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D E C I S I O N
of 6 February 2006

Case Number: T 0549/03 - 3.2.7

Application Number: 93401463.0

Publication Number: 0574307

IPC: B65G 1/04

Language of the proceedings: EN

Title of invention:
Bar-storage apparatus

Applicant:
AMADA COMPANY, LIMITED

Opponent:
KEURO Besitz GmbH & Co EDV Dienstleistungs KG

Headword:

-

Relevant legal provisions:
EPC Art. 54, 56, 123(2), 123(3)
EPC R. 57a

Keyword:
"Inventive step (yes) "

Decisions cited:

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Catchword:

-



Case Number: T 0549/03 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 6 February 2006

Appellant: KEURO Besitz GmbH & Co EDV Dienstleistungs KG
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Respondent: AMADA COMPANY, LIMITED
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Representative: Dronne, Guy
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
12 March 2003 concerning maintenance of
European patent No. 0574307 in amended form.

Composition of the Board:

Chairman: H. Meinders
Members: H. E. Felgenhauer
C. Holtz

Summary of Facts and Submissions

- I. The appellant (opponent) filed an appeal against the interlocutory decision of the opposition division maintaining the European patent No. 0 574 307 in amended form.

Opposition was filed against the patent as a whole based on the ground of opposition according to Article 100(a) EPC (lack of inventive step).

The opposition division considered *inter alia* the following prior art documents, also referred to in the grounds of appeal:

D3: US-A-3 895 723

D4: WO-A-84/00739

II. Requests

- (i) The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- (ii) The respondent (patentee) requested that the decision under appeal be set aside and the patent be maintained with amended claims 1 and 13 filed with letter dated 1 August 2005.

III. Amended claim 1 reads as follows:

" A bar storage apparatus comprising:

- a shelf frame (19) provided with a plurality of pallet accommodating shelves (17) each for movably accommodating a pallet (15) on which a plurality of bars (B) are mounted;
- an elevator device (23) disposed on one side of said shelf frame (19) so as to be movable up and down and provided with a traverser (21) for moving each pallet (15) into and from each of the pallet accommodating shelves (17), the pallet (15) mounted on said elevator device (23) being moved to a predetermined position;
- a bar supplying device (25) disposed at said predetermined position for supplying a bar (B), mounted on the pallet (15) moved from the pallet accommodating shelf (17) and located at the predetermined position by said elevator device (23), to a bar processing machine (3), the bar supplying device having means (81, 95, 121, 153) for lifting the bar from the pallet (15) to a lifted position;

characterised in that said means (81, 95, 121, 153) for lifting the bar can selectively lift any single predetermined bar among said plurality of bars mounted on a pallet and that said bar supplying device (25) is provided with a plurality of rollers (87, 111, 145) for supporting the bar (B) in the lifted position and further for feeding the bar (B) in a longitudinal direction of the bar."

Amended claim 13 reads as follows:

" A method for loading a bar from a storage apparatus (1), as claimed in any preceding claim, to a bar processing machine (3), the method comprising the steps of:

- loading bars (B) into the pallets (15);
- moving a pallet (15) housing bars (B) from a pallet accommodating shelf (17) to the predetermined position by using the elevator device (23);
- lifting any selected bar (B) from the pallet (15) to the lifted position; and
- feeding the selected bar (B) in a longitudinal direction of the bar from the lifted position by driving the rollers (87)."

IV. With letter dated 27 April 2004 the appellant, referring to amended claims 1 and 13 filed with the reply of the respondent dated 27 November 2003 expressed its opinion that in case the Board intends to maintain a patent on the basis of these amended independent claims, the auxiliary request for oral proceedings is withdrawn.

With letter dated 26 April 2004 the respondent expressed its opinion that in case the Board intends to maintain a patent on the basis of the amended independent claims 1 and 13, the auxiliary request for oral proceedings is withdrawn.

V. The arguments of the appellant may be summarised as follows:

- (i) Claims 1 and 13 underlying the decision under appeal comprise the features "said means (81, 95, 121, 153) for lifting the bar can selectively lift a single predetermined bar among said plurality of bars" and "lifting a selected bar (B) on the pallet (15) to the lifted position", respectively.
- (ii) Claim 1 furthermore comprises the feature according to which means are provided "for lifting the bar relative to the pallet (15) to a lifted position".
- (iii) The opposition division erroneously interpreted these features too narrowly in its examination of inventive step. Based on an appropriate interpretation of these features the subject-matter of claims 1 and 13 is not novel with respect to document D4 and it also does not involve an inventive step considering document D4 as closest prior art in combination with document D3.

VI. The arguments of the respondent may be summarised as follows:

- (i) Within claim 1 the feature according to which the bar supplying device has "means (81, 95, 121, 153) for lifting the bar relative to the pallet (15) to a lifted position" has been amended defining that

this device has "means (81, 95, 121, 153) for lifting the bar from the pallet (15) to a lifted position". Furthermore the feature according to which said means for lifting the bar can selectively lift "a single predetermined bar among said plurality of bars" has been amended defining that "any single predetermined bar among said plurality of bars" can be lifted. Within claim 13 correspondingly the method step "lifting a selected bar (B) on the pallet (15) to the lifted position" has been amended to "lifting any selected bar (B) from the pallet (15) to the lifted position".

- (ii) These amendments lead to the apparatus and the method according to claims 1 and 13 being further distinguished from the apparatus and method according to the prior art documents. Consequently the subject-matter of claims 1 and 13 are novel and involve an inventive step with respect to a combined consideration of documents D4 and D3.

Reasons for the decision

1. *Amended claims 1 and 13*

Claim 1 has been amended in that the feature according to which the bar supplying device has "means (81, 95, 121, 153) for lifting the bar **relative to the pallet (15)** to a lifted position" has been replaced by the feature defining that the bar supplying device has

"means (81, 95, 121, 153) for lifting the bar **from the pallet (15)** to a lifted position". Furthermore the feature according to which said means for lifting the bar can selectively lift "**a single predetermined bar** among said plurality of bars" has been replaced by a feature defining that "**any single predetermined bar** among said plurality of bars" can be lifted.

These features are disclosed in the application as filed (cf. page 13, lines 10 - 16; page 14, lines 8 - 13; figures 2, 4 and 5) and further limit the subject-matter of claim 1, such that the requirements of Article 123(2) and (3) EPC are fulfilled.

Since these amendments further distinguish the apparatus according to claim 1 from known apparatuses in reply to a ground of opposition (lack of novelty; lack of inventive step) the amendments likewise satisfy the requirement of Rule 57a EPC.

The above applies correspondingly with respect to claim 13, in which the method step "lifting **a selected bar (B) on the pallet (15)** to the lifted position" has been amended to "lifting **any selected bar (B) from the pallet (15)** to the lifted position".

2. *Novelty*

2.1 Amended claim 1 defines a bar storage apparatus comprising a bar supplying device which

(a) has means for lifting the bar from the pallet to a lifted position, and which

(b) can selectively lift any single predetermined bar among said plurality of bars mounted on a pallet.

The bar storage apparatus according to claim 1 thus enables any single bar placed on a pallet which has been moved from the pallet accommodating shelf and located at a predetermined position, to be lifted from this pallet.

2.2 In a corresponding manner claim 13 defines a method for loading a bar from a storage apparatus comprising the step of

(c) lifting any selected bar from the pallet to the lifted position.

2.3 By the above features the subject-matter of claims 1 and 13 is novel over document D4 (Article 54 EPC). The Board has ascertained that none of the other documents discloses a bar storage apparatus and a method of loading a bar from a storage apparatus comprising all features of claims 1 and 13, respectively.

3. *Inventive step*

3.1 It is undisputed that document D4 constitutes the closest prior art. This document discloses a bar storage apparatus with a bar supplying device having means for lifting a single bar or a number of bars from a pallet, wherein the number of bars to be removed can be varied (page 9, line 25 - page 6, line 12).

The apparatus according to claim 1 differs from the known apparatus in that according to feature (b) (cf. point 2.1 above) **any** single bar among the plurality of bars mounted on a pallet can be selectively lifted.

The same applies to the method according to claim 13, in respect of feature (c) (cf. point 2.2 above).

3.2 Problem underlying the invention

With respect to the bar storage apparatus of document D4 the technical problem underlying the patent in suit thus consists in making this bar storage apparatus better capable of storing a great number of bars of various kinds, within which any required bar can be selected from a great number of bars and supplied to a bar processing machine (patent in suit, column 2, lines 6 - 11).

3.3 Solution

According to claim 1 this problem is solved with a bar storage apparatus comprising means for lifting the bar which is capable of selectively lifting any single predetermined bar as defined by features (a) and (b) (*supra*).

A corresponding problem is solved by the method according to claim 13, in that as defined by feature (c) (*supra*) any selected bar can be lifted from the pallet.

3.4 Obviousness

Document D4 does not give any indication according to which any single predetermined bar can be lifted from the pallet.

The appellant has argued that considering document D3 in combination with document D4 as closest prior art leads in an obvious manner to the subject-matter of claims 1 and 13. This argument however has been brought forward with respect to claims 1 and 13 underlying the decision under appeal and is based on an understanding of the manner in which a bar is lifted with respect to the pallet, which no longer applies with respect to the amended claims 1 and 13 as filed with letter dated 27 November 2003. According to this understanding lifting of the bar **relative to the pallet** could be the result of the pallet being lowered relative to a means for lifting the bar, as it is known from document D3 for an apparatus for automatically feeding bars to a processing machine (column 3, lines 56 - 68).

Due to the amended features (a) and (c) the relative motion between the bar to be lifted and its pallet formerly referred to is limited to a motion by which the bar is lifted from the pallet.

3.5 The appellant did not argue on document D3 or any other document with respect to amended claims 1 and 13.

The Board is satisfied that even if the person skilled in the art would have considered document D3, despite the fact that this document, contrary to the subject-matter of claims 1 and 13 and document D4, does not

relate to a bar storage apparatus comprising a shelf for pallets but an apparatus for automatically feeding bars to a processing machine, in combination with document D4 in an attempt to solve the problem underlying the patent in suit, it does not give an indication leading to the subject-matter of claims 1 and 13. The reason is that the means for lifting the bar relative to the pallet as disclosed in D3 are of a structure which only enables the pallet to be lowered with respect to a bar supplying device, not for lifting of a bar from the pallet. There is also no indication in D3 leading to such a motion.

- 3.6 The subject-matter of independent claims 1 and 13 defining that any single predetermined bar can be lifted from the pallet according to features (a), (b) and (c) - and with them the subject-matter of dependent claims 2 to 12 and 14 - thus involve an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent as amended in the following version:

claims 1 and 13 filed with letter dated 1 August 2005,
claims 2 to 12 and 14 of the patent specification

description:

columns 5 to 10 of the patent specification,
columns 1 to 4 and 11 to 14 filed with letter dated
5 November 2002

drawings:

figures 1 to 9 and 11, 12 of the patent specification.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders