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**Datasheet for the decision
of 13 December 2022**

Case Number: T 0049/20 - 3.2.07

Application Number: 15182626.0

Publication Number: 2977107

IPC: B02C21/02, B65G37/00,
B65G47/20, B65G41/00

Language of the proceedings: EN

Title of invention:

MOVABLE PROCESSING APPARATUS FOR MINERAL MATERIAL PROCESSING

Patent Proprietor:

Metso Minerals, Inc.

Opponent:

thyssenkrupp Industrial Solutions AG

Headword:

Relevant legal provisions:

EPC Art. 76(1)
RPBA 2020 Art. 15(1)

Keyword:

Divisional application - subject-matter extends beyond content
of earlier application (yes)

Decisions cited:

G 0002/10

Catchword:



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Case Number: T 0049/20 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 13 December 2022

Appellant: thyssenkrupp Industrial Solutions AG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 November 2019 concerning maintenance of the
European Patent No. 2977107 in amended form.**

Composition of the Board:

Chairman I. Beckedorf
Members: S. Watson
A. Pieracci

Summary of Facts and Submissions

- I. An appeal was filed by the opponent in the prescribed form and within the prescribed time limit against the decision of the opposition division maintaining European patent No. 2 977 107 in amended form according to the main request.
- II. The opposition division found that the opponent's objections regarding insufficiency of disclosure, added subject-matter, lack of novelty and lack of inventive step, which were raised against the main request, did not prejudice the maintenance of the patent in amended form.
- III. In preparation for oral proceedings the Board communicated its preliminary assessment of the case to the parties in a communication pursuant to Article 15(1) RPBA 2020 of 16 March 2022. The patent proprietor responded in substance to this communication with its submissions of 5 October 2022 and 7 December 2022, the opponent with its submissions of 28 November 2022.
- IV. Oral proceedings before the Board took place on 13 December 2022. At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.
- V. The final requests of the parties are as follows:

for the opponent (appellant),
that the decision under appeal be set aside; and
that the patent be revoked.

for the patent proprietor (respondent),
that the appeal be dismissed; or
if the decision under appeal is set aside
that the patent be maintained in amended form
according to the set of claims of the auxiliary
request filed with the reply to the statement of
grounds of appeal.

VI. Claim 1 of the main request reads as follows

"A movable processing apparatus (1) for mineral
material processing, comprising:
a movable frame (2);
a side conveyor (4) attached to the frame;
a pivot joint (13) for the side conveyor which
pivot joint is attached between the side conveyor
(4) and the frame (2); and
wherein the processing apparatus (1) is equipped
with mineral material crushing means; characterized
in that
the side conveyor is pivotable horizontally around
the pivot joint to one or more operating positions
at least on one side of the processing apparatus
and to a protected state in a transportation
position under the frame."

VII. Claim 1 of the auxiliary request reads as follows
(additions with respect to the main request are shown
underlined):

"A movable processing apparatus (1) for mineral
material processing, comprising:
a movable frame (2);
a side conveyor (4) attached to the frame;
a pivot joint (13) for the side conveyor which
pivot joint is attached between the side conveyor
(4) and the frame (2); and

wherein the processing apparatus (1) is equipped with mineral material screening and crushing means; characterized in that the side conveyor is pivotable horizontally around the pivot joint to one or more operating positions at least on one side of the processing apparatus and to a protected state in a transportation position under the frame."

VIII. The lines of argument of the parties are dealt with in detail in the reasons for the decision.

Reasons for the Decision

1. *Main request - extension of subject-matter - Article 76(1) EPC*

1.1 In the decision under appeal (section C.3), the opposition division found that the subject-matter of claim 1 of the main request did not extend beyond the content of the earlier (parent) application.

1.2 In its statement of grounds of appeal the appellant contested this decision, arguing that the feature that the side conveyor is pivoted to "a protected state" in a transportation position under the frame is not directly and unambiguously derivable from the parent application.

The appellant essentially argued firstly, that the parent application disclosed a condition of the side conveyor rather than a position into which the side conveyor was moved, and secondly, that there was no link in the original application between a protected state, whether a condition or a position, and a transportation position under the frame.

1.3 The contested feature reads as follows (amendments with respect to claim 1 of the parent application are underlined):

"the side conveyor is pivotable horizontally around the pivot joint to one or more operating positions at least on one side of the processing apparatus and to a protected state in a transportation position under the frame."

1.4 The opposition division found that the description of the parent application as published on page 5, final paragraph, formed the basis for the disclosure of the embodiment of claim 1 of the main request (see decision under appeal, point C.3.4).

This paragraph reads as follows:

"Also during use of the processing apparatus, the side conveyor may be pivoted in a protected state away from its operating position if it is not desired to operate the side conveyor. Additionally, during the transportation the side conveyor does not take space around the movable processing apparatus or at a working site."

1.5 The respondent stated that the correct translation of this paragraph of the originally filed documents of the parent application, from the Finnish language in which it was filed, is that "the side conveyor may be moved into a protected state", so that a position rather than a condition of the side conveyor is clearly disclosed. However, even if the appellant's first argument were, to the benefit of the patent proprietor, to thus be considered moot, the Board agrees with the appellant's second argument that there is no direct and unambiguous

link between a protected state and the transportation position under the frame.

- 1.6 It is uncontested that the only literal disclosure of the term "protected state" is found in the first sentence of the last paragraph of page 5 of the parent application as published.

The opposition division found that this passage established a link between the transportation position under the frame and the protected state because the second sentence of the paragraph disclosed that if the side conveyor is in the protected state, then the processing apparatus is not larger than its frame (see decision under appeal, point C.3.4.c).

- 1.7 The Board, however, agrees with the appellant that the second sentence of the cited passage does not directly and unambiguously disclose that the side conveyor in the protected state is no larger than the frame, nor that the transportation position is under the frame and constitutes a protected state. It discloses only that, during transportation, the side conveyor does not take up space around the apparatus or at a working site (see statement of grounds of appeal, point 3.4 c) and submissions of 8 September 2020, I.2.2).

- 1.8 It is settled case law that the extension of subject-matter beyond the content of the original or earlier application as filed must be assessed using the "gold standard" (G2/10) which requires that any amendment made lies within the limits of what the skilled person is able to directly and unambiguously derive from the originally filed documents.

1.9 The respondent has argued that the skilled person, when reading the application documents as a whole, understands that when the side conveyor is in its transportation position it is in a protected state as the operating positions and the transportation position are the only positions disclosed and there is an inherent structural link between the side conveyor being placed in the transportation position under the frame, and being in a protected state.

1.9.1 The respondent argued that it was clearly disclosed to the skilled person that the apparatus had a number of operating positions within a pivoting sector and a single transportation position, which was under the frame of the processing apparatus, as disclosed on page 2, line 32 to page 3, line 5; page 3, lines 12 to 14; page 8, lines 5 to 6 and page 9, lines 14 to 15. According to the respondent, it was therefore inherent that when the side conveyor was moved away from an operating position it could only be moved into the transportation position. Therefore the final paragraph of page 5, which disclosed that the side conveyor was pivoted into a protected state away from its operating position if it was not desired to use it, clearly disclosed that the protected state must be the transportation position.

The Board however agrees with the appellant, that it is not clearly and unambiguously disclosed that the side conveyor can only be positioned in either one of a number of operating positions or a single transportation position. As argued by the appellant during the oral proceedings, the passage on page 5, lines 23 to 26 of the parent application as published discloses that the side conveyor may be moved into positions which are away from the operating position

but are not the transportation position, there are therefore other positions disclosed which are neither operating nor transportation positions.

- 1.9.2 The respondent further argued that page 9, lines 23 to 26, together with figures 3 and 4 served as a further basis for the amendment as it is clear from the figure and the cited passage that when the side conveyor is pivoted into its transportation position under the frame it is protected by the overlying frame and thus is inherently in a protected state (see reply to the statement of grounds of appeal, points 7. and 9. and submissions of 5 October 2022, paragraph 64).

The Board notes that the passage on page 9, lines 23 to 26 of the parent application as published discloses that a transportation position may preferably be under the frame of the processing apparatus, but does not disclose or imply a protected state. Figures 3 and 4 show that the side conveyor can be pivoted under the frame of the apparatus but also give no indication that this position is to be viewed as a protected state.

Although, as argued by the respondent, it is not necessary for a protected state to achieve complete protection, in the absence of any indication in the parent application relating to details of the protected state, *i.e.* what the side conveyor is to be protected from and how this is to be achieved, the skilled person has no reason to connect the transportation position under the frame with the protected state disclosed on page 5. Throughout the parent application the transportation position is linked to a reduction in width of the apparatus, see page 3, lines 3 to 10; page 5, lines 30 to 31; page 9, lines 23 to 30 and not to the side conveyor being in a protected state.

1.10 There is therefore no direct and unambiguous disclosure that a "protected state" is the state in which the side conveyor is in a transportation position under the frame and the subject-matter of claim 1 of the main request extends beyond the content of the earlier (parent) application as filed.

2. *Auxiliary request*

The same objection applies to the auxiliary request (as raised by the appellant in its submissions of 8 September 2020, point II.2.). The respondent confirmed during the oral proceedings that the auxiliary request did not overcome the objection under Article 76(1) EPC. Therefore, the auxiliary request also cannot be allowed.

3. *Conclusion*

In the absence of any allowable requests, the patent has to be revoked.

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:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated