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Datasheet for the decision of 9 February 2007

Case Number: T 0663/04 - 3.2.05

Application Number: 99200082.8

Publication Number: 0920931

IPC: B21D 5/04

Language of the proceedings: EN

Title of invention:
Apparatus for bending a metal sheet

Patentee:
Liet, Cornelis Hendricus

Opponent:
Reinhardt Maschinenbau GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 84, 114(2)

Keyword:
"Clarity (no)"
"Requests submitted during oral proceedings, not admitted"

Decisions cited:
-

Catchword:
-

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Case Number: T 0663/04 - 3.2.05

D E C I S I O N
of the Technical Board of Appeal 3.2.05
of 9 February 2007

Appellant: (Patent Proprietor)
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Decision under appeal:
Decision of the Opposition Division of the European Patent Office posted 1 April 2004 revoking European patent No. 0920931 pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: W. Zellhuber
Members: W. Widmeier
K. Garnett

Summary of Facts and Submissions

I. The appellant (patent proprietor) lodged an appeal against the decision of the Opposition Division revoking European patent No. 0 920 931.

Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty, Article 54 EPC, and lack of inventive step, Article 56 EPC) and 100(c) EPC.

II. Oral proceedings were held before the Board of Appeal on 9 February 2007.

III. The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the documents filed on 8 January 2007, as follows:

(i) Main Request, consisting of claims 1 to 6 submitted as main request;

(ii) first auxiliary request, consisting of claim 1 submitted as first auxiliary request;

(iii) second auxiliary request, consisting of claim 1 submitted as second auxiliary request.

IV. The respondent (opponent) requested that the appeal be dismissed.

V. Claim 1 of the main request reads as follows:

"1. Apparatus for bending a metal sheet (1), comprising a frame (2), a stationary lower beam (3) with a lower clamp (4), a movable upper beam (5) with an upper clamp (6), the movable upper beam (5) being rotatably mounted

in the frame around an axis (11) by means of pivot plates (10), said clamps (4, 6) each having a clamping face for clamping a metal sheet in a working position, a lower bending beam (7) and an upper bending beam (8) for bending a clamped metal sheet upwardly and downwardly, respectively, said bending beams (7, 8) each at both sides being supported rotatably around a corresponding axis in a support plate (9), said support plates being movably mounted in the frame in such a manner that the lower or upper bending beam can be moved into a working position, in which its axis is substantially in the plane of the clamping face of the lower or upper clamp, respectively, and further comprising a device (12) for holding the metal sheet, said holding device being provided with a mainly C-shaped frame (13) with a slide (14) movable backwards and forwards between a front and a back position on a slide bed (15), said C-shaped frame having two legs (17, 18) with free ends and opposite ends interconnected by a web, the legs (17, 18) of said frame at their free end carrying a lower (19) and upper disc (20), respectively, adapted to engage a metal sheet in a working position, wherein in the front position of the slide (14) the free ends of the legs (17, 18) of the C-shaped frame (13) are located between the upper and lower beams (3, 5) and the lower and upper discs (19, 20) adjoin the clamps (4, 6), characterised in that the frame (2, the pivot plates (10), the support plates (9) and the C-shaped frame (13) are located at the same side of the rotation axis of the bending beams (7, 8), wherein in the front position of the slide (14) the legs (17, 18) of the C-shaped frame (13) project from the web of the C-shaped frame, extending along the

rotation axis (11) of the pivot plates (10) and between the upper and lower beams (3, 4) to said free ends."

Claim 1 of the first auxiliary request is supplemented with respect to claim 1 of the main request at the end of the claim by the feature "wherein the lower and upper clamps in the working position together extend as seen in cross-section along a V-shape, the top of which is directed towards the axis of the bending beam being in the working position".

Claim 1 of the second auxiliary request is supplemented with respect to claim 1 of the main request at the end of the claim by the feature "wherein the lower and upper clamps in the working position together extend as seen in cross-section along a V-shape, the clamping faces of the clamps (4, 6) being located in the top of the V-shape, which top is directed towards the axis of the bending beam being in the working position".

VI. The appellant argued essentially as follows:

The web of the C-shaped frame is that part of the frame which interconnects the two legs of the C-shaped frame. In Figure 1 of the patent in suit this is the vertical part of the C-shaped frame. The legs, including the rotatable leg, are part of the C-shaped frame. The expression "along the rotation axis" should be understood as meaning that the horizontal parts of the C-shaped frame pass transversely the rotation axis of the pivot plates. The definition of the position of the legs of the frame in the characterising portion of claim 1 of all requests, namely that the legs extend between the upper and lower beams to the free ends of

the legs, is an addition to the definition of the position of the legs defined in the preamble of the claim and specifies not only that the free ends of the legs are located between the upper and lower beams but also that a certain length of the legs extends between the upper and lower beams. The rotation axis of the bending beams is defined in the preamble of claim 1 of all requests so that the position of the frame, the pivot plates, the support plates and the C-shaped frame with respect to this axis as defined in the characterising portion is clear.

Thus, when "along the rotation axis" is interpreted as "passing transversely the rotation axis", all features objected to under Article 84 EPC are clear.

VII. The respondent argued essentially as follows:

The expression "web of the C-shaped frame" in claim 1 of all requests is not clear. The description of the patent in suit, which does not contain this expression, does not help the reader to understand the corresponding feature of the claim. The expression "along the rotation axis of the pivot plates" is misleading because the drawings of the patent in suit show that such an orientation of the legs is impossible. If "along" is interpreted as "transversely", another lack of clarity is created. The feature of claim 1 which defines the position of the frame, the pivot plates, the support plates and the C-shaped frame with respect to the rotation axis of the bending beams is not clear either. The preamble of the claim just mentions this axis, however, without defining where it is, and the drawings do not show this axis.

Thus, claim 1 of all requests lacks clarity.

Reasons for the Decision

1. *Procedural matter*

In a communication annexed to the summons for oral proceedings, the Board raised objections under Article 84 EPC. The Board expressed its opinion that a clear definition of the web of the C-shaped frame is missing and that the feature that the legs of the C-shaped frame project from the web of the C-shaped frame is not clear. The appellant reacted to this communication by submitting new sets of claims prior to oral proceedings. Thus, the appellant has had the opportunity to remove the objected deficiencies so that the appellant's right to be heard (Article 113(1) EPC) has been observed. When it became apparent during oral proceedings that the configuration of the web and the legs of the C-shaped frame was still not clear, the appellant submitted further sets of claims. These claims have thus been submitted after the expiry of the time limit of one month prior to the date of oral proceedings set in said communication, so that they must be considered late filed. Moreover, due to a new lack of clarity concerning the location of the horizontal parts of the C-shaped frame with respect to the rotation axis of the pivot plates (see below, point 2.4), these claims were prima facie not allowable. The Board therefore exercised its discretion provided for by Article 114(2) EPC to reject this late filed submission. The sets of claims submitted by the

appellant during oral proceedings were therefore not admitted into the proceedings.

2. *Clarity*

2.1 The following refers to claim 1 of all requests, i.e. claim 1 of the main request and of the first and second auxiliary requests.

2.2 Claim 1 specifies that the holding device of the bending apparatus is provided with a mainly C-shaped frame having two legs with free ends and opposite ends interconnected by a web and that said legs project from the web of the C-shaped frame. Whilst a person skilled in the art understands a C-shaped frame as a frame which has more or less the form of the letter "C", and may understand that the web of a C-shaped frame forms the vertical part of the "C" which connects the upper and lower horizontal parts of the "C", the skilled person will not associate the "legs" of the C-shaped frame of the bending apparatus referred to in claim 1 with the horizontal parts of the "C"-shaped frame. Firstly, this is not disclosed in and thus not supported by the description of the patent in suit. In particular, the term "web" does not appear in the description of the patent in suit in connection with the description of the C-shaped frame. Secondly, this does not match up with paragraph [0024] of the patent in suit where it is explained that "the upper leg 18 of the C-shaped frame 13 is connected rotatably to the remaining part of the frame 13 at 24' ". That point 24', however, is located at the far end of the upper horizontal part of the C-shaped frame 13 (cf. Figure 1 of the patent in suit). Thirdly, this is in conflict

with the wording of the claim itself which provides that the legs project from the web of the C-shaped frame. Furthermore, Figure 1 of the patent in suit, where reference number 13 denotes the C-shaped frame, does not indicate which part of the device might be the web, which parts might be the legs, which part forms the "remaining part" of the frame, and in particular what is meant by the "opposite ends" of the legs. It is therefore not possible for a person skilled in the art to determine which parts of the bending apparatus of claim 1 are the legs of the C-shaped frame and which part is the interconnecting web.

2.3 Consequently, the feature combination of claim 1, namely that the free ends of the legs of the C-shaped frame are located between the upper and lower beams and that the legs extend between the upper and lower beams to said free ends, is not clear either. Even if the appellant's explanation as to this feature combination is accepted, i.e. that a certain length rather than only the ends of the legs are located between the beams, it remains obscure how this length is to be determined and when a bending apparatus having a C-shaped frame is in accordance with claim 1 and when it is not.

2.4 Furthermore, claim 1 specifies that the legs of the C-shaped frame extend along the rotation axis of the pivot plates. "Along an axis" normally means "close to and substantially parallel to an axis". Figure 1 does not support this orientation of the parts called legs 17 and 18 of the C-shaped frame with respect to the rotation axis 11 (cf. Figure 2) of the pivot plates 10. Even if the expression "the legs extend along the rotation axis of the pivot plates" is to be interpreted

as "the horizontal parts of the C-shaped frame pass transversely the rotation axis of the pivot plates", as explained by the appellant, this feature remains unclear. It is still not clear whether the legs of the C-shaped frame intersect the axis of the pivot plates or whether the legs pass the axis at a distance therefrom.

2.5 In addition to and independent of the above mentioned lack of clarity, the feature that the frame, the pivot plates, the support plates and the C-shaped frame are located at the same side of the rotation axis of the bending beams, is unclear. Claim 1 only specifies the presence of a rotation axis of the bending beams ("said bending beams each at both sides being supported rotatably around a corresponding axis in a support plate"). Claim 1 does not specify, however, where, with respect to other parts of the bending apparatus, the support plate for this rotation axis is located, or where, with respect to this support plate, the bending beams are located. Consequently, it is not clear where the pivot plates, the support plates and the C-shaped frame are located. The description of the patent in suit does not contain any further information in that respect and the drawings do not show the rotation axis of the bending beams.

2.6 Thus, the subject-matter of claim 1 as a whole is not defined clearly, and not all features of claim 1 are supported by the description. Consequently, claim 1 does not meet the requirements of Article 84 EPC. As the features considered unclear by the Board are comprised in claim 1 of all the requests, none of these requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Meyfarth W. Zellhuber