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D E C I S I O N
of 9 March 2000

Case Number: T 0513/96 - 3.2.2

Application Number: 88306176.4

Publication Number: 0298729

IPC: C23C 30/00

Language of the proceedings: EN

Title of invention:
Cutting tool

Patentee:
SUMITOMO ELECTRIC INDUSTRIES LIMITED

Opponent:
Sandvik Aktiebolag
Plansee Tizit AG

Headword:
Late filed statement of grounds/SUMITOMO

Relevant legal provisions:
EPC Art. 108
EPC R. 65(1)

Keyword:
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Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0513/96 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 9 March 2000

Appellant: (Opponent I)
Sandvik Aktiebolag
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Appellant: (Opponent II)
Plansee Tizit AG
6600 Reutte/Tirol (AT)

Representative:
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Respondent: (Proprietor of the patent)
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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 3 April 1996 concerning maintenance of European patent No. 0 298 729 in amended form.**

Composition of the Board:

Chairman: W. D. Weiß
Members: M. J. M. Bidet
J. C. M. De Preter

Summary of Facts and Submissions

I. On 31 May and 6 June, respectively, opponents II and I lodged an appeal against the decision of the Opposition Division posted on 3 April 1996 maintaining European patent No. 0 298 729 in amended form. The appeal fees were paid on 7 and 6 June, respectively. The statement of grounds of opponent I was received on 13 August 1996.

II. By a communication dated 30 August 1996, sent by registered letter with advice of delivery, the Registry of the Board informed opponent II that no statement of grounds had been filed and that its appeal could be expected to be rejected as inadmissible. Opponent II was also invited to file observations within four months.

III. A written statement setting out the grounds of appeal was filed by opponent II on 28 November 1996.

IV. By letter of 5 March 1997 the respondent stated that, as the grounds of appeal of opponent II were received out of time, it was assumed that this appeal would be rejected as inadmissible.

V. In the annex to the summons of 2 November 1999 to attend oral proceedings the attention of opponent II was drawn to the apparent inadmissibly of its appeal.

VI. Upon opponent I's withdrawal of its appeal by letter of 14 December 1999, the Board pointed out in its communication of 31 January 2000 that only the admissibility of the appeal of opponent II would be discussed at the oral proceedings.

VII. By letter of 8 February 2000 opponent II argued that, although short, the substantiation of the grounds of appeal in its notice of appeal was sufficient and auxiliarily requested that the patent be revoked on the basis of Article 114(1) EPC.

VIII. Oral proceedings were held on 9 March 2000 in the absence of the parties who had informed the Board that they would not attend these proceedings.

Reasons for the Decision

1. Following the withdrawal of its appeal by opponent I the admissibility of the appeal of opponent II (Plansee Tizit AG), whose detailed grounds of appeal were filed out of time, is decisive for whether the Board is entitled to review the decision under appeal on its substantial merits. Thus, the question arises whether already the notice of appeal of opponent II contains statements which can be considered as sufficiently substantiated grounds of appeal.

2. In its notice of appeal opponent II stated that its grounds of appeal were the same as those recited in its notice of opposition. According to its letter of 8 February 2000 this statement constituted sufficient, albeit short, grounds of appeal which, as stated, would be completed by more detailed arguments. In the same notice of appeal it was requested to take the evidence into account which had been filed at the oral proceedings to support the grounds of opposition and which had not been considered by the Opposition Division.

The said notice of appeal objected in particular that the decision under appeal failed to consider the general knowledge of the skilled practitioner with respect to honing and lapping and also had neglected the documents in support thereof.

3. However, by merely referring to its grounds of opposition and to the above mentioned evidence supporting these grounds, the reasons why the decision under appeal should be set aside were not specified; nor were any clear arguments presented to enable the Board and the respondent to understand why the appealed decision is incorrect. The Opposition Division, on page 10 of the decision under appeal, acknowledged that the skilled person could have honed the coating surface but that there was no apparent reason why he would have done so. The notice of appeal does not give any enlightenment in this respect. In fact the notice of appeal only contained a general introduction to the stated grounds of appeal which were filed out of time.

Therefore the appeal of opponent II must be rejected as inadmissible which implies that no further arguments, such as those based on Article 114(1) EPC can be taken into consideration.

Since there is no admissible appeal the decision of the Opposition Division is final.

Order

For these reasons it is decided that:

The appeal of opponent II (Plansee Tizit AG) is rejected as inadmissible.

The Registrar: The Chairman:

S. Fabiani W. D. Weiß