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**Datasheet for the decision
of 23 April 2021**

Case Number: T 1979/18 - 3.2.04

Application Number: 06830113.4

Publication Number: 1954118

IPC: A01G17/06, F16B2/24

Language of the proceedings: EN

Title of invention:
CLASPING DEVICE FOR WIRE-LIKE BODIES

Patent Proprietor:
MOLLIFICIO BORTOLUSSI S.R.L.

Opponent:
GR S.r.l.

Headword:

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
Novelty - (yes)
Inventive step - skilled person - (yes)

Decisions cited:

T 1587/12

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 1979/18 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 23 April 2021

Appellant: MOLLIFICIO BORTOLUSSI S.R.L.
(Patent Proprietor) Via Trieste, 93
33080 Fiume Veneto (PN) (IT)

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

Respondent: GR S.r.l.
(Opponent) Via Arnaud 3
46029 SUZZARA (MN) (IT)

Representative: Modiano, Micaela Nadia
Modiano & Partners
Via Meravigli, 16
20123 Milano (IT)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 June 2018
revoking European patent No. 1954118 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman A. de Vries
Members: S. Oechsner de Coninck
T. Bokor

Summary of Facts and Submissions

- I. The appellant (proprietor) lodged an appeal received on 27 July 2018 against the decision of the opposition division posted on 22 June 2018 revoking European patent No. 1954118 pursuant to Article 101(3) (b) EPC, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 4 October 2018.
- II. The patent EP 1 954 118 was the subject of appeal T 1587/12. The Board considered the opposition ground based on Article 100(c) EPC together with Articles 123(2) and (3) EPC as well as the requirement of clarity pursuant Article 84 EPC and decided to remit the case to the opposition division, so that it could examine the remaining opposition grounds of Article 100(a) EPC in relation to novelty and inventive step for claim 1 of the auxiliary request 3.
- III. In its decision following remittal, the opposition division decided that the subject-matter of the sole claim according to the main request (auxiliary request 3 considered in T 1587/12) was novel in respect of D1, but lacked an inventive step when using the skilled person's common knowledge.
- IV. Oral proceedings were held by videoconference on 23 April 2021.
- V. The appellant patent proprietor requests that the decision under appeal be set aside and the patent be maintained in an amended form on the basis of a main request or one of Auxiliary Requests 1 or 2 filed with the grounds of appeal dated 4 October 2018.

VI. The respondent opponent requests that the appeal be dismissed.

VII. The wording of the independent claim 1 of the main request (corresponding to auxiliary request 3 considered in T 1587/12) reads as follows:

"Use of a clasping device in agricultural applications for fastening together a first one (1) and a second one (2) of two substantially rigid means having an elongated or wire-like shape, extending substantially across each other and in contact with each other at the point of mutual intersection, from which each one of said means branches out with respective pairs of opposite arms (1A, 1B) and (2A, 2B), respectively, to form a large-meshed vertical grid to which trunks, branches and shoots of agricultural plants can be tied, said first substantially rigid means (1) being rods (1) set up in a ground vertically and said second substantially rigid means (2) being metal wires (2) arranged vertically above each other to horizontally connect the rods with each other, said clasping device comprising a flexible metal wire-like member (3) adapted to be wound in a saddle-like manner (15) by about half a turn round the first arm (1A) of said first means (1), the two opposite elongated prongs (5, 6) of said wire-like member being bendable round respective ones of two opposite arms (2A, 2B) of said second means (2), wherein each of said elongated prongs (5, 6) comprises an end portion (6A, 6B) wherein the two end portions (5a, 6a) of said two elongated prongs (5, 6) are engaged, independently one another, elastically upon a surface of the opposite arm (1B) of said first means (1), which lies substantially on the same outer face of said first means (1) that is engaged

by said saddle- like conformation (15) and said elongated prongs (5, 6) have different lengths; and wherein each of said two end portions (5a, 6a) of said two opposite elongated prongs (5,6) is engaged elastically against said opposite arm (1B) of said first means (1) by means of a curvature formed thereon in the form of an angle bend or an arc of a circle (8), and is selectively disengageable from said opposite arm (1B)."

VIII. In the present decision reference is made to the following documents :

D1: IT-34811 B/80 and its English translation D1-EN

D2: US 1 185 263

A1: Corrazine, E: "Il progetto e 'l'impianto di un piccolo vigneto familiare di uva da vino", Frutteto Vigneto, Via in Campagna, Vol.5/2004, 2004

A2: English translation of A1

D7-IT:Webpage retrieved from webarchive at <https://web.archiv.org/web/20021205001707/http://www.cimesgroup.it:80/Default.htm> and its English translation D7

D10: Elliot, B.: "Using Wire Mesh in the Garden", Mother Earth News, Organic Gardening, June/July 2002

IX. The appellant proprietor argues as follows:

- The use of the clasping device of claim 1 is a method of fastening including steps not disclosed in D1 or D2.
- Starting from the use of fasteners disclosed in D7 or the vine training system of A1, the skilled person would not obviously consider similar fasteners used for concrete reinforcements such as D1 or D2. Therefore the subject-matter of claim 1 also involves an inventive step.

- X. The respondent opponent argues as follows:
- The meshes of D1 and D2 can also be used just like the mesh of claim 1, which therefore lacks novelty.
 - Starting from D7 or A1, the person skilled in agriculture would seek advice from a person skilled in the field of building construction and therefore use the fasteners taught by D1 or D2 to improve fastening by way of obviousness.

Reasons for the Decision

1. The appeal is admissible.
2. Main request - Novelty
 - 2.1 Claim 1 according to the main request is the same as claim 1 according to the auxiliary request 3 that was decided to comply with requirements of Articles 123(2) and (3) EPC in the first appeal T 1587/12.
 - 2.2 Claim 1 is directed at the use of a clasping device for forming vertical grids used in agricultural applications. Such a use claim is to be interpreted as a process claim for producing the grid using the clasping device, cf. CLBA, 9th edition 2019, II.E.2.6.1 a) in particular G 2/88 and T 401/95. In this case the process includes the step of fastening together rigid rods that are set up in the ground and crossing metal wires to form a vertical grid to which trunks, branches and shoots can be tied. This process includes as specific requirements the steps of setting up rigid rods vertically in the ground, and connecting to them via the clasping device metal wires one above the other and horizontally between the rods to so form the grid, see also reasons 4.1.2, 2nd paragraph, of T 1587/12, where the Board explained why these features did not

add subject-matter. Contrary to the respondent's arguments these features decidedly limit the claimed use of the clasping device.

In considering novelty it is thus necessary to establish whether such steps are also directly and unambiguously taught by the cited prior art. The Board finds that this is not the case.

2.3 D1 discloses the metallic reinforcements for use in building constructions (page 1, lines 19-22). Figure 4 shows a node of a grid comprising a series of uprights 9 and stirrups 8 attached by a clip (page 8, lines 16-21). The clip is made of a metal wire like member and comprises two contoured grapnels 6 and 7 (page 8, lines 1-4) identified as the prongs of the clasping device defined in claim 1.

D2 discloses a similar spring clip for concrete reinforcements made of spring metal filaments (page 1, lines 9-11). Figure 4 discloses a spring in which each arm has a saddle like portion to be independently secured to the reinforcement (pages 2, lines 17-22) depicted in figure 1 as a grid of crossed and intersecting rod like reinforcements (page 1, lines 36-41).

However, even if in either case the clips may be similar to the clasping devices used in claim 1 there is no suggestion in D1 or D2 that reinforcing rods to which the fasteners are applied are set up in the ground, much less that the reinforcing grid is to be used in an agricultural application in its proper sense, more particularly for attachment of trunks, branches and shoots of agricultural plants. Indeed, there is no suggestion whatsoever in D1 or D2 of

possible agricultural applications, where the term "agriculture", see for example "Merriam-Webster" generally refers to the "the science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products". That concrete reinforcement might be used to build agricultural structures such as farm buildings or greenhouses does not make the process of concrete reinforcement an agricultural application. Nor does it normally involve planting rods in the ground prior to assembly.

2.4 Contrary to the respondent's submission it is not enough to establish if the reinforcement grids of D1 or D2 may be *suitable* for use in agriculture as growth supports. Suitability may be a consideration in assessing novelty of a device with respect to a known device with all the same structural features but not the functions, it plays no role for assessing novelty of the use of a device if that use is different. It needs no explanation that embedding metal grids in concrete is a different use. Thus, the fact that another document, D10, suggests that presumably pre-welded wire reinforcement is suitable as growth support is not relevant.

2.5 Consequently, the Board concludes that the subject-matter of claim 1 is novel over D1, and for the same reason, over D2. Thus the decision's positive finding on novelty has to be confirmed.

3. Main request - Inventive step

3.1 D7-IT (further references are to D7, its English translation) relates to website pages retrieved from the web archive of the Italian company CIMES, which is

mainly active in the construction industry but also has an agricultural division. The first page shows fasteners used in construction, the following pages relating to its agricultural division ("CIMES Agriculture") show agricultural fastener products available in a variety of designs (AGR, ONDAGR, OMEGAGR) and dimensions. Figures and photographs show their use to connect upright rigid rods to metal wires, see for example the box "AGR fastening systems for agriculture" and the two photographs "gancio OMEGAGR" and "gancio AGR").

As D7 clearly concerns the use of fasteners to build a growth support from vertical rods and horizontal wires it indeed represents a promising starting point for inventive step.

3.2 The process of claim 1 differs from this prior art by the features of the fastener used: two end portions of two elongated prongs are engaged independently one another elastically upon a surface of the opposite arm of the rods which lies substantially on the same outer face, the elongated prongs have different lengths, and wherein each of said two end portions of said two opposite elongated prongs is engaged elastically against said opposite arm of said fist means by means of a curvature formed thereon in the form of an angle bend or an arc of a circle, and is selectively disengageable from said opposite arm.

3.3 As seen above D7 already provides to some degree the sought stable and removable connection between an upright rod to the horizontal wires supported by it in the above-noted agricultural application expressed in paragraph 022 of the patent. The provision of two prongs can be seen to facilitate and improve attachment of the rod and wires as explained therein.

The associated problem may thus be regarded as how to improve or facilitate connection of the rods and wires during assembly of an agricultural grid supporting plants or of a similar growth support in agriculture.

- 3.4 The field of application concerns the realisation of meshed grid for growing plants, possibly on an industrial scale, and undisputedly lies in the field of agriculture. Therefore the relevant skilled person is considered to be an experienced practitioner in the field of agriculture, such as an agricultural engineer, specialized in growing produce requiring growth support. Though it is true that agricultural engineering may combine (depending on the particular application) with a wide variety of other disciplines such as civil, chemical, mechanical, bio-systems, environmental engineering, this does not mean that therefore the skilled person is also fully knowledgeable in those fields, i.e. is also a civil, chemical, mechanical etc. engineer. Rather they will have a limited knowledge in the relevant field that is tailored to their needs and experience. The Board is therefore also unconvinced that the skilled person will be one of a team of engineers from these various fields. In that the problem-solution approach is meant to emulate the real world process of technological development, so also the skilled person should have a solid basis in the real world. In the rather focused field of growing produce with related growth support it is hard to imagine a team; rather, a single engineer with the necessary knowledge in the relevant fields should suffice.

For this reason and contrary to the respondent's opinion the Board is unconvinced that the skilled person seeking to facilitate and improve assembly of growth supports would as a matter of course consider

looking at solutions offered in the field of civil engineering or building constructions, or team up with a civil engineer knowledgeable in building construction. Thus they would not, as a matter of obviousness, be familiar with the contents of publications D1 or D2 in that particular field.

- 3.4.1 In more detail, the Board observes that the field of building construction using concrete reinforcements cannot be said to be part of common general knowledge in the present limited field of applications, nor does it represent a neighbouring field in which the person skilled in agriculture would look for suggestions as expressed in the case law (see Case Law of the Boards of Appeal, 9th edition 2019 (CLBA) I.D.8.2).

Moreover, the Board also does not consider knowledge of (concrete) construction techniques to fall within the limited area of knowledge which the person skilled in growing produce might possess because of needs and experience. The forces at play in a growth support and in the connections of its mesh, even if built on an industrial scale, are different for an embedded steel reinforcement used to enhance the structural integrity of concrete used to build heavy and stable constructions. D1 for example mentions the need for the elastic clips to ensure a strong bond between the iron rods and a high congruence as well as a correct - spatial - configuration of the cage (page 1, lines 15-18). These questions are more relevant for the field of civil engineering than for assembling components of a standalone growth support. In the latter case rather different considerations and requirements are at play: resistance to weather, the ability to absorb vibrations occasioned by (mechanized) harvesting and the ability to carry plants without damaging them that are

specific to agriculture, cf. D7, page 2, the paragraph headed "Stronger" and the last but one paragraph. Indeed D7 has a dedicated range AGR for agricultural applications.

- 3.4.2 The respondent also relies on the fact that the manufacturer of the fasteners disclosed in D7 is active both in construction and agriculture as proof that the skilled person in the present field would as a matter of course look towards fasteners used for forming concrete reinforcement such as disclosed in D1 or D2.

The Board disagrees. The fact that a document shows that a particular company that manufactures fasteners for concrete reinforcement has set up a division for manufacturing dedicated to fasteners for growth supports, does not mean that the skilled person growing produce on growth supports will now as a matter of course always look to the field of concrete reinforcement for inspiration for further development of growth support fasteners (or vice versa for that matter). D7 is not a textbook teaching in either field. Rather it presents a number of singular instances of prior art each to be considered in their own right and in the context of their disclosure in a single document. Thus starting from the use of the agricultural fastener manufactured by the agriculture division described in D7, the skilled person in agriculture wanting to develop it further would as a matter of obviousness look at the concrete reinforcement fasteners shown in that document. That fastener (see photograph on page 1, top right hand corner) does not feature a second prong located on the same side of these "stable binder", but rather appears to have the same overall structure as the agricultural fastener. As it lacks the differing features, the

combination of the two teachings in D7 would not result in the claimed use.

3.4.3 It follows from the above that the skilled person would neither of themselves and from their own knowledge look to the field of building constructions, nor would they try to seek advice from a technician skilled in that field. They would therefore not be familiar with the contents of D1 or D2. Starting from the use of an agricultural fastener for building growth supports as can be inferred from D7 it would therefore not have been obvious for the person skilled in agriculture to arrive at the use of a clasping device with two prongs according to claim 1.

3.5 In the communication in preparation for the oral proceedings, see section 3.2, the Board gave its provisional opinion on the further attacks put forward by the respondent in its written submissions:

"The appellant questions the suitability of D1 as starting point for inventive step, more particularly page 6 of the appellant's ground mentions that a proper problem solution approach would rather start from the same technical field.

According to established case law, a central consideration in selecting the closest prior art is that it must be directed to the same purpose or effect as the invention (CLBA 9th edition 2019, I.D.3.2).

As noted above D1 (and D2) are not concerned with forming agricultural growing grids, and thus do not appear particularly suitable as starting points. If the skilled person did choose to start from such a prior art, they would be bound by that choice to the development of methods of forming concrete

reinforcement grids, cf. CLBA, I.D.3.6. That another document, D10, suggests the use of (pre-manufactured, 9 gauge or 3.2 mm) concrete reinforcement wire mesh, does not render D1 or D2 any more suitable as starting points. Similarly, this provisional view is regardless of what gauge the skilled person might consider for forming concrete reinforcement grids according to D11 to D13.

In the Board's provisional opinion it would therefore not be obvious for the skilled person starting from D1 or D2 alone or in combination with any of the other cited prior art to arrive at a method of forming agricultural growing grids in which clasping devices are used to fasten upright rigid rods set in the ground to crossing wires.

Similar comments apply to D9 as starting point. This document is concerned with constructing vinyl (green) houses from a framework of pipes formed by fastening the end of pipes to other pipes. Routine development would thus be constrained to the manufacture of vinyl house pipe frameworks and fastening of the pipes.

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Another suitable starting point appears to be disclosed in A1. A1-EN is the English translation of the explanations given in the figure on page 38 of A1. A set of fasteners are depicted that are used to attach zinc coated wires 3-4 and a 2mm steel wire to a rod that stands vertically in the ground. The same question of whether the skilled person would obviously look to fasteners used for concrete reinforcements should be debated."

As the appellant did not provide any further arguments on that particular line of attack, the Board does not see any reason to depart from its provisional assessment. It adds that the same reasoning as given above when starting from D7 holds also for A1/A1-EN, or from D10, mentioned as a further starting point in the respondent's reply of 18 February 2019, but also not commented on thereafter. Thus, in either case the skilled person has no reason to look to D1 or D2 in the distant field of concrete reinforcements.

- 3.6 None of the challenges against inventive step succeed. The Board concludes, therefore, that, in the light of the prior art cited, the subject-matter of claim 1 of the main request involves an inventive step within the meaning of Article 56 EPC.

4. In conclusion claim 1 as amended according to the main request are found to meet the requirements of the EPC. The Board is also satisfied that the consequential amendments of the description to adapt it to the the amended claim comply with Article 123(2) EPC. It thus finds that, considering the amendments made to the patent according to the new main request, the patent and the invention to which it relates meet the requirements of the EPC, and that therefore the patent can be maintained as amended, Article 101 (3) (a) EPC.

Order

For these reasons it is decided that:

1. **The decision under appeal is set aside.**
2. **The case is remitted to the Opposition Division with the order to maintain the patent as amended in the following version:**

Claims: Claim 1 of the main request filed with the grounds of appeal dated 4 October 2018,

Description: pages 1 to 5 filed in the oral proceedings before the Board,

Drawings: Figures 1 to 14 of the published patent specification.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated