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File Number: T 563/92 - 3.2.2

Application No.: 85 905 124.5

Publication No.: 0 198 871

Title of invention: Method and installation for heat treatment, especially case-hardening

Classification: C21D 9/00

D E C I S I O N  
of 24 February 1993

Applicant: AB VOLVO

Opponent: Möbius, Hans-Eberhard Dr.-Ing.  
Caterpillar Inc.

Headword: Statement of Grounds/VOLVO

EPC Article 108, 3rd sentence; Rule 65(1)

Keyword: "Admissibility of appeal - inadequate Statement of Grounds"



Case Number : T 563/92 - 3.2.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.2  
of 24 February 1993

Appellant :  
(Proprietor of the patent)

AB VOLVO  
Assar Gabrielssons väg  
Torslanda  
S - 405 08 Göteborg (SE)

Representative :

Hellbom, Lars Olof  
H. Albihns Patentbyrå AB  
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S - 103 62 Stockholm (SE)

Respondent :  
(Opponent)

Möbius, Hans-Eberhard Dr.-Ing.  
Michael-Tritz-Strasse 4  
W - 6633 Wadgassen (DE)

Respondent :  
(Opponent)

Caterpillar Inc.  
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Representative :

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WAGNER & GEYER  
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Gewürzmühlstrasse 5  
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Decision under appeal :

Decision of the Opposition Division of the  
European Patent Office dated 14 April 1992  
revoking European patent No. 0 198 871 pursuant  
to Article 102(1) EPC.

Composition of the Board :

Chairman : G.S.A. Szabo  
Members : G. Davies  
J.B.J. Kollar

## Summary of Facts and Submissions

- I. On 12 June 1992, the Appellant gave Notice of Appeal against the decision of the Opposition Division of the European Patent Office dated 14 April 1992 by which the Appellant's European patent No. 0 198 871 was revoked. The appeal fee was duly paid.
  
- II. In the letter giving Notice of Appeal, the Appellant stated "The grounds for appeal are those presented in my letter of 29 October 1991". This letter had been submitted to the Opposition Division during the course of the opposition proceedings. No further submissions have been made within the period prescribed for filing a Statement of Grounds by the Appellant.
  
- III. By letter dated 13 November 1992, the Respondent (Opponent) objected that the purported grounds of appeal could not be considered as "a written statement setting out the grounds of appeal" as required by Article 108 EPC, and submitted that, as no written statement setting out the grounds of appeal had been filed within the relevant time limit, the appeal was inadmissible. The Respondent also requested that the Appellant be required to bear the entire costs of the appeal proceedings, as, in his opinion, the way the appeal had been filed should be regarded as an abuse of the appeal procedure. The Appellant subsequently failed to file any reply to the objection concerning the inadequacy of his submissions.

## Reasons for the Decision

1. It is the established case law of the Boards of Appeal that grounds of appeal should state the legal and factual reasons why the decision under appeal should be set aside

and the appeal allowed (see decisions J 22/86 OJ EPO, 1987, 280; T 220/83 OJ EPO 1986, 249 and T 145/88 OJ EPO, 1991, 251). Whether a document complies with the requirements of Article 108, last sentence, is considered to depend upon its substance and not upon its heading or form.

2. In the present case, the Appellant purported to file grounds of appeal by referring to a previous letter sent to the Opposition Division. This letter, however, was sent prior to the decision being reached and thus did not take issue with the reasoning of the Opposition Division in coming to its conclusion. It merely set out the case put to and subsequently dealt with by the Opposition Division in the decision under appeal. Thus it cannot be said to give any legal or factual reasons why the decision under appeal should be set aside.
3. Accordingly, as no written statement setting out the grounds of appeal has been filed in conformity with Article 108 EPC, last sentence, the Board is required to reject this appeal as inadmissible, in accordance with the provisions of Rule 65(1) EPC.
4. As far as the Respondent's request that the Appellant be required to bear the full cost of the appeal proceedings is concerned, the Board cannot agree that the filing of an inadmissible appeal in this case constitutes an abuse of the appeal procedure. This request is accordingly refused.

Order

For these reasons, it is decided that:

The appeal is rejected as inadmissible.

The Registrar:



N. Maslin

The Chairman:

  
G. Szabo

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