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D E C I S I O N
of 19 December 2000

Case Number: T 0591/97 - 3.2.6

Application Number: 91203071.5

Publication Number: 0492683

IPC: B30B 5/06

Language of the proceedings: EN

Title of invention:

Continuous press with low-friction sliding device

Patentee:

PAGNONI IMPIANTI S.p.A.

Opponent:

Hymmen GmbH Maschinen- und Anlagenbau

Headword:

-

Relevant legal provisions:

EPC Art. 54

Keyword:

"Novelty (yes)"

"(Inventive step (yes))"

Decisions cited:

T 0169/83

Catchword:

-



Case Number: T 0591/97 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 19 December 2000

Appellant: Hymmen GmbH Maschinen- und Anlagenbau
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Respondent: PAGNONI IMPIANTI S.p.A.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 10 April 1997
rejecting the opposition filed against European
patent No. 0 492 683 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: M. Bidet
J.-C. De Preter

Summary of Facts and Submissions

- I. The respondent is proprietor of European patent No. 0 492 683.

Claim 1 as granted reads as follows:

"Continuous press device of the type comprising metal belts (14,15) shaped into a ring which slide with their sections facing each other and each close to a plate (12,13) of a press, a device (17,18) being disposed between each press plate (12,13) and the respective section of the belt to enable it to slide with a minimum of friction, each sliding device (17,18) comprises a supporting element (19, 20, 19', 20') fitted on the plate of the press to support in a plurality of longitudinally spaced apart areas a plurality of parallel pins (21,21') each being fitted with a row of roller bearings (22,22'), characterised by the fact that rollers (25,25') are freely supported to rest on each pair of adjacent rows of bearings (22,22') and on the relative section of the belt (14,15) facing the plate of the press".

- II. The patent was opposed by the appellant (opponent) on the grounds according to Article 100(a) in conjunction with Articles 52 to 57 EPC as indicated in the statement of the grounds, but in which only the ground of lack of novelty was substantiated.

The following state of the art was essentially relied upon:

D1: DE-C2-2 853 285

D2: DE-A-2 145 447

and an alleged prior use supported by drawings E1 to E3, a related invoice E4 filed together with the notice of opposition and nomination of two witnesses.

III. The Opposition Division rejected the opposition by decision posted on 10 April 1997. It was of the opinion that the subject-matter of claim 1 of the patent as granted differed from the closest prior art as represented by DE-A-2 853 285 (D1a) in that the press rollers were freely supported to rest on each pair of adjacent rows of bearings.

Furthermore, also the alleged prior use did not anticipate the continuous press device according to claim 1 since the press rollers, which were arranged similarly to those described in D1a, were supported in bearings mounted to a centering bar at the end portions of the pressing rollers.

Therefore, the ground of lack of novelty did not prejudice the maintenance of the patent as granted.

Although the ground of lack of inventive step had not been substantiated the Opposition Division nevertheless decided to examine this ground of its own motion and concluded that the cited prior art did not contain suggestions leading in an obvious manner to the subject-matter of claim 1.

IV. On 4 June 1997, the appellant lodged an appeal against this decision, the appeal fee being paid the same day.

In its statement of grounds of appeal, which was filed

on 28 July 1997, the appellant maintained the view that the claimed subject-matter lacked novelty with respect to D1 which disclosure differed from that of D1a. Furthermore, the requirement of inventive step of the subject-matter of claim 1 when compared to that of D1 was not met.

- IV. In a communication dated 19 July 2000, pursuant to Article 11(2) of the Rules of Procedure of the Boards of Appeal the Board expressed the provisional opinion that the skilled person would not interpret the text in column 3, lines 29 to 55 of D1 to mean that the rollers were freely supported to rest on each pair of rows of bearings.

The Board noted that the staggered support forming the rows of bearings would lead to extensive side forces acting on the ends of the unsupported rollers, so that the provision of additional end support of the pressing rollers would have been inescapable. Therefore, the subject-matter of claim 1 appeared to be novel when compared to the press device known from D1.

- V. In its letter of 7 November 2000 the appellant contested the novelty and the inventive step with respect to the prior use based on the continuous press device of the patent publications D1 or D1a.
- VI. Oral proceedings took place on 19 December 2000 during which the appellant focussed on the prior use submitted with the grounds of opposition.

The appellant requested that the decision under appeal be set aside and that the European patent be revoked.

The respondent requested dismissal of the appeal.

- VII. The arguments submitted by the appellant in support of its request can be summarised as follows:

It was clear from the drawings E1, E2 and E3 of the continuous press device in accordance with the prior use, that the ends of the press rollers (see the "Druckrolle" having the reference number 215.06.14-151/4 of E1 and E2) were freely supported. As was shown at the bottom of the drawing E1 on its right hand side, the recesses of the centering bar received the ends of the press rollers, so that the press rollers both had substantial axial and radial clearance within the recesses. Therefore, the centering bar did not have a bearing function for the press rollers. In fact the rollers were axially and radially movable in the same manner as shown in Figure 3 of the patent in suit. Therefore, the known press rollers were freely supported and consequently the subject-matter of claim 1 lacked novelty. In any case, it lacked an inventive step.

