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**Datasheet for the decision
of 15 July 2010**

Case Number: T 1939/07 - 3.2.06

Application Number: 03711813.0

Publication Number: 1485230

IPC: B23Q 11/08

Language of the proceedings: EN

Title of invention:
Scraper arrangement

Patentee:
Hestego S.R.O

Opponent:
Hennig Holding GmbH

Headword:
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Relevant legal provisions:
-

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Claim 1 inventive step (no)"

Decisions cited:
-

Catchword:
-



Case Number: T 1939/07 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 15 July 2010

Appellant: Hennig Holding GmbH
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Representative: Rau, Manfred
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Respondent: Hestego S.R.O.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 15 November 2007
rejecting the opposition filed against European
patent No. 1485230 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: M. Harrison
W. Sekretaruk

Summary of Facts and Submissions

- I. The appellant (opponent) filed an appeal against the decision of the opposition division rejecting the opposition against European patent No. 1 485 230, and requested revocation thereof.
- II. In support of its arguments, the appellant relied on the following documents:
- D1: EP-A-0 893 200
D2: DE-A-37 22 450.
- III. The respondent (proprietor) requested dismissal of the appeal.
- IV. As an annex to the summons to oral proceedings, the Board issued a communication indicating its provisional opinion, stating *inter alia* that only one feature of claim 1 appeared to be novel with respect to the disclosure in D1, namely that the holder (19) of claim 1, corresponding to the intermediate carrier 12 of D1, "holds simultaneously a shock absorber (20)". It was also stated why, if the Board maintained its provisional view, the subject matter of claim 1 appeared to lack an inventive step when considering the teaching of D2.
- V. Due to an accident suffered by the representative of the respondent, a new date for the oral proceedings was set. In a letter from the office of the respondent's representative dated 28 January 2010, received at the EPO on 31 March 2010, it was indicated that the respondent would not attend the oral proceedings.

VI. During the oral proceedings held on 15 July 2010 before the Board and in the absence of the respondent (as announced), the appellant confirmed its request for revocation of the patent.

The request of the respondent remained in accordance with its written submission, namely dismissal of the appeal.

VII. Claim 1 reads as follows:

"A scraper arrangement with a telescopic cover particularly of guideways on machine-mills consisting of a carrier strip (10) with an elastic seal (7) detachably attached to segments (3) of the telescopic cover (1) characterized in that the scraper arrangement (6) consisting of the carrier strip (10) and the seal (7) is detachably attached to the segments (3) of the telescopic cover (1) by means of at least one clamp (16) fitted with a front projection (17) and a rear projection (18), while at least one longitudinal orifice (5) is formed close to a front (4) of the segments (3) of the telescopic cover (1), a rear projection (18) of the clamp (16) is engaged into said orifice (5) while a front projection (17) of the clamp (16) is retained against a front portion (11) of the carrier strip (10) and a rear portion (12) of the carrier strip (10) is engaged into a holder (19) attached to the segment (3) of the telescopic cover (1) and holds simultaneously a shock absorber (20)."

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

All features of claim 1 were known from D1, with the exception that the holder 12 of D1 did not hold simultaneously a shock absorber. Starting from D1, the problem to be solved was to find an arrangement suitable to damp abutment forces from the rear part of the scraper means when retracting the segments of the cover. D2 disclosed (e.g. in Fig. 1) a scraper arrangement similar to that in D1, and for the same purpose, whereby a shock absorber 4 was held in a recess on the rear part of a carrier member 1, which was itself attached to a segment 2. D2 (e.g. column 2, line 67 *et seq*) taught that the shock absorber came into abutment with another segment, whereby the shock absorber had the function of damping abutment forces in the same way as the shock absorber of claim 1. The skilled person would thus regard it as obvious to include the shock absorber of D2 into the scraper arrangement of D1. This argument was also in agreement with the opinion given in the Board's communication annexed to the summons to which the respondent had not replied substantively.

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

The claimed invention had to be considered as a whole, also with regard to mutual and spatial relationships. The spatial arrangements of elements in the support strip of the patent were different to those in D1. Although different elements of claim 1 were known from different documents, the combination of known

structural elements as defined in the claim was not obvious.

Reasons for the Decision

Inventive Step

1. As stated in the Board's communication annexed to the summons to oral proceedings, claim 1 defines "at least one longitudinal orifice is formed close to a front of the segments of the telescopic cover". Although this feature was found to be different with regard to D1 by the opposition division (see the decision under appeal item 2.2(a)), the Board noted in its communication that the terminology "close to a front of the segments" did not seem to require that the "at least one longitudinal orifice" should be formed in the segment itself. As further stated in that communication, D1 disclosed a recess 14a on the intermediate carrier 12 ("Zwischenträgerorgan") which was located at the front of each of the segments and thus corresponded to the manner in which the orifice was defined in claim 1.

Since the respondent did not respond substantively to the Board's communication, the Board finds no reason to alter its opinion given therein. The Board thus concludes that the only difference of claim 1 with respect to D1 is indeed that the holder (which is formed by the intermediate carrier 12 of D1) "holds simultaneously a shock absorber".

2. Starting from D1, the problem to be solved by the aforementioned feature is the damping of shock loadings caused when one segment is retracted and abuts against another one.

3. D2 (see e.g. Fig. 1 and column 2, line 67 to column 3, line 5) discloses a shock absorber 4 used for this purpose. In particular, the shock absorber is attached to a carrier 1 which is attached to the segment 2 and also supports the elastic scraper seal 3, albeit directly rather than via an intermediate carrier.

This disclosure in D2 thus teaches a skilled person how to solve the stated problem, namely by retaining (i.e. holding) the shock absorber in a recess, at the rear end of holder 1 in the scraper arrangement (which is also where abutment loads would occur in D1) while at the same time acting as a holder for a further portion (i.e. the scraper seal 3 of D2). The rear end of the scraper depicted in Fig. 2 of D1 furthermore even has a recess at the rear end of the holder 12. The inclusion of a shock absorber from the scraper arrangement of D2 into the scraper arrangement of D1 therefore does not involve an inventive step.

Again, the foregoing is in accordance with the communication annexed to the summons to oral proceedings to which no substantive reply was received from the respondent.

4. The subject matter of claim 1 therefore lacks an inventive step and the requirement of Article 56 EPC 1973 is not met.

5. Although the respondent supplied arguments concerning inventive step when providing its response to the grounds of appeal, these arguments did not relate to the feature of a shock absorber being regarded as the only difference with regard to D1. Thus, although the respondent argued in its response that the spatial arrangements of elements in the support strip of the patent were different to those in D1, such a difference is not found to exist between the features defined in claim 1 and the disclosure of D1, such that this argument lacks relevance. Similarly, the argument that elements of claim 1 were known from different documents but that the combination of known structural elements as defined in the claim would not be obvious, is not reasoning which is convincing in light of the analysis *supra* starting from D1 as the closest prior art and combining this with the teaching of D2 in light of the problem to be solved. Indeed in as far as different structural elements are concerned, D1 and D2 do not concern merely different structural elements but both relate instead to structural elements of similar constructions used in scraper arrangements for the same purpose.

6. Since claim 1 is not allowable and the respondent has filed no further request, the Board must revoke the patent in accordance with the request of the appellant.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent is revoked.

The Registrar

The Chairman

M. Patin

P. Alting van Geusau