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**Datasheet for the decision
of 19 November 2018**

Case Number: T 1596/14 - 3.2.05

Application Number: 07860866.8

Publication Number: 2100070

IPC: F16L47/28

Language of the proceedings: EN

Title of invention:

Connection assembly for the connecting of a cylindrical branch of a plastic pipe, and method for the attaching of a cylindrical branch to a plastic pipe

Patent Proprietor:

Wavin B.V.

Opponent:

Dyka B. V.

Relevant legal provisions:

EPC 1973 Art. 84, 123(2), 83, 54(2), 56, 104(1)

RPBA Art. 12(4), 13(1), 13(3)

EPC 1973 R. 99(2), 101(1)

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(yes)

Late-filed requests - admitted (yes)

Amendments - new main request - added subject-matter (yes)

Amendments - amended auxiliary request I - allowable (yes)

Amended auxiliary request I - Novelty (yes)

Amended auxiliary request I - Inventive step (yes)

Apportionment of costs - (no)



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Case Number: T 1596/14 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 19 November 2018

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
9 July 2014 concerning maintenance of the
European Patent No. 2100070 in amended form.**

Composition of the Board:

Chairman M. Poock
Members: S. Bridge
J. Geschwind

Summary of Facts and Submissions

- I. Both parties lodged an appeal against the interlocutory decision of the opposition division that the European patent No. 2 100 070 amended according to the auxiliary request meets the requirements of the EPC.
- II. An opposition was filed against the patent as a whole based on Article 100(a) EPC 1973 (lack of novelty, Article 54 EPC 1973 and lack of inventive step, Article 56 EPC 1973).
- III. Oral proceedings were held before the board of appeal on 19 November 2018.
- IV. Appellant I (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the new main request filed with letter of 19 October 2018 or amended auxiliary request I filed during the oral proceedings, or auxiliary request II filed with letter of 19 October 2018.
- V. Appellant II (opponent) requested that the appeal of appellant I be rejected as inadmissible or that the decision under appeal be set aside and that the European patent be revoked. Appellant II also requested an apportionment of costs.
- VI. Claims 1 and 9 according to the new main request read as follows:

"1. Connection assembly for the connecting of a cylindrical branch of a plastic pipe (1, 1*), which plastic pipe has a wall (2) having an inner surface (3), an outer surface (4) and a wall thickness, and there being

provided in the wall an opening (5) for the connecting of the branch to the plastic pipe (1, 1*), which opening (5) is delimited by an annular wall, which connection assembly comprises:

- an insert pipe (21) which is to be inserted in the opening (5) in the wall (2) of the plastic pipe (1, 1*), which insert pipe (1, 1*) has a flange (22) having a maximum diameter which is smaller than the diameter of the opening (5) in the wall (2) of the pipe (1, 1*) and the outer diameter of the flange (22) being larger than the outer diameter of the insert pipe (21), which insert pipe (21) is displaceable with respect to the annular wall of the opening (5) between a first position and a second position in a direction which is substantially perpendicular to the axial direction of the pipe (1, 1*), the distance between the flange (22) of the insert pipe (21) and the inner surface (3) of the pipe (1, 1*) being larger in the first position than in the second position,
- displacement means (35) for moving of the insert pipe between the first and the second position, wherein the displacement means comprises a lever (35) which acts on the insert pipe,
- a support ring (28, 128) which is to be arranged between the insert pipe (21) and the annular wall of the opening (5) in the plastic pipe (1, 1*), which support ring (28, 128) has, when mounted, a substantially fixed position with respect to the annular wall of the opening (5) in the plastic pipe (1, 1*) but which support ring (28, 128) is detached from the insert pipe (21),
- a locking means (36) for the securing of the insert pipe (21) in the second position, which locking means is supported directly or indirectly on the outer surface (4) of the pipe (1, 1*) in such a way that the force required for the securing of the insert pipe (21)

in the second position is absorbed by the outer surface (4) of the pipe (1, 1*), wherein the lever also serves as locking means, by configuring the lever such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position, wherein the connection assembly further comprises a deformable blocking ring (25, 125), which blocking ring (25, 125) can assume a stretched form which blocking ring (25, 125) is located between the flange (22) of the insert pipe (21) and the support ring (28, 128), the blocking ring having in the second position of the insert pipe an outer diameter which is larger than the diameter of the opening in the plastic pipe, characterized in that the blocking ring (25, 125) can also assume a folded form due to an outward bending of the blocking ring, the outer diameter of the blocking ring being larger in the folded form than in the stretched form, wherein the blocking ring (25, 125) is located between the flange (22) of the insert pipe (21) and the support ring (28, 128) in such a way that the blocking ring (25, 125) has, in the first position of the insert pipe (21), a substantially stretched form and, in the second position of the insert pipe (21), the folded form, wherein the blocking ring (25, 125), in its folded form, also produces a seal between the plastic pipe (1, 1*) and the insert pipe (21) by tight clamping of a portion of the blocking ring (25, 125) between the insert pipe (21) and the annular wall of the opening (5) in the plastic pipe."

"9. Method for the attaching of a cylindrical branch to a plastic pipe (1, 1*), which plastic pipe has a wall (2) having an inner surface (3), an outer surface (4) and a wall thickness, which method includes the following steps:

- the forming of an opening (5) in the wall of the plastic pipe (1, 1*), which opening is delimited by an annular wall,
- the inserting of an insert pipe (21) in the opening (5) in the wall (2) of the plastic pipe (1, 1*), which insert pipe has a flange (22) having a maximum diameter which is smaller than the diameter of the opening (5) in the wall (2) of the pipe (1, 1*) and is larger than the outer diameter of the insert pipe (21),
- the arranging of a deformable blocking ring (25, 125) on the flange (22) of the insert pipe (21), which deformable blocking ring (25, 125) can assume a stretched and a folded form, the blocking ring (25, 125) being substantially in the stretched form during the arranging thereof to the flange (22) of the insert pipe (21), wherein the blocking ring (25, 125), in its folded form, also produces a seal between the plastic pipe (1, 1*) and the insert pipe (21) by tight clamping of a portion of the blocking ring (25, 125) between the insert pipe (21) and the annular wall of the opening (5) in the plastic pipe.
- the arranging of a support ring (28, 128) to the blocking ring (25, 125) in such a way that the support ring (28, 128) is located between the insert pipe (21) and the annular wall of the opening (5) in the wall (2) of the plastic pipe (1, 1*),
- the locking of the support ring (25, 125) with respect to the annular wall of the opening (5) in the wall of the plastic pipe (1, 1*), the support ring (25, 125) remaining detached from the insert pipe (21),
- the displacing of the insert pipe (21) using displacement means in such a way that the flange (22) of the insert pipe (21) is brought closer to the support ring (28, 128), the blocking ring (25, 125) being brought into its folded form due to an outward bending of the blocking ring, in which folded form the

outer diameter of the blocking ring is larger than in the stretched form, and the blocking ring (25, 125) having, in the folded form, an outer diameter which is larger than the diameter of the opening (5) in the plastic pipe (21), the displacement means comprising a lever which acts on the insert pipe,
- the locking of the position of the insert pipe (21) with respect to the plastic pipe (1, 1*) using locking means in such a way that the folded form of the blocking ring (25, 125) is maintained, the force required for the locking being absorbed by the outer surface (4) of the plastic pipe (1, 1*) wherein the lever also serves as locking means, by configuring the lever such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position."

VII. Claims 1 and 9 according to the amended auxiliary request 1 respectively differ from claims 1 and 9 according to the new main request in that,

- the text

"so that the lever engages the insert pipe in the second position"

is added in claim 1 after

"by configuring the lever such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position,"

and is added in claim 9 after

"comprising a lever which acts on the insert pipe";

- in claim 9, the erroneous full stop after *"in the plastic pipe"* is replaced by a comma.

VIII. The following documents are referred to in the present decision:

D2: EP-B1-0 365 583;
D4: FR 2 269 673 A2;
D11: Brochure "*Buitenriolering*" and English translation D15 of page 7;
D16: WO 2006/064191 A2;
D23: JP 086870 B2 (including a machine translation).

IX. The arguments of appellant I (patent proprietor) in the written and oral proceedings can be summarised as follows:

Admissibility of the appeal of the patent proprietor

The disclosure of the feature of granted claim 1 ("*in such a way that the force required for the securing of the insert pipe (21) in the second position is absorbed by the outer surface (4) of the pipe (1, 1*)*") in document D16 is questioned. This also affects the opposition division's finding of lack of inventive step starting from document D16.

Appellant I's grounds of appeal thus explain why the opposition decision should be set aside: thus the appeal of appellant I is sufficiently reasoned and is therefore admissible.

Admissibility of the new main request and of the amended auxiliary request I

These new requests substantially reduce the number of appellant I's requests and fall back onto a particular embodiment. This is in line with the EPC and does not create a new case.

Amended auxiliary request I is only a corrected version of new auxiliary request I (filed together with the new main request) in which the omission in claim 9 of the feature added to claim 1 was corrected.

The new main request and the amended auxiliary request I are thus admissible.

Claims 1 and 9 according to the new main request - article 123(2) EPC

Claim 1 already states that the lever "*acts on the insert pipe*". Since this statement is not further qualified, it also applies to when the connection assembly is in the second position. This feature is thus implicitly already contained in claim 1 according to the new main request. The subject-matter of claim 1 thus satisfies the requirements of article 123(2) EPC.

Amended auxiliary request I - Amendments

Displacing the insert pipe in such a way that the flange of the insert pipe is brought closer to the support ring implicitly discloses the axial compression force: the "*outward bending*" is merely an explanation of how the folding is achieved in accordance with the description as filed. The mechanism involved is already fully specified in the claims. Additionally mentioning the forces involved is not required. The requirements of articles 84 and 123(2) EPC are satisfied.

*Amended auxiliary request I - Sufficiency of disclosure
(article 83 EPC 1973)*

The relevant skilled person is a mechanical engineer with experience in the field of pipe connections. Such an engineer is familiar with over dead centre mechanisms as part of his common general knowledge. It is part of the routine work of such an engineer to design a lever configuration such that the lever also serves as locking means, when it is drawn over a dead centre position when the insert pipe is moved from the first position to the second position. In consequence, there is no lack of disclosure even though there are no figures showing such a configuration in detail.

*Amended auxiliary request I - Claims 1 and 9 - Novelty
(article 54 EPC 1973)*

Document D2 does not directly and unambiguously disclose a stretched configuration of the seal and does not disclose a lever that is drawn over a dead centre position. The subject-matter of the claims is thus new.

*Amended auxiliary request I - Claims 1 and 9 -
Inventive step (article 56 EPC 1973)*

Schematic figure 2 of document D2 does not disclose a lever configured such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position: There is no corresponding teaching to this effect in the description of document D2 which discloses other securing means (column 4, lines 53 to 58).

The admissibility of late filed document D23 is no longer contested. Document D23 discloses an engagement

position and shape of the lever in the recesses 13A, 18A that ensures that the lever is retained. Document D23 thus uses a different mechanism for preventing further movement of the lever. Document D23 does not disclose a lever configured such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position.

In consequence, neither figure 2 of document D2 nor document D23 disclose or suggest the use of a lever configured such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position. The subject-matter of claims 1 and 9 is not disclosed or suggested by the cited prior art.

Request for apportionment of costs

The number of auxiliary requests filed with the grounds of appeal is not excessive and only involved five technical features in various permutations. The number of auxiliary requests was furthermore substantially reduced after the preliminary opinion of the board. The request for the apportionment of costs is not justified.

- X. The arguments of appellant II in the written and oral proceedings can be summarised as follows:

Admissibility of the appeal of the patent proprietor

In their grounds of appeal, appellant I only argued that the feature "*in such a way that the force required for the securing of the insert pipe (21) in the second position is absorbed by the outer surface (4) of the*

pipe (1, 1*)" of claim 1 as granted is not disclosed in document D16.

Appellant I did not explicitly dispute the finding of lack of inventive step of claim 1 as granted with respect to documents D16 and D5. In so doing, appellant I did not provide a legal or factual grounds as to why the decision of the opposition division should be set aside. Thus, the grounds of appeal of appellant I are not sufficiently reasoned and the appeal should not be admitted.

Admissibility of the new main request and of amended auxiliary request I

These requests are very late filed only one month before the appeal oral proceedings and could have been filed earlier during the opposition proceedings. Appellant II further objects to the large number of auxiliary requests filed with appellant I's grounds of appeal from which these requests have finally been selected and involve a feature taken from the description.

Amended auxiliary request I filed during the auxiliary proceedings is yet a further request and constitutes an intentional abuse of procedure.

The new main request and the amended auxiliary request I should not be admitted into the proceedings.

Claims 1 and 9 according to the new main request - article 123(2) EPC

The subject-matter of a lever drawn over a dead centre position was not in any of the granted claims and omits

the phrase "*so the lever engages the insert pipe in the second position*" from the passage page 4, lines 5 to 13 of the application as published. This omission adds subject-matter, because the new main request also covers embodiments in which the lever does not engage the insert pipe in the second position. Claims 1 and 9 according to the new main request do not meet the requirements of article 123(2) EPC.

Amended auxiliary request I - Amendments

The amendment "*an outward bending [of the blocking ring]*" added to claims 1 and 9 according to amended auxiliary request I was taken from the description and is unclear, because the kind of bending is not specified precisely, contrary to article 84 EPC.

The amendment made to method claim 9 extends beyond the application as filed, because some aspects have been obtained from specific embodiments. The amendment was isolated from the description which indicates that such outward bending results from an axial compressive force: since radial forces may also achieve outwards bending, the amendment is contrary to article 123(2) EPC.

Amended auxiliary request I - Sufficiency of disclosure (article 83 EPC 1973)

There is no detailed example of a lever configuration such that the lever also serves as locking means when it is drawn over a dead centre position when the insert pipe is moved from the first position to the second position. Therefore there is a lack of disclosure, contrary to article 83 EPC.

*Amended auxiliary request I - Claims 1 and 9 - Novelty
(article 54 EPC 1973)*

Although document D2 does not disclose the shape of the sealing means in the first position, the term "*stretched form*" used in claims 1 and 9 should be interpreted to mean any configuration of the sealing means which allows the seal to be inserted into the main pipe in accordance with the description of the patent in suit (application as published, page 1, lines 35 to 38). This is implicitly the case for the sealing means of document D2.

Figures 1, 2 and 4a of document D2 disclose a lever which is in a stable position, i.e. locked by moving it over a dead centre position. The securing means mentioned in the description of document D2 are only additional securing means.

In consequence, the subject-matter of claim 1 and 9 is not new with respect to document D2.

*Amended auxiliary request I - Claims 1 and 9 -
Inventive step (article 56 EPC 1973)*

Document D2 forms the closest prior art from which the subject-matter of claim 1 and 9 differs in terms of:

- the stretched form of the blocking ring and
- the configuration of the lever moving over a dead centre.

These two differences concern separate problems, namely respectively :

- to provide an easier manner of inserting the connection assembly into the main pipe; and
- to hold the lever in a stable position without additional securing means.

The solution to the first problem in terms of a stretched form of the blocking ring is known from various prior art documents, for example, document D4 (page 1, lines 3 to 8).

The solution to the second problem is already disclosed in figure 2 of document D2, where the left side of the figure shows the mechanism over a dead centre in view of the arrangement of the rotation points of the levers. Alternatively, document D23 discloses in figures 2, 6 and 7 a lever which is held in a stable position in the concave engagement parts 13A and 18A without any additional locking means. This configuration is therefore considered as having been drawn over a dead centre position. The solution to the second partial problem is thus obvious to the skilled person.

In consequence, the subject-matter of claim 1 and 9 lacks an inventive step with respect to document D2 in combination with document D4 with respect to the first difference and in combination with either figure 2 of document D2 or figures 2, 6 and 7 of document D23 with respect to the second difference.

Request for apportionment of costs

It is unreasonable for appellant I to file 14 new auxiliary requests with the grounds of appeal only to replace them with two new requests one month before the oral appeal proceedings. Therefore, costs should be awarded to appellant II for also having to prepare for requests which are no longer relevant.

Reasons for the Decision

1. *Admissibility of the appeal of the patent proprietor*

The opposition division's finding of lack of inventive step of claim 1 as granted starting from document D16 assumed that the feature ("*in such a way that the force required for the securing of the insert pipe (21) in the second position is absorbed by the outer surface (4) of the pipe (1, 1*)*") of claim 1 as granted was disclosed in document D16. Should this not be the case, then the opposition division's decision in this respect cannot stand as it is, because it necessarily does not take into account the new arguments concerning the above feature advanced by appellant I on appeal.

By contesting the disclosure of the above feature in document D16, appellant I has provided at least one legal or factual ground as to why the decision of the opposition division should be set aside. The requirements of rule 99(2) EPC are satisfied.

There is thus no reason not to admit the appeal of appellant I into the proceedings (rule 101(1) EPC): the appeal of appellant I is admitted.

2. *Admissibility of the new main request and of amended auxiliary request I*

2.1 According to article 13(3) of the rules of procedure of the boards of appeal (RPBA), "*amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings*".

This is not the case with the new main request or with amended auxiliary request I, because the set of claims corresponding to the new main request was already filed with the grounds of appeal as auxiliary request III. Similarly, the set of claims corresponding to amended auxiliary request I concern a minor amendment to the claims according to the new main request, in reaction to an objection under article 123(2) EPC raised by appellant II. The new main request and the amended auxiliary request I limit appellant I's previous requests in reaction to the objections raised by appellant II and repeated in the preliminary opinion of the board. These requests thus do not raise issues which the Board or the other party cannot reasonably be expected to deal with without adjournment of the oral proceedings. In particular, amended auxiliary request I does not create a new case and cannot surprise appellant II. In consequence, the article 13(3) RPBA is not applicable to the new main request and the amended auxiliary request I.

- 2.2 According to article 13(1) RPBA, *"any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be 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"*.

Since the new main request and the amended auxiliary request I are based on auxiliary request III filed with the grounds of appeal and limit appellant I's previous requests in reaction to the preliminary opinion of the board, neither the complexity of the new subject-matter submitted, nor the current state of the proceedings nor

the need for procedural economy stand in the way of admitting these requests.

Appellant II's opinion that amended auxiliary request I filed during the auxiliary proceedings constitutes an intentional abuse of procedure is merely speculative, since there is no evidence that the omission of the feature from claim 9 of the new auxiliary request I is not merely accidental. Correcting such an obvious error does not amount to an abuse of procedure.

Furthermore, appellant II correctly presumed that the previous auxiliary requests of appellant I were withdrawn. Appellant I confirmed his request situation as soon as the doubts of appellant II in this respect became known to him.

Thus there is no reason why the board should not admit the new main request and the amended auxiliary request I on this basis.

2.3 According to article 12(4) RPBA, the board has the power "*to hold inadmissible facts, evidence or requests which could have been presented in the first instance proceedings*".

The first instance proceedings in this respect can be summarised as follows:

- The provisional opinion of the opposition division of 13 February 2014 issued with the summons to oral proceedings was favourable to appellant I.
- With letter of 1 May 2014 appellant II filed document D16 and briefly outlined a lack of novelty with respect to document D16.

- With fax of 13 May 2014 appellant I reacted to (late filed) document D16 and argued that the subject-matter of granted claim 1 was new with respect to this document.
- With a 27 page long letter of 13 May 2014 appellant II filed further documents D17 to D20 (points 1.2 and 1.3) and *inter alia* argued in detail a lack of novelty with respect to document D16 (point 3.1) and a lack of inventive step with respect to document D16 in combination with document D5 (point 11).
- With a further letter of 16 May 2014 appellant II reacted to appellant I's fax of 13 May 2014 and argued in favour of the admissibility of document D16 and the lack of novelty of the subject-matter of granted claim 1 with respect to document D16.
- With fax of 10 June 2014 appellant I reacted to appellant II's letter of 13 May 2014 and protested about the amount of material provided by appellant II therein and *inter alia* re-iterated its argument that the subject-matter of granted claim 1 was new with respect to document D16. Appellant I in particular argued that :
 - *"in terms of the number of pages used for submitting the views of the Opponent, many many more pages have been submitted after the end of the opposition term as compared to the number of pages submitted before the end of the opposition term"*;
 - *"the total amount of information and documentation of which it is as yet unclear whether this will be admitted into the proceedings or not is*

consequently much larger than the amount of information and documentation of which it is clear that it has been admitted into the proceedings"; and

- *"the annex to the Summons aims to assist parties in preparation for the oral proceedings. Under the present circumstances, it is very unclear what the Opposition Division will consider as important for discussing during the oral proceedings".*

- During the oral proceedings on 13 June 2014 document D16 was admitted into the proceedings and the subject-matter of claim 1 of the patent as granted was found to lack an inventive step with respect to document D16 in combination with document D5.

Thus, although appellant I could theoretically have prepared suitable fallback requests in view of document D16, the board does not consider that it was readily evident for appellant I to anticipate which of the numerous late filed additional lines of argumentation of appellant II might succeed (even though the preliminary opinion of the opposition division was in favour of appellant I), while preparing for all possible outcomes would not appear to be practical for the same reasons, i.e. because the large number of late filed additional lines of argumentation of appellant II.

- 2.4 In consequence, the board uses its discretion to admit the new main request and amended auxiliary request I into the proceedings.

3. *Claims 1 and 9 according to the new main request - article 123(2) EPC*

A lever drawn over a dead centre position is only disclosed in the application as published, page 4, lines 5 to 13. However, the phrase "*so the lever engages the insert pipe in the second position*" was omitted from this passage.

The fact that "*the displacement means comprises a lever which acts on the insert pipe*" (see current claim 1 and application as published, page 4, line 10) is not necessarily related to the end position of the lever when it serves as "*locking means*" (see current claim 1 and application as published page 4, lines 11 to 13). A statement to the effect that the lever "*acts on the insert pipe*" during displacement thus leaves open whether the lever actually "*engages the insert pipe in the second position*" when acting as "*locking means*" once the insert pipe 21 has reached its second position. Furthermore, a lever may act indirectly on an insert pipe 21 without actually *engaging* it. The omission thus adds subject-matter, because there is no basis in the application as filed for claims according to the new main request without the lever engaging the insert pipe in the second position.

Thus claims 1 and 9 according to the new main request do not meet the requirements of article 123(2) EPC.

4. *Amended auxiliary request I - Amendments*

4.1 The added subject-matter objection raised in the context of the new main request (point 3. above) was overcome by adding the missing feature into claims 1

and 9 of the amended auxiliary request I and was not contested by appellant II.

- 4.2 The text "*due to an outward bending of the blocking ring*" further added to claims 1 and 9 was contested by appellant II.
- 4.3 The board notes that this amendment does not add any substantive information, because the independent claims as granted already require the feature "*the outer diameter of the blocking ring being larger in the folded form than in the stretched form*". Since "*folding*" implies "*bending*" to achieve the fold, the skilled person would already expect the blocking ring to bend outwards. This corresponds to appellant I's position that the amendment merely constitutes a further explanation. Appellant II's objection with respect to the clarity of the expression "*outward bending*", is an objection relating to the breadth of this expression when viewed in isolation rather than a lack of clarity when read in the context of the claim as a whole. Thus the amendment meets the requirements of article 84 EPC.
- 4.4 According to the description as filed, the "*compressive force acting on the blocking ring causes the blocking ring to bend outward in its radial direction, as a result of which the outer diameter of the blocking ring increases. The outward bending brings the blocking ring into its folded state*" (application as published, page 2, lines 6 to 9). The application as filed thus provides a clear basis for this amendment.
- 4.5 One of appellant II's objections under article 123(2) EPC relates to the [axial compressive] force needed to bend the blocking ring into its folded form. However, a force is not a structural feature of the claimed appa-

ratus and method: the relevant structural features such as the insert pipe and its displacement causing the bending and folding are already present in claims 1 and 9. Not explicitly additionally mentioning the axial compressive force in the text of the claims thus does not give rise to any intermediate generalisation.

- 4.6 Appellant II further objected that for method claim 9 this amendment extended beyond the application as filed, because some aspects were only obtained from device embodiments. However, the passage in the application as filed (WO-publication, page 4, lines 5 to 13) is in the general part of the disclosure and is thus to be read in the context of the first two lines of the application which similarly refer to the method in general. Thus there is no added subject-matter due to a generalisation selectively extracted from device embodiments.
- 4.7 The subject-matter of claims 1 and 9 thus meets the requirements of article 123(2) EPC.
5. *Amended auxiliary request I - Sufficiency of disclosure (article 83 EPC 1973)*
- 5.1 There is no explicit detailed example of a lever configuration in the figures of the application as filed, such that the lever also serves as locking means when it is drawn over a dead centre position when the insert pipe is moved from the first position to the second position. However, such a lever is clearly disclosed in the general part of the description (page 4, lines 10 to 15) and as variants of two embodiments (page 6, lines 33 to 39 and page 8, lines 20 to 22). A patent description is written for the skilled person. In this case the relevant skilled person is a mechanical

engineer with experience in the technical field of pipe connections.

5.2 The board considers that basic mechanisms are part of the common general knowledge of a mechanical engineer, since they necessarily form part of the training required to obtain a mechanical engineering qualification. One such basic mechanism is a lever configuration such that the lever locks, when it is drawn over a dead centre position. In consequence, the indications provided in the description are sufficient for the skilled person to be able to practice the invention in terms of a lever configuration such that the lever also serves as locking means when it is drawn over a dead centre position when the insert pipe is moved from the first position to the second position. Thus the requirements of article 84 EPC 1973 are also met.

5.3 In consequence, there is no lack of disclosure and the requirements of article 83 EPC 1973 are met.

6. *Amended auxiliary request I - Claims 1 and 9 - Novelty (article 54 EPC 1973)*

6.1 Document D2 discloses a "*coupling sleeve for connection of a branch pipe to a main pipe*" (column 1, lines 3 and 4). There are only two features which were contentious between the parties: the initial shape of the seal and the locking means for the lever.

6.2 Document D2 does not disclose the initial shape of the seal 8 corresponding to the first position. However, for the correct operation of the disclosed connector, it must be nevertheless possible to insert the coupling into the main pipe and this implies that the seal 8 can

pass into the main pipe through the opening in the wall of the main pipe.

The opposition division decided that "*the assumption of the initial shape of the seal corresponding to the first position - based on customary practice is speculative. The subject-matter of claim 1 [as granted] is new in view of D2*" (point II.4.4). In the absence of a direct and unambiguous disclosure of the seal in a stretched configuration, the board has no reason to depart from the conclusion reached by the opposition division.

Appellant II's argument that the stretched configuration should be merely interpreted as any configuration which allows the seal 8 to pass into the main pipe cannot be followed as it would go against the explicit wording of claims 1 and 9 of the amended auxiliary request I which requires a stretched form of the blocking ring (article 84 EPC 1973, first sentence).

- 6.3 In addition, document D2 does not disclose a configuration of the lever such that it is drawn over a dead centre position.
- 6.4 Appellant II's argument that in the absence of a concrete embodiment of such a lever in the patent in suit, the expression "*drawn over a dead centre position*" should be interpreted as any stable position cannot be followed, because it would go against the actual wording used in claims 1 and 9 (see point 5.2 above), which require the lever to be configured such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position.

6.5 Appellant II's arguments that figures 1, 2 or 4a of document D2 disclose levers that are drawn over a dead centre position when the insert pipe is moved from the first position to the second position finds no support in the description which discloses other means for securing these levers:

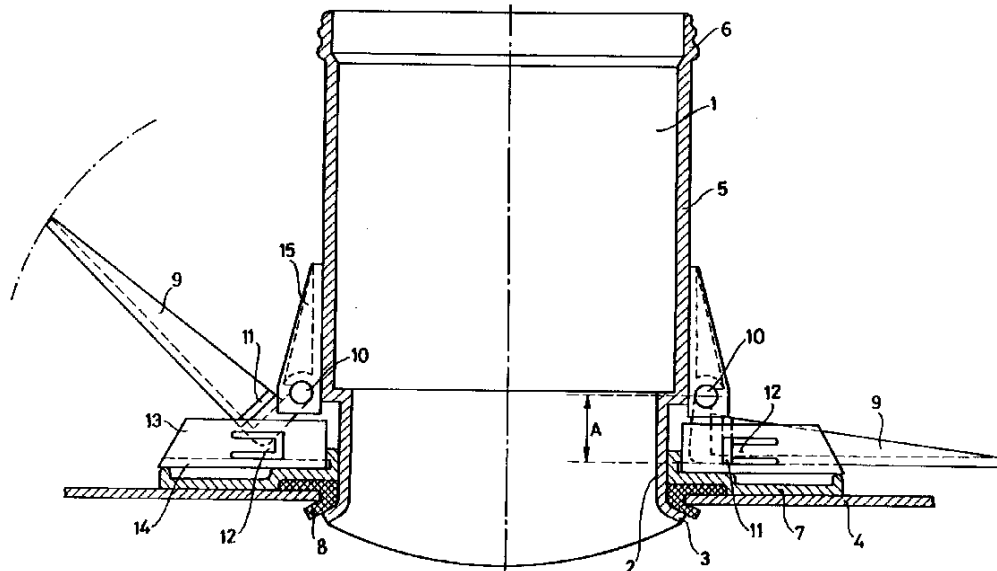


FIG. 1.

- figure 1: "securing means are present in the form of a protuberance 11 on the lever and an inwardly curved lip 12 in the side walls 13 extending upwards on either side of the lever resting face 14. When the lever 9 has reached the end position the protuberance 11 falls behind the inwardly curved lip 12, and the lever 9 cannot be released without further ado. The lever is shown in the end position on the right hand side of Fig. 1; the position of the protuberance 11 and the inwardly curved lip 12 relative to each other can be seen there" (column 4, lines 41 to 52, figure 1);

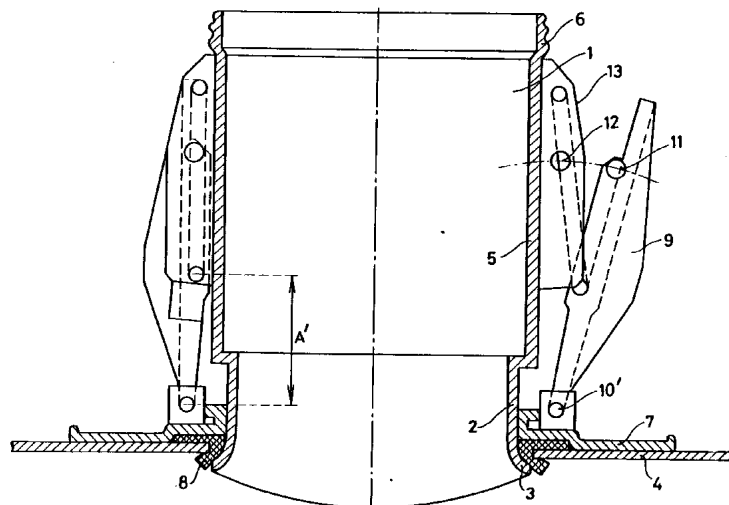


FIG: 2.

- figure 2: "Securing is achieved here through the fact that the securing means 11 and 12 are formed by holes present in the lever 9 and the side walls 13, through which a securing pin can be inserted" (column 4, lines 53 to 58);

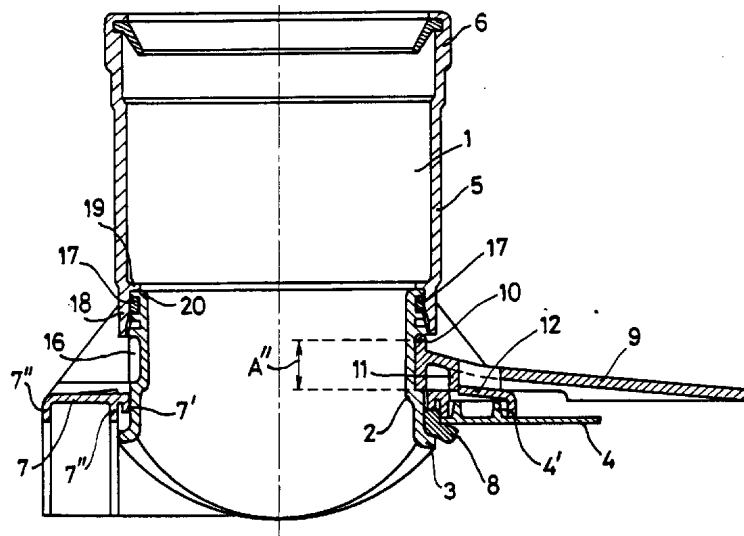


FIG: 4a.

- Figure 4a: "Securing means 11 and 12 are also present in this case to prevent the levers 9 from being released without further ado when the coupling sleeve is fitted" (column 6, lines 22 to 24).

6.6 Appellant II considered that the left hand side of figure 2 disclosed a lever drawn over a dead centre

position. However, there is no direct and unambiguous teaching to this effect either in the schematic figure 2 itself or in the corresponding description. The schematic patent drawings of figures 1, 2 and 4a do not clearly indicate that any of the levers might be drawn over a dead centre position when the insert pipe is moved from the first position to the second position. In addition, there are no indications in document D2 that there might be any other securing means in addition to those explicitly mentioned in the description or that any lever is being moved over a dead centre position.

In consequence, document D2 does not disclose a lever which also serves as locking means by configuring the lever such that it is drawn over a dead centre position when the insert pipe is moved from the first position to the second position.

6.7 Therefore, the subject-matter of claims 1 and 9 according to amended auxiliary request differs from the disclosure of document D2 in:

- a deformable blocking ring which can assume a stretched form during the arranging thereof on the flange of the insert pipe; and
- a lever which also serves as locking means by configuring the lever such that it is drawn over a dead centre position when the insert pipe is moved from the first position to the second position.

6.8 Therefore, the subject-matter of claims 1 and 9 according to amended auxiliary request is new with respect to document D2 (article 54 EPC 1973).

6.9 In the written procedure appellant II further raised an objection of lack of novelty with respect to document D11.

However, document D11 was not admitted by the opposition division, because it does not go beyond the disclosure of document D16, which shows the seal in both positions and does not contain additional information that could be decisive for the decision (point 3.2 of the contested decision).

In view of the above, it is not apparent that the opposition division exercised its discretion under Article 114(2) EPC 1973 according to the wrong principles, or without taking into account the right principles, or in an unreasonable way (cf. G 7/93, OJ EPO 1994, 775).

Consequently, the board has no reason to overrule the opposition division's decision not to admit document D11 into the proceedings. In further consequence, the lack of novelty objection with respect to document D11 does not need to be considered on appeal.

7. *Amended auxiliary request I - Claims 1 and 9 - Inventive step (article 56 EPC 1973)*

7.1 Document D2 forms the closest prior art from which the subject-matter of claims 1 and 9 differs in terms of:

- the stretched form of the blocking ring and
- the configuration of the lever moving over a dead centre position

(see point 6. above).

7.2 The technical effect of these differences are:

- the smaller outer diameter of the stretched form of the blocking ring facilitates passing it through

the opening in the wall of the pipe (patent in suit, paragraph [0007]);

- once the dead centre position has been passed, the lever prevents the insert pipe from moving back toward the first position, so that the lever also acts as a locking means (patent in suit, paragraph [0021]).

7.3 These two differences concern separate objective problems, namely respectively:

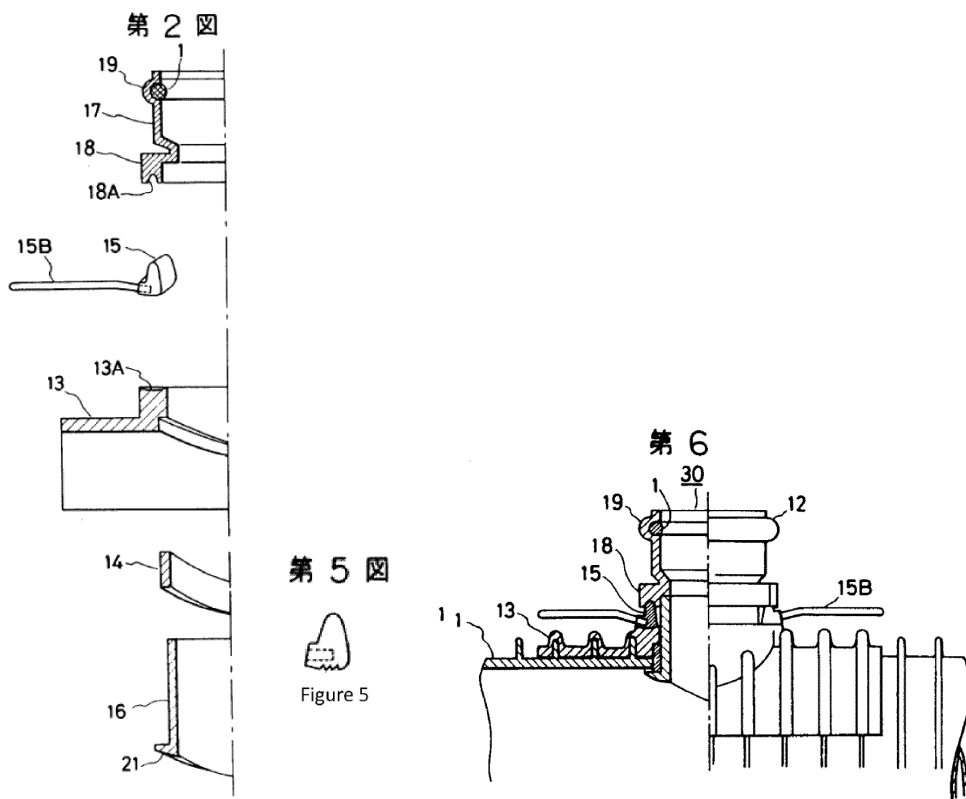
- facilitating the insertion of the connection assembly into the main pipe; and
- providing a simple locking means to hold the insert pipe in position.

7.4 Appellant II's position that the second objective problem was merely to provide stable position of the lever cannot be followed, because it ignores the claimed requirement relative to the lever passing a dead centre position (article 84 EPC 1973, first sentence).

7.5 Contrary to appellant II's position, there is no teaching in document D2 as a whole, nor in figure 2 of document D2 in particular, of a lever passing through a dead centre position (see point 6. above). Thus, the skilled person starting from document D2 would not find any teaching therein concerning a lever moving over a dead centre position. Instead document D2 discloses other locking means such as a protruberance 11 and an inwardly curved lip 12 or holes for inserting a securing pin (column 4, lines 41 to 45 and 55 to 58).

7.6 Document D23 concerns a branch pipe joint used when providing a branch part in the middle of piping lines (Machine translation D23, page 2, section "[Industrial

Application]"). Document D23 discloses a lever like locking member 15 with a handle 15B to be held between concave engagement parts 13B and 18A. The lower surface of the lever like locking member 15 has a "rugged form" shown in figure 5 to prevent the lever from rotating (Machine translation D23, page 4, lines 62 to page 5, line 34, figures 1, 5 and 6). Document D23 does not mention or otherwise disclose a dead centre position over which the lever is drawn.



7.7 Contrary to appellant II's position, the mere fact that the lever like locking member 15 is held in a stable position between concave engagement parts 13B and 18A does not amount to a disclosure of the lever having been drawn over a dead centre position: the arrangement of document D23 is based on the geometrically interlocking shapes of the lever like locking member 15 and the concave engagement parts 13B and 18A to ensure that

the lever cannot return. Document D23 thus uses a different mechanism for preventing further movement of the lever.

Even if the skilled person starting from document D2 and seeking a simple locking means to hold the insert pipe in position were to consult document D23, he would only adopt the shaped lever and the two concave engagement parts and thus not arrive at the claimed subject-matter of a lever which also serves as locking means by configuring the lever such that it is drawn over a dead centre position when the insert pipe is moved from the first position to the second position.

Thus, neither figure 2 of document D2 nor document D23 disclose the use of a lever configured such that it is drawn over a dead centre position when the insert pipe is moved from the first to the second position. The subject-matter of claims 1 and 9 is thus not disclosed or suggested by the cited prior art.

Although the solution of the first objective problem in terms of a stretched configuration of the blocking ring is generally known from, for example, document D4 (page 1, paragraph 1, figures 1 to 3) or document D16 (page 9, line 21 to page 10, line 5, figures 1 and 2), the non-obvious solution to the second objective problem is on its own sufficient with respect to the requirements of article 56 EPC 1973.

In consequence, the subject-matter of claim 1 and 9 does not lack an inventive step with respect to document D2 alone or in combination with document D23.

8. *Amended auxiliary request I - Description*

The description was amended by appellant I with respect to the claimed subject-matter and there were no more objections from appellant II.

9. *Request for apportionment of costs (article 104(1) EPC)*

Appellant II objected to appellant I's fifteen requests filed with the grounds of appeal which were subsequently reduced to only three requests one month before the oral proceedings before the board of appeal.

These fifteen requests corresponded to selected permutations of only five additional features, respectively concerning outward bending, sealing, a lever, a support plate (i.e. granted claim 2) and a groove.

When taking into account the events during the opposition procedure (see point 2.3 above), the board does not consider such requests to be excessive or that they constitute an abuse of procedure. In consequence, the request for the apportionment of costs for preparing a response to the fifteen requests filed with the grounds of appeal is refused.

10. *Obiter dictum - Concerning the fact that the opposition decision could not be notified to both parties at the same time*

Appellant I (patent proprietor) objected to the fact that the decision of the opposition division was sent to them with a date of 9 July 2014 and resent only to appellant II (opponent) at the later date of 22 July 2014.

This situation arose because the opponent had changed address without the EPO being aware of this, so that the decision could not be delivered on the first attempt.

10.1 Appellant I requested "*that the Board sees to a consideration of the legal constellation and provides for a view as to how appeal proceedings like the present one should be handled such that unequal treatment of the parties is resolved*".

10.2 Appellant I argued that the two different notification dates of the decision to the parties have as consequence that the time limits for filing a notice of appeal and the statement setting out the grounds of appeal were also different.

10.2.1 Appellant I filed their notice of appeal on 7 July 2014, two days before the date of notification of the decision to the parties on 9 July 2014.

Thus, appellant I decided to file an appeal at a very early stage even before the time limit was set to start.

Appellant II filed their notice of appeal on 28 August 2014, i.e. within the time limit as calculated from the date of 9 July 2014 (theoretically, with regard to the second notification date of the decision, the time limit was 1 October 2014).

So far the fact that the opposition division notified the decision on two different dates does not have any biasing effect. Both parties filed their respective appeals without any specific delay or without having any apparent particular advantage or disadvantage.

10.2.2 The situation differs slightly with regard to the time limit for filing the grounds of appeal.

Appellant I filed their statement of grounds on 19 November 2014 which was the last day of the time limit with regard to the date of their notification of the decision, i.e. 9 July 2014.

For appellant II the time limit expired on 1 December 2014 (in view of the later date of their notification of the decision of 22 July 2014) and they filed their statement of grounds on 28 November 2014.

Thus, it appears that appellant II had nine days more than appellant I to file their grounds (and theoretically eighteen days more with regard to the calculation of the time limit).

Nevertheless, appellant I did not provide evidence that this situation was detrimental to their position as appellant. It is correct that in the present case appellant II knew appellant I's argumentation before filing their own statement of grounds (grounds of appeal of appellant II of 28 November 2014, page 3 section "*Regarding the Grounds of Appeal as filed by the Proprietor on November 19, 2014*").

But there is no general rule that in each and every appeal proceedings the parties file their statement of grounds in the last minute of the last day of the time limit. In fact, the situation would have been the same if appellant I had filed their statement of grounds, for example, nine days before the expiration of the time limit, e.g. 10 November 2014 and appellant II then

only filed their statement on the last day of the "first" time limit, i.e. 19 November 2014.

It is a mere assumption that in the present case the parties would have filed their respective statements of grounds simultaneously on the last day of the time limit.

Furthermore, there is no evidence that appellant II gained any advantage in knowing appellant I's arguments in advance.

- 10.3 Appellant I further argued that the parties were put on an unequal footing because business decisions might have been taken on an understanding of a legal situation which later on turned to be significantly different, such as a missed time limit for filing the statement of grounds by an appellant.

This argumentation is not persuasive.

Both parties were aware that they had respectively filed an appeal. Furthermore, the parties had the possibility of monitoring the procedure online.

It is not persuasive that appellant I might have taken important business decisions with regard to the patent in suit or in relation to its subject-matter such a short time before expiration of the procedural time limits, knowing that the opponent had also filed an appeal and was seeking to have the patent revoked.

Furthermore, appellant I did not provide any evidence that they took, or intended to take such business decisions and whether there were any consequences or prejudices resulting from the situation.

10.4 There is no specific sanction or remedy foreseen in the EPC for this situation and it seems difficult to assume that appellant I's suggestion to re-send the decision with a new common notification date would be a remedy, since the parties are by now already aware of each other's arguments.

Furthermore, appellant I made general statements to the effect that the situation could lead to an unequal treatment of the parties, but in the present case no evidence was provided that a party was prejudiced.

Appellant I did not file a specific request with regard to a substantial procedural violation or inadmissibility of the appeal of appellant II.

10.5 Appellant I further questioned form 23XX of 22 July 2014 in Epoline which suggests that the outcome of the opposition proceedings was also notified to the patent proprietor on 22 July 2014 even though this was never received by appellant I: Form 23XX in an internal form with the addresses of the parties to the opposition proceedings and is presumably generated automatically by the computer systems in consequence of the second attempt to notify the opponent of the outcome of the opposition proceedings, once the valid address of the opponent had become available.

10.6 Conclusion: there is no evidence or indication that the alleged unequal treatment of the parties induced by different dates of notification of the same decision was detrimental to any party's interests, and in particular, not to appellant I's interests. There do not appear to be any consequences for the admissibility

of the appeals or for the due course of the ensuing appeal proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of the following documents :
 - claims 1 to 9 submitted during the oral proceedings,
 - description pages 2 to 7 submitted during the oral proceedings,
 - figures 1 to 13 of the patent specification.
3. The appeal of appellant II is dismissed.
4. The request for apportionment of costs of appellant II is refused.

The Registrar:

The Chairman:



N. Schneider

M. Poock

Decision electronically authenticated