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**Datasheet for the decision
of 31 October 2024**

Case Number: T 0506/23 - 3.5.05

Application Number: 18192994.4

Publication Number: 3620346

IPC: B61L1/00, B61L1/02, B61L1/08,
B61L1/16, E01B26/00

Language of the proceedings: EN

Title of invention:
Sensor arrangement

Patent Proprietor:
Frauscher Sensortechnik GmbH

Opponents:
Voestalpine Signaling Poland Sp. z o.o.
ALSTOM ZWUS sp. z o.o.

Headword:
Sensor arrangement/FRAUSCHER

Relevant legal provisions:
EPC Art. 54(3), 56, 83, 84, 111(1), 113(1)
RPBA 2020 Art. 11, 12(2), 12(4)

Keyword:

Amendment to proprietor's case - 1st to 7th auxiliary requests
(no): claim requests "admissibly raised and maintained" in the
first-instance proceedings
Remittal to the opposition division - (yes): auxiliary
requests not yet examined

Decisions cited:

T 0246/22



Beschwerdekammern

Boards of Appeal

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Case Number: T 0506/23 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 31 October 2024

Appellant: Voestalpine Signaling Poland Sp. z o.o.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
4 January 2023 concerning maintenance of the
European Patent No. 3620346 in amended form.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	N. H. Uhlmann
	F. Blumer

Summary of Facts and Submissions

I. The opponent I (appellant) appealed against the opposition division's decision to maintain the present European patent according to the then "second auxiliary request".

II. The following prior-art documents are referred to in this decision:

D1: EP 3 567 161 A1

D4: EP 1 808 531 A1.

III. The board summoned the parties to oral proceedings and set out its provisional opinion in a communication under Article 15(1) RPBA. It also indicated that, if the appellant's request for oral proceedings was withdrawn, the board would be minded to cancel the scheduled oral proceedings, to set aside the appealed decision and to order a remittal of the case to the opposition division for further prosecution.

IV. The appellant conditionally withdrew its request for oral proceedings.

The respondent (patent proprietor) did not request oral proceedings.

Opponent II stated that it did not intend to participate in the scheduled oral proceedings.

V. The arranged oral proceedings were then cancelled (cf. Article 12(8) RPBA).

VI. The parties' requests are as follows:

- The appellant requests that the decision under appeal be set aside and that the patent be revoked. Furthermore, it requests conditionally that a witness be heard.
- The respondent requests that the appeal be dismissed (**main request**) or, in the alternative, that the patent in suit be maintained in amended form according to one of the **first to seventh auxiliary requests**, all as (re-)filed with the written reply to the statement of grounds of appeal.
- Opponent II did not submit any requests.

VII. Claim 1 of the **main request** (patent as maintained) reads as follows:

"Sensor arrangement (20) comprising:

- a wheel sensor (21) which is arranged to detect wheels of rail vehicles,
- a carrier (22), and
- a connector (23), wherein
- the wheel sensor (21) is fixed on the carrier (22),
- the connector (23) is fixed to the carrier (22),
- the connector (23) is electrically connected with at least one electrical contact (24) of the wheel sensor (21),
- the wheel sensor (21) comprises an inductive sensor,
- the connector (23) comprises an electrical contact (29),

- the connector (23) comprises at least one hole (30) in which a screw (26) is arranged in such a way that the connector (23) is fixed to the carrier (22), and
- the carrier (22) comprises a metal."

Reasons for the Decision

1. The patent in suit pertains to a sensor arrangement for detecting wheels of rail vehicles. It comprises an inductive "wheel sensor", a "carrier" and a "connector". The sensor and the connector are both fixed to the carrier, the latter via a screw.
2. Prior-art document **D4** discloses a similar sensor arrangement for use in railway systems.

3. Main request - claim 1

- 3.1 The main request is identical to the second auxiliary request underlying the contested decision, i.e. the patent as maintained. Claim 1 of the main request includes the following limiting features (board's labelling and emphasis):

- (a) Sensor arrangement comprising:
- (b) a wheel sensor which is arranged to detect wheels of rail vehicles,
- (c) a carrier, and
- (d) a connector, wherein
- (e) the wheel sensor is fixed on the carrier,
- (f) the connector is fixed to the carrier,
- (g) the connector is electrically connected with at least one electrical contact of the wheel sensor,
- (h) the wheel sensor comprises an inductive sensor,

- (i) the connector comprises an electrical contact,
- (j) the connector comprises at least one hole in which a screw is arranged in such a way that the connector is fixed to the carrier,
- (k) the carrier comprises a metal.

4. Main request - claim 1 - Article 84 EPC

Contrary to the appellant's allegations, **feature (k)**, i.e. that the carrier comprises a metal, on its own and in the context of claim 1, is actually clear for the skilled reader. In addition, the sentence in paragraph [0013] of the patent description, on which this feature is based, cannot cast doubts on the clarity of the claimed feature, i.e. that the carrier comprises a metal.

5. Main request - claim 1 - Article 83 EPC

The appellant's objection under Article 83 EPC is not persuasive either. The skilled person, based on their common general knowledge, is in fact able to put **feature (k)** into practice. Indeed, as the opposition division rightly stated in its decision under appeal, the "choice of metal for the carrier has been self-evident for the skilled person" and is "already widely used in the railway industry".

6. Main request - claim 1 - Article 54(3) EPC

Document **D1** does not disclose, explicitly or implicitly, feature (k). It is correct that it belongs to the common general knowledge of the skilled person. However, it is not the clear and unambiguous consequence of the explicit disclosure of D1 that the

"carrier" must inevitably comprise a "metal". In particular, it is technically possible to use e.g. well-known composite fiber-glass materials for the "carrier". The materials might be more expensive and might need to go through certification procedures, but these are no technical reasons.

7. Main request - claim 1 - Article 56 EPC

- 7.1 The decision under appeal includes, *inter alia*, an inventive-step reasoning based on document **D4**. This document is a suitable starting point for the inventive-step analysis.
- 7.2 According to the impugned decision (cf. third to fifth paragraphs of page 24), document D4 discloses all features of claim 1 except **features (e) and (k)**.
- 7.3 The opposition division rightly assumed that the two distinguishing features did not lead to any synergistic effect and that **feature (k)** was self-evident for the skilled person. The respondent did not dispute these findings.
- 7.4 According to **feature (e)**, the "wheel sensor is fixed on the carrier". In document D4, the claimed "wheel sensor" is anticipated by the "sensor" referred to throughout this document and the "carrier" is anticipated by the housing ("Gehäuse 3") (cf. decision under appeal, the last full paragraph on page 18 up to the second full paragraph on page 19). However, document D4 does not disclose whether the sensor is fixed to any other element, except to the "Steckerbuchse 14" (socket) (cf. paragraph [0014]), and if so, how this is done.

The board considers that the technical effect caused by feature (e) could be seen in that forces acting on the sensor do not act on the mechanical and electrical connection between the sensor and the socket but are diverted to other members of the arrangement. In contrast, the technical effect set out in the decision under appeal ("diverting forces acting on the cable to other members of the arrangement") is not credibly caused by feature (e). This is because, in the system of D4, the cable and the "Stecker 15" (plug) are in fact fixed to the "Gehäuse 3" (housing) via the "Abdeckung 17" (cover). The associated objective technical problem can thus be formulated as *how to adapt the arrangement of D4 to protect the connection between the sensor and the socket.*

7.5 In view of this problem and having in mind that in the system of D4 "Gehäuse 3" is the housing of the sensor (cf. "das Gehäuse 3 des Sensors" in paragraph [0014] of D4), the skilled person would have immediately recognised that fixing the sensor to its own housing would already solve the above problem. Hence, the skilled person would have indeed arrived at the incorporation of feature (e) into the system of D4 without any need for inventive skill.

7.6 For these reasons, the subject-matter of claim 1 does not involve an inventive step. Hence, the respondent's main request is not allowable (Article 56 EPC).

8. First to seventh auxiliary requests - admittance

8.1 The decision under appeal is not based on these auxiliary requests (Article 12(2) RPBA). Hence, they are to be regarded as an "amendment" of the respondent's appeal case, unless the respondent "demonstrates" that these requests were "admissibly raised" and "maintained" in the opposition proceedings (Article 12(4), first sentence, RPBA).

8.2 The respondent did not provide any arguments explicitly addressing this provision of Article 12(4) RPBA. The board, however, is satisfied that the respondent maintained the present auxiliary requests, which were filed during the first-instance oral proceedings and merely renumbered on appeal (cf. points 14 and 23 of the minutes of the first-instance oral proceedings). Still, it is not self-evident that those requests were "admissibly raised".

8.3 The board agrees with the explanations provided in decision **T 246/22**, Reasons 4, that such "carry-over requests" may be regarded as "admissibly raised" under the minimum requirements that the party shows

(1) that they were filed in due time, typically before expiry of the time limit set by the opposition division under Rule 116(1) and (2) EPC, **and**

(2) that it was made clear, explicitly or by way of unambiguous implication, for which purpose they were filed, i.e. which objections raised by the other party or the opposition division they try to overcome and how this is actually achieved.

8.4 As to the first requirement (1), in the case at hand, the first to seventh auxiliary requests were filed at the first-instance oral proceedings, i.e. well **after** expiry of the time limit set by the opposition division under Rule 116(1) and (2) EPC. The respondent argued that these claim requests were filed in reaction to the change of the opposition division's opinion, during those oral proceedings, regarding the disclosure of feature (h) in document D1, hence they were not late-filed.

The board agrees that the first to seventh auxiliary requests may be seen as "filed in due time" within the meaning of T 246/22, because the change in opinion of the opposition division regarding feature (h) led to the then "second auxiliary request" (as filed on 8 September 2022) not complying with Article 54(3) EPC.

8.5 As to the second requirement (2), the purpose for which the auxiliary requests were filed was made clear, i.e. were "demonstrated", in the explanations set out in sections 1 and 8 of the respondent's written reply to the statement of grounds of appeal, which essentially correspond to the arguments put forward in the respondent's letter dated 8 September 2022.

8.6 For these reasons, the first to seventh auxiliary requests form part of the respondent's appeal case, and the board has no discretion to disregard them in the present appeal proceedings.

9. Procedural issues - Article 113(1) EPC

9.1 The appellant argued that Article 113 EPC was violated in the course of the first-instance oral proceedings.

The board disagrees. Firstly, in the course of the opposition proceedings, the appellant did not provide any arguments based on prior-art documents **D2** and **D10** and regarding the decisive **feature (j)**. Thus, it was not necessary to address those documents, and the alleged prior use, in the decision under appeal.

Secondly, the appellant argued that, during the first-instance oral proceedings, the opposition division admitted the "second auxiliary request" (the "main request" now) and did not grant sufficient time to the appellant to provide comments and to submit new documents. In this regard, the board notes that, according to point 15.1 of the minutes of those oral proceedings, "both opponents stated that they did not need any additional break to consider the new requests" and according to point 21 "both opponents confirmed that they did not wish to present any further objections". Furthermore, the appellant did not request any adjournment of the oral proceedings.

9.2 Hearing a witness

The appellant further requested that a witness be heard, presumably in order to confirm that the sensors "UNIAS" were publicly disclosed before the filing date of the patent in suit.

The board holds that it is not necessary in the present appeal case to hear a witness, because the board holds (cf. point 7 above) that the main request is not allowable in view of document D4 anyway.

10. Admittance of documents filed by the appellant on appeal

In view of the conclusions of the board (cf. point 7 above and point 11 below), it is not necessary to take a position on the admittance of documents **D33 to D45** and **D41c, D48 and D49** in the present appeal proceedings.

11. Remittal - Article 11 RPBA

11.1 The primary object of the appeal proceedings is to review the decision under appeal in a judicial manner (Article 12(2) RPBA). In the case at hand, none of the first to seventh auxiliary requests, which include amendments stemming from the patent description, were examined in the course of the opposition proceedings. Thus, neither the appealed decision nor the minutes of the first-instance oral proceedings deal with those claim requests.

11.2 In this particular situation, the board holds that "special reasons" present themselves for remitting the case to the opposition division for further prosecution on the basis of the present auxiliary requests (Article 11 RPBA; Article 111(1) 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 for further prosecution.

The Registrar:

The Chair:



B. Brückner

K. Bengi-Akyürek

Decision electronically authenticated