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D E C I S I O N
of 6 March 2003

Case Number: T 1097/01 - 3.2.6

Application Number: 94200870.7

Publication Number: 0619397

IPC: D06F 67/04

Language of the proceedings: EN

Title of invention:
Depositing apparatus for laundry

Patentee:
AMKO INTERNATIONAL B.V.

Opponent:
H.J. WEIR ENGINEERING CO. LTD

Headword:

Relevant legal provisions:
EPC Art. 99(1), 101(1)
EPC R. 55(c), 56(1)

Keyword:
"Admissibility of opposition - requirements of Rule 55(c) not fulfilled"

Decisions cited:
T 0328/87

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1097/01 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 6 March 2003

Appellant: (Opponent)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 26 July 2001 rejecting as inadmissible the opposition filed against European patent No. 0 619 397 on the basis of Rule 56(1) EPC.**

Composition of the Board:

Chairman: P. Alting Van Geusau
Members: G. Pricolo
M. B. Tardo-Dino

Summary of Facts and Submissions

I. The appeal is from the decision of the Opposition Division posted on 26 July 2001 to reject as inadmissible the opposition filed by the appellant as opponent against European patent No. 0 619 397, granted in respect of European patent application No. 94 200 870.7.

Independent claim 1 as granted related to a depositing apparatus for depositing a piece of laundry.

II. The Appellant based its opposition solely on lack of novelty and lack of inventive step of the claimed apparatus in respect of an apparatus identified as CEFRADUE "Star Feed".

The Opposition Division considered that the opposition did not meet the requirements of Rule 55(c) EPC because it did not contain a sufficiently specific and clear indication of the facts, evidence and arguments in support of the grounds of opposition. The Division stated that it was not possible to determine the date on which the alleged prior use of the "Star Feed" apparatus took place. With the notice of opposition the appellant had referred to a leaflet distributed at an exhibition in 1987 where the "Star Feed" apparatus was shown, and also to a brochure, two photographs and a drawing. However, the leaflet was not included with the notice of opposition. Furthermore, the brochure and the drawings were not dated. Neither were the photographs dated, which showed an installation of the apparatus in Italy prior to April 1993. As regards the installation, the mention of such an indeterminate period did not correspond to a date but only meant that a prior use

took place. From the notice of opposition it was also not possible to determine the degree of similarity between the object used. In fact, the leaflet was not filed with the notice of opposition and no similarity appeared between the content of the brochure and photographs and the subject-matter of claim 1 of the patent in suit. There was no indication that the content of the drawing had any relation with the "Star Feed" apparatus shown in the brochure and photographs. Finally, the mere allegation that the apparatus was shown at an exhibition in 1987 was not a sufficient indication of the circumstances relating to the use.

III. The appellant lodged an appeal against this decision, received at the EPO on 4 October 2001, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received at the EPO on 4 December 2001. The appellant requested that the decision of the Opposition Division be set aside, that the Opposition be declared admissible, and that as a consequence the case be remitted to the Opposition Division for further examination of its merits.

IV. In an annex to the summons for oral proceedings pursuant to Article 11(2) Rules of Procedure of the Boards of Appeal the Board expressed its preliminary opinion that it was questionable whether the allegations made in the notice of opposition in respect of the date on which the alleged prior use occurred and of what had been used were precise enough to meet the requirements of Rule 55(c) EPC.

V. With letter dated 5 February 2003, the appellant maintained the request to remit the case to the Opposition Division to consider the substantive issues

raised in the opposition, and stated that the Board had "sufficient information before them to make a decision in this matter without the need for the opponents to be heard further" and that, therefore, the appellant would not be attending the proposed oral proceedings.

VI. Oral proceedings took place on 6 March 2003.

As announced with the letters dated 5 and 26 February 2003, respectively, the appellant and the respondent (patentee) did not attend the oral proceedings. The proceedings were continued without them (Rule 71(2) EPC).

VII. The arguments of the appellant can be summarized as follows:

With regard to the date of the prior use, an indication that the CEFRADUE "Star Feed" apparatus was installed in a particular and specialised laundry in Italy prior to April l993 was a sufficient indication of the facts in this case.

As submitted with letter filed by the opponent on 18 August 1998 during opposition proceedings, the CEFRADUE "Star Feed" apparatus was exhibited at the exhibition "Expo Detergo" in Italy in 1987 and 1989. The catalogue for "Expo Detergo" 1987 indicated that the CEFRADUE "Star Feed" apparatus was a new apparatus and so it could clearly be deduced that the prior use at the above-mentioned laundry took place between the 1987 Exhibition and the priority date of the patent in suit.

With the notice of opposition a brochure, a drawing and

two photographs were filed. The brochure clearly illustrated and described an apparatus which was much the same as the subject of the patent, and the drawing was clearly a cross-sectional view through the front part of the apparatus of the CEFRADUE "Star Feed" brochure. The photographs clearly showed a CEFRADUE apparatus corresponding to the illustration of the apparatus in the drawing and to the apparatus of the brochure.

The documents filed by the opponent in advance of the oral proceedings before the Opposition Division including a written declaration confirmed the prior use of the CEFRADUE "Star Feed" apparatus before the priority date of the patent in suit.

Anyway, the prior use on which the opponents relied was adequately made out at the commencement of the opposition proceedings. The source and construction of the machines on which the opponent relied were clearly identified and disclosed so that there could have been no doubt regarding the machines on which the opposition was based. The demonstration of one such machine at the 1987 exhibition and the installation of the machine at the laundry identified prior to April 1993, as referred to in the statement of opposition, and the documents which accompanied the notice of opposition sufficiently substantiated the prior use. The indications given were enough to launch the opposition proceedings.

VIII. The respondent did not file any submissions in respect of the appeal.

Reasons for the Decision

1. The appeal is admissible.

2. *Admissibility of the opposition*

2.1. Under Article 101(1) EPC, the opposition is examined "if it is admissible".

It is therefore imperative, before embarking on substantive examination, to verify the admissibility of the opposition.

Under Rule 55(c) EPC, the notice of opposition has to contain:

(1) a statement of the extent to which the European patent is opposed;

(2) an indication of the grounds on which the opposition is based;

(3) an indication of the facts, evidence and arguments presented in support of these grounds.

Under Article 99(1) EPC, notice of opposition may be filed "within nine months from the publication of the mention of the grant of the European patent". The requirements of Rule 55(c) EPC therefore have to be met before the time limit of nine months expires. This clearly follows from Rule 56(1) EPC, which provides for opposition to be rejected as inadmissible, especially where the notice of opposition fails to comply with the provisions of Rule 55(c) EPC and these deficiencies have not been remedied before the expiry of the opposition period (see eg T 328/87, OJ 1992, 701, point 2 of the reasons).

From the above if follows that, as far as the admissibility of the opposition is concerned, solely the submissions filed before expiry of the nine months period referred to in Article 99(1) EPC should be taken into account.

2.2 According to the established case law of the Boards of Appeal in case of prior public use (see in particular T 328/87 *supra*, point 3.3 of the Reasons; see also "Case Law of the Boards of Appeal of the European Patent Office", 4th edition 2001, VII.C.8.6.3), requirement 3 of Rule 55(c) EPC will only be satisfied if the Opposition Division and the patent proprietor are able to determine the following details:

(a) the date on which the alleged use occurred,

(b) what has been used,

(c) all the circumstances relating to the use, by which it was made available to the public, as for example the place of use and the form of use.

2.3 The date of the alleged use (criterion a)

2.3.1 In the notice of opposition, it is stated that a laundry apparatus "Star Feed" was manufactured and sold before the earliest priority date of the patent in suit. It is also stated that such an apparatus was installed at the works of Lavanderia Centrale, Terme in Salsomarrione (Parma), Italy, prior to April 1993. With respect to the sale and the installation, no further detail is given. This amounts to an allegation of prior use without indicating the relevant date or period (see T 328/87, *supra*, point 3.3.1).

2.3.2 When referring in the notice of opposition to a copy of a leaflet which was allegedly distributed at "an" exhibition in 1987, the appellant indicated that the "Star Feed" apparatus was shown at said exhibition. This constitutes an allegation of a further prior use. However, considering that there are several exhibitions taking place during a year, the mere indication of "an exhibition in 1987" is vague and cannot help in identifying a specific exhibition. It constitutes, therefore, an insufficient indication of the relevant date or period.

2.3.3 Therefore, in respect of the prior use of the "Star Feed" apparatus by means of a sale and installation in Italy prior to April 1993, or an exhibition in 1987, the above criterion (a) is not fulfilled.

2.4 What has been used (criterion (b))

Since in section 4 of the notice of opposition the "Star Feed" apparatus is described in detail, the Board accepts that criterion (b) is fulfilled.

2.5 The circumstances of the use (criterion (c))

2.5.1 In the notice of opposition, the appellant submitted that the apparatus was manufactured and sold in Italy before the earliest priority date of the patent in suit, that it was installed at the works of Lavanderia Centrale before April 1993, and that the "Star Feed" apparatus was shown at an exhibition in 1987. No further details about the sale, the installation and the exhibition have been given in the notice of opposition.

Therefore, the Board concludes that the notice of opposition lacks an indication as to whether the apparatus was unconditionally sold to a member of the public and whether the installation at the works of Lavanderia Centrale and the exhibition were of such nature that members of the public thus persons not bound to secrecy were able to ascertain the specific features of the object. In summary, it is not clear from the notice of opposition whether an apparatus having all the features allegedly present in the "Star Feed" apparatus was effectively made available to the public.

2.5.2 By failing to supply exact indications of evidence, such as for example a reference to delivery notes, names and address of witnesses, etc, the appellant failed to establish the precise basis of his allegations regarding prior use i.e. that the "Star Feed" apparatus was manufactured and marketed, exhibited and installed before the priority date of the patent in suit.

2.5.3 The Board observes that in the notice of opposition (see section 3, paragraphs (i) to (iv)) reference was made to the following documents:

- a leaflet distributed at an exhibition in 1987,

- a copy of a brochure,

- two photographs, and

- a drawing.

However, these documents cannot be regarded as

indication of evidence in support of the above mentioned facts.

Indeed, as pointed out by the Opposition Division in the decision under appeal (see page 5, first paragraph) the copy of the leaflet was not filed within the opposition period. Hence, at the expiry of the opposition period it could not be said what was shown therein.

Furthermore, the other documents were merely representative of the apparatus used.

The alleged fact that the brochure was issued by CEFRADUE, which is the company producing the "Star Feed" apparatus, before April 1993, does not constitute indication of evidence that the apparatus itself was actually sold, exhibited or installed before April 1993.

In the notice of opposition it is stated that the two photographs show a laundry apparatus at the works of Lavanderia Centrale which was installed before April 1993. Yet, there is no indication that the photographs were actually taken before this date.

Finally, in the notice of opposition it is stated that the drawing, dated 9 July 1989, shows a sectional view through the "Star Feed" apparatus. However, the drawing carries no date (see page 5, second paragraph, of the decision under appeal). In any case, even if the drawing were dated, this would only imply that it was completed on said date. Therefore, the drawing could not constitute indication of evidence that the apparatus itself was actually sold, exhibited or

installed before April 1993.

2.5.4 Criterion (c) is therefore not fulfilled in respect of the alleged prior use.

2.6 The Board notes there is no indication in the notice of opposition that the photographs and/or the drawing were made available to the public before April 1993.

Moreover, there is no precise indication to be found either in the notice of opposition or in the brochure about the date at which the latter was effectively issued and made available to the public. Neither is there any indication of evidence in support of the fact that the brochure was issued prior to April 1993.

2.7 In respect of the leaflet, it was allegedly distributed at an exhibition in 1987. However, neither was the leaflet filed with the notice of opposition, nor is there any indication in the notice of opposition of what features of the "Star Feed" apparatus could be seen in the leaflet. Thus, there is also no basis in the notice of opposition to conclude that the leaflet was intended to represent a prior art document.

2.8 The Board observes that the documents filed by the appellant after the expiry of the opposition period, such as the "Expo Detergo" catalogues filed with letter of 18 August 1998 and the further documents filed in advance of the oral proceedings before the Opposition Division, are irrelevant for the question whether the notice of opposition complies with the provisions of Rule 55(c) EPC, since as explained above (point 2.1) the requirements of Rule 55(c) EPC have to be met before the time limit of nine months for filing an

opposition expires.

2.9 Summarising, the Board comes to the conclusion that at the expiry of the opposition period the notice of opposition was deficient in respect of the indication of facts and evidence relating to the circumstances of the prior use. The Opposition Division therefore acted correctly in finding the opposition deficient as regards the requirements of Rule 55(c) EPC. The notice of opposition is therefore inadmissible (Rule 56(1) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

M. Patin P. Alting van Geusau