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**Datasheet for the decision  
of 11 March 2021**

**Case Number:** T 2061/19 - 3.2.07

**Application Number:** 10187811.4

**Publication Number:** 2368816

**IPC:** B65G17/08, B65G15/30

**Language of the proceedings:** EN

**Title of invention:**

Link for a conveyor chain and multi-link conveyor chain with such links

**Patent Proprietor:**

Ramsey Products Corporation

**Opponent:**

Pennine Industrial Equipment Limited

**Headword:**

**Relevant legal provisions:**

EPC Art. 56, 104(1), 106(1), 113, 116

RPBA Art. 12(2), 12(4)

RPBA 2020 Art. 12(2), 12(3), 12(8), 15(1), 15(3), 16(1)(c),  
16(1)(d), 16(1)(e), 17(2), 24, 25(1)

**Keyword:**

Late-filed argument - admitted (no)

Late-filed facts - submitted with the statement of grounds of appeal

Oral proceedings - non-attendance at oral proceedings in first instance proceedings - withdrawal of request for oral proceedings

Apportionment of costs - (no)

**Decisions cited:**

T 0198/15

**Catchword:**



**Beschwerdekammern**

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Case Number: T 2061/19 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 11 March 2021**

**Appellant:** Pennine Industrial Equipment Limited  
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**Representative:** Stuttard, Garry Philip  
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**Respondent:** Ramsey Products Corporation  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
19 June 2019 concerning maintenance of the  
European Patent No. 2368816 in amended form.**

**Composition of the Board:**

**Chairman**            I. Beckedorf  
**Members:**            A. Cano Palmero  
                              V. Bevilacqua

## **Summary of Facts and Submissions**

- I. The appellant (opponent) lodged an appeal in the prescribed form and within the prescribed time limit against the decision of the opposition division to maintain European patent No. 2 368 816 in amended form on the basis of the main request filed on 11 January 2019.
  
- II. The appellant requests  
  
that the decision be set aside and  
that the patent be revoked in its entirety.
  
- III. The patent proprietor (respondent) requests  
  
that the appeal be dismissed, *i.e.* that the patent be maintained according to the set of claims of the main request which the opposition division held to meet the requirements of the EPC (main request),  
or, in the alternative,  
when setting aside the decision under appeal,  
that the patent be maintained in amended version according to one of the set of claims re-filed as auxiliary requests 1 to 11 with the reply to the statement setting out the grounds of appeal.
  
- IV. With a communication pursuant to Article 15(1) RPBA 2020, the Board informed the parties of its preliminary assessment of the factual and legal situation, according to which the appeal was likely to be dismissed as unfounded. None of the parties responded to said communication on the merits of the case.

- V. With letter of 11 February 2021 the respondent further requested
- a different apportionment of costs.
- VI. With a communication dated 8 March 2021, notified to the parties in advance on 3 March 2021, the Board informed the parties that a different apportionment of costs was likely not to be ordered.
- VII. Both parties withdrew their respective requests for oral proceedings with letters of 22 February 2021 (appellant) and 4 March 2021 (respondent).
- VIII. The parties' arguments relevant to the decision are those relating to the compliance of the subject-matter claim 1 of the patent in amended form as maintained by the opposition division with the requirements of Article 56 EPC, and to the admittance of these arguments into the appeal proceedings, as well as those relating to a different apportionment of costs, and they are discussed in detail in the reasons for the decision.

### **Reasons for the Decision**

1. *Transitional provisions - Revised Rules of Procedure of the Boards of Appeal (RPBA 2020)*

The appeal proceedings are governed by the revised version of the Rules of Procedure which came into force on 1 January 2020 (Articles 24 and 25(1) RPBA 2020), with the exception of Article 12(4) to (6) RPBA 2020

instead of which Article 12(4) RPBA 2007 remains applicable (Article 25(2) RPBA 2020).

2. *Procedural matters*

2.1 The case is ready for decision which is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA 2020 and with Articles 113 and 116 EPC.

2.2 Both parties, after having received the Board's communication pursuant to Article 15(1) RPBA 2020 and the communication dated 8 March 2021, withdrew their respective requests for oral proceedings (Article 116(1) EPC). Hence, the parties chose to rely on their written submissions only. The principle of the right to be heard pursuant to Article 113(1) EPC is observed since that provision only affords the opportunity to be heard and the parties' submissions are fully taken into account (see Case Law of the Boards of Appeal, 9th edition 2019, III.B.2.7.3 and V.A.4.5.3).

2.3 As a consequence, the Board is in a position to take the final decision on the basis of the contested decision to be reviewed and the extensive written submissions of the parties (Article 15(3) RPBA 2020), while preserving their rights under Articles 113 and 116 EPC, so that the oral proceedings scheduled for 11 March 2021 were cancelled.

3. *Patent as maintained by the opposition division - admittance of the arguments regarding inventive step of the claims according to the main request*

3.1 In its statement setting out the grounds of appeal, the appellant argues that the subject-matter of the claims according to the main request lacks an inventive step in the sense of Article 56 EPC. The appellant states in the first paragraph of page 2 that the grounds of appeal are "*substantially identical to the Grounds of Opposition set out in Part I of the Statement of Grounds for Opposition, subject to the inclusion of arguments which serve to address Item 1.5.2 if the Decision. Many of these arguments were set out in the Opponent's pre-Hearing submissions filed on 10 January 2019.*" (*emphasis* added by the Board)

3.2 The Board notes that the statement of grounds of appeal, specially with respect to the alleged lack of inventive step of the main request, consists exclusively of three types of arguments, namely:

- (a) arguments which correspond *verbatim* to those of the notice of opposition (pages 2 to 6, points (A1)-(A5), pages 8 to 10, points (B1)-(B5), and pages 10 to 12, "Inventive Step of Claims 2 to 7 of the Main Request", of the statement of grounds of appeal);
- (b) arguments which correspond *verbatim* to passages of the reply of 10 January 2019 to the summons to oral proceedings before the opposition division ("Arguments in reply to Item 1.5.2.4", pages 6 and 7, with exception of the 6 last lines of page 6 and "Arguments in reply to Item 1.5.2.5" on pages 7 and 8 of the statement of grounds of appeal);
- (c) arguments made for the first time in appeal proceedings (last 6 lines of page 6 and "Arguments



in reply to Item 1.5.2.6 of page 10 of the statement of grounds of appeal).

3.3 Regarding arguments (a) and (b), they consist essentially of word-for-word repetitions of the notice of opposition, supplemented by word-for-word repetitions of the appellant's written submission of 10 January 2019. It is established case law of the Boards of Appeal that arguments which are mere repetitions of the ones presented before the opposition division, **cannot provide reasons as to why the decision under appeal is to be set aside** because they were drafted before the decision under appeal was issued (in the case of the arguments of the notice of opposition, even before the preliminary opinion of the opposition division was communicated to the parties). These arguments thus do not meet the requirements of Rule 99(2) EPC, and the Board therefore does not to admit them in exercising its discretion under Article 12(4) and (2) RPBA 2007, whereby Article 12(2) RPBA 2007 essentially corresponds to Article 12(3) RPBA 2020 (see Case Law of the Boards of Appeal, *supra*, V.A. 2.6.3.e; and T 198/15, not published in OJ EPO).

3.4 Regarding arguments (c) the Board shares the view of the respondent that the appellant could have presented these arguments during the opposition proceedings, namely at least at the oral proceedings before the opposition division. Instead, the appellant chose not to attend the oral proceedings. The non-attendance of the appellant at the oral proceedings cannot justify the submission of new arguments as a reaction to the reasons of the decision and to the respondent's requests which correspond to those which had already been filed during opposition proceedings. The Board, considering that the main aim of appeal proceedings is

that of reviewing the decisions of the administrative departments of the EPO (cf. Article 12(2) RPBA 2020) does not consider it appropriate that the appellant starts a complete fresh case in appeal, without even providing a justification for this course of action. Therefore, the Board, exercising its discretion pursuant to Article 12(4) RPBA 2007, does not admit these arguments into the proceedings.

- 3.5 It follows that objections and arguments concerning lack of inventive step of the main request put forward by the appellant either do not deal with the incorrectness of the decision, or they could and actually should have been presented in the proceedings before the opposition division.

The Board, in view of the considerations above, decides not to consider these arguments and objections in appeal proceedings in view of Article 12(4) and (2) RPBA 2007.

- 3.6 The reasons for the decision set out in points 3.1 to 3.5 above correspond to the Board's preliminary opinion provided in the communication pursuant to Article 15(1) RPBA 2020 (see points 6.1 to 6.5 thereof). Said opinion neither has been subsequently commented on nor has it been contested by the parties, in particular by the appellant.

- 3.7 Under these circumstances, the Board - having once again taken into consideration all the relevant aspects put forward in the parties' written submissions - sees no reason to deviate from its above-mentioned preliminary opinion and confirms it.

3.8 Hence, the appellant's case contains no submissions which are admissibly filed and have been drafted to demonstrate in a substantiated and convincing manner the incorrectness of the decision under appeal. In consequence, the appeal shall be dismissed.

4. *Apportionment of costs (Article 104 EPC)*

4.1 Under Article 104(1) EPC each party to opposition (appeal) proceedings shall, as a rule, bear its own costs. However, the Board may for reasons of equity order a different apportionment of costs. In addition, according to Article 16(1) RPBA 2020 the Board may at request of a party order a party to pay some or all of another party's costs, e.g. in case of acts or omissions prejudicing the timely and efficient conduct of oral proceedings, of failure to comply with a direction of the Board, or of abuse of procedure (Articles 16(1)(c) to (e) RPBA 2020 and Case Law of the Boards of Appeal, *supra*, III.R.2).

4.2 The respondent requests that the appellant bears the respondent's costs relating to the preparation in advance of oral proceedings. According to the respondent, the conduct of the appellant is inequitable due to the failure of the appellant to communicate anything at all with respect to the Board's preliminary opinion or in relation to the oral proceedings, which means that the respondent has had to incur costs in preparation for said hearing.

4.3 The Board, contrary to the view of the respondent, cannot identify an inequitable conduct of the appellant that could give rise to a different apportionment of costs, for the following reasons.

- 4.3.1 The Board notes that the parties were by no means procedurally obliged to respond, let alone within a time limit, to a communication pursuant to Article 15(1) RPBA 2020, even where this preliminary opinion is prejudicial to their interests. Said communication did not contain any specific direction of the Board apart from the Board's preliminary conclusions after examining the case according to the state of the file at that point in time. The same is true for the Board's concluding remarks (see point 7 to 9 of the communication). Thus, the appellant's silence cannot be qualified as a non-compliance with a Board's direction in the meaning of Article 16(1) (d) RPBA 2020.
- 4.3.2 Not responding promptly to such a communication may provoke consequences in terms of having a later submission admitted into the proceedings and taken into account by the Board, e.g. under Article 13 RPBA 2020. However, the absence of a reaction to such a negative preliminary, non-binding opinion of the Board (Article 17(2) RPBA 2020) cannot constitute *per se* a malicious or irresponsible behaviour that automatically amounts to an abuse of procedure in the sense of Article 16(1) (e) RPBA 2020.
- 4.3.3 On the contrary, in this particular case, the sole reaction of the appellant to the preliminary opinion had been the withdrawal of the request for oral proceedings, which made possible - in combination with the final requests of the respondent - the cancellation of the oral proceedings, so that the situation foreseen under Article 16(1) (c) RPBA 2020 cannot apply.
- 4.3.4 In addition, the respondent's alleged costs to build upon a defense of the contested patent in its maintained version lie exclusively within the sphere

and interest of the patent proprietor in response to the appeal filed by the appellant in exercising its rights under Article 106(1), first sentence, EPC and cannot justify a different apportionment of costs.

- 4.4 In view of the above, the request of the respondent for a different apportionment of costs is refused.

## Order

### For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for a different apportionment of costs is refused.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated