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**Datasheet for the decision
of 5 July 2023**

Case Number: T 1541/22 - 3.2.04

Application Number: 10004815.6

Publication Number: 2384639

IPC: A22C15/00, B62B3/00

Language of the proceedings: EN

Title of invention:

Loading station for a storage frame

Patent Proprietor:

Poly-clip System GmbH & Co. KG

Opponent:

Tipper Tie technopack GmbH

Headword:

Relevant legal provisions:

EPC Art. 122(2), 123(3), 84

Keyword:

Amendments - added subject-matter (no) - broadening of claim
(no)

Claims - clarity (yes)

Decisions cited:

T 0455/92

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 1541/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 5 July 2023

Appellant: Poly-clip System GmbH & Co. KG
(Patent Proprietor) Niedeckerstraße 1
65795 Hattersheim (DE)

Representative: Eisenführ Speiser
Patentanwälte Rechtsanwälte PartGmbH
Postfach 31 02 60
80102 München (DE)

Appellant: Tipper Tie technopack GmbH
(Opponent) Postfach 1328
21505 Glinde (DE)

Representative: Glawe, Delfs, Moll
Partnerschaft mbB von
Patent- und Rechtsanwälten
Postfach 13 03 91
20103 Hamburg (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
2 May 2022 concerning maintenance of the
European Patent No. 2384639 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. The appeals were filed by the proprietor and the opponent against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 3 (3a in appeal), the patent in suit met the requirements of the EPC.

In particular, the opposition division decided that amendments in claim 1 as granted added subject-matter but that amendments made to claims of auxiliary request 3 did not extend beyond the content of the application as filed and that its subject-matter involved an inventive step.

- II. In a communication in preparation for oral proceedings dated 27 March 2023 the Board made observations on the relevant issues. Oral proceedings before the Board were duly held on 5 July 2023. During the oral proceedings, the appellant proprietor withdrew all its requests except auxiliary request 4c and filed a description adapted to this request.

- III. The appellant opponent requests that the decision under appeal be set aside and that the patent be revoked.

The appellant proprietor requests that the decision under appeal be set aside and that the patent be maintained according to auxiliary request 4c, filed with its reply to the opponent's grounds of appeal.

IV. The independent claim of auxiliary request 4c reads as follows:

"A loading station (100) for a storage frame, wherein the storage frame (10) serves for temporarily holding and transporting rod-like elements, in particular smoking rods, on which sausage-shaped products, like sausages, are stored, and comprises two side parts (12), wherein each side part (12) has two vertical rods (20) and two supports (14) being substantially parallel to each other, and wherein the side parts (12) are connected with each other by at least one cross-beam (16), and horizontally arranged trays (22) for accommodating rod-like elements, wherein the loading station (100) comprises a framework including four vertically arranged corner posts (112) coupled by a number of perpendicularly arranged side beams (114), a horizontal rear side beam (116), a first, horizontal upper front beam (120) and a second, lower front beam (118), wherein lowermost side beams (114) are mounted to corner posts (112) at a height which corresponds to the height of side parts (12) of storage frame (10), wherein rear beam (116) and first front beam (120) are attached to the upper ends of corner posts (112), wherein second front beam (118) is coupled to the lower ends of the two corner posts (112) facing the front side of loading station (100) at a height corresponding to the height of side parts (12) of storage frame (10), wherein the loading station (100) comprises at least one position defining device (114, 118) for defining a predetermined position of the storage frame (10), wherein lowermost side beams (114) and lower front beam (118) act as a positioning device for positioning storage frame (10) in a loading or unloading position in loading station (100), wherein two locking devices

(130) are provided for releasably locking of the storage frame (10) in its predetermined position within the loading station (100), each of which is attached to one of two corner posts (112) facing the front side of the loading station (100), wherein a sensor (160) is provided for detecting the storage frame (10) being positioned in its predetermined position, and wherein the locking devices (130) are configured to engage the vertical rods (20) of the storage frame (10) which are directed to the front side of the loading station (100), when the storage frame (10) is shifted into the loading station (100) from the rear side of the loading station (100) until the storage frame (10) abuts on the lower front beam (118), wherein sensor elements (160) detect the presence of the storage frame (10) in the loading station (100) and cause the locking devices (130) to be pivoted from their unlocking position into their locking position, characterized in that at least one straightening device (150) is provided for straightening the storage frame (10) while the storage frame (10) is moved into its predetermined position, wherein the straightening device (150) consists of four straightening units, wherein each straightening unit is held by one attachment unit (140), and wherein the vertical rods (20) of the storage frame (10) facing the front side of the loading station (100) are positioned in channels (154) of the straightening units".

V. The appellant-opponent's arguments can be summarised as follows:

Claim 1 of auxiliary request 4c amends the patent to extend the protection it confers. It also lacks clarity and inventive step.

VI. The appellant-proprietor's arguments can be summarised as follows:

The subject matter of claim 1 of auxiliary request 4c is more restricted than as granted so it does not extend the protection conferred. The claim is clear.

Reasons for the Decision

1. The appeals are admissible.

2. Background

The patent relates to a loading station for a storage frame which serves to temporarily hold rod-like elements on which products like sausages are transported or stored (see published patent, paragraph [0001]). Such storage frames may vary in size and their form may become warped through wear and tear. An idea of the invention is to provide a loading station for always accommodating a storage frame in a predetermined position and locking it therein (see paragraph [0013] and granted claim 1). Another idea is to straighten the storage frame when it is moved into the predetermined position (see published patent, paragraph [0017] and granted claim 1).

3. Auxiliary request 4c, claim 1 added subject matter

Unless stated otherwise, references in this section are to the published patent application (EP2384639 A).

3.1 In its decision, the division had concluded added subject-matter for granted claim 1 because a feature (locking device configured to engage the vertical rods of the storage frame at the front side of the loading

station when the storage frame is shifted into the loading station) had been added in isolation from the specific context in which it had originally been disclosed in the as filed description on page 10, lines 13 to 27 (paragraphs [0035] and [0036] of the published application), thus resulting in an unallowable intermediate generalisation. This objection was maintained by the appellant-opponent in its appeal against the now abandoned claims as maintained by the opposition division. Claim 1 of the only remaining request is amended to include all those features which the appellant opponent had argued were omitted from the specific original context, whereby the Board considers it implicit that a locking device that *pivots* implicitly includes an axle (cf. Oxford English Dictionary on line (OED) Pivot (noun): *A short shaft or pin, usually of metal and pointed, forming the centre on which a mechanism turns or oscillates*). This claim is based on original claims 1 and 4. It also adds features from the description of the embodiment (paragraphs [0023] to [0036] with figures 1 to 4).

In summary, the amendments are as follows:

- 3.1.1 Each side part of the storage frame has two vertical rods. As the last feature of claim 1 defines, two of these face the front side of the loading station (when the frame is in the loading station). This feature has a basis in paragraph [0023], which defines that vertical rods are arranged at *each end* of the frame's side parts, thus implicitly each side part has a front facing rod.
- 3.1.2 The loading station comprises a framework having four corner posts which are coupled to various perpendicularly arranged side beams. Moreover,

lowermost side beams and a lower front beam act as a positioning device for positioning the storage frame in a loading/unloading position. These amendments have an almost literal basis in paragraph [0024].

- 3.1.3 Whereas original claim 1 defined *at least one locking device for releasably locking the storage frame in its predetermined position*, claim 1 now defines *two locking devices* for doing so. This amendment is taken from paragraph [0025]. The additional structurally related features found there that each locking device is attached to one of two corner posts facing the front side of the loading station, and that the [two] locking devices are configured to engage the front side vertical rods of the storage frame have also been included in the claim.

In this regard, the Board notes that the skilled person reads the claim with their mind willing to understand. In the claim context of each of the two locking devices being attached to one of the front facing corner posts of the frame and that they engage the front facing vertical rods, which the claim defines to be at respective sides of the storage frame, the skilled person would understand that each vertical rod is engaged by the locking device on the corner post next to it, rather than that one locking device might engage two rods as the appellant-opponent has suggested might be readable onto the claim features.

- 3.1.4 The claim also now defines that the vertical rods are engaged by the [two] locking devices when the storage frame is shifted into the loading station from the rear. This feature finds its basis in paragraph [0036], where it is disclosed functionally/structurally related to other features which are likewise incorporated in

claim 1: Namely that the front facing rods are positioned in channels of the straightening device - which comprises four units each being held by an attachment unit (see also paragraph [0026]) - whereby sensor elements detect the presence of the storage frame in the loading station, causing the locking devices to pivot into their locking positions. In this regard, the Board notes that the application as filed discloses that *pivoting* locking devices are not limited to *levers* (see paragraph [0043]).

3.1.5 The claim also defines that the sensor detects when the storage frame is in a predetermined position (see paragraph [0013]). In this regard, the particular case of the storage frame being pushed in from the rear as claimed is originally disclosed in paragraph [0035]. This paragraph also includes the functionally related feature that the predetermined position is reached when the storage frame abuts the lower front beam. This feature has likewise been incorporated into claim 1.

3.2 The Board concludes that the amendments to claim 1 do not add subject matter extending beyond the application as filed.

4. Auxiliary request 4c, claim 1, extension of protection, Article 123(3) EPC

4.1 At the oral proceedings before the Board the appellant-opponent raised an objection of extension of protection for the first time. The appellant-opponent pointed out that, in the Board's communication preparing for the oral proceedings (see point 2.9 on pages 8 and 9), with regard to the feature of the granted claim 1 "*the locking device is configured to engage the vertical rods of the storage frame*" it had stated that: *Defining*

that one locking device engages two rods is clear in itself, however the concept was not originally disclosed.

4.2 The appellant-opponent argued that, since the Board at the oral proceedings interpreted claim 1 in its present form to define that each of the two locking devices engages only one rod, not only had the Board changed its interpretation of a claim feature from that presented in its communication (justifying the introduction of a new argument), but also this interpretation meant that the protection conferred by the claim had been extended: Claim 1 no longer requires that one locking device engages two rods as granted claim 1 did.

4.3 The Board is not convinced by this argument. The Board's comments in point 2.9 of its communication were made in the context of examining for added subject matter: They dealt with and answered in the negative the question as to whether there is an original basis for *one locking device engaging two rods*. However, the question as to whether granted claim 1 *always required* that one locking device engaged two rods had no relevance in that context, nor did the Board give an opinion on it. Since, however, it is relevant in the present context of examining for extension of protection, the Board must now consider it.

4.4 Granted claim 1 (see published patent specification, column 10, line 18) defines that *at least one locking device (130) is provided*. With these words, the claim introduces the *locking device* idea. The skilled person understands the wording *at least one* to mean precisely one or a plurality [of locking devices] from a purely logical, semantic reading. The immediately following

feature of granted claim 1, to which the Board referred in its communication (column 10, lines 22 to 23), starts with the words *wherein the locking device is configured to engage the vertical rods [...]*. The use of the definite article here can but mean that it refers back to its only precedent - the *at least one locking device*. Thus it covers the alternative possibilities of precisely one locking device engaging [both] the vertical rods and that a plurality of locking devices do so.

4.5 In present claim 1, the number of locking devices has been limited to exactly two. Thus, the claim is now limited to a specific plurality. This limitation excludes, amongst others, the alternative expressed in granted claim 1 of there being *precisely one* locking device. Thus, the present claim 1 is more restricted than granted claim 1, whichever way the Board considered the latter expressed the vertical rods to be engaged in its single locking device alternative. Therefore, the patent has not been amended in such a way that the protection it confers is extended.

4.6 Therefore, without prejudice to the question of admissibility of the appellant-opponent's late filed objection, the objection fails.

5. Auxiliary request 4c, claim 1, clarity

5.1 In its letter of 10 May 2023, the appellant-opponent raised an objection of lack of clarity against claim 1 of auxiliary request 2c which would manifestly also apply to auxiliary request 4c. This objection was filed *after* the summons dated 20 February 2023 and accompanying communication and is an amendment that falls within the terms of Art 13(2) RPBA. Requests 2c

and 4c had been filed 25 January 2023, less than a month before the summons. Though it can be questioned whether the appellant opponent needed almost four months to respond, it is clear that because of the short amount of time between requests and summons the appellant opponent had very little time to react if it was not to fall foul of the provisions of Article 13(2), much less than would normally be expected to respond. The Board sees herein exceptional circumstances that justify taking this late objection into account.

- 5.2 Claim 1 of auxiliary request 4c is directed to a loading station for a storage frame, so the storage frame is referred to but not directly part of the claimed subject matter. The claim defines that the loading station's *lowermost side beams* and its *second front beam (118)* are *mounted to corner posts at a height which corresponds to the height of side parts of storage frame* (cf. published patent specification, paragraph [0027]).
- 5.3 The appellant-opponent argued (see letter of 10 May 2023, page 8, point 1) that the height of the side parts of the storage frame, that is their height above the ground, may vary according to the size of the wheels used. Therefore, the reference to the height of its side parts in defining the corresponding height of parts of the loading station renders the claim unclear. The Board disagrees.
- 5.4 The patent confirms (see published specification, paragraphs [0008] and [0009]) that storage frames are not of standard dimensions. In accordance with the Guidelines for Examination in the EPO, see edition of March 2023, part F, chapter IV, point 4.14.2,

references to second entities which cannot be seen as subject to standardisation may also be sufficiently clear in cases where the skilled person would have little difficulty in inferring the resultant restriction of the scope of protection for the first entity. This reflects established jurisprudence, (see Case Law of the Boards of Appeal, 10th edition, 2022 (CLBA), II.A.3.6) and in particular T0455/92, reasons 2. In the latter case, defining the size of a cover for a round hay bale by reference to a hay bale (which are not of standard size), was found to be sufficiently clear since the skilled person would know the order of magnitude of the cover size from the range of usual bale sizes and thus the size of the cover was clearly defined in so far as it excluded covers for other physical entities.

5.5 In the present case, the claimed loading station is for a storage frame for temporarily holding and transporting rod like elements on which sausages are to be hung. As the respondent-proprietor has pointed out, such storage frames are generally known to the skilled person (cf. published patent specification, paragraph [0026] and figure 1). As explained there, such frames have two side parts below which (in the case of figure 1) wheels for transportation are arranged.

5.6 The claim defines how the lower side and lower front beams of the loading station interact with the storage frame: They act as a positioning device for positioning the storage frame in the loading station, which is shifted into the loading station from the rear until the storage frame abuts the lower front beam. Therefore, the claim itself gives a clear definition of the function of the lowermost side and front beams in confining the storage frame on three sides in its

(predetermined) loading/unloading position. To do so, the beams must be arranged above any transportation wheels.

5.7 The Board agrees with the appellant-opponent that wheels of different diameter may be used for such a storage frame, in other words they are not standardised. However, such wheels will always fall within the size range of [castor type] wheels suitable for a storage frame as defined in the claim, rather than wheels sized much larger, say for a car or much smaller, say for a toy car. Thus they have a limited range of sizes. Therefore, the skilled person knows from their general knowledge the order of magnitude of the height of the side parts, that is their height above ground. By the same token, if such a storage frame were to have no wheels but was provided with skids maintaining the sides at a height above ground suitable for inserting forks of a forklift truck, as the appellant-proprietor has suggested is also generally known to the skilled person, the Board holds that the side parts would be at a height of the same order of magnitude.

5.8 It follows that the skilled person has no difficulty in understanding how the reference to the height of the storage frame sides limits the scope of the claim. In particular, they understand the order of magnitude of the heights for the lower most side and front beams of the loading station that are defined in the claim by reference to the storage frame. Thus, although the claim does not precisely quantify these heights, it defines them sufficiently clearly. Therefore, the Board finds that the claim meets the clarity requirements of Article 84 EPC.

6. Auxiliary request 4c, claim 1, inventive step

6.1 In its grounds of appeal of 24 August 2022, the appellant-opponent only objected added subject matter against claim 1 as maintained (auxiliary request 3a in appeal). Similarly in its reply of 21 December 2022 to the proprietor's statement of grounds it again only discussed added subject-matter. Only in its letter of 10 May 2023 (see pages 8 and 9) did the appellant-opponent for the first time raise an inventive step objection, in this case against auxiliary request 4c. Since this request is more restricted than the patent as maintained, against which the appellant-opponent raised no novelty or inventive step objection, the new objection amounts to an amendment of the opponent's appeal case that, contrary to the situation for clarity objection above, cannot be said to be a reaction to the filing of auxiliary request 4c. Its admittance is therefore at the discretion of the Board, Article 13(2) RPBA 2020.

6.2 The appellant-opponent provided no reasons for this late amendment to its appeal case in its letter of 10 May 2023. At the oral proceedings, the appellant-opponent did not further pursue the objection. In view of this, the Board decided not to take this objection into account, Article 13(2) RPBA 2020.

7. The Board is satisfied that the amended description has been suitably adapted to the wording of the claims. The Board concludes that the sole request on file, auxiliary request 4c, meets the requirements of the 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:

Description:

pages 1 to 6 filed at the oral proceedings before the Board (5 July 2023)

Claims:

Claims 1-7 of auxiliary request 4c filed with letter of 25 January 2023

Drawings:

Figures 1-7 of the published patent specification.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated