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**Datasheet for the decision  
of 22 March 2013**

**Case Number:** T 0858/10 - 3.2.01  
**Application Number:** 01870098.9  
**Publication Number:** 1155955  
**IPC:** B63B 19/16, B63B 19/24,  
B63B 19/14  
**Language of the proceedings:** EN

**Title of invention:**

Hatch cover

**Patent Proprietor:**

Baeck, Arthur Gerard M.

**Opponent:**

Blommaert, besloten vennootschap met beperkte  
aansprakelijkheid

**Headword:**

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**Relevant legal provisions:**

RPBA Art. 13(1)

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

EPC Art. 54(1)

**Keyword:**

"Late-filed document (admitted)"

"Novelty: main request and auxiliary requests 1 and 2 (no)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0858/10 - 3.2.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.01  
of 22 March 2013

**Appellant II:** Baeck, Arthur Gerard M.  
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**Appellant I:** Blommaert, besloten vennootschap met beperkte  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
25 February 2010 concerning maintenance of  
European patent No. 1155955 in amended form.**

**Composition of the Board:**

**Chairman:** G. Pricolo  
**Members:** Y. Lemblé  
T. Karamanli

## **Summary of Facts and Submissions**

- I. Both parties to the first instance proceedings, the Patent Proprietor (Appellant II) and the Opponent (Appellant I), appealed to the decision of the Opposition Division to maintain the European patent No. 1 155 955 in amended form on the basis of the second auxiliary request filed during the oral proceedings of 26 January 2010.
- II. In its decision the Opposition Division held that the subject-matter of claim 1 of the second auxiliary request was new and involved an inventive step in view of the prior art documents cited by the Opponent.
- III. Appellant II (Patent Proprietor) requested that the decision of the Opposition Division be set aside and, as a main request, that the patent be maintained as granted, or that the patent be maintained on the basis of the auxiliary request 1 filed on 6 July 2010 with his statement setting out the grounds of appeal, or on the basis of the auxiliary request 2 filed during the oral proceedings of 26 January 2010 before the Opposition Division.
- IV. Appellant I requested that the decision of the Opposition Division be set aside and that the patent be revoked in its entirety. After the filing of its statement setting out the grounds of appeal, Appellant I cited with letter of 1 December 2010 the following document

X14: DE-B-1 053 964

- and requested that this document be admitted into the proceedings because it was considered novelty destroying for claim 1 of all requests.
- V. In the annex to the summons to oral proceedings pursuant to Article 15(1) RPBA, the Board indicated that it would decide whether the newly cited document X14 would be introduced into the proceedings and, if it was the case, would deal with the question of whether the subject-matter of claim 1 of the patent was novel or involved an inventive step, having regard to the document X14.
- VI. In reply to the summons to oral proceedings, Appellant II, with letter dated 21 December 2012, informed the Board that he withdrew his request for oral proceedings and that he would not attend the oral proceedings.
- VII. With letter dated 8 January 2013 the Appellant I pointed out that, since Appellant II would not attend the oral proceedings, these could be cancelled if the patent could be revoked on the basis of the written submissions.
- VIII. With a letter dated 21 January 2013 the Board informed the parties that the oral proceedings were cancelled.
- IX. Claim 1 of the main request (claim 1 as granted) reads as follows (subdivision of features as proposed by the Opposition Division):
- a) Hatch cover (1) to be nested within another one, in particular of the "Frisian cap" type, for covering a

hatchway giving access to a vessel's hold (3), which hatchway is provided with a hatch coaming having two hatch beams (4) situated opposite each other,

b) which hatch cover (1) has two end parts (12) situated opposite each other, each provided underneath with a bearing surface (14) which is designed to rest upon said hatch beams(4), each forming an outermost extremity of the hatch cover (1),

c) and each optionally provided with a locking flap (20),

d) characterized in that said bearing surfaces (14) are bounded on their outside by at least one projection (27) projecting below said bearing surfaces (14),

e) which projection (27) in each case is situated substantially at one of the abovementioned outermost extremities

f) and, when the hatch cover (1) is resting with its bearing surfaces (14) upon the hatch beams (4),

g) the projections (27) have slanting insides which face the outside of the hatch beams (4) and flare out downwards from the respective hatch beam (4).

Claim 1 according to the auxiliary request 1 differs from claim 1 of the main request in that the word "substantially" has been deleted in the expression "...substantially at one of the outermost extremities..." of feature e).

Claim 1 according to the auxiliary request 2 reads as follows:

Nestable hatch cover (1), in particular of the "Frisian cap" type, for covering a hatchway giving access to a vessel's hold (3), which hatchway is provided with a

hatch coaming having two hatch beams (4) situated opposite each other, which hatch cover (1) has two end parts (12) situated opposite each other, each provided underneath with a bearing surface (14) which is designed to rest upon said hatch beams (4), each forming an outermost extremity of the hatch cover (1) and each optionally provided with a locking flap (20), whereby said bearing surfaces (14) are each bounded on their outside by at least one projection (27) projecting below said bearing surfaces (14), which projection (27) in each case is situated substantially at one of the abovementioned outermost extremities and, when the hatch cover (1) is resting with its bearing surfaces (14) upon the hatch beams (4), the projections (27) have slanting insides which face the outside of the hatch beams (4) and flare out downwards from the respective hatch beam (4), said projections (27) being each formed by a downward projecting edge (27) and characterised in that said projections (27) form the outermost extremities of the hatch cover (1).

X. The submissions of Appellant I, made in writing, insofar as they are relevant to the present decision, can be summarised as follows:

Document X14 was short, concise and not at all complex. Its impact on the case was immediately clear. Since it was *prima facie* relevant, it should be admitted into the proceedings. Document X14 was novelty destroying for claim 1 of the main request, as well as for the independent claims of the first and the second auxiliary requests.

XI. Appellant II did not comment on the admission of document X14 into the proceedings, nor did he react to the objection of lack of novelty made in connection with document X14.

### **Reasons for the Decision**

1. The appeals are admissible.
2. Following Appellant II's withdrawal of the request for oral proceedings, the Board, considering that Appellant I requested oral proceedings on a conditional basis only and that a decision favourable to the Appellant I could be taken on the basis of the written submissions in the appeal proceedings, decided to cancel the oral proceedings and issue the decision on the appeal on writing.
3. Admission of document X14 into the proceedings

As indicated in the annex to the summons to oral proceedings, it is at the board's discretion under Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA) to admit and consider any amendments to a party's case after it has filed its grounds of appeal or reply. The discretion is exercised in view of inter alia the complexity of the new subject matter submitted, the current state of the proceedings and the need for procedural economy.

In the present case, Appellant I indicated that it had no knowledge of document X14 at an earlier stage. The Board notes that document X14 is a relatively ancient

prior art patent document (published in 1959) which does not originate from Appellant I itself. In the absence of evidence that the citation of this document at this stage of the proceedings was done deliberately for tactical reasons, the Board has no reason to believe that the citation of document X14 constitutes an abuse of the proceedings. Moreover, document X14 is also short and concise. It does not content complex technical subject-matter that may cause undue burden on the other party or the Board for interpreting it. Thus, it does not raise issues which the Board and Appellant II could not reasonably be expected to deal with. Furthermore X14 is allegedly novelty destroying for claim 1 of all requests, and therefore its filing cannot be regarded as a mere attempt of Appellant I to delay the proceedings by making up a fresh case requiring investigation of complex and/or different issues.

Consequently, document X14 is admitted into the proceedings pursuant to Article 13(1) RPBA.

4. Novelty

Document X14 discloses in figure 1 a hatch cover ("Lukendeckel 11" i.e. "Teil einer Lukenabdeckung") to be nested within another one, in particular of the "Frisian cap" type, for covering a hatchway ("Luke") giving access to a vessel's hold, which hatchway is provided with a hatch coaming having two hatch beams ("Lukensüll 9) situated opposite each other, (column 1, lines 34-40: "...auf jeder Schiffseite entlang dem Lukensüll...").



With regard to the feature that the hatches of document X14 can be nested, reference is made to the passage of the description from column 1, line 50 to column 2, line 31 which mentions that one hatch can be placed on top of another.

The fact that the hatch cover spans over the whole hatchway (column 1, lines 51-52) implies that the hatch cover 11 has two end parts situated opposite each other, each provided underneath with a bearing surface which is designed to rest upon said hatch beams ("Lukensüll 9), each forming an outermost extremity of the hatch cover (see figure 1). The optional feature that the hatch is provided with a locking flap need not be considered. It is noted that figure 1 of X14 only shows one gangway, hatch coaming 9, lift installation 1 but it is implicit to the skilled reader that the situation is identical at the other side of the vessel (see column 1, line 34 to column 2, line 43).

As shown in figure 1 the bearing surfaces are bounded on their outside by at least one projection ("gabelförmiger Rand 12") projecting below said bearing surfaces, which projection 12 in each case is situated substantially at one of the abovementioned outermost extremities and, when the hatch cover 11 is resting with its bearing surfaces upon the hatch beams ("Lukensüll 9), the projections 12 have slanting insides which face the outside of the hatch beams 9 and flare out downwards from the respective hatch beam.

X14 also discloses (see column 3, lines 21-23 and figure 1: "gabelförmiger Rand 12") that the projections 12 have the centring effect mentioned in column 6, lines 36-40 of the patent in suit, this centring effect

playing an important role to accurately position the hatch cover over the hatchway (see letter of the Appellant II dated 23 December 2004: page 3, second full paragraph) and thus to solve the problem underlying the invention (to provide a nestable hatch cover which projects a minimum distance beyond the hatch beams, so that the clear width of the gangway can remain at a maximum level).

It follows from the above that the subject-matter of independent claim 1 of the main request is not new (Article 54(1) EPC 1973).

5. Auxiliary request 1

When claim 1 of this request is compared to claim 1 of the main request, only the word "substantially" has been deleted in feature e). Figure 1 of document X14 clearly discloses that "the projection is situated at one of the above-mentioned outermost extremities" and therefore is novelty destroying for the subject-matter of claim 1 of this request.

6. Auxiliary request 2

When claim 1 of this request is compared to claim 1 of the main request the features have been added that the "projections being each formed by a downward projecting edge and... form the outermost extremity of the hatch cover". Having regard to the above explanations and with particular reference to the projections 12 shown in Fig. 1 of X14, which are directed downwards and are at the outermost extremities of the hatch cover, it is clear that the hatch cover of document X14 also

discloses these added features and is therefore novelty destroying for the subject-matter of claim 1 of this request.

7. It follows from the foregoing that none of the requests of the Appellant II (Patent Proprietor) can be allowed, since the respective claim 1 of these requests fail to satisfy the requirements of the EPC.

## **Order**

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

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

The Registrar

The Chairman

A. Vottner

G. Pricolo