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**Datasheet for the decision
of 11 September 2019**

Case Number: T 1530/17 - 3.2.07

Application Number: 11705032.8

Publication Number: 2531456

IPC: B08B1/00, C03B35/16, F27D25/00,
B65G45/10, F27B9/30

Language of the proceedings: EN

Title of invention:
ROLLER CLEANING DEVICE

Patent Proprietor:
KERAGLASS INDUSTRIES S.r.l.

Opponent:
EUROTECH WAY S.R.L. (opposition withdrawn)

Headword:

Relevant legal provisions:
EPC Art. 100(b)

Keyword:
Sufficiency of disclosure - (yes)

Decisions cited:

Catchword:



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Case Number: T 1530/17 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 11 September 2019

Appellant: KERAGLASS INDUSTRIES S.r.l.
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Representative: Grünecker Patent- und Rechtsanwälte
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Respondent: EUROTECH WAY S.R.L.
(Opponent: opposition Strada Statle 467, N°142/b
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Representative: Negrini, Elena
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 3 July 2017
revoking European patent No. 2531456 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman I. Beckedorf
V. Bevilacqua
Members: K. Poalas
G. Patton
C. Brandt

Summary of Facts and Submissions

- I. The patent proprietor (appellant) lodged an appeal against the decision of the opposition division revoking the European patent No. 2 531 456.
- II. Opposition had been filed against the patent as a whole based *i.a.* on the ground for opposition under Article 100(b) EPC. The patent was revoked because of a lack of sufficient disclosure concerning a feature claimed in all the requests submitted by the appellant in opposition proceedings (main request, auxiliary requests 1 to 3, as attached to the decision under appeal).
- III. The appellant requested in essence
- that the decision under appeal be set aside and that the case be remitted to the opposition division for the discussion on patentability in respect of any of the sets of claims according to the main request and auxiliary requests 1 to 3 decided upon in the decision under appeal.

The respondent (opponent) withdrew their opposition by letter dated 20 February 2018.

- IV. **Claim 1 of the main request**, corresponding to claim 1 of the patent as granted, reads as follows:

"A roller cleaning device, in particular for roller kilns, comprising a cleaning element (2), predisposed to enter into contact with a surface of at least a roller (100) and to clean the said surface;

motor means, predisposed to activate the cleaning element (2) to slide at least along a longitudinal direction (x) of the roller (100), characterized in that the motor means are predisposed to activate the cleaning element (2) to move along a first transversal direction (y), perpendicular to the longitudinal direction (x), between an active position, in which the cleaning element (2) is in contact with the surface of the roller (100), and an inactive position, in which the cleaning element (2) is removed from the surface of the roller (100, the motor means being predisposed to activate the cleaning element (2) in movement along a second transversal direction (z), perpendicular to the longitudinal direction (x) and to the first transversal direction (y)."

In view of the decision taken by the Board, there is no need to reproduce auxiliary requests 1 to 3.

V. The appealed decision can be summarised as follows:

The feature that the motor means are predisposed to activate the cleaning element in movement along a second transversal direction (z) perpendicular to the longitudinal direction and to the first transversal direction is not sufficiently disclosed.

To realise this movement, the claimed device must include completely autonomous mechanical means to lift the guide, including the rest elements, from the roller plane and move them in the z direction in a smooth way, to allow a controlled transfer of the cleaning element from one roller of a kiln to the following one in the z direction.

Such means are not available to the skilled person on the basis of its common general knowledge, and are also not disclosed in the patent in suit.

It is also not evident how this mechanism may work, for example how the reaction forces occurring during z translation are transmitted to the furnace structure of the rollers.

Also the embodiment of paragraph [15] of the patent in suit is not sufficiently disclosed, because if only the cleaning element is moved in the y direction, and the guide and the rest wheels are not lifted from the roller plane during translation in the z direction, the question then arises how the rest wheels can provide a smooth transition from one roller to the next.

- VI. The appellant argued substantially that as the patent in suit is addressed to the person skilled in the art, it was not necessary to give any detail of well-known motor means in the patent in suit. The appellant's arguments form part of the reasons for the decision as discussed below.

Reasons for the Decision

1. The decision is issued in written proceedings without holding oral proceedings. The appellant requested oral proceedings only as a precautionary measure should the Board not allow their request for remitting the case to the opposition division for further prosecution. The Board considers the case ready for decision already on the basis of the appellant's written submissions.

2. According to the appealed decision, the characterising portion of claim 1 has the following, not sufficiently disclosed, functionally defined, feature:

"the motor means being predisposed to activate the cleaning element (2) in movement along a second transversal direction (z), perpendicular to the longitudinal direction (x) and to the first transversal direction (y)".

3. The appellant acknowledges that no structural detail of the mechanical means used to achieve the claimed transversal movement in the z-direction is mentioned in the description of the patent in suit, but argues that the description and the drawings, when read by a skilled person, contain sufficient information to carry out the above mentioned feature, and that therefore the ground for opposition under Article 100(b) EPC does not hold against the patent as granted.

This is because, so the appellant, once the straight guide 30 carrying the cleaning element is moved sufficiently away from the rollers in the first transversal direction (y, see column 3, lines 10-14), such that there is sufficient clearance between the cleaning element and the rollers in the y direction and and the cleaning elements are out of contact, there would be no particular difficulties, for a skilled person, using his common general knowledge, to apply actuators or motors for further displacing the cleaning element (2) in movement along the second transversal direction (z).

4. The Board agrees and notes that the appealed decision is taken on the basis of an excessively narrow interpretation of the subject-matter of claim 1.

Granted claim 1 is not restricted to cleaning devices to be used in kilns for heat treatment of glass, and the above-mentioned feature regarded as being not sufficiently disclosed neither imposes that the movement in the z-direction has to be completely autonomous, or particularly smooth, which are requirements mentioned in the appealed decision, see page 4.

The amount of movement is also not specified in the claim, and as a consequence of that the motor means do not have to be suitable to allow controlled transfer from one roller to the other, which is another requirement mentioned in the appealed decision, see page 5.

The skilled person carrying out the subject-matter of granted claim 1 is therefore free from all the constraints imposed by the particular technical field of the patent in suit, and mentioned in the appealed decision.

This freedom clearly facilitates the actual implementation of the claimed motor means, which as the appellant argued, could be carried out by means of several alternative solutions which are all within the reach of the common general knowledge of the person skilled in the art.

5. As a consequence of that the ground of opposition according to Article 100(b) EPC does not hold against the patent as granted.
6. The Board notes that the decision under appeal

is silent with regard to the ground for opposition under Article 100(a) EPC and that the appellant did not submit any arguments in support of novelty and inventive step of the claimed subject-matter.

Notwithstanding the withdrawal of the opposition by the opponent, the Board, following the appellant's explicit request for remitting the case to the opposition division, exercises its discretion under Article 111(1), second sentence, EPC as to remit the case to the opposition division for further prosecution on the basis of the patent as granted.

Order

For these reasons it is decided that:

1. The appealed decision is set aside.
2. The case is remitted to the opposition division for further prosecution.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated