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**Datasheet for the decision
of 6 December 2019**

Case Number: T 0819/15 - 3.2.05

Application Number: 06751199.8

Publication Number: 1886059

IPC: F16L55/165, F16L55/18,
B29C63/36

Language of the proceedings: EN

Title of invention:

Air inversion and steam cure of cured in place liners apparatus
and method

Patent Proprietors:

Insituform Holdings (UK) Limited
INA Acquisition Corp.

Opponent:

Per Aarsleff A/S

Relevant legal provisions:

EPC Art. 108, 123(2), 101(2), 101(3)
EPC 1973 Art. 100(c)
EPC R. 101(2)

Keyword:

Admissibility of appeal - (yes)
Amendments - added subject-matter (yes)

Decisions cited:

G 0001/12, T 0097/98, T 0540/09



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Case Number: T 0819/15 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 6 December 2019

Appellant: Per Aarsleff A/S
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Representative: Budde Schou A/S
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Respondents: Insituform Holdings (UK) Limited
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and

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 February
2015 rejecting the opposition filed against
European patent No. 1886059 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman M. Poock
Members: T. Vermeulen
 T. Karamanli

Summary of Facts and Submissions

- I. The appeal lies against the decision of the opposition division posted on 19 February 2015 and rejecting the opposition filed against the European patent No. 1 886 059 (hereinafter: the patent) which is based on international application PCT/US2006/015404.
- II. The opposition had been filed against the patent as a whole based on Article 100(a) EPC 1973 (lack of novelty, lack of inventive step), on Article 100(b) EPC 1973 and on Article 100(c) EPC 1973.
- III. On 16 April 2015 the representative of the opponent in the first-instance proceedings filed notice of appeal in the name of Carlsberg Breweries A/S.
- IV. On 19 June 2015, the same representative filed the statement setting out the grounds of appeal. With respect to the details about the appellant, he stated that, due to a data processing error, the details of the appellant given in the notice of appeal were incorrect. He also provided the correct name and address of the appellant and a corresponding correction was requested.
- V. On 16 September 2015 a communication according to Rule 101(2) EPC was dispatched, notifying a discrepancy between the name and address of the appellant registered at the EPO and the name and address mentioned in the notice of appeal.
- VI. By telefax of 25 September 2015, a corrected notice of appeal was filed.

- VII. In its communication pursuant to Rule 100(2) EPC dated 20 April 2018, the board set out its preliminary view that the appeal was admissible.
- VIII. In preparation for the oral proceedings scheduled on 19 September 2019 the board issued a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) on 30 November 2018, in which its preliminary view was given that claim 1 according to each of the requests on file contained subject matter which extended beyond the content of the application as filed.
- IX. By letter of 16 August 2019 the respondents (joint patent proprietors) withdrew their request for oral proceedings and informed the board that they would not be attending the oral proceedings.
- X. On 16 September 2019 the parties were informed by telefax that the oral proceedings to be held on 19 September 2019 were cancelled.
- XI. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondents (joint patent proprietors) requested that the appeal be rejected as inadmissible (main request), that the appeal be dismissed (auxiliary request 1) or that the decision under appeal be set aside and that the patent be maintained amended on the basis of one of the sets of claims filed as auxiliary requests 2 to 6 with the statement setting out the grounds of appeal.

XII. Claim 1 as granted (auxiliary request 1) reads as follows (the feature numbering adopted by the appellant is adhered to by the board):

"An air inversion and steam cure apparatus for installing a resin impregnated cured in place pipe liner, comprising:

[a] a substantially rigid container (11) having an inlet surface and an outlet surface dimensioned to allow an impregnated cured in place liner to pass therethrough;

[b] the container (11) having an elongated inlet slot opening (26) forming a gap on the inlet surface and a cavity forming an inversion chamber (12) and an inversion boot outlet (16) on the outlet surface;

[c] an air and steam inlet (20) connected to the inversion chamber (12);

[d] a compressible material (46) is disposed on both sides of the slot opening (26) on the inlet surface; and

[e1] the gap across the elongated slot (26) is adjustable outside the container cavity to urge the compressible material (46) against the liner in a direction substantially perpendicular to the liner

[e2] as the liner travels through the slot opening into the container and is inverted out the inversion boot

[e3] without the compressible material (46) being pressed against the liner within the container (12)."

XIII. Claim 1 according to auxiliary request 2 was amended with respect to claim 1 according to auxiliary request 1, by the following changes in features b and c:

"[b'] the container (11) having an elongated inlet slot opening (26) forming a gap on one the inlet

surface and a cavity forming an inversion chamber (12) and an inversion boot outlet (16) on the opposed surface, wherein the opposed surface is the outlet surface;"

"[c'] an air and steam inlet (20) connected to and on the inversion chamber (12);"

- XIV. Claim 1 according to auxiliary request 3 was amended with respect to claim 1 according to auxiliary request 2 by the following changes in feature e2:

"[e2'] as it ~~the liner~~ travels through the slot opening into the container and is inverted out the inversion boot"

In addition, an additional feature was inserted at the end of the claim:

"[f] wherein the container (11) is formed with a top having the slot opening formed by two facing edges (23a, 24a) and at least one edge is moveable towards the other to adjust the size of the gap and press against a liner passing through the slot opening."

- XV. Claim 1 according to auxiliary request 4 was amended with respect to claim 1 according to auxiliary request 3 by inserting the following features at the end of the claim:

"[g] and wherein the gap is either adjusted by a plurality of displaceable fingers (133) on one edge positioned to urge the compressible material (46) over the slot opening and against a liner passing through the slot opening; or

[h] wherein the gap is adjusted by a plurality of opposed displaceable fingers (133) positioned on both edges to urge the compressible material (46) over the slot opening and against a liner passing through the slot opening."

XVI. Also with respect to claim 1 according to auxiliary request 3, claim 1 according to auxiliary request 5 was amended by inserting both feature h and the following feature at the end of the claim:

"[i] and the container (11) is an elongated box with a slotted opening and between 16 and 64 fingers (133) on each side of the slotted opening."

XVII. Claim 1 according to auxiliary request 6 was amended with respect to claim 1 according to auxiliary request 5 by inserting a further feature at the end of the claim:

"[j] and the container (11) is substantially rectangular and the inversion boot (16) is tapered to allow the liner to be turned back over the opening and secured thereto."

XVIII. The appellant essentially argued as follows:

Admissibility of the appeal

Due to a data processing error, the details of the appellant were incorrect in the notice of appeal. The correction filed on 25 September 2015 was admissible for the same reasons as set out in decision T 97/98.

Added subject matter

The expression "an inversion boot outlet" was introduced in feature b of claim 1. When comparing claim 1 with the application as filed, the passages containing a description of the term "boot" had to be considered. In particular, the paragraphs [0018], [0040], [0041], [0051], [0072] and [0077] in the PCT-publication of the application as filed were pertinent. The detailed part of the specification could not serve as a proper basis for the definition of the "inversion boot outlet" in claim 1. The only occurrence in the general part of the specification was in the discussion of the prior art in paragraph [0018].

Claim 1 required that the "inversion boot outlet" was "on the outlet surface". As a consequence, the "inversion boot outlet" was not identical to the outlet surface and constituted a new entity for which there was no basis in the application as filed. Even if the opposition division designated the boot as the furthest part of the outlet, this did not form a basis for the introduction of an "inversion boot outlet".

XIX. The arguments of the respondents can be summarised in the following manner:

Admissibility of the appeal

The appeal had to be rejected as inadmissible. The appeal was filed by Carlsberg Breweries A/S, who was neither adversely affected by the impugned decision, nor had been party to the first-instance proceedings. The appeal therefore did not comply with Article 107 EPC and said deficiency had not been remedied before the relevant time periods under Article 108 EPC.

The names of the original appellant, Carlsberg Breweries A/S, and the substituent appellant, Per Aarsleff A/S, were not at all similar, the similarity being a key aspect which led the board in T 97/98 to decide on admitting the substitution of the appellant's name. Further, no information was derivable from the appeal itself which might indicate that any party other than Carlsberg Breweries A/S would have intended to file the appeal. It was also probable that the appeal was intended to be filed against a decision adversely affecting Carlsberg Breweries A/S in a different case before the EPO.

It had therefore not been shown with a sufficient degree of probability that it was the true intention of Per Aarsleff, and not Carlsberg Breweries A/S, to file an appeal.

Added subject matter

The assessment of the "inversion boot outlet"-amendment by the opposition division was correct. Feature e2 of claim 1 as originally filed already disclosed that the container had an inversion boot and that the liner was inverted out of the inversion boot.

In consequence, no information was added to claim 1 by modifying the original expression "outlet on the opposed surface" of original feature b to read "inversion boot outlet (16) on the outlet surface" in claim 1 as granted.

Reasons for the Decision

1. Admissibility of the appeal

1.1 It is undisputed that, within the two-month period under Article 108, first sentence, EPC, the representative of the opponent in the first-instance proceedings filed notice of appeal which did not contain the name and address of any of the parties to the first-instance proceedings. Rather the notice of appeal contained the name and address of another legal person.

With the grounds of appeal, the same representative requested correction of the appellant's name and address. The board's registrar dispatched a communication according to Rule 101(2) EPC and the representative filed a corrected notice of appeal within the specified period.

1.2 According to decision G 1/12, OJ EPO 2014, A114, such a deficiency can be corrected under Rule 101(2) EPC, if the true intention was to file on behalf of the legal person who should have filed the appeal. The board assesses the evidence supporting such "true intention" in accordance with the free evaluation of evidence.

1.3 The board notes that the notice of appeal has been filed by the representative of the opponent in the first-instance proceedings, under the same internal reference, referring to the same patent, the same patent proprietor and mentioning the correct date of the impugned decision (see also decision T 540/09, Reasons, point 1). Thus sufficient elements were provided to indicate that a mistake occurred in the

naming of the appellant and that a correction of this name is allowable.

1.4 Upon this basis the board finds that the true appellant was identifiable on expiry of the two-month period under Article 108, first sentence, EPC. The true intention of the appellant was to file the notice of appeal in the name of Per Aarsleff A/S, the opponent in the proceedings before the opposition division. The correction of the notice of appeal does not reflect a later change of mind as to whom the appellant should be, but on the contrary only expresses what was intended when filing the appeal (see G 1/12, loc. cit. and Case Law of the Boards of Appeal, 9th edition 2019, V.A.2.5.2 a) and also V.A.2.4.1 a)).

1.5 These findings are confirmed by the facts that the actual appellant was the only party affected by the rejection of the opposition and that the file shows no indication that the appellant had or was seeking to transfer his status as opponent to a third party. In addition, the legal person named in the notice of appeal has, as far as the board is aware, no connection whatsoever to the opponent or the subject matter of this case, neither is there any similarity between the name of this legal person and that of the opponent.

1.6 In view thereof, the appeal is admissible.

2. Patent as granted

2.1 Feature b of claim 1 as granted differs from claim 1 as originally filed as follows (additions are underlined, deletions are struck through):

"the container (11) having an elongated inlet slot opening (26) forming a gap on ~~one~~ the inlet surface and a cavity forming an inversion chamber (12) and an inversion boot outlet (16) on the ~~opposed~~ outlet surface;"

2.2 In respect of the ground for opposition under Article 100(c) EPC, the opposition division considered in the fourth and fifth paragraphs on page 5 of the impugned decision that the text "inversion boot" had a basis in the originally claimed "inversion chamber and outlet" and that the term "boot" did not designate an added element but rather the farthest part of said outlet. The opposition division concluded that the requirements of Article 123(2) EPC were met.

2.3 In Figure 1(a) of the application as filed, reproduced herein below, the upper flange 18 of the inversion boot 16 is fastened to the bottom flange 14 of the container 11 so that the inversion boot is mounted immediately below the container.

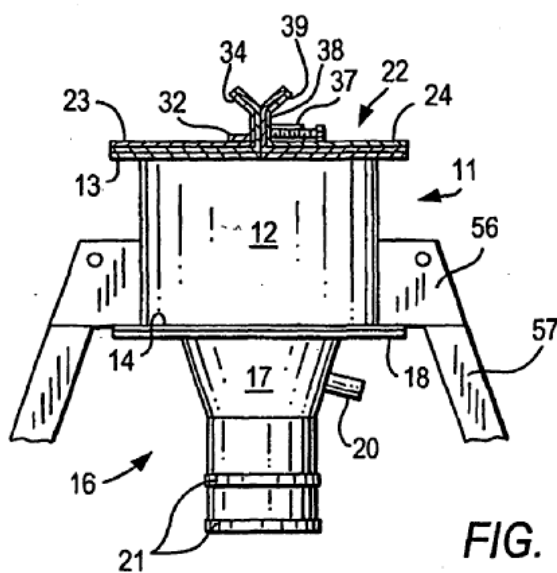


FIG. 1(a)

The liner is inserted from the top in the inversion chamber 12 of the container 11 and is then fed through

the upper frustoconical section 17 and the lower cylindrical section of the inversion boot 16 before the end of the liner is folded back over the external ribs 21 (cf. paragraph [0041]). In operation, the liner travels through the top cover 22 into the container 11 and is inverted out of the inversion boot 16.

The inversion boot 16 is thus arranged downstream of the container 11 relative to the direction of travel of the liner. Consequently, the outlet surface of the container 11 lies at the height of the bottom flange 14. The outlet of the inversion boot 16, on the other hand, is situated in the lower plane of the boot at the height of the lower rib 21 in Figure 1(a), remotely from the outlet surface of the container 11. This means that the inversion boot outlet cannot be on the outlet surface of the container, so that there is no basis for the amendment in the original description of the Figure 1(a) embodiment.

- 2.4 Also the embodiments of Figures 4 and 6 as described in the application as filed fail to disclose "an inversion boot outlet on the outlet surface [of the container]". According to paragraphs [0073] and [0078] of the description as originally filed, the liner 116 is fed over a roller 113 into the top opening 123 of the box 111 ("the container"), then travels through the box, passes through the inversion boot 131 mounted below the box, where it is folded and secured similarly as in the embodiment of Figure 1(a). Therefore, the outlet of the inversion boot 131 does not coincide with the outlet surface of the box 111 but is situated well below the outlet surface.

- 2.5 The original description does not contain any further passage referring to the arrangement of the (outlet of the) inversion boot.
- 2.6 The amended wording implies that the inversion boot outlet lies in the plane of the outlet of the container. This could only mean that the inversion boot is placed *inside* instead of below the container. Such an alternative arrangement is neither explicitly nor implicitly disclosed in the application as filed.
- 2.7 In view of the above, the subject matter of granted claim 1 extends beyond the content of the application as filed and, therefore, the ground for opposition under Article 100(c) EPC 1973 prejudices the maintenance of the patent as granted.
3. Patent as amended according to auxiliary requests 2 to 6
- 3.1 In claim 1 according to the auxiliary requests 2, 3, 4, 5 and 6, feature b was further amended by reintroducing "the opposed surface" of original claim 1, in the following manner:

"an inversion boot outlet (16) on the opposed surface, wherein the opposed surface is the outlet surface;".

This amendment does not remedy the deficiency of added subject matter discussed in point 2. There is no basis in the application as filed for arranging the outlet of the inversion boot on the outlet surface of the container.

3.2 The further amendments c', e2', f, g, h and i in claim 1 of the respective auxiliary requests 2 to 5 do not concern the arrangement of the inversion boot outlet.

3.3 Also the amendment

"the inversion boot (16) is tapered to allow the liner to be turned back over the opening and secured thereto"

in claim 1 according to auxiliary request 6 does not overcome the objection of point 2. Even if "the opening" would refer to the inversion boot outlet, the additional feature does not alter or undo the requirement of feature b that the inversion boot outlet must be "on the outlet surface [of the container]".

3.4 Hence, claim 1 according to auxiliary requests 2 to 6 is amended in such a way that it contains subject matter which extends beyond the content of the application as filed. Therefore, it does not meet the requirements of Article 123(2) EPC.

4. Conclusion

Since the ground for opposition under Article 100(c) EPC 1973 prejudices the maintenance of the patent as granted and amended claim 1 according to auxiliary requests 2 to 6 does not meet the requirements of Article 123(2) EPC, the patent must be revoked (Article 101(2), first sentence, EPC and Article 101(3) (b) EPC, respectively).

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:



N. Schneider

M. Poock

Decision electronically authenticated