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**Datasheet for the decision
of 29 June 2021**

Case Number: T 1328/18 - 3.3.05

Application Number: 13707029.8

Publication Number: 2807279

IPC: C21C5/52, F27B3/18, F27D13/00

Language of the proceedings: EN

Title of invention:
METHOD FOR MANAGING THE CHARGE IN A MELTING FURNACE AND
CORRESPONDING LOADING APPARATUS

Patent Proprietor:
Danieli Automation SPA

Opponent:
ArcelorMittal

Headword:
Melting furnace/Danieli

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 13(2), 25(3)

Keyword:

Amendments - intermediate generalisation
Amendment after summons - cogent reasons (no)

Decisions cited:

T 2271/18

Catchword:



Beschwerdekammern

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Case Number: T 1328/18 - 3.3.05

D E C I S I O N
of Technical Board of Appeal 3.3.05
of 29 June 2021

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
23 March 2018 concerning maintenance of the
European Patent No. 2807279 in amended form.**

Composition of the Board:

Chairman E. Bendl
Members: J. Roider
A. Jimenez

Summary of Facts and Submissions

- I. The appeal lies from the opposition division's interlocutory decision to maintain the patent on the basis of the then auxiliary request 1 filed with the submission of 13 December 2017.
- II. In the appeal proceedings the appellant (opponent) argued that the claims did not comply with the requirements of Article 100(a), (b) and (c) EPC in combination with Articles 123(2), 83, 54 and 56 EPC, as well as with Article 84 EPC.
- III. The respondent (patent proprietor) maintained the set of claims upheld by the opposition division as its main request.
- IV. In a communication pursuant to Article 15(1) RPBA 2020 dated 24 September 2020, the board expressed the preliminary opinion that the requirements of Article 123(2) EPC were not fulfilled by the main request.
- V. On 30 April 2021 the respondent filed a clean version of the main request and additionally filed auxiliary request 1, which was subsequently withdrawn during the oral proceedings before the board, and auxiliary request 2. During the oral proceedings, the respondent also filed auxiliary request 3.
- VI. Claim 1 of the main request reads:
"Method for managing the metal charge (11) in a melting furnace (14) comprising at least a step of depositing a plurality of differentiated types of metal materials in a storage zone (13), said differentiated types

comprising at least low value scrap, scrap with a greater value, slabs of cast iron or other, a step of picking up and loading said metal materials from said storage zone (13) onto a continuous conveyor (12) by means of loading means (19-22), and a feed step in which said continuous conveyor (12) unload said materials into the melting furnace (14), characterized in that said deposit step provides to divide said storage zone (13) into a plurality of distinct and specialized areas (33-40) in each of which a different type of materials (23-30) of said metal materials is deposited forming piles of metal material, each of said specialized areas (33-40) being codified depending on the type of metal materials deposited therein and containing metal materials with homogeneous characteristics, in that at least its own distinct loading mean (19-22) is associated to each of said specialized areas (33-40), and in that during said pick-up and loading step, a processing device (50) controls and commands the actuation of one or more of said specific loading means (19-22) which pick up selected types of materials (23-30) from one and/or another of said specialized areas (33-40) in relation to the final metallurgical properties of the product to be obtained and in relation to an optimization of the energy consumption required to set off the melting process and load them onto said continuous conveyor (12), wherein during said pick-up and loading step said processing device (50) provides to coordinate the actuation of gantries (15-18), cranes (19-22), and pick-up equipment (41, 42) of said types of materials (23-30) so as to move them continuously and obtain an equal distribution of the metal charge inside the continuous conveyor (12) and to distribute said metal charge equally and uniformly inside the conveyor (12)."

- VII. In claim 1 of auxiliary request 2 the features "*cranes (19-22), and pick-up equipment (41, 42) of said types of materials*" and "*and to distribute said metal charge equally and uniformly inside the conveyor (12)*" were deleted.
- VIII. Claim 1 of auxiliary request 3 contained the same amendments as auxiliary request 2, apart from the deletion of the second feature. At the end of auxiliary request 3 the following features were added:
"and wherein said processing device (50) is connected to at least one of either a first processor (51) and a second processor (52) which respectively command and control said continuous 30 conveyor (12) and said melting furnace (14)."
- IX. The appellant argued that the international application published under the PCT (further referred to as "A1") disclosed that the gantries were suitably moved continuously, while the wording of claim 1 extended this action to the cranes and pick-up equipment. The arrangement of the gantries, cranes and pick-up equipment was not apparent from the subject-matter of claim 1. Moreover, for distributing the metal charge equally and uniformly inside the conveyor, the description as originally filed disclosed that the reciprocal interaction of the processing device 50, the first processor 51 and the second processor 52 was indispensable.

All auxiliary requests were first filed after notification of the summons to oral proceedings and should not be admitted into the proceedings under Article 13(1) and (2) RPBA. There were no exceptional

circumstances apparent, and the respondent did not justify this late submission.

- X. The respondent argued that according to the description as originally filed on page 6, lines 1-3, the cranes were mounted on the gantries and the cranes were equipped with grabs or magnets. Figures 1 and 2 clearly identified the gantries, for horizontal movement, the crane, for vertical movement, and the grabs or magnets, for picking up. By moving the gantries, the cranes and the pick-up equipment were necessarily moved as well. It was acknowledged that on page 9, lines 8-9, only a reference to the gantries was made, because it was the horizontal movement of the gantries that made it possible to unload the charge material in the empty zones of the continuous conveyor. However, it was clear that by moving the gantries, the cranes and the pick-up means were also moved together, and the unloading step also required, after the positioning of the gantries required, the actuation of the cranes and the pick-up means, to unload the material on the surface of the conveyor. It was implicit for the skilled person that the activation of all components of the loading means was required.

As to the processors, page 9, lines 18-19, did not add anything more to what was already mentioned on page 9, lines 8-9. The only difference in these sentences was the term "uniformly", but this term could be considered as implicitly included in the term "equal distribution". However, the sentence in lines 8-9 was not strictly connected with the necessary provision of the first and the second processor.

The auxiliary requests should be taken into account, since they addressed the issues raised in the summons

to oral proceedings. The respondent should be given the opportunity to react to the observations of the board.

- XI. The appellant/opponent requested that the decision under appeal be set aside and the patent be revoked.

The respondent/patent proprietor requested that the appeal be dismissed (main request) or, alternatively, that the patent be maintained according to auxiliary request 2 filed by letter of 30 April 2021, or to auxiliary request 3 filed during the oral proceedings of 29 June 2021.

Reasons for the Decision

1. Main request, Article 123(2) EPC
 - 1.1 The application as filed on page 9, lines 8-9, mentions gantries only. For the specific feature "*providing equal distribution inside the conveyor*", the application as filed discloses that the gantries are suitably moved continuously.
 - 1.2 In contrast, the subject-matter of claim 1 requires that the processing device provided to coordinate the actuation of gantries, cranes and pick-up equipment so as to move *them* continuously to obtain an equal distribution of the metal charge.
2. It is undisputed that there is no literal disclosure of this feature in the application as filed.
 - 2.1 Moreover, it is not convincing that this feature is implicitly disclosed in the application as filed.

First of all, the exact arrangement of the cranes, gantries and pick-up equipment with respect to each other is not defined by the subject-matter of claim 1. Therefore, by moving the gantries, the other elements are only moved if the arrangement is configured as alleged/explained by the respondent.

Even if one were to accept the arrangement described by the respondent as being implicit, which does not necessarily need to be the case, the subject-matter of claim 1 extended beyond the original disclosure.

The subject-matter of claim 1 foresees that a processing device provides to co-ordinate the actuation of the gantries, cranes and pick-up equipment. This feature does not imply any movement, only the capability to move. Claim 1 goes on to specify the movement, which is to move "*them*", i.e. the gantries, the cranes and the pick-up equipment, *continuously*.

In contrast to the respondent's interpretation that by (actively) moving the gantries, the cranes and pick-up equipment would also be (passively) moved, the wording used in claim 1 encompasses the *continuous* independent and active movements of *each* of the gantries, cranes and pick-up equipment, which has not been originally disclosed as such and does not even form part of the respondent's interpretation of the original disclosure.

2.2 Furthermore, it is agreed with the respondent that the feature "*uniform distribution*" is comprised within the feature "*equal distribution*". These features have a large overlap but are not exact synonyms. Moreover, both sentences relate to the same embodiment.

However, the statement on page 9, lines 20-21, according to which, for this purpose, the reciprocal interaction of the processing device 50, the first processor 51 and the second processor 52 was *indispensable*, applies to the whole embodiment and is missing in the wording of claim 1.

3. Admittance of the auxiliary requests

All auxiliary requests were filed for the first time in the appeal proceedings, after notification of the summons to oral proceedings, and thus represented an amendment to the respondent's case. The admittance of these requests was at the board's discretion under Article 13(2) RPBA 2020, which applies to the case in hand in accordance with the transitional provisions set out in Article 25(3) RPBA 2020 (the summons to oral proceedings was notified after 1 January 2020).

In accordance with Article 13(2) RPBA 2020, any amendment to a party's appeal case made after notification of a summons to oral proceedings must, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

The objections which the amendments try to overcome were already raised in the opposition phase (see minutes, page 4, first para.) and in the statement of grounds of appeal (item 4 on page 6).

The board has seen no exceptional circumstances during the whole appeal proceedings which could justify the late-filing of the auxiliary requests shortly before and in particular during the oral proceedings. The unfavourable preliminary opinion does not qualify for

such an exceptional circumstance (see T 2271/17, Reasons 3.3).

For these reasons, the auxiliary requests are not admitted into the proceedings in accordance with the requirements of Article 13(2) RPBA 2020.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



C. Vodz

E. Bendl

Decision electronically authenticated