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File Number: T 156/90 - 3.2.1  
Application No.: 81 201 274.8  
Publication No.: 0 079 404  
Title of invention: A single point mooring buoy with rigid arm

Classification: B63B 27/34, B63B 22/02

D E C I S I O N  
of 9 September 1991

Proprietor of the patent: Bluewater Terminal Systems N.V.  
Opponent: Single Buoy Moorings Inc.

Headword: Admissibility/BUEWATER

EPC Art. 107

Keyword: "Opponent not adversely affected; formal agreement to amended patent"

Headnote



Case Number : T 156/90 - 3.2.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.1  
of 9 September 1991

**Appellant :** Single Buoy Moorings Inc.  
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**Respondent :** Bluewater Terminal Systems N.V.  
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**Representative :** Timmers, Cornelis Herman Johannes  
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**Decision under appeal :** Interlocutory decision of the Opposition Division  
of the European Patent Office dated  
19 December 1989 concerning maintenance of  
European patent No. 0 079 404 in amended form.

**Composition of the Board :**

**Chairman :** F.A. Gumbel  
**Members :** C.V. Payraudeau  
P. Alting van Geusau

### Summary of Facts and Submissions

- I. The Respondents are the proprietors of the European patent No. 0 079 404 filed under No. 81 201 274.8.
- II. The Appellants have filed an opposition against this patent.
- III. In a communication sent to the parties on 20 June 1989, the Opposition Division expressed the provisional opinion that if claim 1 of the patent was amended by incorporation of the features disclosed in column 1, lines 57-61 and in column 2, lines 27-29 of the description, the invention so claimed would be new and inventive in view of the prior art cited by the opponent in that it would differ therefrom by the following characterising features:
  - (a) the mooring point is a floating buoy (of the type attached to the floor of the body of water by means of one or more anchor chains),
  - (b) the tension members are pivotable tension members such as chains or cables,
  - (c) the rigid arm structure is Y-shaped,
  - (d) the arrangement between the mooring point and the vessel being such as to allow a rotational movement around the longitudinal axis of the Y-shaped structure (with the limited lateral stability of the buoy anchored by means of one or more anchor chains).
- IV. In answer to this communication, the Appellants informed the Opposition Division by letter dated 2 August 1989:

"that if claim 1 is amended by adding the additional features which are found in the description in column 1, lines 57-61 and column 2, lines 27-29, which means that in claim 1 the points a, b, c, and d of page 4 of the communication are taken into account, the opponent no longer has objections against the maintenance of the patent with claim 1 in this amended form.

If on the other hand the proprietor of the patent would not amend exactly according to the lines of amendment given by the Opposition Division then the representative of the opponent wants to be properly informed and maintains the right to be heard."

- V. The Respondents on their part filed on 19 October 1989 a new claim 1 having the following wording:

"1. Mooring system for mooring a vessel (1) on the surface of a body of water (2), comprising a mooring point (3) having buoyancy and being anchored to the floor of the body of water (2) and a rigid arm structure (15, 11, 12) connected at one end to said mooring point (3) and at the other end to the respective, ballasted, ends of two tension members (6, 7) one on each side of the vessel hull, characterized in that said mooring point (3) is a floating buoy (4) having a limited lateral stability and anchored by means of anchor chains or anchor cables, the tension members (6, 7) are pivotable tension members such as chains or cables and the rigid arm structure (15, 11, 12) is Y-shaped, each vessel end (13, 14) thereof being connected to a tension member (6, 7), the arrangement being such as to allow a rotational movement around the longitudinal axis of the Y-shaped structure.

VI. The Opposition Division gave on 19 December 1989 the intermediary decision under appeal in which it was stated that "taking into account the proposed amendments, the patent meets the requirement of the Convention".

VII. With their letter of 13 February 1990, the Appellants communicated to the Opposition Division that it was no longer possible for them to maintain the approval given with Opponent's letter of 2 August 1989.

The reason given was that "the arguments, as given in the communication of June 20, 1989 of the Opposition Division with respect to publication D1 (FR-A-2 420 475) appear not to be correct".

VIII. On 16 February 1990, the Appellants filed a notice of appeal requesting that the patent be revoked; they paid the appeal fee on the same date. The grounds of appeal were filed on 6 April 1990.

IX. In these grounds, the Appellants essentially submitted that:

- A) The interlocutory decision was based on a not entirely correct interpretation of FR-A-2 420 475 (D1).
- B) Claim 1 as considered patentable by the Opposition Division did not fulfill the requirement of Article 83; and
- C) Claim 1 as considered patentable by the Opposition Division did not relate to an inventive step as required in Article 56.

The Respondents in their letter dated 28 August 1990 contested the arguments put forward by the Appellants and requested that the appeal be dismissed.

- X. In a communication to the parties, the Board of Appeal expressed the provisional opinion that it did not seem that the appeal could be considered as admissible in view of the fact that the Appellants had clearly indicated that they had no longer any objection against the maintenance of the patent with claim 1 in the amended form.

Therefore it did not appear that the Appellants could be considered as adversely affected by the decision to maintain the patent in the form which they had accepted. The conditions of Article 107 EPC apparently were not satisfied.

- XI. In their answer to this communication, the Appellants contested this provisional opinion of the Board and submitted that the Respondents had not exactly amended the claim 1 in the manner requested by the Opposition Division because they had only introduced in this claim the words "having a limited lateral stability" but not the words "the buoy simply rolling together with the rigid arm structure" which give an (although still somewhat vague) explanation of what can be meant with "lateral stability of the buoy".

Therefore, the agreement of the Appellants being conditional on the amendment of claim 1 exactly on the lines of amendment given by the Opposition Division in the communication of 20 June 1989, the Appellants were adversely affected by the decision under appeal which had considered that the patent with this insufficiently amended claim 1 met the requirement of the Convention.

XII. In their answer to the communication of the Board the Respondents shared the provisional view of the Board that the appeal was inadmissible. In a further letter addressed to the Board and commenting on the submissions of the Appellants, the Respondents submitted that the statement "the buoy simply rolling together with the rigid arm structure around the longitudinal axis thereof" was not a feature but only an effect. Therefore, this statement pertained to the specification where it was indeed mentioned, but not to the claims.

### Reasons for the Decision

1. The appeal lies against an interlocutory decision of the Opposition Division which allows a separate appeal.
2. The notice of appeal was filed within the two-month time limit set up by Article 108 EPC and the fee for appeal was paid within this time limit. A statement of grounds was filed within the four-month time limit set up by Article 108 EPC.
3. The conditions for admissibility provided for in Article 106 and 108 EPC are therefore fulfilled.
4. However, for an appeal to be admissible, the conditions of Article 107 EPC must also be satisfied.
5. Article 107 EPC states:  
  
"Any party to proceedings adversely affected by a decision may appeal ...".
6. The Appellants do not contest that by their letter dated 2 August 1989 they had given their agreement to the

maintenance of the patent in suit with the amendment proposed by the Opposition Division.

7. It is thus necessary to examine whether the amendments made by the Respondents and accepted by the Opposition Division i.e. the addition of the words "having a limited lateral stability and anchored by means of anchor chains or anchor cables" correspond to the proposal made by the Opposition Division in their communication of 20 June 1989 and accepted by the Appellants to incorporate in claim 1 the features contained in column 1, lines 57-61 and column 2, lines 27-29 of the description.

8. These two passages read as follows:

"The rotational movement around the longitudinal axis of the Y-shaped structure can be allowed by a limited lateral stability of the buoy, the buoy simply rolling together with the rigid arm structure around the longitudinal axis thereof",

and

"The buoy body 4 is attached to the floor of the body of water 2 by means of one or more anchor chains 5."

9. As regards this last passage, the Appellants do not contest that the amended claim 1 incorporates the corresponding feature. The Board agrees on this point so that there is no need to further consider this feature.
10. The Appellants also agree that the first part of the first passage i.e. "the rotational ... stability of the buoy" has been correctly incorporated into the new claim 1 so that there is no need to examine it further.



11. It is thus only necessary for the Board to decide whether the passage "the buoy simply rolling with the rigid arm structure" represents a characterising feature the omission of which in the allowed claim 1 could result in that the scope of this claim is broader or at least different to what it would be with the added passage.
  
12. It should be first noted that the Opposition Division has not considered this passage as relating to a characterising feature of the invention which is the subject-matter of claim 1 either in the communication of 20 June 1989 since it is not mentioned in the distinguishing features (a) to (d), see point III hereinabove, or in the decision under appeal.

As regards these additional features (a) to (d) the Appellants do not contest that they are indeed incorporated in Claim 1 under consideration. In fact, they now argue that also the functional statement "the buoy simply rolling with the rigid arm structure" further contained in the passage in column 1, lines 57-61 should have been incorporated in the new claim.

Considering this argument the Board observes that in the Appellants' letter of 2 August 1989 there is explicitly stated that "if Claim 1 is amended by adding the additional features which are found in the description in column 1, lines 57 to 61 and column 2, lines 27-29 which means that in Claim 1 the points a, b, c and d on page 4 of the communication are taken into account the Opponent no longer has objections ...".

This statement in the Appellant's letter clearly sets out that in fact the features defined in the points a, b, c and d are the features which are essential and cannot be construed, in the Board's opinion, that all the features

stated in the above referred to paragraphs of the description should be included in a new Claim 1 as it is now argued by the Appellants. This can also not be concluded from the Opposition Division's communication of 20 June 1989 which in the last paragraph of point 1 simply states that "additional necessary features can be found in the description in column 1 (57-61) and column 2 (27-29)".

13. The Appellants themselves did not give the slightest hint either in their letter dated 13 February 1990 (see point VII hereinabove) or in their grounds of appeal that they considered the new claim 1 as not satisfying the requirements of the Opposition Division. It is only when the Rapporteur of the Board of Appeal expressed the Board's provisional opinion on the admissibility of the appeal that the Appellants made this objection.
14. Even so, the Appellants have not submitted that the passage concerned related to an independent feature but only that it gave "an explanation of what can be meant with lateral stability of the buoy".
15. The Board does not share the opinion of the Appellants that the incorporation of this passage in claim 1 was necessary to clarify the meaning of the expression "limited lateral stability" of the buoy. In fact, it is clearly indicated in the claim that the buoy is connected to the rigid arm structure and is anchored to the floor of the body of water by means of anchor chains or cables so that it is obvious that due to this arrangement the buoy may roll together with the rigid arm structure.
16. It should be noted that even if the meaning of the words "limited lateral stability" were not perfectly clear, the claims having to be interpreted in the light of the

description and drawings (Article 69 EPC), a reference to the corresponding part of the description (column 1, lines 50-64) would permit the reader to immediately understand that the "limited lateral stability" means that "the buoy rolls together with the rigid arm structure".

17. Consequently, the Board considers that claim 1 as deemed allowable by the Opposition Division does correspond with the proposal of amendment made in the communication dated 20 June 1989 of the Opposition Division on which the Appellants had formally agreed in their letter of 28 August 1989. The fact that the Appellants withdrew their approval after the issuing of the decision under appeal, cannot be taken into consideration since this disapproval does not have a retroactive effect on the agreement existing at the issuing date of the decision.
  
18. Therefore the Appellants were not adversely affected by the decision under appeal which corresponds to their request (Article 107 EPC) and the appeal should be dismissed as inadmissible, (cf. decision J 12/85, OJ EPO 1986, 155).

**Order**

**For these reasons, it is decided that:**

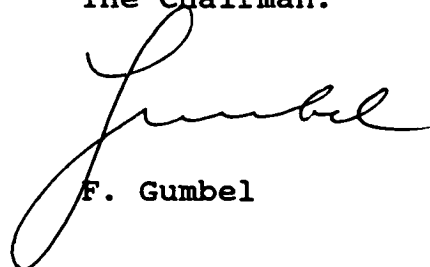
**The appeal is dismissed as inadmissible.**

**The Registrar:**



S. Fabiani

**The Chairman:**



F. Gumbel

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