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**Datasheet for the decision
of 25 April 2019**

Case Number: T 2556/16 - 3.2.05

Application Number: 10742579.5

Publication Number: 2442968

IPC: B29D30/06, B29C33/20

Language of the proceedings: EN

Title of invention:

A Tire Curing Press and Tire Curing Process

Patent Proprietor:

Uzer Makina ve Kalip Sanayi Anonim Sirketi
Anonim Sirketi
Yurdakul, Ata

Opponent:

Harburg-Freudenberger Maschinenbau GmbH

Headword:

TIRE CURING PRESS / Sirketi

Relevant legal provisions:

EPC Art. 108 sentence 3
EPC R. 99(2)
RPBA Art. 12(2)

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(no)

Decisions cited:

T 0213/85, T 0162/97, T 1581/08, T 0573/09, T 0395/12,
T 2012/16



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Case Number: T 2556/16 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 25 April 2019

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 27 October 2016
rejecting the opposition filed against European
patent No. 2442968 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Poock
Members: C. Brandt
 O. Randl

Summary of Facts and Submissions

- I. The appeal of the appellant-opponent lies against the decision of the Opposition Division to reject its opposition against European patent No. 2 442 968.
- II. The Opposition Division found that the patent as granted satisfied the requirements of sufficiency, novelty and inventive step (that is the heads of opposition under Articles 100(a) and (b) EPC were considered).
- III. During the discussion of novelty under Article 100(a) EPC a key issue was whether document D1, read in the light of the common general knowledge of the skilled person, disclosed features "p)" and "q)" - see point 2.3.1 of the Opposition Division decision. The Opposition Division thought not. In particular, the Opposition Division found that the opponent had not provided, "...convincing corresponding evidence, i.e. basic textbooks, representing common general knowledge and disclosing features p and q in combination". This was also an issue in the discussion of inventive step.
- IV. The Opposition Division further found that the generic disclosure of an "end switch" in document D1 did not take away the novelty of the more specific combination of features, "p)" and "q)" - see last paragraph, point 2.3.1 of the Opposition Division decision.
- V. In its written statement of grounds of appeal, the appellant-opponent merely repeated its argument that features p and q were disclosed in document D1 in combination with the common general knowledge of the skilled person. No evidence on this common general knowledge, the absence of which had been a decisive

issue before the Opposition Division, was provided by the appellant-opponent. Finally, the appellant-opponent referred to its written submissions in the proceedings before the Opposition Division.

- VI. The respondent-patent proprietor replied to the statement of grounds of appeal in substance and requested the dismissal of the appeal.
- VII. With communication dated 31 July 2018 pursuant to Rule 100(2) EPC the Board set out its preliminary opinion according to which the appeal appeared to be found inadmissible (Rule 101(1) EPC). The appellant-opponent did not file a response to this communication.
- VIII. The appellant-opponent requested, that the patent be revoked.

Oral proceedings were not requested.

Reasons for the Decision

Remark

Since oral proceedings were not requested by the appellant-opponent the Board was in the position to take a final decision without arranging for oral proceedings.

Admissibility of the appeal

1. For the appeal to be admissible it must meet the requirements of Article 108 EPC and Rule 99(2) EPC.

2. Rule 99(2) EPC provides that in the statement of grounds of appeal the appellant must indicate the reasons for setting aside the decision, or the extent to which it is to be amended and the facts and evidence on which the appeal is based. These requirements are further reflected in Article 12(2) RPBA.
3. It is an established general principle that the grounds of appeal should specify the legal or factual reasons on which the case for setting aside the decision is based. The arguments must be clearly and concisely presented to enable the board to understand immediately why the decision is alleged to be incorrect, and on what facts the appellant bases his arguments, without first having to make investigations of its own (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition, section IV.E.2.6.3 a), and the case law cited therein, see in particular T 573/09, point 1.1).
4. The examination of whether the requirements of Article 108, third sentence, and Rule 99(2) EPC are met has to be made on the basis of the statement of grounds of appeal and of the reasons given in the contested decision (see T 162/97, point 1.1.2).
5. In the statement of grounds of appeal, the appellant-opponent did not challenge the legal basis given in the appealed decision, nor did it provide any evidence based arguments relating to the common general knowledge of the skilled person, which could serve as a basis for overturning the Opposition Division's decision on this point. This would have been even more important as the Opposition Division explicitly held that the opponent had not provided, "...convincing corresponding evidence, i.e. basic textbooks,

representing common general knowledge and disclosing features p and q in combination" and this missing evidence was clearly the decisive reason for considering claim 1 to be novel.

6. The Board is rather faced with a bald, unsupported statement from the appellant-opponent, ("Eine entsprechende Anordnung gehört jedoch zum allgemeinen Grundwissen des Fachmannes ..."). Such a statement does not go beyond merely stating that the Opposition Division was incorrect (see T 395/12, point 1; T 1581/08, points 3 to 5; and T 213/85, OJ 1987, 482, point 2).

7. According to the established case law of the Boards of Appeal merely referring to one's own submissions in the first instance proceedings cannot normally replace an explicit account of the legal and factual reasons for the appeal (Case Law of the Boards of Appeal, 8th edition 2016, IV.E.2.6.4a) and T 2012/16 of 12 May 2017, not published in the OJ EPO). This applies even more, when - as in the present case - the absence of evidence for an alleged common general knowledge was one of the decisive reasons in the first instance decision for rejecting the opposition.

8. In the context of this case, the absence of evidence and arguments based thereon has the consequence that the statement of grounds of appeal does not fulfil the requirements of Article 108, third sentence, and Rule 99(2) EPC. This means that the appeal has to be found inadmissible (Rule 101(1) EPC).

Order

For these reasons it is decided that:

The appeal is rejected as inadmissible.

The Registrar:

The Chairman:



N. Schneider

M. Poock

Decision electronically authenticated