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**Datasheet for the decision  
of 24 March 2021**

**Case Number:** T 0443/18 - 3.2.01

**Application Number:** 14001221.2

**Publication Number:** 2754521

**IPC:** B23D53/04, B23D55/06, B23D55/00

**Language of the proceedings:** EN

**Title of invention:**  
Band saw machine, and saw blade driving method

**Patent Proprietor:**  
Amada Holdings Company Ltd.

**Opponent:**  
KEURO Besitz GmbH & Co. EDV-Dienstleistungs KG

**Headword:**

**Relevant legal provisions:**  
EPC Art. 52(1), 54, 56  
RPBA 2020 Art. 11

**Keyword:**

Remittal - fundamental deficiency in first-instance proceedings (no)  
Reimbursement of the appeal fee (no)  
Novelty - main request (yes)  
Inventive step - main request (yes)  
Discretion correctly exercised by the first instance department (yes)

**Decisions cited:**

T 0390/88, G 0012/91, T 0481/99, T 0699/99, T 0042/02,  
T 1081/02, G 0004/19

**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 0443/18 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 24 March 2021**

**Appellant:**

(Opponent)

KEURO Besitz GmbH & Co.  
EDV-Dienstleistungs KG  
Industriestrasse 14  
77855 Achern (DE)

**Representative:**

Lemcke, Brommer & Partner  
Patentanwälte Partnerschaft mbB  
Siegfried-Kühn-Straße 4  
76135 Karlsruhe (DE)

**Respondent:**

(Patent Proprietor)

Amada Holdings Company Ltd.  
200, Ishida  
Isehara-shi  
Kanagawa 259-1196 (JP)

**Representative:**

Grünecker Patent- und Rechtsanwälte  
PartG mbB  
Leopoldstraße 4  
80802 München (DE)

**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 22 December  
2017 rejecting the opposition filed against  
European patent No. 2754521 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** V. Vinci  
A. Jimenez

## **Summary of Facts and Submissions**

- I. The appeal filed by the opponent is directed against the decision of the opposition division to reject the opposition and to maintain the European patent No. 2 754 521 as granted.
- II. In its decision the opposition division held that none of the grounds of opposition raised by the opponent under Article 100(a) in combination with Articles 54 and 56 EPC was prejudicial to the maintenance of the patent as granted. In particular, the opposition division found that the subject-matter of the independent claims 1 and 6 as granted was novel in the meaning of Article 54 EPC and involved an inventive step in the meaning of Article 56 EPC in view of the following state of the art:

D1 : US 4 913 014 A  
D2 : DE 38 19 018 C1  
D4': DE 297 14 674 U1

Furthermore, the opposition division disregarded an alleged prior use based on the following pieces of evidence:

D5' : Prospekt showing a KASOTEC band saw machine  
D6' : Ersatzteilliste" KASTO  
D7' : Pieces of evidence D7'A-D7'G

for the reasons that it was filed after expiry of the opposition period and that its availability to the public before the priority date of the contested patent was not sufficiently substantiated.

III. Summons to oral proceedings were issued on 15 April 2020.

With a communication under Article 15(1) RPBA dated 18 May 2020 the Board informed the parties of its preliminary, non binding assessment of the appeal.

Oral proceedings took place on 24 March 2021 before the Board.

IV. The appellant (opponent) requested that the decision under appeal be set aside, that the case be remitted to the opposition division with the order to maintain the interlocutory decision on the patent as granted lacking inventive step as announced during the oral proceedings and to further examine the auxiliary requests of the respondent (patent proprietor). It also requested that the appeal fee be reimbursed in view of a substantial procedural violation. Alternatively, it requested that the patent be revoked in its entirety.

The respondent (patent proprietor) requested that the appeal be dismissed or, as an auxiliary measure, that the patent be maintained in amended form according to anyone of the auxiliary requests 1 to 5 as filed during the opposition procedure with letter dated 6 October 2017.

V. Claim 1 of the patent as granted reads as follows:

*"A saw blade driving method in a band saw machine (201) in which an endless saw blade (8) is wound around a driving wheel (221) and a driven wheel (223) rotatably supported by a saw blade housing (207), the saw blade is rotationally moved by rotationally driving the driving wheel by a saw blade driving unit (253) and a*

cut material (W) is cut with the rotationally traveling saw blade, **characterized by** the method comprising the steps of:

coupling the saw blade driving unit (253) to the shaft (225) of the driving wheel (221) in the floating state in the saw blade rotating direction with respect to the saw blade housing;

controlling the saw blade rotating direction of the saw blade driving unit via a buffer part (271; 287A, 287B; 291; 297) provided at the saw blade housing (207); and

damping a reaction force caused by the driving of the saw blade by the buffer part."

Claim 6 of the patent as granted reads as follows:

"A band saw machine (201 ), comprising:

an endless saw blade (8) wound around a driving wheel (221) and a driven wheel (223) rotatably supported by a saw blade housing (207); and

a saw blade driving unit (253) for rotationally moving the saw blade by rotationally driving the driving wheel, **characterised in that**

the saw blade driving unit has a floating structure coupled to the shaft (225) of the driving wheel in a floating state relative to the saw blade housing (207) in the saw blade rotating direction;

and a buffer part (271; 287A, 287B; 291; 297) for controlling the saw blade rotating direction of the saw blade driving unit and damping the reaction force

*generated by driving of the saw blade (B) is provided at the saw blade housing (207)."*

## **Reasons for the Decision**

### **ALLEGED SUBSTANTIAL PROCEDURAL VIOLATION**

1. The appellant alleged a major procedural deficiency caused by the circumstance that the opposition division reversed in the course of the oral proceedings a previously announced and binding interlocutory decision according to which the subject-matter of claims 1 and 6 as granted was considered to lack inventive step in view of document D4' combined with general technical knowledge. In the appellant's view the statement of the opposition division reported under point 5 of the minutes had clearly the binding character of a final interlocutory decision which as such and according to established Case Law of the Boards of Appeal (decisions T390/88, G12/91, T0699/99, T0042/02, T1081/02 and G4/19 were cited by the appellant) could not be reversed. Furthermore, the appellant argued that the review of the already announced and binding interlocutory decision did have an impact on the development of the whole oral proceedings and on its outcome which negatively affected the appellant's position in defending its case.
- 1.1 The arguments of the appellant are not convincing for the following reasons:

The Board concurs with the respondent that the relevant passage of the minutes, which have never been contested, wordily states that, unlike the cases underlying the decisions of the Boards of Appeal and of the Enlarged Board of Appeal cited by the appellant,

what was announced and thereafter withdrawn by the opposition division was an opinion without any binding character and not a final interlocutory decision. This is further confirmed by the fact that the opposition division gave its opinion without having yet announced a decision on the admissibility of D4', which decision according to point 3 of the minutes, last sentence, was intended to be announced later. The Opposition Division indeed decided to admit document D4' only at a later stage, namely after announcing that the subject-matter of claim 6 as granted was not rendered obvious by the combination of D4' and D1 (see point 10 of the minutes, third paragraph).

Furthermore, the Board observes that after the revision of the initially announced opinion in view of a further distinguishing feature which became apparent to the opposition division only upon discussion of D4' with respect of the auxiliary request 1 (i.e. the claimed arrangement of the buffer part on the saw blade housing), the object of the discussion was reverted to the main request (see line 17 of point 8 of the minutes), whereby the appellant did have the opportunity to defend its position with respect to the revised conclusion of the opposition division regarding inventive step of the main request. The Board is thus convinced that the review of the non-binding opinion announced by the opposition division in the course of the oral proceedings did not negatively and substantially affect the position of the appellant/opponent in defending its case.

- 1.2 In view of the above, the Board concludes that no substantial procedural violation adversely affecting the rights of the appellant/opponent took place, and that therefore, no "*special reasons*" in the meaning of



Article 11 RPBA 2020 for setting aside the decision under appeal and remitting the case to the opposition division can be identified. As a result, the reimbursement of the appeal fee under Article 103 (1) (a) EPC requested by the appellant is not justified.

**NOVELTY**

2. The appellant brought forward that the technical content of both documents D4' and D1 is prejudicial to the novelty of the subject-matter of independent claims 1 and 6 as granted.

2.1 In the following paragraphs the labelling of the features of the independent claims adopted in the decision under appeal is adhered to.

In view of D4'

2.2 The appellant firstly put forward that the three embodiments presented in the contested patent, in particular the one in figure 20 based on the use of a vibration generating device, would allow for a very broad interpretation of the expressions "*buffer part*" and "*damping a reaction force*" used in the independent claims at stake. It was argued that in operation the torque support arm (14) and the abutting stop (13) shown in figure 2 of D4' will mandatorily experience at their interface a reiterated loss/restoring of contact at high frequency (rattling effect), thereby providing the same damping functionality provided by the buffer part of claims 1 and 6 as granted at least in the broad meaning which should be conferred to the wording used therein. Furthermore, the appellant put forward that a vibration and resonance damping effect would always be provided by the inherent elasticity of the relatively

long torque support arm (14) which will thus be able to absorb some vibrations thereby acting as a buffer part.

2.3 The Board does not agree for the following reasons:

Firstly, as convincingly argued by the respondent, document D4' does not indicate that the rattling effect alleged by the appellant takes place between the torque support arm (14) and the stop (13). In this respect the Board observes that operation of this known band saw machine without rattling at the interface between the stop (13) and the torque support arm (14) is technically conceivable. Furthermore, the Board concurs with the opposition division and the respondent that the stop (13) and the torque support arm (14) provided in the band saw machine of D4' do not functionally result, in combination, in a *"buffer part"* with the damping functionality expressed in independent claims 1 and 6 as granted. In fact, the Board is convinced that the person skilled in the art, reading the claims at stake in the light of the applicable technical context, would understand the feature *"buffer part"* for *"damping a reaction force"* (see features A4 and A5 of claim 1 and B5 of claim 6) as indicating an additional mechanical component intentionally provided in order to determine an enhanced vibration damping effect compared to the very limited damping capability inherently associated to any substantially rigid metallic component of a machine as a result of its mechanical and geometrical characteristics. The stop (13) and the torque support arm (14) of the band saw machine according to D4' are essentially rigid metallic elements and, as such, are unsuitable for providing any remarkable vibration damping effect in the technical meaning of claims 1 and 6 of the contested patent. In this respect the Board concurs with the respondent that

D4' does not disclose that the elements (13) and (14) are designed and configured so as to provide such a vibration damping functionality.

- 2.4 Document D4' does not thus directly and unambiguously disclose a buffer part with the functionality defined by features A4 and A5 of claim 1 and by feature B5 of claim 6 as granted and is thus not prejudicial to novelty.

In view of D1

- 2.5 The Board concurs with the opposition division and with the appellant that, notwithstanding the fact that D1 discloses that the spring (28) and stop (27) operate as a kind of load sensing means suitable for preventing, in combination with the safety valve (20), that in operation a predetermined reaction force is exceeded, the person skilled in the art would realise that this arrangement, due to the presence of the spring (28), may additionally provide some kind of vibration damping functionality, thereby acting, even with some limitation, as a *"buffer part"* in the meaning of claims 1 and 6 as granted. However, as both the stop (27) and the spring (28) are mounted on the driving wheel (5) (see for example figure 3), even by considering these components as embodying the *"buffer part"* in the meaning of claims 1 and 6, they are not *"provided at the saw blade housing"* as required by features A4 and B5 of claims 1 and 6 respectively, as correctly observed by the opposition division in the decision under appeal. It follows that, at least for this reason, the subject-matter of independent claims 1 and 6 is novel in view of D1.

2.6 In conclusion, for the reasons given above, the subject-matter of independent claims 1 and 6 as granted is novel in the meaning of Articles 52(1) and 54 EPC with respect to the cited prior art as correctly assessed by the opposition division in the decision under appeal.

**INVENTIVE STEP: ARTICLES 52(1) and 56 EPC**

3. The appellant contested the conclusion of the opposition division that the subject-matter of claim 1 and 6 as granted involves an inventive step in the meaning of Articles 52(1) and 56 EPC over D4' or D1 in view of common general knowledge or over D4' in combination with D1.

D4' in view of common general knowledge

3.1 As explained above, the subject-matter of claims 1 and 6 as granted differs from the disclosure of D4' in that a *"buffer part" for "damping a reaction force caused by the driving of the saw blade"* is provided.

3.2 It is common ground between the parties that starting from D4' and in view of the aforesaid distinguishing feature the objective technical problem addressed by the contested patent can be seen in improving damping of peak loads, vibrations and noises caused by the reaction forces that in operation are transferred to the drive.

3.3 The appellant argued that the person skilled in the art would directly and unambiguously realize that in the band saw machine of D4' vibrations and noises are essentially generated at the interface of the torque support arm (14) with the stop (13) due to the loose

contact existing therebetween which generates a kind of "rattling" effect. In the Appellant's view, the person skilled in the art aiming to solve the technical problem stated above, would obviously consider to provide some kind of buffer part between the stop (13) and the torque support arm (14) in order to absorb vibration and avoid the rattling effect which takes places between these elements.

3.4 The arguments of the appellant are not convincing for the following reasons:

The Board concurs with the opposition division and with the respondent that there is no hint in D4' that undue vibrations, rattling and/or or noises may occur at the interface between the stop (13) and the torque support arm (14) and hence that a damping element may be required in this point of the band saw machine. Therefore, contrary to the appellant's view, the person skilled in the art would have no reasons for introducing a "*buffer part*" according to features A4, A5 and B5 of claims 1 and 6 of the contested patent in this known band saw machine. Moreover, the Board shares the view of the respondent that even by assuming that the person skilled in the art would realize that a buffer part may be required in the band saw machine of D4' in order to damp vibrations and noises caused by the driving of the saw blade, there is no obvious hint that such a buffer part should be provided at the saw blade housing as required by the independent claims of the contested patent. In fact the Board is convinced that the source of the vibrations and noises may be located in different places of the band saw machine, whereby the introduction of a buffer element at the interface between the stop (13) and the torque support arm (14) and hence on the saw blade housing cannot be

considered to be the only and thus obvious choice. The Board thus concludes that the subject-matter of claims 1 and 6 does involve an inventive step in view of D4' in combination with common general knowledge.

D1 in view of common general knowledge

3.5 In view of the fact that the band saw machine of document D1 discloses an arrangement consisting of the arm (26), the stop (27) and the spring (28) potentially suitable for damping the reaction forces caused by the driving of the saw blade, the appellant asserted that D1 addresses the same technical problem of the patent at stake and that, for this reason, can be considered a suitable starting point either. The appellant argued that it would amount to an obvious design measure to modify this known saw machine by providing the buffer part (i.e. the spring (18)) on the saw blade housing thereby arriving without inventive step to the subject-matter of claims 1 and 6 as granted.

3.6 The arguments of the appellant are not convincing for the following reasons:

As correctly observed by the opposition division and the respondent, document D1 does not addresses at all the technical problem of damping the reaction forces caused by the the driving of the saw blade, but rather the problem of controlling the driving resistance of the saw-band by automatically adjusting the downward feed rate. Already for this reason document D1 does not represent a promising starting point for the contested patent. Furthermore, as observed by the respondent, document D1 fails to disclose or show a saw blade housing and teaches to arranges the damping spring (28) on the the driving wheel (5). In view of the above the

Board shares the view of the respondent that the person skilled in the art would have no reason for modifying the band saw machine of D1 by arranging the spring (28), which may be considered to act as buffer part in the meaning of the contested patent, on the saw blade housing. Furthermore, this modification would imply major constructional changes which cannot be considered obvious. Therefore, the subject-matter of claims 1 and 6 as granted does involve an inventive step in view of D1 in combination with common general knowledge.

D4' in view of D1

- 3.7 The appellant argued that the person skilled in the art would realise that the assembly comprising the arm (26), the stop (27) and the spring (28) shown in figures 1 to 3 of D1 is suitable for providing some kind of damping functionality, and that he/she would obviously consider to introduce this damping assembly in the saw blade machine of D4' in order to damping vibrations, thereby arriving without inventive step to the subject-matter of independent claims 1 and 6 of the patent as granted.
- 3.8 This reasoning is not convincing:
- 3.9 As explained by the opposition division in the decision under appeal, the arrangement formed by the arm (26), the stop (27) and the spring (28) shown in figures 1-3 of D1 acts as a kind of sensing means that, in combination with the security valve (20), prevents that the forces applied between the saw blade and the saw blade driving unit exceed a predetermined threshold. Therefore, there is no hint in D1 that this arrangement may solve the objective problem of the contested

patent, namely damping of vibrations and noises generated by the impact forces acting on the saw blade and transmitted to the saw blade driving unit during cutting operation. Therefore the Board shares the view of the respondent that the person skilled in the art would not consider either to introduce this arrangement in the band saw machine of document D4' in order to solve the vibration related issue nor to provide it at the saw blade housing. Therefore, the subject-matter of claims 1 and 6 does involve an inventive step in view of D4' in combination with the teaching of D1.

**ALLEGED PRIOR USE**

4. The appellant contested the decision of the opposition division not to admit the late filed alleged prior use based on documents D5' to D7' in the opposition proceedings. In the appellant's view the opposition division did not correctly apply that the relevant criterion of the "prima facie" relevance and this because the relevance of the technical content of this prior use for the decision to be taken was not properly assessed.
  - 4.1 This argument is not convincing for the following reasons:
    - 4.2 The Board preliminarily observes that a decision on the admissibility of a late filed piece of evidence is taken by the first instance in exercise of its own discretion pursuant Article 114(2) EPC and that, according to established Case Law of the Boards of Appeal, the review of this decision by the Board should be generally restricted to the question whether the first instance has exercised its discretion power



properly and according to the correct criteria.

- 4.3 The Board notes that the decision of the opposition division not to admit the late filed prior use was in fact not based on an (allegedly wrong) assessment of the "*prima facie*" relevance of its technical content, but rather on the conclusion that the availability to the public of a "KASOTEC A5" band saw machine in the version with a rubber-metal sleeve acting as a buffer part according to the features A4, A5 and B5 of the independent claims before the priority date of the contested patent was considered not to be sufficiently substantiated. In fact, in the decision under appeal, the opposition division pointed out to some inconsistencies and gaps in the evidences submitted in support of the alleged prior use (see point 12.2.2 of the decision) and on that basis exercised its discretionary power under Article 114(2) EPC not to admit the late filed prior use with the reason that it was not sufficiently proven that its technical content belonged to the state of the art pursuant to Article 54(2) EPC. The Board cannot see any error in the exercise of the discretionary power by the opposition division (see in particular the analogous situation in T 481/99, point 5.2 of the reasons) and hence has no reason for overturning the decision to disregard the alleged prior use.
- 4.4 Consequently, the objections and the arguments of the appellant regarding lack of novelty and inventive step in view of the alleged prior use D5'-D7' are disregarded.
5. In view of the above the Board does not see any reason for deviating from the conclusion of the opposition division in the decision under appeal.

**Order**

**For these reasons it is decided that:**

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated