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**Datasheet for the decision
of 14 March 2016**

Case Number: T 1592/14 - 3.2.01

Application Number: 05700480.6

Publication Number: 1719702

IPC: B64F1/305

Language of the proceedings: EN

Title of invention:

BOARDING BRIDGE AND METHOD OF IMPROVING THE STABILITY OF A
BOARDING BRIDGE

Patent Proprietor:

China International Marine Containers (Group) Co., Ltd.

Opponent:

ThyssenKrupp Airport Systems, S.A.

Headword:

Relevant legal provisions:

EPC Art. 123(2), 100(c), 84, 111(1)
RPBA Art. 13(1)

Keyword:

Claims - clarity (yes)

Amendments - added subject-matter (no)

Late-filed request - admitted (yes)

Appeal decision - remittal to the department of first instance
(yes)

Decisions cited:

G 0003/14

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 1592/14 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 14 March 2016

Appellant: China International Marine Containers (Group)
(Patent Proprietor) Co., Ltd.
CIMC R & D Center,
No.2 Gangwan Avenue,
Shekou Industrial Zone
Shenzhen Guangdong 518067 (CN)

Representative: Grünecker Patent- und Rechtsanwälte
PartG mbB
Leopoldstraße 4
80802 München (DE)

Respondent: ThyssenKrupp Airport Systems, S.A.
(Opponent) Poligono Industrial Vega de Baiña s/n
33682 Mieres (Asturias) (ES)

Representative: Lorenz, Bernd Ingo Thaddeus
Andrejewski - Honke
Postfach 10 02 54
45002 Essen (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 3 June 2014
revoking European patent No. 1719702 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: H. Geuss
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the Opposition Division of the European Patent Office posted on 3 June 2014 revoking European patent No. 1719702 pursuant to Article 101(3)(b) EPC.
- II. The opposition division held that the subject-matter of claims 1 and 11 as granted (main request) extended beyond the content of the application as filed (Article 100(c) EPC) and that claims 1 and 11 according to the auxiliary requests extended the scope of protection (Article 123(3) EPC).
- III. During oral proceedings held on 14 March 2016 the appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the claims according to the sole request filed during oral proceedings.

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

- IV. Claim 1 of the sole request as filed during oral proceedings reads as follows:

A boarding bridge comprising:

a tunnel for carrying the passenger, whereby the tunnel is disposed above a beam (2), the first end of the tunnel adapted to be connected to a boarding gate of an airport, the second end of the tunnel adapted to be connected to an exit of an airplane;

an elevation system (12) for changing the height of the tunnel provided at the second end of the tunnel;

the beam (2) for supporting the elevation system (12), on which an elevator system (12') is arranged; and wheels (1), attached to the beam (2) through a bearing assembly (21) and being in contact with the ground;

a wheel mechanism (10) provided with the beam (2), a supporting unit composed of a revolving base, a hinge support and a hinge shaft being provided thereon, whereby the wheels (1) of the wheel mechanism (10) are attached to the supporting unit and rotating relative to the revolving base;

a control system, for controlling the moving direction of the wheels (1) and the lifting of the elevation system (12);

and

an auxiliary supporting unit (20) for providing an auxiliary support to the tunnel when the boarding bridge is moving or when the boarding bridge is located on position, said auxiliary supporting unit (20) being defined at an outside of the wheels (1) and provided with

two leg supports (3; 13; 23; 33), respectively attached under two ends of the beam (2) and defined outside the wheels (1), wherein each leg support (3; 13; 23; 33) can be driven to extend and retract; and

two foot portions (5; 15; 25; 35), each attached to one end of the respective leg support (3; 13; 23; 33), wherein the foot portions (5; 15; 25; 35) can be supported on the ground when the leg supports (3; 13; 23; 33) being extended and can leave the ground when

the leg supports (3; 13; 23; 33) being retracted.

V. The appellant's submissions may be summarized as follows:

The request as filed during the oral proceedings is based on auxiliary request 4, filed on 12 February 2016, and should be admitted into the proceedings. With this request all objections as mentioned in the communication of the board have been resolved and the amendments made are literally disclosed in claim 10 as originally filed. Furthermore, claim 1 is clear in the sense of Article 84 EPC. It is perfectly clear which elements belong to the boarding bridge according to the invention and which elements are part of the gate of the airport. In fact, the elements constituting the boarding bridge are specified in the features of the claim. Further, introducing the term "adapted to be" in the feature "the first end of the tunnel adapted to be connected to a boarding gate of an airport" (denoted as feature b) in the written procedure) does not introduce additional subject-matter. The invention as originally filed was directed to a boarding bridge, see description, first page, first sentence. Moreover, the feature denoted as feature d) in the written proceedings, namely "the beam (2) for supporting the elevation system (12), on which an elevator system (12') is arranged", introduces no undisclosed subject-matter. In the description "elevation system" and "elevator system" are used as synonyms. They both refer to the same device. Despite of different reference signs in the feature in suit, it is clear for the skilled person that they refer to the same part. In any case, the phrasing of a claim should always be interpreted in the light of the description, which, in the underlying case, leaves no doubt that only a single

elevator system - respectively elevation system - is disclosed and claimed.

VI. The respondent's rebuttal was essentially the following:

The patent proprietor's request as filed during the oral proceedings should not be admitted into the proceedings. The deficiencies which have been corrected in this version of claim 1 were already objected to with the notice of opposition. However the appellant failed to provide suitable auxiliary requests. For reasons of procedural economy and fairness this claim should not be accepted. Claim 1 according to the sole request is not clear and concise according to Article 84 EPC. In particular the feature "the first end of the tunnel adapted to be connected to a boarding gate of an airport" remains vague and unclear. Since the tunnel is adapted to be connected to the boarding gate of the airport, the skilled person does not know - in the connected state - which parts belong to the boarding bridge according to the invention and which parts belong to the airport building. As a matter of fact, the border line between airport building and boarding bridge has not been clearly defined in the application as originally filed. Now that the boarding bridge is no longer connected but "adapted to be connected", the scope of the claim is unclear. For the same reason, this amendment in claim 1 introduces undisclosed subject-matter. The wording of claim 10 as originally filed defines the tunnel as being connected to the gate of an airport. Since the gate of the airport is no longer part of the definition of the boarding bridge according to claim 1, the wording "adapted to be connected to" instead of "connected to" infringes Article 123(2) EPC.

Furthermore, feature d1) "the beam (2) for supporting the elevation system (12), on which an elevator system (12') is arranged" introduces undisclosed subject-matter.

This phrasing is absolutely clear and concise and defines an elevation system (12) being supported by the beam (2) and a further elevator system (12') arranged thereon. The use of different expressions and reference signs leaves no doubt that "elevator system" and "elevation system" are two separate entities which are arranged and supported by the beam according to feature d1).

Consequently there is no need for the skilled person to consult the description for clarifying this feature, as it would be the case for an unclear feature. In contrast, the appellant's argument that the terms "elevator system" and "elevation system" should be interpreted as synonyms, causes a problem of consistency: following the appellant's argument the feature in suit would mean that the beam supports the elevation system on which the elevation system is arranged. At least the second part of this sentence would be meaningless and therefore unclear. A skilled person, however, would always tend to understand a technical feature in a concise and self-consistent way, which implies in the present case that "elevator system" and "elevation system" are two different elements.

Reasons for the Decision

1. The appeal is admissible.

2. The patent proprietor's request as filed during the oral proceedings is admitted into the proceedings.

This request corresponds to the auxiliary request 4, filed with letter of 12 February 2016, and only differs therefrom by the deletion of method claims 11 to 13. The mere deletion of these claims does not per se justify the exercise of the Board's discretion under Article 13(1) RPBA not to admit the request.

As regards the amendments of claim 1, which were made on filing the auxiliary request 4, they clearly constitute a direct reaction to the objections mentioned in point 1.2 of the communication of the Board pursuant to Article 15(1) RPBA accompanying the summons to oral proceedings. In fact, the amendments consist of introducing features in the claim, which absence was objected to by the Board in the above-mentioned communication in such detail for the first time in the proceedings. Moreover, the respondent's objection that the feature (feature b)) "... a tunnel ... the first end of the tunnel adapted to be connected to a boarding gate of an airport..." renders claim 1 unclear and introduces undisclosed subject-matter, is not so complex that it cannot be discussed during oral proceedings before the Board of appeal (cf. points 3.1 and 4.1, below).

Under these circumstances, the Board exercised its discretion to admit the request into the proceedings.

3. Claim 1 is clear and concise and is supported by the description, Article 84 EPC.
- 3.1 The respondent objected the feature of claim 1 "... a tunnel ... the first end of the tunnel adapted to be

connected to a boarding gate of an airport...”, which is based on the wording of claim 10 as originally filed, which reads“... a tunnel ... the first end of the tunnel connected to a boarding gate of an airport...”.

- 3.2 The Board does not follow the respondent’s argument that the introduction of the term “adapted to be” renders claim 1 unclear and vague since the border line between “boarding gate of the airport” and “tunnel” is not exactly defined.

The wording “adapted to be connected” means clearly that the tunnel of the boarding bridge according to the invention is suitable to be connected to the boarding gate. In the Board's view it is perfectly clear for a skilled person where the boundary between a boarding bridge and a boarding gate is, the latter belonging to an airport's building and the former being a specific structure bridging the boarding gate and an airplane's exit. In any case, since the claim is directed to a boarding bridge, it is appropriate to recite in the claim that the boarding bridge is adapted to be connected to a boarding gate, rather than connected to, since in the latter case it would be questionable whether what is claimed is the boarding bridge on its own or the combination of boarding bridge and boarding gate.

4. Claim 1 has not been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed, Articles 123(2) and 100(c) EPC.

- 4.1 With respect to the amendment as discussed under point 3.1, above, the respondent argues that the addition of “adapted to be” introduces undisclosed subject-matter,

since the boarding gate of the airport is no longer part of the claimed invention.

As already pointed out, cf. 3.2 above, the whole description leaves no doubt that the invention concerns a boarding bridge and as such it is disclosed, namely as a separate part, without the airport building and without the airplane. Further, the Board cannot identify a supplementary technical information given to a skilled person by addition of "adapted to" in the feature as originally disclosed.

The respondent's argument that claim 10 as originally filed defines a ready-to-use boarding bridge which is already connected to the airport building whereas in the amended version of the claim, also pre-products are covered, is not convincing. The claim clearly relates to a boarding bridge on its own, and this corresponds to what is disclosed in the application as originally filed, cf. page 1, first paragraph.

5. The respondent submits further that the feature "the beam (2) for supporting the elevation system (12), on which an elevator system (12') is arranged" (denoted as feature d1) in the written proceedings) introduces undisclosed subject-matter. Two different expressions - "elevation system (12)" and "elevator system (12')" - with different reference signs and the correct use of the indefinite article with respect the elevator system (12') leave no doubt that two separate elements are claimed. The application as filed does not disclose two such separate parts of the boarding bridge. However it is agreed that in the description "elevation system" and "elevator system" are used as synonyms.

The opposition division shared the opinion of the

respondent in its decision.

The Board firstly notes that the above-mentioned feature is present in granted claim 1 and as such is not open to an objection of lack of clarity (Article 84 EPC) following G 3/14 (see in particular point 55 of the reasons).

Claim 1 defines that the tunnel of the boarding bridge is disposed above a beam, that an elevation system is provided for changing the height of the tunnel, and that the elevation system is supported by the beam. These features would suggest that it is the elevation system that has the function of changing the height of the tunnel, and that the elevation system is provided between the beam and the tunnel. The claim further recites, after the feature "the beam (2) for supporting the elevation system (12), the feature "on which an elevator system (12') is arranged". This raises the question of whether this elevator system is arranged on the beam or rather is arranged on the elevation system. Considering that no further function can be attributed to the elevator system other than that of changing the height of the tunnel, the first possibility would imply that there are two devices for changing the height of the tunnel, both being arranged on the beam. The second possibility would imply that the elevator system is arranged on the elevation system, i.e. that it is a part of the elevation system that either provides, or contributes to, the function of changing the height of the tunnel. The wording of the claim is therefore ambiguous.

However, the patent must be construed by a mind willing to understand, not a mind desirous of misunderstanding. It is thus not the correct approach, having noted this ambiguity, to arbitrarily select a possible

interpretation of the claim. Instead, an attempt must be made to resolve this ambiguity, in particular taking into account the description of the patent in suit.

This ambiguity would be solved by reading the description, which indisputedly clearly uses "elevation system" and "elevator system" as synonyms.

As a consequence the Board holds that the terms "elevation system" and "elevator system" in claim 1 can only be read as synonyms. This implies that feature d1) "the beam (2) for supporting the elevation system (12), on which an elevator system (12') is arranged" does not introduce undisclosed subject-matter.

6. The patent was revoked by the Opposition Division for non-compliance with the requirements of Article 100(c) and 123(3) EPC. Numerous other issues have yet to be examined and decided on. The Board accordingly deems it appropriate, exercising its discretion under Article 111(1) EPC, to remit the case to the department of first instance for further prosecution.

Order

For these reasons it is decided that:

- The decision under appeal is set aside.
- The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated