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**Datasheet for the decision
of 10 October 2019**

Case Number: T 2508/18 - 3.3.09
Application Number: 09761958.9
Publication Number: 2296875
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C08J5/00, C09J7/00, C09J123/04
Language of the proceedings: EN

Title of invention:

A REMOVABLE DOUBLE-SIDED ADHESIVE ANCHOR FOR TEMPORARILY
SECURING AN OBJECT IN PLACE

Applicant:

Ascott, Ines Catherine

Headword:

Relevant legal provisions:

EPC Art. 84, 123(2)
EPC R. 137(4)
RPBA Art. 13(1)

Keyword:

Main request: clarity of parameter and of functional features
- (no)
Auxiliary requests 1 to 4: admission - (no)

Decisions cited:

T 0908/04

Catchword:



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Case Number: T 2508/18 - 3.3.09

D E C I S I O N
of Technical Board of Appeal 3.3.09
of 10 October 2019

Appellant: Ascott, Ines Catherine
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 30 May 2018
refusing European patent application No.
09761958.9 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman W. Sieber
Members: A. Veronese
D. Rogers

Summary of Facts and Submissions

- I. This decision concerns the appeal filed by the applicant against the decision of the examining division refusing European patent application No. 09 761 858.
- II. The examining division decided that the subject-matter of the main request, filed under cover of a letter dated 5 January 2018, did not meet the requirements of clarity (Article 84 EPC).
- III. Claim 1 of the main request reads:
- "1. A removable double-sided adhesive anchor (2) for temporarily securing an object (6) in place, which anchor (2) is characterised in that:*
- (i) it is in the form of a circular disc;*
 - (ii) it is at least 3.5 mm thick;*
 - (iii) it is made of a plastics foam material;*
 - (iv) it has a first adhesive (8) on a first side (10), and a second adhesive (12) on a second side (14);*
 - (v) the first adhesive (8) is protected by a first separable sheet (16);*
 - (vi) the second adhesive (8) is protected by a second separable sheet (18);*
 - (vii) the first adhesive (8) is such that it has an adhesive tack of 300-500 Newtons per m² and, in use, it enables the anchor (2) to be stuck to a support surface (20) such that an infant (4) cannot remove the anchor (2) from the support surface (20), an adult is required to remove the anchor (2) from the support surface (20), and such that the support surface (20) will not normally be damaged when the anchor (2) is removed from the support surface (20);*

- (viii) the second adhesive (12) is such that it has an adhesive tack of 300-500 Newtons per m² and, in use, it enables the object (6) to be stuck to the anchor (2) such that the infant (4) cannot remove the object (6) from the anchor (2), an adult is required to remove the object (6) from the anchor (2), and such that the object (6) will not normally be damaged when the object (6) is removed from the support surface (20);*
- (ix) the plastics foam material, the first adhesive (8) and the second adhesive (12) are non-toxic to the infant (4); and*
- (x) the circular disc comprises at least one circular cut (22) which is positioned inwards of a periphery (24) of the circular disc and which forms the circular disc into an inner disc (26) and an outer ring (28), thereby to afford, in use, a user the possibility of using the entire circular disc (26), or the inner disc on its own and/or the outer ring (28) on its own."*

IV. As far as relevant for the present decision, the examining division found that the following features characterising claims 1 were unclear:

- The definition "adhesive tack".
- The requirements that the anchor was removable by an adult, but not an infant, that the support surface and the object were not normally damaged when the anchor was removed, that the foam material and the adhesives were non-toxic to an infant.

V. This decision was appealed by the applicant (appellant). The appellant requested that the decision under appeal be set aside and that a patent be granted based on the request which formed the basis of the examining division's decision. Two documents were filed together with the statement setting out the grounds of appeal:

D5: Declaration from Ronnie Mersch, dated
26 September 2018

D6: Technical data sheet from 3M, dated July
2015

- VI. The appellant was summoned to oral proceedings. In a written communication issued in preparation for the hearing, the board expressed the preliminary opinion that the claimed subject-matter was unclear.
- VII. Under cover of a letter dated 19 September 2019, the appellant requested that a patent be granted on the basis of a main request or, alternatively, one of auxiliary requests 1 to 4, all requests filed with that letter. A copy of section F-IV, 4.2 of the EPO examination guidelines was also annexed. D5 was re-filed. The appellant also announced that it would not be represented at the oral proceedings.
- VIII. Claim 1 of the main request differs from claim 1 of the request forming the basis of the decision under appeal in that the position of the reference sign (26) has been moved from the term "circular disc" to the term "inner disc".
- IX. Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the references to an adhesive tack of 300-500 Newtons per m² and the term "normally" were deleted from points (vii) and (viii).

Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that points (vii) and (viii) were deleted.

Claim 1 of auxiliary request 3 differs from claim 1 of the main request in that points (vii), (viii) and (ix) were deleted.

Claim 1 of auxiliary request 4 is identical to claim 1 of auxiliary request 3.

X. On 10 October 2019 oral proceedings took place before the board. As announced, the appellant was not represented.

XI. The appellant's arguments, where relevant for the decision, may be summarised as follows.

The invention was simple and claim 1 had to be read by a person skilled in the art attempting to make technical sense out of it. The term adhesive tack and the corresponding range of 300-500 Newtons per m² were readily understood by the skilled person. This was confirmed by a technical expert in D5. There was no need to define the method for measuring the claimed range. The requirements that an adult could, but an infant could not, remove the anchor from the supporting surface and from the object, and that the surface and the object were not damaged upon removal, could be simply verified.

Reasons for the Decision

Main request

1. *Clarity*

1.1 The claimed invention relates to a removable double-sided adhesive anchor, in the form of a circular disc, for temporarily securing an object to a support. A

first and a second adhesives are present on the two sides of the disk. The idea is to interpose the disk between the surface of a support and the object which needs to be anchored. The anchor can be used, for example, for securing a plate to a table, so that an infant is prevented from throwing or knocking over the plate.

1.2 Claim 1 requires that the first and the second adhesives have an adhesive tack in the range of from 300 to 500 Newtons per m^2 and that in use the adhesives enable the anchor to be stuck to a support surface, and an object to be stuck to the anchor, so that:

- an infant cannot remove the anchor from the support surface and the object from the anchor, and
- an adult is required to remove the anchor from the support surface and the object from the anchor, and
- the support surface and the object are not normally damaged when the anchor and the object are removed from the support surface.

1.3 As far as the first feature is concerned, requiring that the first and the second adhesives have an adhesive tack in the range of from 300 to 500 Newtons per m^2 , neither the claims nor the description specify how this parameter has to be determined. The testing method and the conditions for testing are not indicated. As set out in numerous decisions of the boards of appeal of the EPO (see the Case Law of the Boards of Appeal, 9th edition, II.A.3.5 and decision T 908/04), the indication of the methodology used for determining a parameter only becomes superfluous if it can be shown that the skilled person would promptly

recognise which method and conditions to employ, because, for instance, this methodology was the methodology commonly used in the technical field, or because all the methodologies known in said field would yield the same result, within the appropriate limit of measurement accuracy. This was not shown in the present case.

- 1.4 In the statement setting out the grounds of appeal, when addressing the objection raised in the appealed decision, that the application failed to specify the testing method, the appellant argued that "a skilled person would not require a definition of adhesive tack and/or knowledge of the method to measure the range of adhesive tack". In its reply to the communication issued by the board in preparation for the oral proceedings, which addressed again this issue, the appellant simply stated that the term Newtons per m² was clear. Quoting D5, it also submitted that this parameter had "the same understanding in the adhesive industry as miles per hours in the motor industry". The issue concerning the failure to indicate the method for measuring adhesive tack was, however, not addressed. In this situation the board can only conclude, that the aforementioned range is unclearly defined.
- 1.5 Even assuming in the appellant's favour, that the aforementioned parameter could be unambiguously determined, the scope of claim 1 would be unclear.
- 1.6 Claim 1 is characterised by further functionally defined features. Firstly, claim 1 requires that the adhesives on the two sides of the anchor enable the anchor to be stuck to a surface and to an object, so that the anchor can be removed by an adult, but not by an infant. It is not disputed that the idea underlying

the invention, which is reflected in this feature, is immediately clear and that, as stated by the appellant, "any parent anywhere in the world would clearly understand this". However, this does not mean that the feature is clear, in the sense that it clearly defines the scope of claim 1.

1.7 The force of an adult is typically higher than that of an infant. However, these forces can vary considerably depending, for example, on age, gender, physical state of the individual considered. No evidence is available, showing that a commonly recognised standard exists, defining the force which can be exercised by an adult or by an infant. Consequently, no standardised method can be put in place, for determining whether an anchor satisfies the aforementioned functional requirement. Accordingly, this functional feature is unclear.

1.8 A further functional feature characterising claim 1 requires that the adhesives enable the anchor to be detached without damaging the object and the support surface to which it is attached. According to the appellant "any person anywhere in the world would understand this requirement". The board concedes that the idea underlying this second functional requirement is also easily understood. However, once again, there is no evidence that standardised criteria exist for assessing whether this requirement is fulfilled. It is noted that neither the type of damage, nor the criteria for determining said damage are mentioned in claim 1. Furthermore, the outcome of any test would depend not only on the adhesive, but also on the nature of the surface to which the anchor is attached: whether it is a sturdy surface made of smoothed wood, metal, synthetic material, or light table cloth. Beside that, a surface which is resistant to scratch or abrasion can

be sensitive to chemical damage, or vice versa. The second functional feature is thus also unclear.

- 1.9 For these reasons, claim 1 does not clearly define the subject-matter for which protection is sought and contravenes the requirements of Article 84 EPC.

Auxiliary requests 1 to 4

2. *Admission*

- 2.1 Auxiliary request 1 was filed with the appellant's letter in reply to the board's communication in preparation for the oral proceedings. Claim 1 corresponds essentially to a combination of claims 1 and 2 of the application as filed. It differs from claim 1 of the main request, in particular, in that the references to an adhesive tack of 300-500 Newtons per m² were deleted from points (vii) and (viii) of claim 1.
- 2.2 This amendment addresses the objections raised against the main request which are discussed above in points 1.3 to 1.4. It does, however, clearly not overcome those raised in points 1.5 to 1.8. Thus, auxiliary request 1 is not admitted into the appeal proceedings (Article 13(1) RPBA).
- 2.3 Auxiliary requests 2, 3 and 4 were also filed with the letter addressing the board's communication in preparation for the oral proceedings. Claim 1 of each of these requests differs from claim 1 of auxiliary request 1 at least in that the two functional features mentioned above in points 1.5 to 1.8 were deleted.

- 2.4 The deletion of features from a claim is only permissible if there is a clear and unambiguous basis for a claim lacking these features in the application as originally filed (Article 123(2) EPC). Although the aforementioned functional features are considered unclear, they do limit the scope of the claims. According to the application as filed they also appear essential for characterising the invention. The question then arises, as to whether claims lacking these unclear but nevertheless limiting features have a proper basis in the application as filed.
- 2.5 The appellant has not indicated the basis for the amendments in the application as filed, as required by Rule 137(4) EPC, nor can the board see one.
- 2.6 Since the amendments raise new complex issues at a very late stage of the appeal proceedings, auxiliary requests 2 to 4 are not admitted into these proceedings too.

Order

For these reasons it is decided that:

1. The appeal is dismissed

The Registrar:

The Chairman:



B. Atienza Vivancos

W. Sieber

Decision electronically authenticated