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**Datasheet for the decision
of 13 June 2013**

Case Number: T 1860/12 - 3.2.07
Application Number: 06812744.8
Publication Number: 1954458
IPC: B28B 11/14, B26D 1/553
Language of the proceedings: EN

Title of invention:
Method and device for cutting plastic material

Applicant:
H+H International A/S

Headword:
-

Relevant legal provisions:
EPC Art. 84
RPBA Art. 13(1)

Keyword:
"Admissibility of requests filed during the oral proceedings -
no, clarity objection not overcome (points 1.2, 2.7)"

Decisions cited:
-

Catchword:
-



Case Number: T 1860/12 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 13 June 2013

Appellant: H+H International A/S
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 15 February 2012
refusing European patent application
No. 06812744.8 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
E. Kossonakou

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the decision of the examining division refusing the European patent application No. 06 812 744.8.

It requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the main request, filed as auxiliary request 1 at the oral proceedings, or on the basis of one of the auxiliary requests 2, amended 2 or 3, all of them filed at the oral proceedings.

- II. The claims 1 of these requests read as follows

Main request

"1. Method for cutting plastic material, in particular semi-plastic cellular concrete, comprising of moving wires reciprocally in their lengthwise direction, the longitudinal direction, and also moving the material transversely of the lengthwise direction of the wires, the transversal direction, characterized in that the method also comprises of moving at least one of said wires reciprocally in transversal direction such that after the cutting said at least one wire passes at least once more over points of a cut surface".

Auxiliary request 2

"1. Method for cutting plastic material, in particular semi-plastic cellular concrete, comprising of moving wires reciprocally in their lengthwise direction by

means of first means, the longitudinal direction, and also moving the material transversely of the lengthwise direction of the wires, the transversal direction, by means of second means, characterized in that the method also comprises of moving at least one of said wires reciprocally in transversal direction by means of third means such that after the cutting said at least one wire passes at least once more over points of a cut surface".

Amended auxiliary request 2

"1. Method for cutting plastic material, in particular semi-plastic cellular concrete, comprising of moving wires reciprocally in their lengthwise direction by means of first means, the longitudinal direction, and also moving the material transversely of the lengthwise direction of the wires, the transversal direction, by means of second means, characterized in that the method also comprises of moving at least one of said wires reciprocally in transversal direction by means of third means such that after the cutting said at least one wire passes at least once more over points of a cut surface further characterized in that the method comprises of moving said at least one wire such that points of this wire describe an elliptical, preferably circular path".

Auxiliary request 3

"1. Device for cutting plastic material, in particular semi-plastic cellular concrete, comprising of moving at

least one wire reciprocally in its lengthwise direction by means of first means, the longitudinal direction, and also moving the material transversely of the lengthwise direction of said at least one wire, the transversal direction, by means of second means, characterized in that the device also comprises third means for moving said at least one wire reciprocally in transversal direction such that after the cutting of the material said wire passes at least once more over points of a cut surface further characterized in that the first and third means are adapted to move the at least one wire such that each point of the or each wire describes an elliptical, preferably circular path".

III. The following documents, which were considered in the impugned decision, are referred to

D1 JP-A-59 131 409

D5 DATABASE WPI, Week 198235
Thomson Scientific, London, GB
AN 1982-L5949E & SU-A-876 444

IV. According to the impugned decision the method of claim 1 as originally filed lacks novelty in view of D5 which has been considered as disclosing a method as defined by the introductory clause of claim 1. Concerning the characterising features of claim 1 the cutting wire of D5 has been considered as moving in the longitudinal direction (lengthwise direction of the wires) and with its upper part also in the transversal direction. Thus the cutting wire was held to pass at least once more over points of a cut surface (reasons, no. III.1). Novelty was therefore lacking over D5.

Under the heading "Further comments" it was i.a. indicated that the method of claim 1 is also not new over D1 (point V.3).

V. The submissions of the appellant can be summarized as follows:

- (a) The previous main request, namely the request underlying the impugned decision, is withdrawn.
- (b) Due to the lack of timely instructions it was not possible to file amended requests prior to the oral proceedings.
- (c) The amendments of claims 1 of all requests as filed at the oral proceedings do not substantially change the claimed subject-matter and are not complex. Since these claims could easily be dealt with during the oral proceedings they should be admitted despite their late filing.

VI. The Board in its annex to its summons to oral proceedings (in the following: the annex) raised i.a. a number of objections concerning lack of clarity (points 6.1.1 - 6.1.5)

VII. Oral proceedings before the Board were held 13 June 2013.

Reasons for the Decision

1. *Admissibility of the requests filed at the oral proceedings*
 - 1.1 It was not disputed that the requests filed at the oral proceedings are late filed, therefore their admittance lies in the discretion of the Board according to Article 13(1) RPBA.
 - 1.2 In exercising its discretion the Board considered, in line with the established jurisprudence
 - the time in the proceedings at which these requests have been filed,
 - whether the late filing is occasioned by new issues which have arisen in the course of the appeal proceedings and
 - the *prima facie* relevance of the late filed requests i.e. whether by these requests previous objections become obsolete and whether new issues need to be dealt with.
 - 1.2.1 The time in the proceedings at which these requests were filed is the latest possible since they were filed at the oral proceedings, after the discussion and withdrawal of the then main request (the one underlying the impugned decision).
 - 1.2.2 The Board notes that no new objections - other than the ones already referred to in the annex - have been raised in the appeal proceedings which could have occasioned the late filing of these requests.

The only reasons given by the appellant relate to the internal communication between the appellant and its representative; for that reason they are of no concern for the Board.

- 1.2.3 Concerning the *prima facie* relevance of the late filed requests the Board is, as stated during the oral proceedings, of the opinion that not all of the objections raised in the annex and discussed during the oral proceedings in connection with claim 1 underlying the impugned decision have been dealt with by the amendments of the claims 1 of all requests.

This concerns in particular, as underlined during the oral proceedings, the definition of the characterising feature of the claims 1 of the main request and of auxiliary request 2 and correspondingly the definition of the first characterising feature of the claims 1 of amended auxiliary request 2 and auxiliary request 3.

2. *Claim 1 according to the main request*

- 2.1 According to claim 1 of the main request the characterising feature in question reads: "the method also comprises of moving at least one of said wires reciprocally in transversal direction **such that after the cutting** said at least one wire passes at least once more **over points of a cut surface**" (highlighting in bold added).

2.2 This feature comprises two parts.

The first part defines a method step according to which at least one of said wires - namely one of the wires which, according to a feature of the entering clause, are moved reciprocally in their lengthwise direction - is moved reciprocally in transversal direction.

The second part defines an effect of this method step with regard to

- the time at which it occurs: **after the cutting** and
- the effect as such: at least one wire passes at least once more over points of a cut surface.

2.3 Concerning the in this respect corresponding feature of claim 1 underlying the impugned decision (i.e. claim 1 as originally filed), two objections have been raised in the annex (point 6.1.4).

The first objection reads: "The expression "after the cutting" in feature (d) appears to leave open which "cutting" is taken as reference (i.e. cutting of the entire plastic material or of an incremental cutting step being completed)".

Concerning the nomenclature for the features, see point 3.1 of the annex.

During the discussion of this first objection at the oral proceedings its validity has not been disputed.

2.4 The issue of the first objection has not been resolved by the claims 1 of any of the requests, as admitted by the appellant who, upon questioning by the Board, was unable to cite an appropriate disclosure in the application as originally filed which could have served as basis for a proper amendment of any of the claims 1, to overcome this objection.

2.5 As referred to in the annex and as indicated above, the expression "after the cutting" defines, as discussed during the oral proceedings, the start of a period which is determined by a "cutting", without defining whether the expression "cutting" relates to the **cutting of the entire plastic material** or whether it relates to the **completion of an incremental cutting step in the course of cutting** the plastic material.

The point in time to be defined by this feature needs to be clear (Article 84 EPC) since it relates to the definition of the sequence of method steps as defined in claim 1 (movement of a wire in longitudinal and in transversal direction).

2.6 This requirement is not fulfilled by claim 1 of the main request.

2.7 It is thus not necessary to examine whether or not the second or any other of the objections raised in the annex with regard to clarity have been resolved, or whether due to the amendment of claim 1 new issues arise.

3. The above reasoning applies *mutatis mutandis* to the claims 1 of auxiliary request 2, amended auxiliary request 2 and auxiliary request 3.

3.1 *Claim 1 according to auxiliary request 2*

3.1.1 This claim 1 differs from claim 1 of the main request in that, concerning the features defining the various movements referred to in the claim, expressions have been added defining that these movements are caused by "**means**". Thus the wires are moved reciprocally in their lengthwise direction by **first means**, the material is moved transversely by **second means** and at least one of said wires is moved reciprocally in transversal direction by **third means**.

Since these first, second and third means are all exclusively defined by reference to their corresponding functions / movements and not by structural features, these amendments cannot contribute to clarify the meaning of the point in time as defined by "after the cutting" as discussed above.

3.2 *Claim 1 of amended auxiliary request 2*

3.2.1 In comparison to claim 1 of the previous auxiliary request 2 this claim comprises the further amended feature of claim 2 as originally filed, that the at least one wire (which moves reciprocally in a transversal direction such that after the cutting it passes at least once more over points of a cut surface) moves such that points of this wire describe an elliptical, preferably circular path.

3.2.2 As indicated by the Board at the oral proceedings this additional feature relates to the definition of how the first means and the third means cooperate in moving this wire in the longitudinal and the transversal direction. This thus gives, as correctly pointed out by the appellant, the indication of a simultaneous movement of the wire in both directions.

As further indicated by the Board during the oral proceedings this feature however does not bear any significance for the lack of clarity in respect of the point in time at which the at least one wire moves.

3.3 *Claim 1 according to auxiliary request 3*

3.3.1 In this request the method claims have been deleted. Claim 1 according to auxiliary request 3 defines a device for cutting plastic material which is defined essentially by features which correspond to the method steps of claim 1 according to the amended auxiliary request 2; in essence they do not go beyond these method steps, as indicated by the Board during the oral proceedings.

The expression "after the cutting of the material" used in this claim 1 still leaves, comparable to the expression "after the cutting" of the claims 1 of the previous requests, undefined at which point in time said wire passes at least once more over points of a cut surface. This claim 1 thus likewise fails to clarify the point in time defined as "after the cutting" for the reasons given above with respect to claim 1 of the amended auxiliary request.

4. Since therefore at least one of the objections raised in the annex has not been *prima facie* resolved by the amended claims 1 of the requests filed during the oral proceedings, the Board exercises its discretion under Article 13(1) RPBA to not admit the requests filed during the oral proceedings.

For completeness' sake the Board wishes to indicate that, as also referred to during the oral proceedings, a *prima facie* examination of the feature comprised in the claims 1 of all requests shows that the or the at least one **wire passes at least once more over points of a cut surface** does not contribute to clarify the meaning of the point in time defined as "after the cutting" as discussed above. It also does not clearly define the area of the cut surface treated in this manner (cf. the annex, point 6.1.5).

5. Since a European patent application can only be decided upon on the basis of a text agreed by the appellant (Article 113(2) EPC) and no request agreed upon by the appellant is in the proceedings, the appeal has to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders