EPC, the department whose decision is impugned shall order the reimbursement of the appeal fee if it revises its decision and considers reimbursement equitable by reason of a substantial procedural violation; in all other cases, hence also in the present case, the matter of reimbursement shall be decided by the Board of Appeal (Rule 103(6), second sentence, EPC).
3. Pursuant to Rule 103(1)(a) EPC, the appeal fee shall be reimbursed in full in the event of interlocutory revision if such reimbursement is equitable by reason of a substantial procedural violation. In the case at hand, the appellant argues that the decision under appeal was not sufficiently reasoned. Inadequate reasoning of a decision may in principle constitute a substantial procedural violation and justify the

reimbursement of the appeal fee under Rule 103(1)(a) EPC (see Case Law of the Boards of Appeal (CLB), 10th edition, July 2022, V.A.11.6.9.).

4. According to Rule 111(2), first sentence, EPC, decisions which may be appealed must be reasoned. It is established case law of the Boards of Appeal that a decision must set out the essential factual and legal considerations that justify the decision taken in a logical chain of reasoning. The conclusions drawn from the facts and evidence must be clearly presented. The reasoning should enable the parties and, in the case of an appeal the Board, to understand whether the decision is justified or not (see for instance T 2282/17, Reasons 3.1; CLB, *ibid.*, III.K.3.4.1, 3.4.3).

5. In the present case, the examining division justified its finding that the requested limitation did not fulfil the requirement of Article 123(2) EPC as follows:

The amendment included the feature *"each tooth of the second group extends in the central plane of the sprocket and has protrusions on opposite positions of its lateral faces"* as taken from page 8 of the original description, lines 14 and 15. The claim was followed by the feature *"wherein the profile of each tooth of the second group has a first protrusion in the front half of the tooth on a first lateral surface and a second protrusion in the rear half of the tooth on a second, opposite lateral surface of the tooth"* as it was in the grant procedure. The amended combination of features could be understood as having a sprocket comprising wide teeth extending in the central plane of the sprocket and having protrusions on either sides of the front half of the tooth and on the opposite side of the

same tooth. However, the same paragraph of the description followed with the feature *"When viewed in the direction of rotation 10, the protrusion on the left lateral face is in the front half and the protrusion on the right lateral face is in the rear half."* which clearly disclosed only one possible arrangement of the protrusions with respect to the wide teeth. No passage was found in the description where other alternatives were directly or non directly disclosed.

6. This reasoning shows in a readily traceable way why the examining division came to the conclusion that the requested limitation did not fulfil the requirement of Article 123(2) EPC. It enables the reader to follow the line of argument for refusing the request for limitation. It therefore constitutes sufficient justification. In this regard, it is not decisive whether the reasoning is correct or convincing in substance (see e.g. T 0075/91, Reasons 7.; CLB, *ibid.*, V.A.11.6.9). Nor does the fact that the appellant's argument (set out in its statement of grounds of appeal) was able to convince the examining division in the course of its interlocutory revision mean that it committed a procedural error.

7. Insofar as the appellant criticises that the examining division did "not even try to assess what a skilled person would derive directly and unambiguously, using common general knowledge, from the original application documents", but "arbitrarily picks a feature (front protrusion on the left side and rear protrusion on the right side) that is described in the context of describing the feature added to the claim" and then "asserts that no passage is found in the description where other alternatives are directly or non-directly

disclosed", this does not refer to inadequate reasoning in the sense of contesting that the reasoning in the decision does not show how the examining division came to its conclusion, but instead relates to the persuasiveness of the content of the reasoning as such. The same applies insofar as the appellant submits that "the assertion by the examining division that no passage was found in the description where other alternatives were directly or non-directly disclosed" was "obviously wrong". Even if the appellant were assumed to be correct on this point, this does not constitute insufficient reasoning in the sense of a substantial procedural violation.

8. In the absence of a substantial procedural violation, the request for reimbursement of the appeal fee must therefore be refused.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated