

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 7 October 2019**

Case Number: T 2413/17 - 3.2.01

Application Number: 09704422.6

Publication Number: 2231497

IPC: B66C1/36, B66C1/22

Language of the proceedings: EN

Title of invention:

HOOK

Patent Proprietor:

Toon, John

Opponents:

The Crosby Group LLC
Yoke Industrial Corp.

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - extension beyond the content of the application
as filed (yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2413/17 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 7 October 2019

Appellant: Toon, John
(Patent Proprietor) 23E Burnside Drive
Dyce
Aberdeen AB21 0HW (GB)

Representative: HGF Limited
Delta House
50 West Nile Street
Glasgow G1 2NP (GB)

Respondent: The Crosby Group LLC
(Opponent 1) 2801 Dawson Road
Tulsa, OK 74110 (US)

Representative: Corbyn, David Jonathan
Bailey Walsh & Co LLP
1 York Place
Leeds, LS1 2DR (GB)

Respondent: Yoke Industrial Corp.
(Opponent 2) 39, 33rd Road
Taichung Industrial Park
Taichung City 407 (TW)

Representative: Adamson Jones
BioCity Nottingham
Pennyfoot Street
Nottingham NG1 1GF (GB)

Decision under appeal: **Interlocutory decision of the Opposition**
Division of the European Patent Office posted on
30 August 2017 concerning maintenance of the
European Patent No. 2231497 in amended form.

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
 A. Jimenez

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (proprietor) against the interlocutory decision of the opposition division finding that, on basis of the auxiliary request 1, the patent in suit (hereinafter "the patent") met the requirements of the EPC.
- II. The opposition division decided that the subject-matter of the main request, as filed on 9 February 2016, extended beyond the content of the application as filed (Article 123(2) EPC).
- III. Oral proceedings were held before the Board on 7 October 2019.
- IV. As announced in their response to the summons of the Board dated 10 September 2019 and 16 September 2019, respondent 1 (opponent 2) and the appellant respectively did not attend the oral proceedings. Respondent 2 (opponent 1) did not attend either.
- V. In accordance with Rule 115(2) EPC and Article 15(3) of the Rules of Procedures of the Boards of Appeal (RPBA), the oral proceedings were held without the parties.
- VI. The proprietor (appellant) requests the appealed decision to be set aside and a patent to be granted on the basis of the main request alternatively on the basis of the first auxiliary request (corresponding to the auxiliary request 1 in opposition proceedings).

The opponents 1 and 2 (respondents) have not replied to the grounds of appeal.

VII. The Board issued a communication dated 15 February 2019 pursuant to Article 15(1) RPBA annexed to a summons to oral proceedings. In this communication the Board expressed a reasoned preliminary opinion according to which the opposition division was correct in concluding that claim 1 of the main request did not meet the requirements of Article 123(2) EPC.

VIII. Independent claim 1 of the main request reads as follows:

A hook (10) comprising:

a load bearing portion (12) and an arm portion (14) pivotally coupled to the load bearing portion (12) such that the arm portion (14) and the load bearing portion (12) are pivotable relative to one another between a closed configuration, in which the load bearing portion (12) and the arm portion (14) form a substantially continuous boundary, and an open configuration, in which the arm portion (14) and the load bearing portion (12) do not define a continuous boundary, the hook (10) further comprising a locking mechanism (90) that is actuatable to lock the arm portion (14) and the load bearing portion (12) with respect to each other in the closed and/or open configuration;

wherein the arm portion (14) and the load bearing portion (12) define a first aperture (18) adapted to receive a connecting load tab or chain or lifting ring therethrough;

wherein a second aperture (19) is defined between a handle portion (22) and the load bearing portion (12); the second aperture (19) is separate from the first aperture (18);

the first and second apertures (19) are separated by a section of the load bearing portion (12);

the second aperture (19) is adapted to receive the fingers of an operator therethrough for holding the handle portion (22);

the handle (22) defines the second aperture (19) which is separate from the region of the first aperture (18) of the hook (10) allowing an operator to place fingers through the second aperture (19) and grip the handle portion (22) firmly, safely away from the hook opening in the form of the first aperture (18);

wherein the handle portion (22) is integral with the load bearing portion (12) and the handle portion (22) is contiguous with an outer part of the load bearing portion (12);

characterized in that

the hook includes a recessed/void region (24) of the load bearing portion (12) which is separate from the first and second apertures (18, 19) of the hook (10); the actuator (20) and other components of the locking mechanism (90) are located in the recessed/void region (24) of the hook (10) such that the actuator (20) and other components of the locking mechanism do not extend beyond an outer profile of the hook (10);

the actuator (20) is selectively operable by a user when holding the handle (22) by using the thumb to activate the locking mechanism (90) and thereby unlock the arm portion (14) with respect to the load bearing portion (12);

wherein the actuator (20) is located on an opposing side of the hook from the region of the opening between the load bearing (12) and arm portions (14).

Reasons for the Decision

1. The Board, in the communication annexed to the summons to oral proceedings, expressed a reasoned preliminary

opinion according to which claim 1 of the main request extended beyond the content of the application as filed, contrary to Article 123(2) EPC. In the absence of any reply from the appellant, the Board sees no reason to deviate from this preliminary opinion.

2. In fact, the Board judges that the assessment made by the opposition division is correct (See p.6-8 of the decision, paragraphs 2.3-2.4).

In the patent application as originally filed there is support for the locking in the open position and in both the open and closed position, but there is no support for the locking in the closed position only i.e. without the possibility to lock in the open position.

3. It is to be noted that the essentiality test used by the proprietor to assess the allowability of the amendment, cannot replace the need to answer the question of what a skilled person would objectively have derived from the description, claims and drawings of a European patent application on the date of filing ("gold standard"). In this respect the analysis of the opposition division is correct.
4. Nevertheless looking at the essentiality test used by the proprietor, the second criteria of the essentiality test is not fulfilled: the replacement of a feature from a claim might not be in breach of Article 123(2) EPC if the skilled person would directly and unambiguously recognise that it was not, as such, indispensable for the function of the invention in the light of the technical problem it served to solve.

5. In the application as originally filed, p.2, 1.2-5, the problem identified is the following: "In use an operator will typically open the hook and guide the tabs or chains on an off the load-bearing portion. As a result of this arrangement, pinch and trap injuries may be suffered by operators handling existing hooks"

Three aspects of the invention have then been disclosed:

- In the first aspect of the invention disclosed on p. 2, 1.7-10, the locking mechanism is disclosed as optional on p.2, 1.27 - p.3, 1.10.
- the second aspect and the third aspect of the invention disclosed respectively on p.3, 1.12-20 and on p.13, 1.4-12 both comprise a locking device for locking the arm portion and the load bearing portion in the open configuration.

Moreover it is to be noted that claim 1 as originally filed corresponds to the second aspect of the invention.

6. Although the locking device for locking the arm portion and the load bearing portion in the open configuration is only described as optional in the first aspect of the invention it seems that the solution to the problem identified (pinch and trap injuries suffered by the operator) is the locking of the arm in the open configuration (see second and third aspect of the invention as well as claim 1 as originally filed). Thus, this feature is indispensable for the function of the invention in the light of the technical problem it served to solve.
7. The arguments submitted by the appellant in order to demonstrate that the locking of the arm in its open configuration is not indispensable for the function of

the invention in the light of the technical problem it served to solve, are not based on the application as originally filed but on claim 1 as granted or claim 1 of the main request, where further features have been introduced and in particular a characterized portion (See grounds of appeal p.4, second paragraph). In claim 1 as originally filed there is no characterizing portion and the only feature which can solve the problem identified is the locking of the arm in the open position.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated