BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [ ] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 3 August 2010

Case Number: T 1343/08 - 3.2.08

Application Number: 99964917.1

Publication Number: 1151203

IPC: F16B 5/02

Language of the proceedings: EN

Title of invention:
Method to interconnect a belt/belts

Patent Proprietor:
Krainer, Norbert

Opponent:
Hans Hall GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Allowability of amendments (no)"
"Admissions of late filed request (no)"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1343/08 **-** 3.2.08

D E C I S I O N
of the Technical Board of Appeal 3.2.08
of 3 August 2010

Appellant: (Patent Proprietor)
Krainer, Norbert
Frutjärnsvägen 9
SE-771 41 Ludvika (SE)

Representative:
Bäckström, Leif C.
Protector Leif C. Bäckström AB
Sandviksvägen 32
SE-165 65 Hässelby (SE)

Respondent: (Opponent)
Hans Hall GmbH
Krügerstrasse 11
D-88250 Weingarten (DE)

Representative:
Rupprecht, Kay
Meissner, Bolte & Partner GbR
Widenmayerstraße 48
D-80538 München (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 6 June 2008 revoking European patent No. 1151203 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: T. Kriner
Members: P. Acton
U. Tronser

Summary of Facts and Submissions

I. The appellant (patent proprietor) filed a notice of appeal, received at the EPO on 9 July 2008, against the opposition division's decision posted on 6 June 2008 revoking European patent No. EP-B-1 151 203. The appeal fee was paid simultaneously and the statement of grounds was received on 4 October 2008.

In its decision the opposition division held that the contested patent contained subject-matter which extended beyond the content of the application as filed (Article 100(c) EPC).

II. Oral proceedings took place before the board of appeal on 3 August 2010.

The appellant requested that the decision under appeal be set aside or to maintain the patent on the basis of claim 1 according to the auxiliary request submitted during oral proceedings.

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

III. Independent claim 1 as granted reads:

"A band arranged to a closed loop in an intended moving direction and a joint device, said band including one or several flexible nets or the like, band-reinforcing and band-strengthening means (1c, 1d, 1e, etc.), which preferably are also baked into a flexible material (1g, 1h, 1i, etc.), for example rubber, wherein the ends of said band are located mutually overlapping to a certain

extent and are provided with holes in said overlapping region, **characterised in that** said joint device includes two plates (3, 6) located mutually aligned on the two surfaces of the band which are turned away from each other in the overlapping region of said band ends, each plate (3, 6) having a length essentially corresponding to the band width in a direction mainly perpendicular to said intended moving direction, a beam in said moving direction shorter than said certain extent of band overlapping and a thickness

– distributing forces acting against it over a surface of the band in the overlapping region defined essentially as the length of said plate (3, 6) multiplied by the beam thereof, wherein said tightening means (4, 5) are running from one of said plates (3, 6) to the other (6, 3) through said holes in the overlapping band ends, which holes are located along one straight line and are running in a direction mainly perpendicular to said intended moving direction, and said means (4, 5) are tightened together such that the overlapping band ends are compressed in said surfaces of the band in the band overlapping region defined essentially as the length multiplied by the beam of each of said plates (3, 6) (feature A)."

Claim 1 according to the auxiliary request differs therefrom in that:

– it is specified that the band is "for a piste machine" (feature B);
– the plates (3, 6) are defined as being "tightening plates" (feature C);

– feature A is replaced by the feature according to which:

"tightening means (4, 5) are tightened together tensioning said tightening plates (3, 6) against the band such that the overlapping band ends are mechanically mutually interacting in the band overlapping region, whereby the mechanically interacting surfaces are defined essentially as the length multiplied by the beam of each of said plates (3, 6)" (feature D).

The designations (A to D) of the features have been inserted by the board.

IV. The respondent's arguments can be summarised as follows:

Main request

The feature according to which the "thickness of the plates is distributing forces acting against it over a surface of the band" was not clear.

If it was understood as meaning that the plates beside a length and a width (beam) also have a thickness, and that the plates as a whole and not the thickness are distributing forces acting against it over a surface, this feature was not disclosed in the originally filed application.

The specific function of the plates had been disclosed in the application as originally filed only in combination with spikes or nails which penetrated into the band (see page 4, lines 10 to 17). In this context,

the application taught that the plates transferred the forces through the spikes, nails or interacting means. However no spikes, nails or interacting means were present in claim 1. Moreover, since the originally filed application was silent about the geometry and the material of the plates, it did not disclose that the plates had to be so rigid that they were able to distribute the forces over a surface. On the contrary, they could be soft and bendable and, therefore, able to transfer forces only punctually.

Therefore, claim 1 as granted extended beyond the content of the application as filed (Article 100(c) EPC).

Auxiliary request

This request should not be admitted into the proceedings since it was late-filed. Moreover, no arguments were presented during the oral proceedings which had not already been dealt with in writing. Finally, the late-filed claim was clearly not allowable since the amendments did not comply with the requirements of Article 123(2) and (3) EPC.

V. The appellant's arguments can be summarised as follows:

Main request

The wording of the feature according to which the plate has a "thickness distributing forces acting against it over a surface of the band in the overlapping region" was indeed not clear and could only be interpreted as meaning that the plates had a thickness, and that the

plates and not the thickness were distributing forces acting against it over a surface. This feature was implicitly disclosed in the application as originally filed. Firstly the plates were defined as being "tightening plates" (see page 4, line 35). This technical term meant that the plates were so designed that they could distribute forces over their surface. Moreover, since the band was made of a flexible material, preferably rubber (see page 3, line 19), tensioning two stiff plates against each other would automatically lead to a distribution of forces over the surface of the band. Finally, since the plates had to be designed in such a way that they could introduce spikes or nails into the band (see page 4, lines 20 to 22) they implicitly had to be rigid and hence to be able to distribute the force over the surface of the band. Therefore, claim 1 as granted did not extend beyond the content of the application as filed.

Auxiliary request

The request should be admitted into the proceedings since it overcame the problems related to the main request and since it prima facie complied with the requirements of Article 123(2) and (3) EPC for the following reasons.

The introductory part of the application (see page 1, line 11) specified that the band was "for a piste machine" (feature B). Moreover, the plates (3, 6) were defined as being "tightening plates" on page 2, lines 38 to 42 (feature C), and feature D, which represented a combination of the teaching of page 4,

line 35 and page 2, lines 25 to 31, overcame the lack of clarity in feature A as granted.

Reasons for the Decision

1. The appeal is admissible.

2. Main request

The feature according to which the "thickness of the plates is distributing forces acting against it over a surface of the band" is indeed not clear because it is technically impossible for a thickness to distribute a load. Since only a physical body can distribute a force, the feature can only be understood as meaning that the plates, which inevitably have a length, a width and a thickness, are distributing forces acting against them over a surface. Therefore, the question to be answered is whether or not this feature, when clarified, was disclosed in the originally filed application.

The appellant argued that the plates had been disclosed to be so rigid as to be able to distribute the forces over a surface, since they were tightening plates and since they were able to insert nails, spikes or interacting means into the surface of the bands. However, since claim 1 is neither limited to tightening plates nor to plates with nails, spikes or interacting means, what has to be assessed is whether or not the application as originally filed discloses a band in combination with generic plates with no nails, spikes

or interacting means, which plates distribute the forces acting upon them over a surface of the band.

The application does not specify the plates' material and geometry, nor does it define explicitly that the plates are so rigid that they are inherently able to distribute the force over a surface.

All passages of the description cited by the appellant relate to embodiments where the plates are provided with nails, spikes or interacting means. Therefore, they do disclose not even implicitly that plates with no nails, spikes or interacting means must be so rigid as to be able to distribute a force over a surface of the band.

Moreover, since the technical characteristics of the plates are not specified, the fact that the band is made of a flexible material is per se not sufficient to assure the distribution of forces over a surface.

Therefore, the original application does not even implicitly disclose that the plates distribute the forces acting on them over a surface and claim 1 as granted extends beyond the application as filed (Article 100(c) EPC).

3. Auxiliary request

The auxiliary request was filed during the oral proceedings and was therefore late-filed. Hence the board has discretion whether to admit the request or not. It must exercise that discretion inter alia with view to the complexity of the new subject-matter

submitted and the current state of the proceedings (see Article 13(1) RPBA, Supplement to OJ 1/2009). Moreover, crucial criteria to be taken into account are whether or not the newly filed claims are clearly allowable and whether or not there is proper justification for their late filing.

In the present case the request was filed after the board had expressed its opinion about the main request, and therefore at the latest possible time before the closing of the oral proceedings.

Moreover, the amended claim is not clearly allowable, in particular since feature D prima facie does not appear to be disclosed as such in the originally filed application, and since the replacement of feature A by feature D appears to result in an extension of the protection conferred by the patent in suit.

Finally, the added features were not present in any of the dependent claims, which should represent the subject-matter for which protection is sought, but have been extracted from the description, thereby leading to an unexpected development in the proceedings.

Since the request was filed at an extremely late stage, since it is not clearly allowable and since it leads to an unforeseeable change in the claimed subject-matter, it is not admitted into the proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

V. Commare T. Kriner