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**Datasheet for the decision  
of 17 June 2010**

**Case Number:** T 0737/08 - 3.2.03

**Application Number:** 00104894.1

**Publication Number:** 1132528

**IPC:** E03B 7/04

**Language of the proceedings:** EN

**Title of invention:**

Parallel-fed nonstagnant integrated water distribution network  
for domestic water and fire sprinkler application

**Patentee:**

Haase, Franz III

**Opponent:**

REHAU AG+Co

**Headword:**

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**Relevant legal provisions:**

EPC Art. 134(1), 107, 54, 56

**Relevant legal provisions (EPC 1973):**

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**Keyword:**

"Appellant I - licensee - admissible appeal (no)"  
"Appellant II - patent proprietor - admissible appeal (yes)"  
"Appellant III - transfer of rights (no) - admissible appeal  
(no)"  
"Main request - novelty (no)"  
"Auxiliary requests, first to fourth - novelty (no)"  
"Auxiliary request, fifth - inventive step (no)"

**Decisions cited:**

G 0002/04, T 0656/98

**Catchword:**

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Case Number: T 0737/08 - 3.2.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.03  
of 17 June 2010

**Appellant I:** H3B Holdings Limited  
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**Representative:** -

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**Respondent :**  
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**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent Office posted 1 February 2008  
revoking European patent No. 1132528 pursuant  
to Article 101(2) EPC.

**Composition of the Board:**

**Chairman:** G. Ashley  
**Members:** E. Frank  
K. Garnett

## Summary of Facts and Submissions

- I. The appeal lies from the decision of the Opposition Division dated 1 February 2008, to revoke European patent No. 1 132 528 pursuant to Article 101(2) EPC. The Opposition Division held that the subject-matter of claim 1 as granted did not meet the requirements of inventive step as required by Article 100(a) EPC.
- II. Appellant I (H3B Holdings Ltd) filed a notice of appeal together with a statement of grounds of appeal on 8 April 2008 claiming, as "Master Licensee" to be acting on behalf of the proprietor, Franz Haase, and purported to pay the appeal fee by way of a cheque. On 10 April 2008, a representative filed notice of appeal on behalf of both Appellant II (Franz Haase III) and Appellant III (Kwench Systems International LLC) and a single appeal fee was paid on the same day. A statement of grounds of appeal on behalf of these two appellants was filed on 11 June 2008.
- III. A communication of the Board indicating that the appeal of H3B Holdings Ltd appeared not to be admissible was sent out on 27 May 2008. On 1 April 2010 a communication in compliance with Article 15(1) RPBA was issued together with a summons to attend oral proceedings stating, inter alia, that Appellant II was the patent proprietor as far as the EPO was concerned. In its communication of 7 May 2010 the Board indicated that it seemed that the European patent had been surrendered or lapsed for all the designated contracting states, and Appellant II was invited to say whether the present appeal would be pursued according to Rule 98 EPC. Appellant II's representative replied

that he would not attend the oral proceedings on behalf of Appellant II. Appellants I, II or III were not represented at the oral proceedings, which were duly held on 17 June 2010.

- IV. Appellant I requested in its notice of appeal dated 8 April 2008 that the decision under appeal be set aside.

Appellant II requested in its statement of grounds of appeal dated 11 June 2008 that the decision under appeal be set aside and the patent be maintained as granted or alternatively on the basis of the first to fifth auxiliary requests filed with the grounds of appeal or alternatively on the basis of "one or more of the subsidiary claims".

Appellant III requested in its notice of appeal dated 10 April 2008 that the decision under appeal be set aside and the patent be maintained as granted.

The Respondent (Opponent) requested that the appeals be rejected as inadmissible or alternatively be dismissed.

- V. The wording of claim 1 reads as follows:

- main request (as granted):

"1. An integrated water distribution system for supplying both domestic water and fire sprinkler water requirements of a structure, said system comprising:

a plurality of multiport fittings (14) being adapted to be secured within the structure, each of said plurality of multiport fittings having a plurality of ports;

a plurality of intercoupled flexible conduit [sic] (16, 18) interconnecting said plurality of multiport fittings (14) through said plurality of ports, said plurality of flexible conduit [sic] (16, 18) establishing a water network (10), and each of said plurality of flexible conduit [sic] within said network being capable of carrying a water flow;

a plurality of plumbing fixtures (22, 26, 28) each being fluidly connected to the network (10) through a fixture conduit, wherein upon occupant use of any one or more of said plumbing fixtures, said water flow through each of said flexible conduits interconnecting said plurality of multiport fittings is substantially non-stagnant;

a fire sprinkler assembly (32) fluidly connected to the network; and

a water supply line (16), fluidly coupled to the network, for supplying the system with water relating to the occupant use, and a fire sprinkler assembly use."

- first auxiliary request:

the following wording is added at the end of the second paragraph of claim 1 of the main request:

"... of ports, each of said plurality of multiport fittings (14) capable of being fluidly coupled to a fire sprinkler assembly (32);"

- second auxiliary request:

the following wording is added at the end of the fifth paragraph of claim 1 of the main request:

"... the network wherein the fire sprinkler assembly (32) is a fire sprinkler head secured to an associated multiport fitting; and"

- third auxiliary request:

the following wording is added at the end of the fifth paragraph of claim 1 of the main request:

"... the network wherein the fire sprinkler assembly (32) is a fire sprinkler head secured to an associated multiport fitting, said water flow established within essentially the entire said system; and"

- fourth auxiliary request:

the following wording is added at the end of the second paragraph of claim 1 of the main request:

"... of ports wherein at least one of the plurality of multiport fitting [sic] (14) includes four ports (38);"



and the following wording is added at the end of the fifth paragraph of claim 1 of the main request:

"... the network wherein the fire sprinkler assembly (32) is a fire sprinkler head secured to an associated multiport fitting, said water flow established within essentially [sic] entire said system; and"

- fifth auxiliary request:

the following wording is added at the end of the second paragraph of the main request:

"... of ports wherein at least one of the plurality of multiport fitting [sic] (14) includes four ports (38);"

and the following wording is added at the end of the fifth paragraph of claim 1 of the main request:

"... the network wherein the fire sprinkler assembly (32) is a fire sprinkler head threadedly secured to an associated multiport fitting, said water flow established within essentially the entire said system; and"

VI. The following evidence cited in the contested decision has been considered for the purposes of the present decision:

E3 = US-A-2 017 841

E9 = U.S. Fire Sprinkler Reporter, November 1993

The following document has been filed during the appeal procedure:

E13 = US-A-4 273 195

VII. As regards the assessment of novelty and inventive step, the parties submitted the following arguments:

VII.1 Admissibility of evidence

(a) The document E9 was filed late by the Respondent in the opposition proceedings, after the opposition period had been expired. The Respondent argued that E9 disclosed the core of the patent's invention, since a combined residential sprinkler and water plumbing system forming a water network without dead ends, was described therein. E9 therefore was relevant as to novelty of claim 1 of the main and auxiliary requests, and hence should be admitted into the proceedings.

(b) Appellant II argued that, although E9 discussed a combined sprinkler and cold water plumbing system, there was no specific disclosure of how this was achieved and what features actually made up the system. Thus, since it was impossible to conclude whether the system of E9 fell within the ambit of claim 1, the late filed document E9 should not be admitted.

VII.2 Novelty and inventive step of claim 1

(a) The Respondent argued that E9 taught the formation of a network ("gridded system") by means of 26 fire sprinklers, 26 multiport fittings and plastic pipes. This network did not comprise dead ends and thus each

of the multiport fittings was hydrodynamically coupled to a fire sprinkler assembly. Moreover, the fire sprinklers of E9 were described as "Grinnel" sprinklers, which were conventional sprinkler heads (see, eg, document E13), and thus threadedly connected to E9's multiport fittings. Therefore, claim 1 of the main and auxiliary requests was not novel over E9. If claim 1 of the first to fifth auxiliary requests was found to be novel, because a connection of the major components of E9's network was not explicitly described, it would nevertheless have been obvious for the skilled person, if the intention was that the network should not comprise dead ends, to connect directly each of the multiport fittings to the corresponding number of firesprinklers. Claim 1 thus also lacked inventive step in the light of E9.

(b) Appellant II argued that E9 did not clearly and unambiguously disclose all features of the system of claim 1, either individually or in combination, and in particular did not disclose how the combined sprinkler and cold water plumbing system could be put into practice. Thus, E9 did not disclose an integrated water system according to the patent.

## **Reasons for the Decision**

### *1. Admissibility of the Appeals*

#### *Appeal of Appellant I, H3B Holdings Ltd*

1.1 A notice of appeal requesting that the decision be set aside was filed by this appellant on 8 April 2008, asserting that it was "Master Licensee" acting on

behalf of the proprietor of the patent in suit, namely "Franz Haase" (Appellant II). However, H3B Holdings Limited did not claim to be and was not at the time either the proprietor of the patent in suit (see below) or able to represent the proprietor in proceedings before the EPO (see Article 134(1) EPC). For this reason alone, this appeal must be rejected as inadmissible.

*Appeal of Appellant II, Franz Haase III*

1.2 A notice of appeal was filed by a representative on behalf of this appellant on 10 April 2008, claiming to be the registered proprietor. The patent in suit had been granted in the name of Franz Haase III, who also was and still is named as proprietor in the Register of European Patents, and who as proprietor was also a party to the decision to revoke the patent. Prima facie therefore, the notice of appeal was filed by a person adversely affected by the decision to revoke the patent (Article 107 EPC). A statement of grounds of appeal was subsequently filed on behalf of this appellant on 11 June 2008.

1.3 However, the above notice of appeal filed on behalf of Appellant II also stated that there had been a transfer of rights from Franz Haase III to Kwench Systems International LLC (Appellant III) and that "for the avoidance of doubt" notice of appeal was also given on behalf of Appellant III. A single appeal fee was paid. At that stage, no evidence of any transfer had been filed with the EPO, no request had been made to register any such transfer and no appropriate transfer fee had been paid. The notice as signed by the representative was followed by the words "Professional

Representative for Kwench Systems International LLC, Association No. 177".

1.4 The Respondent argues that the appeal by Franz Haase III is inadmissible. It is argued, first, that while it is legitimate to file a single appeal in the name of alternative appellants where there is uncertainty as to the correct appellant (see G 2/04, OJ EPO 2005, 549, point 3.2 of the decision), in the present case there was no uncertainty because no transfer of proprietor had been requested and so no appeal could have been filed on behalf of Appellant III. However, the Respondent goes on to argue that no appeal could have been filed on behalf of Appellant II either since at the relevant time it was no longer the proprietor of the patent. The Board understands this to be a reference to the fact that a transfer of the patent, based on an assignment dated 22 September 2005, had in fact been registered in the United Kingdom register of patents on 22 May 2006. Although the Board considers this latter argument to be wrong (see paragraph 1.8), the Respondent cannot have it both ways: the mere fact of the argument, even if wrong, shows that it was legitimate for a notice of appeal to be filed in the names of alternative appellants.

1.5 The Respondent argues, secondly, that the notice of appeal was filed by the representative expressly on behalf of Appellant III, and therefore was not filed on behalf of Appellant II. Further, although an earlier authorisation dated 28 November 2006 had been filed by the representative, this named Franz R. Haase as the client and there was nothing to show that this was the same person as Appellant II (Franz Haase III). In any

event, at this date, the United Kingdom patent had already been transferred to Appellant III and so the authorisation could not have been effective.

- 1.6 The Board cannot accept these arguments. Although the words underneath the signature to the notice of appeal indicate that the representative was acting on behalf of Appellant III, this does not contradict the earlier statement in the notice that the notice of appeal was also given on behalf of the registered proprietor, Appellant II. Subject to the point made by the Respondent about the precise identity of the client, the representative had been acting for Appellant II in the opposition proceedings and there is nothing to suggest that he no longer had authority to act when the notice of appeal was filed. Given the background circumstances, the ordinary reading of the notice is also that the representative was claiming authority to act for both named appellants. As to the identity of his client, the Board has no reason to believe that Franz R. Haase was not the same person as Appellant II (Franz Haase III). The letter dated 20 December 2006 enclosing the authority ran as follows:

**"Re: EP 1,132,528 B1**  
Proprietor: Haase, Franz III  
....

I act on behalf of the proprietor (Franz Haase) of the above patent, and enclose a copy of a letter dated 28th November 2006, which authorises [the representative's firm] to represent the proprietor in relation to patents held in his name. ..."

The position could hardly have been clearer.

- 1.7 The appeal of Franz Hasse III is therefore admissible.

*Appeal of Appellant III, Kwench Systems International LLC*

1.8 For a transferee of a patent to be entitled to appeal, the necessary documents establishing the transfer, the transfer application and the transfer fee must all be filed before the expiry of the period of appeal: see T 656/98 (OJ EPO 2003, 385), headnote. This was not done in the present case, so that as far as the EPO is concerned Franz Haase III was still the proprietor at the date of the notice of appeal. On any basis therefore, this appeal must be rejected as inadmissible.

2. *Admissibility of evidence*

The document E9, filed during the opposition procedure on 11 December 2007, one month before the date set for the oral proceedings, describes a water distribution system for supplying both domestic and fire sprinkler water. Contrary to the view of Appellant II and the Opposition Division, E9 discloses the concept of a substantially non-stagnant water flow through a combined sprinkler-plumbing system. The Board thus considers E9 to be very relevant and therefore, in accordance with Article 12(4) RPBA, E9 is admitted into the proceedings. Moreover, E13, filed on 27 October 2008 with the Respondent's reply to the grounds of appeal is admitted into the proceedings, because a threaded "Grinnell" sprinkler head is described therein (Article 12(4) RPBA). This has not been objected to by Appellant II.

3. *Admissibility of further alternative request of Appellant II*

Appellant II also requested that the patent be maintained alternatively on the basis of "one or more of the subsidiary claims" (see point IV above). The subject-matter of this request is so vague that it could not be reasonably dealt with by the Board. Hence the further alternative request of Appellant II was not admitted into the proceedings (Article 12(4) RPBA).

4. *Novelty and inventive step of claim 1 (Article 100(a) EPC; Articles 54 and 56 EPC)*

4.1 Document E9 describes a combined residential sprinkler and cold water plumbing system which forms a grid having no dead ends, ie a closed, integrated water distribution system of the type defined in claim 1. With this water system, "water comes to each sprinkler from several sources", ie from the ports of other fittings, whereby "all of the sprinklers are interconnected": cf. page 5, first column last paragraph to page 5, second column. According to E9 (page 6, right column), it is expected that, even if the water in a pipe freezes, adequate water for fire protection would still be provided, because, in this gridded system, "there are so many paths water may take to reach the sprinklers".

In the Board's view, in order that all the sprinklers are interconnected within the grid system of E9, where each of the sprinklers has three or four lines going to it (E9, page 5, second column), each sprinkler must be provided with a plurality of ports. This is also



indicated on page 6, left column of E9 under "The major components of the system", which mentions 26 Grinnell low pressure sprinklers and 26 four-port fittings; it is apparent that these sprinklers and four-port fittings are used together. The ports of at least two, ie a plurality, of the 26 four-port fittings are interconnected by means of the non-metallic polybutelene, ie flexible, pipes, which are also described as major components of E9's system on page 6, left column.

Therefore, E9 discloses a plurality of multiport fittings, each capable of being fluidly coupled to a fire sprinkler assembly, and a plurality of flexible conduits interconnecting this plurality of multiport fittings establish the (sprinkler's) water network, wherein a fire sprinkler assembly is fluidly connected to this network according to paragraphs two, three, and five of claim 1 of the main and first auxiliary requests.

Moreover, the integrated water distribution system of E9 also provides the cold water for the domestic plumbing: "occupants will be checking the combined sprinkler-plumbing system for water availability each time a cold water fixture is opened" (page 6, right column), and an annual inspection of the sprinklers will not be required, since with the combined system, if the house-hold plumbing works, so also will the sprinklers (page 5, right column first paragraph). Therefore, the plumbing fixtures of E9 are fluidly connected to E9's sprinkler network and when an occupant uses any one or more of the plumbing fixtures of E9's system the water flow is substantially

non-stagnant, as is required by paragraph four of claim 1, is also disclosed in E9.

Thus, claim 1 of the main request lacks novelty over the disclosure of E9.

Since E9 discloses a plurality of multiport fittings capable of being fluidly coupled to a fire sprinkler assembly (see above), the subject-matter of the first auxiliary request also lacks novelty.

From the above, E9 also discloses a fire sprinkler head secured to an associated multiport fitting, with water flow established within the entire system, as defined in claim 1 of the second, third and fourth auxiliary requests. Hence, the subject-matter of these requests also lacks novelty.

- 4.2 Claim 1 of the fifth auxiliary request differs from E9 in that the specific way of connection of the "Grinnel" sprinklers to the four-port fittings by using a threaded connection is not disclosed on page 6 of E9. However, multiport fittings, threadedly receiving and securing a conventional sprinkler head such as a "Grinnel" sprinkler, are generally known in the art: cf. the sprinklers of E3 in figure 2 and the "Grinnel" sprinkler heads shown in, eg, E13. Hence, the Board agrees with the Respondent that, based on page 5, second column of E9, the skilled person, using his common technical knowledge would consider threadedly securing a "Grinnel" sprinkler to its corresponding four-port fitting as being a trivial design measure.

Thus, the subject-matter of claim 1 of the fifth auxiliary requests lacks an inventive step.

**Order**

**For these reasons it is decided that:**

1. The appeals of Appellants I and III are rejected as inadmissible.
2. The appeal of Appellant II is dismissed.

The Registrar

The Chairman

A. Counillon

G. Ashley