- VIII. The respondent contested the appellant's arguments and argued as follows:

Novelty of the subject-matter of claim 1 was evident since the press device in accordance with the prior use disclosed a centering bar which exercised a centering function for the end parts of the press rollers received in the recesses. Even assuming that axial and radial spaces existed in the bearings, this was not the same as "free support" in the manner as claimed.

Moreover, the press assembly according to the alleged

prior use lacked any suggestion to omit support of the rollers so that the claimed press device also fulfilled the requirements of inventive step.

Reasons for the Decision

1. The appeal is admissible

2. *The continuous press device in accordance with the alleged prior use*

- 2.1 With respect to the alleged prior use, E1 shows the construction of press rollers (see "Druckrolle" referred to as drawing number 215.06.14 according to E2), of roller bearings (backing rollers) and centering bars (see E3) mounted according to the press assembly represented in the drawings of E1 (see particularly the bottom, left and right hand sides of E1). E4 relates to an invoice and shows that the opponent sold in 1978 a two-band press of the above type to the Norwegian firm Norema, Bergramoen, N-3520 Jevnaker.

The respondent did not dispute the prior use of the press device in accordance with the drawings E1 to E3. The Board does not see any reasons to raise objection either.

3. *Novelty*

- 3.1 It was not disputed that the features of the preamble of claim 1 relating to each rolling device disposed between each press plate and the related section of the belt are disclosed in the prior use.

In particular, the drawings of E1 show that the press rollers are located between the staggered rollers bearing (see "Lagerwelle 215.06.09-586/4", middle of page) and the related section of the belt for transmission of the pressing force to the belt and therefore to the material to be treated. Furthermore, at the bottom of E1 at the right hand side, the end parts of the press rollers are reduced in diameter to be located in related recesses of a centering bar (Zentrierleiste 215.06.04-4MM/4). This assembly shows that small spaces are axially and radially provided between the surfaces of the reduced ends of the press rollers and the inside surfaces of the recesses of the centering bar.

3.2 On the basis of these facts, the appellant emphasised that due to the clearance resulting from this space the press rollers were axially and radially movable in the same manner as in Figure 3 of the patent in suit and concluded that the ends of the press rollers were not supported by the centering bar.

3.3 In accordance with the case law of the Boards of Appeal a feature is disclosed only if it is clearly and unambiguously derivable from the text of the document or is shown in the drawings. In the latter case not only the structure of the feature should be shown sufficiently clearly in the drawings, but also the technical function achieved thereby should unambiguously be derivable (T 169/83, OJ 1985, 193).

3.4 Applying these principles, it is to be noted that the drawings in E1 to E3, are presented with the actual dimensions of the elements concerned. According to E2 the nominal value of the reduced diameter of the

cylinder rollers is $6^{-0,1}$ mm and according to E3 that of the recesses in the centering bar is $6,2^{+0,1}$ mm. The greatest radial clearance or play between the ends of the press rollers and the recesses in the bar is then 0,4 mm, the lowest being 0,2 mm. However, considering these figures in relation to the total length of the press rollers (over 1280 mm according to E1) and the great number of individually supported bars these clearance values cannot be seen to be large enough to suggest to the skilled person a free support of the bar ends. In particular the order of magnitude cannot be considered as giving enough clearance of the ends of the press rollers so as to be "freely" supported in the meaning given in the decision of the Opposition Division (see point 4) according to which there should be an "absence of any bearings other than the periphery of the roller bearings".

Furthermore, the technical function to be provided by a "centering bar" is in contradiction with a free support of the rollers.

- 3.5 Moreover, considering the vertical press forces applied to the elements of the press according to E1, the skilled person being aware of the staggered partial support of the cylinder rollers by means of the rows of roller bearings shown on the left side and at the upper part of E1, would realise that the staggered support gives lead to bending forces acting in the plane of the rollers. In fact D1a explicitly refers to such horizontal bending of the rollers and describes measures to avoid such sideward bending. For these reasons alone it is immediately apparent to the skilled person that the press rollers need to be supported at their ends for keeping them in line, so that the

provision of additional end support of the press rollers is inevitable.

- 3.6 In this respect the appellant submitted that the centering bars were not designed for support of the roller ends because they were made of brass and therefore not suitable for supporting the rotating ends of the rollers. Furthermore, the sideward bending could be ignored because it was very small.

In this respect the Board is not convinced that the brass alloy concerned (MS 58, see E3) is principally unsuitable for supporting the rotating ends of the rollers. In any case, since no details are derivable from the documents supporting the alleged prior use to exclude that at least some of the rollers are rotatably supported by their ends in the centering bar, the feature of claim 1 according to which the rollers are freely supported to rest on each pair of adjacent rows of bearings cannot be considered to be present in the press device in accordance with the alleged prior use.

- 3.7 Novelty of the subject-matter of claim 1 can therefore be concluded.

4. During the appeal proceedings the appellant also submitted that the subject-matter of claim 1 lacked an inventive step. However, this objection was presented as a mere allegation and no substantiated argumentation was developed in this respect.

In the decision under appeal the Opposition Division explained why the subject-matter of claim 1 of the patent in suit fulfilled the requirements of inventive step. The Board follows this argumentation in the

decision under appeal and, in the absence of any counterarguments by the appellant, sees no reason for further consideration of this issue.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau