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**Datasheet for the decision
of 25 May 2007**

Case Number: T 0710/02 - 3.2.7

Application Number: 92 910 199.6

Publication Number: 0 585 289

IPC: B65G 7/00

Language of the proceedings: EN

Title of invention:

Method for removing or installing rolls in a paper machine or the like

Patentee:

EWM Technology Ltd Oy

Opponent:

Metso Paper, Inc.

Headword:

-

Relevant legal provisions:

EPC Art. 108, 110(1), 113(1)

EPC R. 1(3)

Keyword:

"Admissibility of the appeal (yes)"
"Breach of the right to be heard (no)"
"Appeal dismissed as unfounded"

Decisions cited:

G 0009/91

Catchword:

-



Case Number: T 0710/02 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 25 May 2007

Appellant: EWM Technology Ltd Oy
(Proprietor of the patent) Vasarakuja 11
SF-67100 Kokkola (FI)

Respondent: Metso Paper, Inc.
(Opponent) Fabianinkatu 9A
SF-00130 Helsinki (FI)

Representative: Lorenz, Werner, Dipl.-Ing.
Lorenz & Kollegen
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 13 May 2002
revoking European patent No. 0 585 289 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
C. Holtz
P. O'Reilly
E. Lachacinski

Summary of Facts and Submissions

- I. The appellant (patentee) lodged an appeal against the decision of the Opposition Division dated 13 May 2002 revoking the European patent No. 0 585 289.
- II. The opposition was filed against the patent as a whole based on Article 100(a) EPC on the ground of lack of novelty (Article 54 EPC) and lack of inventive step (Article 56 EPC).
- III. The patentee's representative filed by fax on 10 July 2002 (received at the EPO at 13.24h) a notice of appeal, requesting the cancellation of the decision of the Opposition Division and indicating at the same time that the grounds of appeal would be filed with the confirmation.
- IV. At 14.31h also on 10 July 2002 a fax from the inventor, Mr Ossi Laakko, was received, entitled "Counterargument and demonstrating focusing against the decision of EPO 13.05.2002".
- V. On 11 July 2002 a further fax from the inventor, in Finnish, was received.
- VI. On 12 July 2002 a confirmation copy of the faxed notice of appeal, signed by the patentee's representative, was filed, which stated: "We enclose the grounds of appeal...". Attached to said confirmation letter was a copy of the submission filed by fax on 10 July 2002 by the inventor (the "Counterargument and demonstrating focusing against the decision of EPO 13.05.2002"), and an annex entitled "Destruction process of patent". It

further included 15 enclosures, some of which were in the Finnish language. With the last sentence on the "Counterargument and demonstrating focusing against the decision of EPO 13.05.2002" a final decision was requested.

Of these enclosures, only the following are referred to in the submissions of the appellant:

Enclosure 4: a declaration of Mr Erik Furn referring to the use of a cylinder exchange device for a paper machine line in 1994;

Enclosure 5a: Documents referring to "Easy-way moving system" dated 2.3.94, 10.3.94, 18.4.94 and 19.4.94;

Enclosure 5b: Documents referring to a request for an offer for a guidance roll for Valmet paper machines dated 18.10.94 and 01.11.1994;

Enclosure 7: Documents referring to security regulations, a Kaipola PM6 machine, a Kaipola PK6 machine and an Anjala PK3 machine all at Valmet paper machinery, bearing dates of 14.9.94 and 4.11.91;

Enclosure 8: pages 1 and 2 are photocopies of different photographs filed during the opposition procedure having handwritten comments; pages 3 and 4 are photographs and drawings of appellant's devices;

Enclosure 10: Extraction of product news of Valmet paper machines, drawings dated 1.11.1994 and 19.8.1997, copies of photos entitled "Pirate of Valmet", "Pirate-evidence", dated 30.1.1996 and a photocopy of the photographs No. 16, 17 and 20 filed during the opposition procedure;

Enclosure 14: Brochure about the appellant's products and services, mentioning the start of EWM technology in 1991;

Enclosure 15: Brochure about the appellant's US-Patent US 5 554 263 A, with date 10 September 1996.

On 13 July 2002 confirmation of the inventor's fax of 10 July 2002 was received, accompanied by three letters in Finnish and the annex "Destruction process of patent" referred to above.

- VII. With its letter dated 2 December 2002 the respondent (opponent) requested the dismissal of the appeal as inadmissible and not well founded.

On 14 January 2003 a letter of the inventor was received with a number of annexes, mainly in Finnish, directed to a prior use of a paper machine named PM6 in Kaipola, Finland.

On 30 May 2003 a further letter, dated 14 May 2003, from the inventor was received together with additional documents, partly in Finnish. Reference was specifically made to enclosures 4, 5, 8, 10, 14 and 15.

- VIII. With its communication dated 27 June 2003 the Board informed the parties that according to its provisional opinion the appeal was formally admissible, that it had to be clarified who represents the appellant and that for documents filed in Finnish an official translation into English should be filed in case the appellant wanted these documents to be taken into consideration by the Board.

An extract of the Finnish Trade Register in Finnish and a certification of a Finnish notary in English were filed with letter of 14 July 2003, by the appellant

company, together with a termination of authorisation of the professional representative who had filed the notice of appeal of 10 July 2002.

- IX. With letter dated 18 August 2003 that representative stated that he withdrew his appointment as representative, enclosing the above-mentioned termination of the authorisation and also the above-mentioned extract of the Finnish Trade Register.

At no stage in the appeal proceedings were oral proceedings requested on behalf of, or by the appellant.

- X. With letter dated 1 October 2003 the respondent asked for translations of the documents filed by the appellant in Finnish into one of the official languages of the EPO and requested further to be allowed to argue against any new arguments of the appellant and for the issue of an intermediate communication of the Board, if the Board were prepared to make a decision in this case.

- XI. The appellant stated the following in the attachment to the confirmation letter of the appeal of 12 July 2002, entitled "Counterargument and demonstrating focusing against the decision of EPO 13.05.2002":

"Facts and submissions on 13.05.2002

Item 6: All the evidence of opponent has been testified as pirates namely falsified wrong ones completely.

Regarding the US Patents D1, D2, D3 we refer the content of US Patent nr. 5,554,263 Sept. 10 1996

especially Background of the Specification. (See. *Encl 15.*)

It has also been testified tha [*sic*] Mr Hummelen was not able to know before 1991 nothing about Easy-way technology (EWM Technology Ltd.)

The witness has not been able to give any evidence for his claim. Why especially inventor Mr Ossi Laakko did not get noticed from the new witness Mr Hummelen with his given evidence and claim before EPO has made it's decision?

Of course, later on it would be possible to get notice about new technology (Easy-way) especially from Mr Petri Kuusela as well other groups of Metso/Valmet.

Minutes of the oral proceedings held in public

30.01.2002

Item 6: a) "What" was the prior use, namely a method as claim in amended claim?

Answer: We refer now enclosed enclosure 7 presentation

b) "When" was disclosed, namely well before the priority date?

Answer: At least since 1994 or even perhaps already 1991. (See *enclosures 4, 5a + b, 14*)

c) "Where W it had been disclosed?

Answer: Not at PARENCO. In Finland latest through ENSO and VALMET asking offers from Kokkolan Laatuteräs Ky and given instructions to ENSO and VALMET. (See enclosure 4, 5a + b.)

d) "Why" it could be considered as having been disclosed to the public, namely because "a lot of people" including VALMET staff had seen it?

Answer: The Easy-way technology was not at all public one, because it was protected through patent application in Finland since 1991. (See enclosure 14.)

Item 9: "the opponent argued that the patentee in the light of the negative outcome of the proceedings before Finnish board of appeals should have abstained from oral proceedings before the EPO. He submitted moreover, that the fact that the patentee does not have a valid patent "anywhere" indicates that the proceedings before the EPO are superfluous".

Answer/Comments: What an appropriate underestimation and outright lie to EPO persons. Surely the opponent knows that we as patent owner have patent as well in the US (5,554,263) and Canada, Brazil, Spain and Italy.

We do know that opponent division namely VALMET/METSO has been broken our patent rights and received

remarkable economical values and we, the patent owner nothing. Same concerns also in Finland.

The chairman of EPO remarked that the Finnish decision was based on the different state of art, viz. a paper machine at the Kaipola mill.

Comments of this, which in fact, we have testified that all claims according the contents of these claims are impossible ones to fulfil in practise. See the chronology and other enclosures, which even specify the whole matter.

We kindly ask you to specify our patent application and take out claims that have nothing to do with our patent as listed.

We do hope, that you now understand the whole case. We are waiting for your final decision."

XII. The respondent argued as follows:

The appeal is inadmissible and not well founded for the following reasons:

Neither in the notice of appeal nor in the grounds of appeal does the appellant give any factual or legal reasons as to why the decision is alleged to be incorrect, thereby failing to state the legal or factual reasons why the decision should be set aside. The appeal is therefore inadmissible, (see e.g. T 220/83, T 1/88, T 145/88, T 250/89, T 102/91, T 493/95, T 83/97 and T 500/97).

Furthermore, the document attached to the confirmation copy of the notice of appeal and which is meant to function as grounds of appeal is drafted by the inventor, who is not the appellant.

In the Oral Proceedings before the Opposition Division the witnesses have given proof of the fact that the features of the patent in suit have already been used in 1981 in a paper machine of Parenco. The statements given by the appellant are not suitable to question these facts. Therefore, the appeal is not well founded either.

Reasons for the Decision

1.1 Admissibility of the Appeal

A notice of appeal filed in the name of the patentee and signed by the professional representative of the patentee having acted in the opposition proceedings together with EPO form 1010 for payment of the appeal fee, were submitted on 10 July 2002 by fax. On 12 July 2002 a confirmation copy of the notice of appeal signed by that representative was filed, which stated: "We enclose the grounds of appeal...". Two pages containing arguments clearly relating to the credibility of the witnesses heard by the Opposition Division were attached to said confirmation letter (see section XI above). The Board considers that these arguments constitute the grounds of appeal against the impugned decision. They were filed on 12 July 2002, i.e. in time under Article 108, third sentence, EPC.

As the letter accompanying these grounds of appeal holds the signature of the appointed representative, they have been validly filed for the appellant. The fact that the same arguments have also been filed on 10 July 2002 by fax signed by the inventor does not influence the validity of the grounds of appeal as filed by the appointed professional representative, during the time he was still the representative.

The appellant by putting into question the credibility of the witnesses in the grounds of appeal gives reasons, which combined with the statement in the accompanying letter that the decision should be cancelled, can be seen as reasons for setting aside the impugned decision.

The case law cited by the respondent relating to a lack of such reasons is not relevant because of these circumstances.

For the above mentioned reasons the Board finds that the appeal is admissible.

1.2 Procedural matters

- 1.2.1 Since on the one hand the appointed professional representative with his letter dated 18 August 2003 withdrew his appointment as being the appellant's representative, asking at the same time that the EPO corresponds directly with the appellant, and on the other hand the inventor filed on 14 July 2003 an extract of the Finnish Trade Register and a certification of a Finnish public notary as evidence that by being a member of the appellant's board he is authorized to sign for the appellant, the Board

concludes that the appellant is now represented by the inventor.

- 1.2.2 The Board fails to understand the purpose of the question in the second sentence of the fourth paragraph of the "Facts and submissions on 13.05.2002" of the grounds of appeal, stating "Why especially inventor Mr Ossi Laakko did not get noticed from the new witness Mr Hummelen with his given evidence and claim before EPO has made it's decision?".

According to the opposition file Mr Hummelen was offered as witness by the opponent with letter dated 15 November 2001, and the appellant was informed via his representative with the communication of the Opposition Division dated 7 December 2001 that Mr Hummelen was to be heard as a witness during the oral proceedings on 30 January 2002. The appellant's representative commented under point 2 of his letter dated 19 December 2001 on the written statement made by Mr Hummelen. The appellant's representative was present at the oral proceedings in question during which the witnesses Hummelen and Kuusela were heard (see the minutes, Form 2309.1), whereby he asked questions to both witnesses (see the minutes of the hearing of witnesses) and he presented his comments on the hearing of the witnesses (see the minutes, point 6).

From the above mentioned facts the Board can only conclude that the appellant has had sufficient opportunity to respond to what was stated by the witness Mr Hummelen and that therefore the requirements of Article 113(1) EPC are fulfilled.

To which extent the inventor or the appellant company was informed about the hearing of the witness Mr Hummelen is an internal matter between the appellant and its appointed representative, which has no bearing on the present decision and does not therefore need to be considered by the Board.

1.3 Grounds of Appeal

1.3.1 Claim 1 forming the basis for the decision under appeal reads as follows:

"A method for removing and installing rolls (2) in a paper machine or the like substantially in the direction of the longitudinal axis of the rolls, in which method

- an auxiliary displacing means (3) is supported to a substantially horizontal support structure (1) of the paper machine or the like above the roll (2) to be displaced, the auxiliary displacing means being mounted to move along the support structure;

- one end of the roll (2) to be displaced is fixed immovably to the auxiliary displacing means (3) so as to be suspended from it, and the other end of the roll to be displaced is supported by a displacing device;

and

- the roll (2) to be displaced is moved by the displacing device substantially in the direction of the longitudinal axis of the roll to be displaced so that the auxiliary displacing means (3) fixed to one end of the roll to be displaced moves along the support structure (1) while the roll to be displaced moves with it, characterized in that another roll (1) of the paper

machine or the hike positioned above the roll (2) to be displaced is used as the support structure."

- 1.3.2 As stated under point 3 of the reasons for the decision under appeal the Opposition Division found that the hearing of the witnesses (Mr Hummelen and Mr Kuusela) has proven that a method **having all the features of the method according to this claim - except that blow boxes or doctor blades are installed in the paper machine instead of rolls** - was made available to the public at Parengo before the priority date of the patent in suit.

As testified by the witnesses this method was developed and used by Parengo (see minutes of the hearing of witnesses, pages 5, 7 and 8). On no occasion during the opposition proceedings was it established that the "Easy-way Technology" as sold by the appellant, or the paper machine Kaipola PM6 (PK6 in Finnish) had been the subject of a public use prior to the priority date of the patent in suit.

- 1.3.3 The appellant's statement in the grounds of appeal that "All evidence of opponent has been testified as pirates namely falsified wrong ones completely" is an allegation which cannot be accepted by the Board, since no supporting evidence has been presented by the appellant.
- 1.3.4 In the grounds of appeal the appellant argues that "It has also been testified that Mr Hummelen was not able to know before 1991 nothing about Easy-way technology (EWM Technology Ltd.)".

This statement is probably correct, since Mr Hummelen neither mentioned the name Easy-way nor described its technology. What Mr Hummelen testified to was that a specific method for installing doctor blades was developed and publicly used at Parengo before the priority date of the patent in suit. It was the Opposition Division which made the connection with the features of the method according to claim 1 of the patent in suit.

This statement of the appellant cannot raise doubts about the method as seen by the witness being used at Parengo before the priority date of the patent in suit. Whether or not Easy-way technology was involved is of no impact.

- 1.3.5 In the first sentence of the fourth paragraph of the chapter "Facts and submissions on 13.05.2002" of the grounds of appeal the appellant states that "The witness has not been able to give any evidence for his claim".

The Board cannot follow the appellant's argumentation, since the hearing of the witness itself is the evidence for the prior use at Parengo. Further, as can be seen from the minutes of the witness hearing, the witness did produce additional evidence regarding what was used at Parengo (see minutes, pages 2 and 3).

Finally, the appellant criticizes the fact that no further evidence was presented by the witness. However, it did not supply evidence for a claim that the prior use at Parengo did not take place as testified. The Board therefore sees no reason to deviate from the

Opposition Division's conclusion regarding the public prior use of the method as applied at Parenco.

- 1.3.6 In the fifth paragraph of the chapter "Facts and submissions on 13.05.2002" of the grounds of appeal the appellant argues that Mr Kuusela could only have seen an Easy-way technology, i.e. a method according to claim 1 of the patent in suit, after 1991, i.e. after the priority date.

As it was also stated under point 1.3.4 above with respect to the testimony of Mr Hummelen, Mr Kuusela testified only that a specific method for installing blow boxes was used at Parenco before the priority date of the patent in suit, he did not testify that the Easy-way technology had been the subject of a prior use.

Therefore, also this statement of the appellant cannot cast doubt on the method as seen by Mr Kuusela being used at Parenco before the priority date of the patent in suit.

- 1.3.7 In the following only those enclosures referred to by the appellant in its grounds of appeal and in its letter dated 14 May 2003 will be examined by the Board. The enclosures to which no reference has been made and in particular all parts of the documents in a non-official language, for which no translation has been filed despite the Board's invitation to do so (Rule 1(3) EPC) are not investigated by the Board in these opposition appeal proceedings (see G 9/91, point 18 of the reasons, OJ EPO 1993, 408). In the above mentioned reasons of G 9/91 it is stated that the purpose of the *inter partes* appeal procedure is mainly to give the

losing party the possibility of challenging the decision of the Opposition Division on its merits and in contrast to the merely administrative character of the opposition procedure, the appeal procedure is to be considered as a judicial procedure, such procedure being by its very nature less investigative than an administrative procedure.

- 1.3.8 Under point a) of the section entitled "Minutes of the oral proceedings held in public 30.01.2002" of the grounds of appeal the appellant defines "what" was a prior use, by referring to enclosure 7 of the grounds of appeal, which refers to different Valmet-apparatuses and to a drawing made by the appellant. A date of 14 September 1994 is mentioned.

However, no reference to the prior use which took place according to the witnesses at Parengo can be found in enclosure 7, nor does the appellant establish that what is shown in the drawings is the only arrangement which could have been installed at Parengo (but then only as late as 1994).

- 1.3.9 Under point b) of the same section the appellant defines "when" a prior use took place by mentioning the years 1994 and 1991 and referring to the enclosures 4, 5a+b and 14 of the grounds of appeal.

Enclosure 4 is a declaration which mentions the year 1994 for implementing a paper cylinder exchange device, but bears no reference to the prior use at Parengo as testified.

Enclosures 5a and 5b relate to devices of the appellant delivered to Valmet or Enso and bear the dates of 2.3.94, 10.3.94, 18.4.94, 19.4.94 and 18.10.94. The only reference to the prior use at Parenco can be found on page 4 of enclosure 5a where the appellant states that the devices described by Mr Hummelen in the oral proceedings as being used at Parenco "have nothing to do with patented devices of us, in question, only for their own purpose is done and belong under the criminal law, etc.". At most, this establishes what Valmet or Enso, or the appellant, installed in 1994, but not what took place at Parenco, in 1981 and 1982 as testified by the witness Hummelen, or in 1989 as testified by the witness Kuusela. In addition it appears to allege that what was testified as having been installed at Parenco was not a truthful account of what actually had been taking place. However, for that allegation no supporting evidence has been filed, so that it is not further considered by the Board.

Enclosure 14 is a brochure about the appellant's products and services without any reference to the prior use according to the witnesses at Parenco. The same applies to enclosure 15.

In all, these enclosures can at most establish that the appellant started delivering its Easy-way technology, which is similar to the one claimed in the patent in suit, only after the priority date. It cannot however, establish that what the witnesses testified as having taken place at Parenco did not take place. The enclosures cannot therefore raise any doubts about these prior uses at Parenco before the priority date of the patent in suit.

1.3.10 Under point c) of the section entitled "Minutes of the oral proceedings held in public 30.01.2002" of the grounds of appeal the appellant argues that public uses took place outside of Parenco and refers to the above mentioned enclosures 4, 5a and 5b.

Again, the fact that other public uses took place, in 1994, in places other than at Parenco is no proof that what was testified by the witnesses did not take place at Parenco before the priority date of the patent in suit.

1.3.11 Also the arguments of the appellant under point d) of the section entitled "Minutes of the oral proceedings held in public 30.01.2002" of the grounds of appeal are directed only to the appellant's Finnish patent, not to the present patent at issue, and does not address the issue of the prior use at Parenco. Thus it cannot cast doubt on this prior use.

1.3.12 The cover page of enclosure 8 of the grounds of appeal is a photocopy of a photograph filed as Annex A during the opposition procedure disclosing handwritten comments about the functionality and the structural features of a wire rope shown in said photograph. Since the comments in enclosure 8 are directed only to the functionality and the structural features of a wire rope and not to the method testified to form part of the public prior use at Parenco, these comments cannot put in question the testimony of the witnesses.

1.3.13 Enclosure 10, referred to in the appellant's letter of 14 May 2003, as the enclosures 5a and 5b referred to in

point 1.3.8 above, relates to the same distinction between what took place at Parengo before the priority date of the patent in suit and what was delivered by the appellant to Valmet paper machines after that date. As with the enclosures 5a and 5b, it cannot throw doubt upon what was testified by the witnesses regarding the Parengo prior use.

- 1.3.14 For the above mentioned reasons, the Board follows the argument of the respondent that the arguments given by the appellant in its grounds of appeal and its further submissions are not suitable to question the public prior use at Parengo as testified by the witnesses which was found by the Opposition Division as being sufficiently proven.

The appeal, only being based on questioning the validity of the witnesses' statements, is therefore unfounded and has to be dismissed.

Since appellant did not request oral proceedings, this decision could be arrived at taking into account only of the written submissions, particularly noting the indication of the appellant at the end of the appeal grounds, that it awaited a final decision.

- 1.4 In view of the above reasons in favour of the respondent's request for dismissal of the appeal, its request to be allowed to file additional argumentation needs no further consideration.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders