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D E C I S I O N
of 24 January 2000

Case Number: T 1069/97 - 3.2.2

Application Number: 92118024.6

Publication Number: 0533212

IPC: C22C 38/60

Language of the proceedings: EN

Title of invention:
A free machining, deformed, solid steel product

Applicant:
Inland Steel Company

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2), 54, 56

Keyword:
"Amendments (not admissible)"
"Novelty (no)"
"Inventive step (no)"

Decisions cited:
T 0784/91

Catchword:
-

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Case Number: T 1069/97 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 24 Janauary 2000

Appellant: Inland Steel Company
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ETATS-UNIS D'AMERIQUE

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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 20 June 1997 refusing European patent application No. 92 118 024.6 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: W. D. Weiß
Members: R. Ries
J. C. M. de Preter

Summary of Facts and Submissions

I. European patent application No. 92 118 024.6 (publication No. 0 533 212) was refused by decision of the Examining Division posted on 20 June 1997. The Examining Division held that the subject matter of the claims according to the main request and according to the auxiliary request

- violated Article 123(2) EPC,

- lacked novelty with respect to the technical teaching of document D2, or if novelty was accepted,

- lacked an inventive step having regard to document D2.

II. With their letter of 18 August 1997 received on 19 August 1997, the appellants (applicants) lodged an appeal against the decision of the first instance. On 17 October 1997, a statement of grounds was submitted by telecopy confirmed by letter of 30 October 1997, which included a revised set of claims 1 to 7 to replace claims 1 to 6 underlying the appealed decision of the Examining Division and in substitution for all earlier requests.

Independent claim 1 reads as follows:

"1. A deformed, carbon-containing, solid steel product containing machinability-increasing manganese sulfide inclusions, wherein:

the manganese sulfide inclusions in said product

are in the form of oxygen-containing manganese sulfide inclusions;

said oxygen-containing manganese sulfide inclusions have a relatively globular shape arising from the presence of said oxygen in said inclusions which in turn is due to the retention in the steel from which said solid product was made, at the time said steel undergoes solidification, of 60-150 mg/kg (ppm) dissolved oxygen which, due to the exclusion from the steel of solid deoxidizing agents other than manganese, is substantially uncombined with these agents;

said globular inclusions impart to said steel product an enhanced machinability, compared to the same steel product having manganese sulfide inclusions without said globular shape;

and said product has a microstructure substantially devoid of machinability impairing oxides of solid deoxidizing agents."

III. The appellants request that the decision under appeal be set aside and that a patent be granted on the basis of revised claims 1 to 7 submitted with letter of 30 October 1997.

IV. In a communication dated 26 March 1999, the Board referred the appellants to the documents

D1: Journal of the Iron and Steel Institute, June 1970, pages 568 to 575

D2: EP-A-0 212 856

D6: Patent Abstracts of Japan, volume 5, 85,

(C-57)(757), June 3, 1981, & JP-A-56029658

D7: DE-B-1 608 752

and substantiated in detail the reasons, why the revised set of claims was found unallowable. The appellants were informed that dismissal of the appeal, therefore, could be expected.

V. In their letter dated 20 May 1999 received on 21 May 1999, the appellants informed the Board that

- no observations would be filed in reply to the Board's official communication, and

- no oral proceedings were requested.

Reasons for the Decision

1. The appeal is admissible.

2. In the official communication of 26 March 1999 the Board fully explained, why it was of the opinion that in particular:

- revised claim 7 failed to meet the requirements of Article 123(2) EPC,

- the subject matter of claim 1 was not novel with respect to the technical teaching of document D2 or, alternatively, with respect to document D6

and furthermore,

- the technical concept underlying the present application was obvious to the man skilled in the art from document D7.

3. The letter of 20 May 1999 represents the definitive response of the appellants to the official communication by the Board of 26 March 1999.

4. Given that the appellants indicate in their letter that they do not wish to comment on the case, this is construed as signifying agreement to a decision being taken on the case as it stands. In this respect, the present Board of Appeal follows the approach taken in the unpublished decision T 784/91.

5. Additionally, the Board observes that up to the date of the present decision, the appellants have been given sufficient time for presenting arguments in response to the Board's communication. No further arguments have been submitted and there is no discernable reason whatsoever for the Board to issue a further invitation to the appellants.

6. Having reconsidered the reasons which were given in the official communication of 26 March 1999 and which were unchallenged by the appellants, the Board sees no reason to depart from them, so that, according to the file as it stands, claims 1 to 7 submitted with letter of 30 October 1997 are not allowable.

The request of the appellants that the decision be set aside and a patent be granted on the basis of claims 1

to 7 therefore cannot be followed.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

The Registrar: The Chairman:

S. Fabiani W. D. Weiß