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**Datasheet for the decision
of 13 January 2009**

Case Number: T 1476/05 - 3.5.02

Application Number: 98912354.2

Publication Number: 0970558

IPC: H02K 15/04

Language of the proceedings: EN

Title of invention:

Method and apparatus for forming a multi-lobed winding for the stator of an alternator

Patentee:

Atop S.p.A.

Opponent:

Statomat GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 56, 83

Relevant legal provisions (EPC 1973):

EPC Art. 60, 107

EPC R. 20(3), 90(1)(a)

Keyword:

"Parties to appeal - entitlement to appeal - adversely affected (yes)"

"Examination of appeals - admissible (yes)"

"Disclosure - sufficiency - (yes) after amendment"

"Inventive step - (yes) after amendment"

Decisions cited:

G 0009/91, T 0675/93, T 0656/98, T 0015/01

Catchword:

see points 1 and 2 of the reasons



Case Number: T 1476/05 - 3.5.02

DECISION
of the Technical Board of Appeal 3.5.02
of 13 January 2009

Appellant: Atop S.p.A.
(Patent Proprietor) Strada S. Appiano, 8/A
50021 Barberino Val d'Elsa (Firenze) (IT)

Representative: Notaro, Giancarlo
c/o Buzzi, Notaro & Antonielli d'Oulx
Via Maria Vittoria 18
10123 Torino (IT)

Appellant: Statomat GmbH
(Opponent) Max-Planck-Strasse 22 - 24
61184 Karben (DE)

Representative: Jochem, Bernd
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
07 October 2005 concerning maintenance of the
European patent No. 0970558 in amended form.

Composition of the Board:

Chairman: M. Ruggiu
Members: G. Flyng
E. Lachacinski

Summary of Facts and Submissions

- I. European patent no. 0 970 558 was granted to Pavesi S.r.l. based on a PCT application that was published under the number WO 98/25444.
- II. An opposition was filed by Statomat GmbH against the grant of the patent in the scope of claims 1 and 3 ("*im Umfang der Patentansprüche 1 und 3*"). Of the various documents and evidence cited during the opposition proceedings, that which according to the opponent remains pertinent to this decision is:

D2: EP 0604797 A2

- III. The opposition division issued an interlocutory decision that, account being taken of the amendments made by the patent proprietor during the opposition proceedings, the European patent no. 0 970 558 and the invention to which it relates were found to meet the requirements of the EPC. The decision was taken on the basis of an amended set of claims 1 to 7 filed during oral proceedings before the opposition division.
- IV. Two notices of appeal against the interlocutory decision were filed, one in the name of the opponent, Statomat GmbH, and the other "*on behalf of the Patent Proprietor*". The appeal on behalf of the proprietor was filed in a letter dated 5 December 2005 by the representative who had represented Pavesi S.r.l. in all first instance proceedings. The letter was referenced "*Applicant: PAVESI S.r.l.*".

- V. In a letter dated 21 December 2005 from the same representative of the proprietor a request was made for an assignment of the patent from Pavesi S.r.l. to Atop S.p.A. to be recorded. Evidence was enclosed of an assignment from Pavesi S.r.l. to Axis S.p.A. and a further assignment "*from Axis S.p.A. (now Axis S.r.l. in liquidation) to Atop S.p.A.*".
- VI. In a communication dated 20 January 2006 the transfer service of the EPO invited the proprietor to submit documents:
1. for the change from Axis S.p.A. to Axis S.r.l. and
 2. authorising Mr. Lombardi to sign as liquidator on behalf of Axis S.r.l.
- VII. In a response dated 6 February 2006, received 10 February 2006, the proprietor filed a copy of a certificate from the Chamber of Commerce of Florence and submitted that the document provided both the evidences requested by the above mentioned communication.
- VIII. The opponent filed grounds for appeal in a letter dated 6 February 2006.
- IX. The proprietor filed grounds for appeal in a letter dated 10 February 2006.
- X. In a letter dated 21 February 2006 the opponent noted having become aware that Pavesi S.r.l. had not existed for some time and that, if this was the case, it should be examined whether an appeal and supporting grounds could be validly filed in the name of Pavesi S.r.l..

XI. In a communication dated 1 March 2006 the transfer service of the EPO advised the parties that the entries pertaining to the proprietor had been amended to Atop S.p.A., that the registration of the changes had taken effect on 10 February 2006 and that the change would be recorded in the Register of European Patents.

XII. An exchange of letters took place, in which the parties responded to each other's appeals and addressed the issues surrounding the changes in proprietorship of the patent.

XIII. The board summoned the parties to oral proceedings. In an annex to the summons the board made observations on the relevant issues. The board indicated inter alia that a question to be discussed at the oral proceedings was whether the patent in suit disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art in the whole range encompassed by claims 1 and 3 as granted. As a particular example, the question arose whether the patent disclosed the invention sufficiently for the case that the multi-lobed coils were formed as described in document D2, which case appeared to be covered by the claims of the patent.

XIV. Oral proceedings were held before the board on 13 January 2009.

During the oral proceedings the proprietor withdrew earlier requests for maintenance of the patent as granted and requested finally that the appeal of the opponent be rejected as inadmissible and that the decision under appeal be set aside and the patent be

maintained in amended form on the basis of claims 1 to 7 filed in the oral proceedings and, more precisely, in the following version:

Description:

- Page 2 received during oral proceedings of 13 January 2009
- Pages 3 to 7 of the patent specification

Claims:

- Nos. 1 to 7 received during oral proceedings of 13 January 2009

Drawings:

- Pages 12 to 19 of the patent specification.

The opponent requested that the appeal of the proprietor be rejected as inadmissible and that the decision under appeal be set aside and claims 1 and 3 be rejected.

- XV. The independent claims 1 and 3 received during oral proceedings of 13 January 2009 read as follows (changes with respect to the claims as originally filed emphasised by the board):

"1. A method for forming a multi-lobed winding (C_1 , C_2) for the stator of an alternator, the winding comprising turns defining a star-shaped configuration, and having a plurality of radial lobes (L) alternated with hollows (V), characterized in that:
in a first stage a first multi-lobed coil (C_1) is formed, by winding a continuously fed wire (W) in a first direction, and
in a second stage a second multi-lobed coil (C_2) axially superimposed on the first coil (C_1) is formed, without

cutting the wire being fed, by winding the wire in the opposite direction, arranging the second coil (C_2) at a position angularly shifted relative to the first coil (C_1), so that the second coil (C_2) has its lobes at the same angular positions **as** the hollows of the first coil (C_1), the wire portion (W_i) connecting the two coils (C_1, C_2) being bent where the wire reverses its winding direction, so as to form a loop (E) following an annular path matching the profile of one lobe of one of the two coils for one part and the profile of a hollow of the other coil opposite to the lobe for another part, **and wherein each of said first and second multi-lobed coils (C_1, C_2) is formed by winding a wire (W) on radially movable forming elements (3) so as to form a polygonal coil (CP_1, CP_2), and, after the polygonal coils have been formed, the central portions of the sides of the polygonal coils (CP_1, CP_2) being pushed radially inwardly to confer the multi-lobed configuration to the coils."**

"3. An apparatus for forming a multi-lobed winding (C_1, C_2) for the stator of an alternator, the winding comprising turns defining a star-shaped configuration and having a plurality of radial lobes (L) alternated with hollows (V), characterized in that the apparatus comprises:

means for forming a first multi-lobed coil (C_1), by winding a continuously fed wire (W) in a first direction, means for forming a second multi-lobed coil (C_2) axially superimposed on the first coil (C_1), without cutting the wire being fed, by winding the wire (W) in the opposite direction, means for arranging the second coil (C_2) at a position angularly shifted relative to the first coil (C_1), so that the second coil

(C₂) has its lobes (L) at the same angular positions **as** the hollows (V) of the first coil (C₁), and means for bending the wire portion (W_i) connecting the two coils (C₁, C₂) where the wire reverses its winding direction, so as to form a loop (E) following an annular path matching the profile of one lobe of one of the two coils for one part and the profile of a hollow of the other coil opposite to the lobe for another part, **and wherein each of said first and second multi-lobed coils (C₁, C₂) is formed by winding a wire (W) on radially movable forming elements (3) so as to form a polygonal coil (CP₁, CP₂), and, after the polygonal coils have been formed, the central portions of the sides of the polygonal coils (CP₁, CP₂) being pushed radially inwardly to confer the multi-lobed configuration to the coils.**"

Claim 2 is dependent on claim 1 and claims 4 to 7 are dependent on claim 3.

XVI. The opponent's arguments relevant to the present decision may be summarised as follows:

The appeal filed on behalf of the patent proprietor was not admissible. Before that appeal was filed, the patent in suit was sold twice, namely by the receiver of bankruptcy "*Pavesi S.r.l. in liquidation*" to Axis S.p.A. and then by the liquidator of Axis S.r.l. to Atop S.p.A.. These transfers took the form of sales contracts, not universal succession in law. Pavesi S.r.l., that no longer existed, remained registered as proprietor. As a result of the sale of the patent, Pavesi S.r.l. was not adversely affected by the decision of the opposition division in the sense of

Article 107 EPC. The representative previously authorised by Pavesi S.r.l. could also not file an appeal calling upon the earlier authorisation. The facts of the case corresponded to those in T 656/98 and the case should be decided accordingly.

The auxiliary request filed during the oral proceedings before the opposition division was also inadmissible (cf. T 15/01, Reasons, paragraph 1), as the representative of Pavesi S.r.l. had no authorisation to act for Axis S.p.A., to whom the patent had by then been sold.

The opponent's own appeal was admissible as the opponent was adversely affected by the decision of the opposition division not only as it held that the validity of the claims of the auxiliary request was not *prima facie* in doubt, but also due to the impermissible extension, in the sense of Article 123(2) and Article 123(3) EPC, linked to the auxiliary request.

XVII. The proprietor's arguments relevant to the present decision may be summarised as follows:

The single and only request of the opponent in the opposition proceedings was cancellation of granted claims 1 and 3. These claims were held invalid by the Opposition Division with the interlocutory decision dated 7 October 2005. Therefore, the opponent was not adversely affected by that decision in respect of what was his one and only request.

The proprietor's own appeal was admissible. The same representative had represented the interests of the

proprietor continuously throughout the procedure. The appeal had been filed in the name of the proprietor. At the time of filing the appeal, Pavesi S.r.l. was recorded as proprietor in the register of European patents. In view of the legal fiction created by Rule 20(3) EPC (1973) it was correct to mention Pavesi S.r.l. in the notice of appeal. It was not relevant whether the patent had been transferred as part of a universal succession in law.

Reasons for the Decision

1. *Admissibility of the proprietor's appeal*
 - 1.1 According to Article 60(3) EPC 1973, *the applicant shall be deemed to be entitled to exercise the right to the European patent. Paragraph 1 of Rule 20 EPC 1973, which was in force at the time the appeal was filed, states that a transfer of a European patent application shall be recorded in the Register of European Patents at the request of an interested party and on production of documents satisfying the European Patent Office that the transfer has taken place. According to paragraph 3 of the Rule, a transfer shall have effect vis-à-vis the European Patent Office only when and to the extent that the documents referred to in paragraph 1 have been produced.*
 - 1.2 In the present case, at the time when the appeal on behalf of the patent proprietor was filed, Pavesi S.r.l. was recorded as the proprietor in the Register of European Patents and no request had been made for transfer of the patent from Pavesi S.r.l. Hence, although in practice the patent may by then have been

transferred, Pavesi S.r.l. was still deemed to be entitled to exercise the right to the European patent in accordance with the legal fiction created by Article 60(3) EPC 1973, taken together with Rules 20 and 61 EPC 1973. The Board could therefore only treat Pavesi S.r.l. as the proprietor and appellant at the date the appeal was lodged. Pavesi S.r.l., being a party adversely affected by the decision under appeal, had the right to appeal (Article 107 EPC).

- 1.3 Rule 90(1)(a) EPC 1973 requires that proceedings before the EPO be interrupted in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of the person authorised by national law to act on his behalf. It states however, that *"to the extent that the above events do not affect the authorisation of a representative appointed under Article 134, proceedings shall be interrupted only on application by such representative"*. In the present case, the representative acting for Pavesi S.r.l. in all proceedings before the first instance did not at any stage apply for interruption of the proceedings and has confirmed that it was his intention to attend the oral proceedings before the opposition division, as well as to file the notice of appeal on behalf of the legal person who had party status as proprietor during the opposition and who was adversely affected by the appealed decision (see letter of 19 July 2007, paragraph 2). Hence, irrespective of any alleged legal incapacity of the actual proprietor, proceedings before the EPO were able to continue, with the proprietor's interests being represented by the appointed representative.

1.4 The present situation is similar to that considered in T 0675/93 (not published in the Official Journal). There an appeal was filed in the name of the original proprietor Tarn Pure Limited, who at that time was in liquidation. The board in that case noted that no assignment of the patent had been registered with the EPO and held that they could only treat Tarn Pure Limited as the patentee and appellant at the date the appeal was lodged. Since further a representative had been appointed by Tarn Pure Limited, the board in that case considered the appeal signed by the representative in the name of Tarn Pure Limited to be admissible. The present board sees no reason to deviate from that ruling.

1.5 For these reasons the board considers the appeal filed on behalf of Pavesi S.r.l. to be admissible.

2. *Admissibility of the opponent's appeal*

2.1 The opposition was filed against the grant of the patent in the scope of claims 1 and 3. During the oral proceedings before the opposition division, the proprietor filed a first auxiliary request, the independent claims 1 and 3 of which were based on claims 1 and 3 as granted, with the addition of a feature which had been part of claim 6 as granted. Claim 6 as granted was dependent on claim 4 as granted.

2.2 In G 9/91 the Enlarged Board of Appeal held that "*even if the opposition is explicitly directed only to the subject-matter of an independent claim of a European patent, subject-matters covered by claims which depend on such an independent claim may also be examined as to*

patentability, if the independent claim falls in opposition or appeal proceedings, provided their validity is prima facie in doubt on the basis of already available information" (see reasons, point 11). In its decision in the present case, the opposition division noted that ruling but found that the validity of the claims of the first auxiliary request was not prima facie in doubt and decided that it did not have the power to examine them (reasons, points 3.2 to 3.5, 4 and 5).

2.3 It is recorded in the minutes of the oral proceedings before the opposition division that "*the opponent objected that the new claims of the first auxiliary request extended beyond the application as filed, Art. 123(2), (3) ...*" (see page 3, sixth paragraph). It is thus apparent to the board that the opponent considered the patentability of the claims of the first auxiliary request to be prima facie in doubt. The decision of the opposition division held otherwise and at least for that reason the board considers that the opponent was adversely affected by the decision. The board therefore considers the appeal filed by the opponent to be admissible.

3. *Amendments*

The opponent raised no objections to the present claims under Article 123 EPC. The features added to independent claims 1 and 3 can be seen as having the following basis in the application as originally filed: WO 98/25444, page 6, lines 6 to 17, page 6, line 32 to page 7, line 18, page 19, lines 27 to 32 and page 20,

lines 5 to 10. Hence, the board also sees no reason to object to the amendments under Article 123 EPC.

4. *Sufficiency of disclosure*

The opponent had objected that the patent as granted did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art in the whole range encompassed by claims 1 and 3 as granted. The opponent considered that the application only described the invention in the context of the proprietor's own prior art machines, in which each half of a distributed, multi-lobed winding was initially formed as a polygonal coil and thereafter the multi-lobed configuration was conferred by radial deformation. In view of the amendments made to claims 1 and 3, that objection is moot. The opponent did not question the sufficiency of disclosure of the subject-matter of present claims 1 and 3 and the board sees no reason to do so.

5. *Novelty and inventive step*

5.1 The opponent has not raised novelty or inventive step objections to present claims 1 and 3.

5.2 Claims 1 and 3 are now restricted to a method/apparatus in which multi-lobed coils are formed by winding a wire on radially movable forming elements so as to form a polygonal coil, and, after the polygonal coils have been formed, the central portions of the sides of the polygonal coils being pushed radially inwardly to confer the multi-lobed configuration.

- 5.3 Document D2 discloses a rather different method of forming the coils, in which the multi-lobed configuration is created during the winding of the wire, by forming the lobes and hollows sequentially as the wire is wound onto a template. There are no polygonal coils formed in D2. For these reasons the board considers that document D2 does not deprive claims 1 and 3 of novelty and, furthermore, is not the most pertinent prior art for assessing inventive step.
- 5.4 The board considers the closest prior art document to be US 4 512 376 (acknowledged in paragraph [0002] of the patent), as it discloses essentially the same method of forming multi-lobed coils by winding a wire on radially movable forming elements so as to form a polygonal coil, and, after the polygonal coils have been formed, pushing the central portions of the sides of the polygonal coils radially inwardly to confer the multi-lobed configuration.
- 5.5 Claims 1 and 3 differ from the disclosure of US 4 512 376 in that a first multi-lobed coil is formed and then a second multi-lobed coil is formed, without cutting the wire being fed, by winding the wire in the opposite direction, the wire portion connecting the two coils being bent where the wire reverses its winding direction to form a loop.
- 5.6 The opponent has not argued that it would be obvious for the skilled person to come to these features starting from US 4 512 376. *Prima facie*, the board sees no reason why the subject-matter of claims 1 and 3 should not be considered as involving an inventive step.

Order

For the above 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 in the following version:

Description:

- Page 2 received during oral proceedings of 13 January 2009
- Pages 3 to 7 of the patent specification

Claims:

- Nos. 1 to 7 received during oral proceedings of 13 January 2009

Drawings:

- Pages 12 to 19 of the patent specification

The Registrar:

The Chairman:

U. Bultmann

M. Ruggiu