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Datasheet for the decision of 3 December 2015

Case Number: T 1691/11 - 3.2.06

Application Number: 01955868.3

Publication Number: 1303240

IPC: A61F13/49

Language of the proceedings: EN

Title of invention:
METHOD AND APPARATUS UTILIZING SERVO MOTORS FOR PLACING PARTS ONTO A MOVING WEB

Patent Proprietor:
THE PROCTER & GAMBLE COMPANY

Opponents:
Ganahl, Bernhard
SCA Hygiene Products AB

Relevant legal provisions:
EPC 1973 Art. 83, 100(b)

Keyword:
Sufficiency of disclosure - enabling disclosure (no);
clear wording of the claim cannot be interpreted differently

Decisions cited:
T 0431/03

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Case Number: T 1691/11 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 3 December 2015

Appellant: (Patent Proprietor)	THE PROCTER & GAMBLE COMPANY One Procter & Gamble Plaza Cincinnati, OH 45202 (US)
Representative:	Anderson, James Edward George Elkington and Fife LLP Prospect House 8 Pembroke Road Sevenoaks, Kent TN13 1XR (GB)
Appellant: (Opponent 1)	Ganahl, Bernhard Huber & Schüssler Patentanwälte Truderinger Strasse 246 81825 München (DE)
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Party as of right: (Opponent 2)	SCA Hygiene Products AB 405 03 Göteborg (SE)
Representative:	Hoffmann Eitle Patent- und Rechtsanwälte PartmbB Arabellastraße 30 81925 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 9 May 2011 concerning maintenance of the European Patent No. 1303240 in amended form.**

Composition of the Board:

Chairman	M. Hannam
Members:	G. de Crignis
	W. Ungler

Summary of Facts and Submissions

I. By way of its interlocutory decision, the opposition division found that European Patent No. 1 303 240 as amended according to Auxiliary Request 5 met the requirements of the European Patent Convention (EPC).

II. The patent proprietor filed an appeal against this decision and requested to maintain the patent as granted and submitted auxiliary requests 1 to 7.

III. Additionally, the opponent OI filed an appeal against this decision and referred to insufficiency of disclosure as well as to lack of novelty and inventive step.

IV. The respondent/opponent OII replied to the appeals and objected to the maintenance of the patent for the same reasons as opponent OI.

V. In a communication annexed to the summons to oral proceedings, the Board indicated its preliminary view that it had serious doubts as to whether the claimed invention was sufficiently completely and clearly disclosed. Additionally formal objections were raised.

VI. Addressing these objections with letter of 3 November 2015, the appellant/proprietor also filed alternative auxiliary requests 1 to 7 and dictionary evidence concerning the meaning of the term "each" ("Collins English Dictionary" 9th edition, 2007).

VII. Oral proceedings were held before the Board on 3 December 2015 during which the appellant/proprietor withdrew its auxiliary requests 4 and 5 and also its alternative auxiliary requests 4 and 5.

The appellant/opponent and the respondent requested that the decision under appeal be set aside and that the patent be revoked.

The appellant/proprietor requested that the decision under appeal be set aside and the patent be maintained as granted, auxiliarily that the patent be maintained in amended form according to one of the auxiliary requests 1 to 3, 6 and 7 as filed with the grounds of appeal, or according to the alternative auxiliary requests 1 to 3, 6 and 7 filed with letter dated 3 November 2015.

VIII. Claim 1 of the main request (as granted) reads as follows:

"An apparatus (20) for receiving parts (30) traveling at a first speed through a receiving zone and applying the parts to a carrier (80) traveling at a second speed through an application zone (23), the apparatus comprising:
at least two independent programmable motors (64A, 64B), and at least two transferring devices (50A, 50B) for receiving the parts in the receiving zone (21) and applying the parts in the application zone, at least one of the transferring devices being coupled to each of the programmable motors for moving the transferring devices in an orbital path, characterized that the programmable motors (64A, 64B) and the transferring devices (50A, 50B) are aligned in relation to a common axis, and
wherein the programmable motors maintain the transferring devices at first surface speeds in the receiving zone (21) as the transferring devices pick up the parts (30) and maintain The transferring devices at

second surface speeds in the application zone (23) as the transferring devices apply the parts to the carrier."

Claim 1 of all the auxiliary requests includes the wording of "at least two independent programmable motors" and "at least one of the transferring devices being coupled to each of the programmable motors for moving the transferring devices in an orbital path," which are the features relevant for the decision. The further amendments in the auxiliary requests concern other features. Hence, it is not necessary here to include the wording of claim 1 of all the auxiliary requests.

IX. The arguments of the appellant/proprietor concerning the issue relevant for the decision may be summarised as follows:

There was no requirement for the same one of the transferring devices to be coupled to each of the motors; there was no doubt about what was intended and what the claim covered.

The term "each" in claim 1 had to be understood such as to mean "every (one) of two or more considered individually". The dictionary extract provided evidence for this. The qualifier was explained to be the term "individually". Additionally, the dictionary extract supported that the term "each" was used as a singular pronoun. "Each" when read as a singular pronoun thus could also be read as "one" or "on its own". Hence, the term "each" made grammatical sense also when there was a one to one coupling between the transferring devices and the programmable motors.

Moreover, concerning the motors, the feature of at least two motors being independent was claimed, not that they should be independently programmable. An embodiment in which all of the motors are coupled to one transferring device was excluded by the requirement for at least two of the motors to be "independent" of each other.

When swapping the wording of the feature ("each of the programmable motors being coupled to at least one of the transferring devices"), the inverse construction did not change the meaning and it was rendered unambiguously clear that each one of the transferring devices had to be coupled to one of the programmable motors. Thus, it was not specified whether the same or different transferring devices were coupled to one or more of the programmable motors. Hence, different ones of the transferring devices could be coupled to each of the motors. The claim language made sense.

The description did not disclose an embodiment where all the transferring devices were coupled to all motors and the description could not be ignored. The aim was "for moving the transferring devices in an orbital path". Hence, only by coupling different ones of the transferring devices to each of the motors could the plural transferring devices be moved. The fact that more than one transferring device could be coupled to one motor was also included in the claim language. Consistently, such subject-matter was disclosed in the embodiment illustrated in Figures 16 to 18 which showed an apparatus having nine motors and three transferring devices and hence an embodiment in which multiple motors were coupled to one transferring device.

X. The arguments of the appellant/opponent and the respondent, related to the issue relevant for the decision, may be summarised as follows:

The features "at least one of the transferring devices being coupled to each of the programmable motors" and "at least two independent programmable motors" were incompatible; there was no disclosure of the invention which enabled a skilled person to couple at least one of the transferring devices to each of the (at least two) programmable motors. This objection applied to claim 1 of all requests.

"Each" unambiguously meant each one individually of a plurality and the minimum of the plurality being two. Consistently, the dictionary extract provided evidence that the term "each" can be understood to mean "every (one) of two or more considered individually". The term thus could not be understood to mean "one". The wording could also not be reversed, as suggested by the opposition division, without changing its meaning. There was an unambiguous relationship between the "at least one of the transferring devices" being coupled to "each of the programmable motors" which left no room for interpretation.

Indeed the wording was not "independently programmable motors" but "independent programmable motors". However, when scrutinizing this expression, it was not even explained in what sense the adjective "independent" should be understood such as, for example, whether it actually implied independence in control.

Reasons for the Decision

1. Claim 1 of all requests

1.1 Claim 1 of all requests includes the features of "at least two independent programmable motors" and "at least one of the transferring devices being coupled to each of the programmable motors". These features are clear and unambiguous.

1.2 The clear linguistic structure of the claim does not allow any different interpretation. An interpretation of a claim is only possible for a claim whose wording lacks clarity. This is not the case here. No need for interpretation arises.

1.3 Additionally, a discrepancy between the claims and the description is not a valid reason to ignore the clear linguistic structure of a claim and thus to interpret the claim differently (see also T 431/03, Reasons 2.2.2). Every applicant should be aware of the requirements of the EPC and, when presenting a certain text (description and claims) in proceedings before the European Patent Office, is responsible for drafting the claims clearly and concisely and thus setting the limits of the desired scope of protection. A perfectly clear wording of the claim, such as presented here as claim 1, is thus that which needs to be considered under Article 83 EPC, rather than another speculative interpretation of the claim.

1.4 Despite the wording of claim 1 being unambiguous, in the decision under appeal, the opposition division held that these features would need interpretation and should be understood as meaning that "every

transferring device is coupled to at least one independent programmable motor".

1.5 Such an understanding required an exchange of the words "at least one" with "every" as well as "each" with "at least one". However, no disclosure of the invention describes the relationship between the transferring devices and programmable motors using these exchanged indefinite pronouns. Therefore, the meaning given to the feature by the opposition division is not based on the disclosure and cannot be justified (See also point 1.6.3 below).

1.6 Consistent with the view of the opposition division, the appellant/proprietor regarded the expression "at least one of the transferring devices being coupled to each of the programmable motors" as requiring interpretation.

1.6.1 In order to support its interpretation of in particular the word "each", the appellant/proprietor filed dictionary evidence. This dictionary evidence states that the word "each" is used as a determiner for every (one) of two or more considered individually. Examples in context are given as "each day" and "each person". As a language note it is added that "*Each* is a singular pronoun and should be used with a singular form of a verb".

1.6.2 Accordingly, this dictionary evidence confirms the usual understanding of the word "each" which is that it is not one, but two (or even more) of a kind - although these are still individual units. Hence, the dictionary evidence does not support the use of the word "each" in the sense of "only one" unit, even though it is used with a singular form of a verb. Therefore, the

dictionary evidence is not suitable to confirm the interpretation which the appellant/proprietor wished to have applied.

1.6.3 Concerning the appellant/proprietor's suggestion that an inverse construction of the wording of the feature in dispute should be considered, there is no basis for this. When reading the feature in the swapped order ("each of the programmable motors being coupled to at least one of the transferring devices"), the meaning of the feature changes completely compared to that in the claim. A basis for exchanging the pronouns is nowhere to be found in the patent specification, hence such swapped wording is not disclosed and cannot be taken into account at all.

1.6.4 The further argument of the appellant/proprietor that the objected features would be compatible under the proviso that the at least two programmable motors remained independent of each other was also not applicable. The suggestion that the programmable motors remaining independent implied that the transferring devices were simply coupled to at least one motor is an interpretation which contradicts the unambiguous wording of the feature in the claim, whereby a transferring device is coupled to each of the motors.

1.6.5 The wording "for moving the transferring devices in an orbital path" which was considered relevant by the appellant/proprietor only refers to the aim of the coupled transferring devices/motors in moving the transferring devices along a particular path. This does not assist in disclosing how a transferring device can be coupled to each programmable motor and thus cannot add anything to alter the lack of sufficient disclosure

concerning how to obtain the claimed relationship between transferring devices and motors.

1.6.6 The reference by the appellant/proprietor to the embodiment shown in Figures 16 to 18 does not alter the above considerations. Figures 16 to 18 refer to a particular embodiment having nine motors and three transferring devices. Each of the transferring devices is coupled to three motors. Hence, this embodiment discloses how to carry out embodiments in which multiple motors are coupled to one transferring device. Nevertheless, this embodiment is inconsistent with the claimed feature of at least one transferring device being coupled to each of the programmable motors which would require at least one of the transferring devices to be coupled to each (all, here all nine) of the programmable motors. Also none of the further embodiments shown in the Figures 1 to 15 and 19 to 22 illustrates that at least one of the transfer devices is indeed coupled to each of the programmable motors. Therefore, none of the disclosed embodiments discloses how to obtain the claimed subject-matter.

1.7 It has also to be taken into account that it is not specified in the claim or in the description in which way the motors are "independent", therefore the broadest interpretation applies which includes that the motors are independent in all possible aspects. Even this interpretation does not help the appellant/ proprietor's argument since the requirement for a transferring device to be coupled to each (and every) programmable motor must still be respected and independent programmable motors change nothing in this regard.

1.8 In conclusion, the skilled person would not be capable of putting the invention into practice in view of the claimed relationship between transferring devices and motors.

1.9 Hence, concerning the main request, the ground for opposition under Article 100(b) EPC 1973 prejudices the maintenance of the patent as granted. Similarly, concerning all the auxiliary requests, the requirement of Article 83 EPC 1973 is not met.

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:

M. H. A. Patin M. Hannam

Decision electronically authenticated