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DECISION
of 29 November 2004

Case Number: T 1234/03 - 3.2.7

Application Number: 99119536.3

Publication Number: 0982242

IPC: B65G 17/00

Language of the proceedings: EN

Title of invention:
Pallet conveyor apparatus

Applicant:
AXIS S.p.A.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56, 109, 123(2)
EPC R. 67

Keyword:
"Interlocutory revision - substantial procedural violation -
reimbursement of appeal fee (no)"
"Extension of subject-matter (no)"
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 1234/03 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 29 November 2004

Appellant: AXIS S.p.A.
I-50028 Tavarnelle Val di Pesa (Firenze) (IT)

Representative: Lotti, Giorgio
c/o Ing. Barzanò & Zanardo Milano S.p.A.
Corso Vittorio Emanuele II, 61
I-10128 Torino (IT)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 12 June 2003
refusing European application No. 99119536.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. Burkhart
Members: H. E. Hahn
C. Holtz

Summary of Facts and Submissions

I. The applicant lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 99 119 536.3.

The Examining Division held that that the subject-matter of independent claim 16 as filed on 19 March 2003 being directed to a pallet lacked novelty with respect to the prior art document D1.

II. In its statement setting out the grounds of appeal filed per fax on 16 October 2003, the appellant requested that the decision be set aside and a patent be granted on the basis of an annexed amended set of claims 1 to 9.

III. On 13 November 2003 the Examining Division signed EPO Form "2701 06.01" and stated by crossing the corresponding boxes that the appeal was allowable and well-founded and that the decision under appeal was rectified under Article 109(1) EPC, and that no request for the reimbursement of the appeal fee had been filed, so that the EPO Form "2710" should be dispatched.

IV. On 10 December 2003 the formalities officer signed EPO Form "**2703** 10.98" on which the box "**no rectification ordered**" was crossed.

V. In a communication of 23 April 2004 the Board stated that the amended claims 1 to 9 were considered to meet the requirements of Article 123(2) EPC. Furthermore, the subject-matter of claim 1 was considered to be novel and inventive with respect to the closest prior

art document D1. Therefore, the Board intended to grant a patent on the basis of the claims 1 to 9, on condition that some unclarities (Article 84 EPC) were removed. The appellant was also invited to file an accordingly adapted description comprising a clear counterpart to the claims and wherein the closest prior art document D1 should be identified and briefly described.

VI. On 27 September 2004 the appellant filed with the letter of 24 September 2004 revised description pages 1 to 18 and a corrected set of claims 1 to 9 and requested grant of patent on the basis of these amended documents.

VII. The most relevant document of the prior art is considered to be:

D1 = CH-A-682 069

VIII. Independent claim 1 filed on 27 September 2004 reads as follows (amendments made in comparison to claim 1 of 19 March 2003 underlying the appealed decision are in bold):

"1. A pallet conveyor apparatus comprising:
a plurality of pallets (10, 40), each of said pallets comprising:

a platform having an upper surface (12, 12', 41) adapted to at least partially support an electric machine component (11,30), **being characterized by:**

each of said pallets having a **single** seat portion (13) having a substantially inverted "U" shape, said seat portion having a central surface (13') and two

opposing surfaces (13'',13'''), said opposing surfaces having a first height and being separated by a first distance; **and further comprising**

a **single** horizontal rail structure (15) having a length, an upper track (15'), and two side surfaces (15'', 15'''), said side surfaces having a second height and being separated by a second distance, wherein said first distance is larger than said second distance so that said rail structure can fit between said opposing surfaces, and wherein said first and second heights are sufficient to prevent a pallet from toppling sideways off said rail structure (15) **by engagement of said opposing surfaces (13'',13''') with said side surfaces (15'',15''')**;

a loop-shaped conveyor belt (14) having an inner belt surface and an outer belt surface, said inner belt surface being at least partially disposed on said upper track (15') of said rail structure and said outer belt surface being at least partially engaged by **said** pallet central surface (13'); and

a drive (80) for causing said conveyor belt (14) to move on said upper track (15') along said length."

Reasons for the Decision

1. *Decision of the Examining Division to rectify its decision*
- 1.1 The decision to refuse the application was taken on 12 June 2003 and received by the applicant on 18 June 2003 (cf. Form 2936). The notice of appeal dated 31 July 2003 and the appeal fee were received by the office on 5 August 2003, i.e. within the two month time

limit, and the statement of grounds of appeal on 16 October 2003.

The appeal is thus admissible and the three month time limit for any rectification of the impugned decision expired on 16 January 2004.

- 1.2 The set of claims 1 to 9 as filed on 16 October 2003 no longer comprised an independent claim directed to a pallet *per se* so that the amendments made by the appellant overcame the single ground for refusing the application.
- 1.3 EPO Form "2701" concerning said appeal was sent to the Examining Division by the formalities officer on 11 November 2003 as apparent from the stamp on the Form (cf. Form "2701"). On 13 November 2003 the Examining Division signed EPO Form "2701 06.01" and stated by crossing the corresponding boxes that the appeal was allowable and well-founded and that the decision under appeal was rectified under Article 109(1) EPC and that no request for the reimbursement of the appeal fee has been filed, so that EPO Form "2710" should be dispatched by the formalities officer.
- 1.4 However, on 10 December 2003 the formalities officer stated on EPO Form "**2703** 10.98" "Remittal: **no rectification ordered**". The file was then sent to Directorate General 3. Thereby the Examining Division no longer had the opportunity to rectify its decision as intended according to EPO Form "2701 06.01", nor was the appellant informed about this intention.

- 1.5 Since the appeal is against the decision of the Examining Division to refuse the application, only the members of that division were competent to rectify that decision. The formalities officer was not entitled to decide that no rectification had been ordered.
- 1.6 The action of the formalities officer represents a substantial procedural violation which resulted in a delay of the procedure.
- 1.7 According to Rule 67 EPC a reimbursement of the appeal fee shall be ordered where the Board deems an appeal to be allowable and if such reimbursement is equitable by reason of a substantial procedural violation. The appellant has not requested this and the Board considers that in the present case such reimbursement is not equitable, since the procedural violation committed by the formalities officer was not the reason for filing the appeal but occurred only after the appeal had been filed (see Case law of the Boards of Appeal of the European Patent Office, 4th edition, 2001, chapter VII.D.15.5).

However, the appellant also complained that the Examining Division proceeded to refuse the application without previously notifying it, in spite of the fact that the claims had been amended in order to overcome the objections raised. The Board does not see this as a substantive procedural violation, in view of the fact that some objections still remained after appeal (see the communication from the Board, point V above).

2. *Admissibility of amendments (Article 123(2) EPC)*

Apparatus claim 1 is based on claim 1 as originally filed but has been brought into the two-part form and has been restricted to the single rail embodiment as disclosed in the application as filed (see page 5, line 35 to page 6, line 2 and page 6, lines 6 to 25; and figures 1, 3 and 4). Thus claim 1 meets the requirement of Article 123(2) EPC.

The subject-matter of the dependent claims 2 to 9 is based on claims 2 to 5, 10, 13 to 14 and 17 as originally filed and therefore likewise meets the requirements of Article 123(2) EPC.

3. *Novelty (Article 54 EPC)*

3.1 The pallet and roll-container conveying apparatus according to document D1 does not disclose a single horizontal rail structure comprising a single track comprising a loop-shaped conveyor belt on the upper track thereof for transporting pallets having a single seat portion having a substantially inverted U-shape, which has a central surface and two opposing surfaces which engage with two opposing surfaces of said rail structure. All embodiments disclosed by document D1 reveal at least two U-shaped seat portions of the pallets engaging with two conveyor means (see D1, figures 1 to 4). Consequently, the subject-matter of claim 1 is novel with respect to document D1.

3.2 The other documents cited in the search report are less relevant than document D1.

3.3 The subject-matter of claim 1 is thus novel.

4. *Inventive step (Article 56 EPC)*

4.1 Closest prior art

The closest prior art document is represented by document D1. The subject-matter of claim 1 differs from the conveying apparatus according to document D1 by a single horizontal rail structure comprising a loop-shaped conveyor belt on the upper track thereof for transporting pallets having a single seat portion having a substantially inverted U-shape, which has a central surface and two opposing surfaces which engage with two opposing surfaces of said rail structure.

4.2 Problem to be solved

The objective problem to be solved according to the present application taken as a whole is considered to be the provision of a mechanically reliable conveyor apparatus that allows easy handling of individual pallets carrying electric machine components in a manufacturing line without negatively affecting transportation stability (cf. page 1, lines 3 to 8; page 2, line 28 to page 3, line 13).

4.3 Solution to the problem

The solution to this problem is the pallets conveyor apparatus as defined in claim 1. Due to the specific engagement of the specifically adapted single seat portion pallets and the single horizontal rail structure the pallets can be easily lifted off the rail

structure and transferred from one manufacturing line to another while preventing the pallet from toppling sideways off said rail structure.

Thus it is credible that the claimed measures provide an effective solution to the technical problem.

The Board considers that the solution according to claim 1 is not rendered obvious by the prior art cited in the Search Report and particularly not by document D1 which aims to solve a slightly different technical problem and which provides a totally different solution by revealing a conveying apparatus comprising at least two rail tracks for carrying pallets or roll-containers (see D1, column 1, lines 3 to 59; figures 1 to 4).

The other documents cited in the Search Report concern different conveying means for transporting pallets or objects and therefore cannot be combined with document D1 at all, let alone in an obvious manner.

5. The subject-matter of independent claim 1 thus involves an inventive step within the meaning of Article 56 EPC.

The same applies to the subject-matter of the dependent claims 2 to 9 which define further preferred embodiments of the apparatus according to claim 1.

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 grant a patent in the following version:

Description:

Pages 1 to 18 as filed with letter of 24 September 2004

Claims:

1 to 9 as filed with the letter of 24 September 2004

Drawings:

Sheets 1 to 9 as originally filed

The Registrar:

The Chairman:

G. Nachtigall

A. Burkhart