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**Datasheet for the decision
of 26 June 2018**

Case Number: T 1595/15 - 3.2.07

Application Number: 05425722.5

Publication Number: 1775089

IPC: B28B1/26, B28B17/00, B29C33/30,
B30B15/02

Language of the proceedings: EN

Title of invention:

Support equipment for a die for a pressure die casting machine
and method for adjusting the position of said die

Patent Proprietor:

Whitech S.r.l.

Opponent:

SACMI COOPERATIVA MECCANICI IMOLA SOCIETA COOPERA

Headword:

Relevant legal provisions:

EPC Art. 123(3)

Keyword:

Amendments - broadening of claim (yes)

Decisions cited:

T 1704/06

Catchword:



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Case Number: T 1595/15 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 26 June 2018

Appellant: Whitech S.r.l.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 3 June 2015
revoking European patent No. 1775089 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: G. Patton
V. Bevilacqua

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal within the prescribed period and in the prescribed form against the decision of the Opposition Division to revoke European patent No. 1 775 089.

The opposition had been filed against the patent as a whole and was based on Article 100(a) EPC (lack of novelty and lack of inventive step).

- II. The Opposition Division held that:
- the subject-matter of claim 1 of the then main request lacked inventive step (Article 56 EPC);
 - claim 1 of the then first auxiliary request lacked clarity (Article 84 EPC); and
 - claim 1 of the then second auxiliary request lacked clarity (Article 84 EPC) and did not fulfil the requirements of Article 123(2) EPC.

- III. In an annex to the summons for oral proceedings, the Board provided the parties with its preliminary non-binding opinion on the sets of claims filed by the appellant with its letter of 13 October 2015 as a main request and as first to fourth auxiliary requests. In response, the appellant filed new sets of claims with a letter of 28 May 2018 as fifth and sixth auxiliary requests.

- IV. Oral proceedings took place on 26 June 2018 in the absence of the appellant in accordance with Rule 115(2) EPC and Article 15(3) RPBA. For an account of the course of the oral proceedings and the issues discussed with the respondent, reference is made to the minutes of the oral proceedings. In particular, the extension of the scope of protection of the subject-matter of

claim 25 according to the main request in view of claim 26 of the patent as granted was discussed. This issue was also relevant for all auxiliary requests on file.

The present decision was announced at the end of the oral proceedings.

- V. The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of one of the sets of claims filed with its letter of 13 October 2015 as a main request and as first to fourth auxiliary requests, and with its letter of 28 May 2018 as fifth and sixth auxiliary requests.

The respondent requested that the appeal be dismissed.

- VI. Method claim 25 of the **main request** (for its wording, reference is made to point 2.2 of the Reasons below), to which method claims 25, 24, 23, 1, 24 and 23 of the first to sixth auxiliary requests, respectively, are identical, is objected to by the respondent for, *inter alia*, non-compliance with Article 123(3) EPC. The respondent argued essentially that, as a result of the amendments made in claim 25 of the main request, the adjustment of the mounting plate on the die holder device becomes optional. The scope of protection of method claim 25 therefore extends to methods in which the mounting plate does not need to be adjusted on the die holder device, i.e. to methods of re-using an already adjusted mounting plate, which was not the case for method claim 26 of the patent as granted.

VII. The appellant has not provided any arguments with respect to the objections raised by the respondent against claim 25 of the main request on the basis of Article 123(3) EPC (in this respect, see aforementioned annex to the summons, points, 4.3.2, 5.4, 6.4, 7.4 and 8).

Reasons for the Decision

1. *Right to be heard*

Although the appellant did not attend the oral proceedings, the principle of the right to be heard pursuant to Article 113(1) EPC has been observed since that article affords only the opportunity to be heard and, by absenting itself from the oral proceedings, a party gives up that opportunity (see the explanatory note to Article 15(3) RPBA cited in T 1704/06, not published in OJ EPO; see also the Case Law of the Boards of Appeal, 8th edition 2016, Chapters III.B.2.7.3 and IV.E.4.2.6.d).

2. *Main request*

2.1 Since the Board considers that the main request does not fulfil the requirements of Article 123(3) EPC, at least for the reasons given below, there is no need to discuss in this decision the other objections raised by the respondent against this request.

2.2 The following feature analysis of the wording of method claim 25 of the main request used in the present decision corresponds to that provided by the respondent in its reply letter dated 25 February 2016, point 3.0.1.0 (amendments as compared with claim 26 of the

patent as granted are in bold, with deletions in strikethrough; emphasis added by the Board):

[A] A method for ~~adjusting the position of a mounting plate of a die~~ on a die holder device of a pressure die casting machine, comprising the steps of:

[B] connecting the die to a mounting plate;

[C] providing a counter plate suitable for being **centered and** locked to said die holder device in a **precise and** predetermined fixed position;

[D] connecting said mounting plate to said counter plate;

[E] locking said counter plate to said die holder device;

~~[F] connecting said mounting plate to said counter plate;~~

[G] adjusting the position of said mounting plate relative to said counter plate **until the die is aligned with a corresponding die on the machine;**

[H] locking the mounting plate to the counter plate in the desired position;

[J] removing the counter plate, mounting plate and the die from the machine without influencing the relative position between the mounting plate and the counter plate for the next usages of the die.

2.3 As argued by the respondent in its reply letter dated 25 February 2016, point 3.0.1.2, there are only two

possible interpretations for the given order of the steps specified in claim 26 of the patent as granted: either it limits the scope of protection or it does not.

2.3.1 If the said order is seen as limiting the scope of protection, the inversion of the following steps (see steps [D], [E] and [F] in point 2.2 above):

- locking said counter plate to said die holder device;
- and
- connecting the mounting plate to the counter plate

in claim 25 of the main request, as compared with claim 26 of the patent as granted, extends the scope of protection. Methods in which connecting the mounting plate to the counter plate is performed before locking the counter plate to the die holder device are now covered by claim 25 of the main request, which was not the case with the claims of the patent as granted, where it was the opposite.

2.3.2 If said order is seen as not limiting the scope of protection, which is in line with the Board's interpretation of the word "comprising" used in claim 26 of the patent as granted to introduce the list of steps, step [E] of locking the counter plate to the die holder device in claim 25 of the main request can be performed after step [G] of adjusting the position of said mounting plate relative to said counter plate.

Therefore, claim 25 of the main request covers methods in which the adjustment of the position of the mounting plate relative to the counter plate can be performed when the counter plate is not yet mounted on the die holder device. This is, however, contrary to claim 26

of the patent as granted, which explicitly comprises the step of adjusting the position of the mounting plate **on the die holder device**.

In particular due to the amendments made, none of the other features of claim 25 of the main request enables such a step of adjusting the position of the mounting plate on the die holder device to be performed. In fact, this step has been deleted from step [A].

As mentioned by the respondent during the oral proceedings, step [G] of claim 25 of the main request also does not specify an adjustment of the position of the mounting plate when mounted on the die holder device. Hence, step [G] extends to methods in which the adjustment and the thus obtained alignment between the two dies can already have been performed before mounting the mounting plate (together with the counter plate) onto the machine. The adjustment of the position of the mounting plate on the die holder device is then optional, which is not the case in claim 26 of the patent as granted. Hence, claim 25 covers methods in which a mounting plate which has already been adjusted relative to the counter plate is re-used and, therefore, no adjustment of its position once mounted onto the die holder device is necessary. Such an adjustment is, however, mandatory in the method of claim 26 of the patent as granted.

As mentioned by the respondent during the oral proceedings, the object of the contested patent is to adjust the position of the mounting plate relative to the counter plate only once, i.e. the first time a specific product is produced. Once the mounting plate has been adjusted, the die, the mounting plate and the counter plate can be removed from the machine without

influencing their relative positions and stored such that they remain connected to each other so as to keep the assembly unchanged for the entire life of the die (see contested patent, paragraphs 60 and 61). The assembly can then be re-used as such with no further adjustment later on for the production of the same specific product. Claim 26 of the patent as granted only covers the adjustment of the position of the mounting plate for the first time. In addition to that, claim 25 of the main request also covers the re-use of the already adjusted mounting plate.

As a consequence, the scope of protection of claim 25 of the main request is extended beyond that of the claims of the patent as granted.

2.4 In view of the above, the requirements of Article 123(3) EPC are not fulfilled.

3. *First to sixth auxiliary requests*

Since method claims 25, 24, 23, 1, 24 and 23 of the first, second, third, fourth, fifth and sixth auxiliary requests, respectively, read the same as method claim 25 of the main request, the reasoning and conclusion given in point 2 above as to the main request's compliance with Article 123(3) EPC apply to them *mutatis mutandis*.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated