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**Datasheet for the decision
of 21 April 2009**

Case Number: T 0661/07 - 3.2.07

Application Number: 98123386.9

Publication Number: 1008438

IPC: B30B 15/04

Language of the proceedings: EN

Title of invention:

A structure for presses, in particular for forming ceramic products

Patentee:

System S.p.A.

Opponent:

SACMI - Cooperativa Meccanici Imola Soc. Coop. A.R.L.

Headword:

-

Relevant legal provisions:

EPC Art. 56, 84, 123

RPBA Art. 11

Keyword:

"Substantial procedural violation in first instance (no)"

"Amendments - allowable (yes)"

"Clarity (yes)"

"Inventive step (yes, after amendments)"

Decisions cited:

-

Catchword:

-



Case Number: T 0661/07 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 21 April 2009

Appellant: SACMI - Cooperativa Meccanici Imola Soc. Coop. A.R.L.
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
26 February 2007 concerning maintenance of
European patent No. 1008438 in amended form.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
E. Dufrasne

Summary of Facts and Submissions

- I. This appeal is against the decision of the opposition division maintaining European patent No. 1 008 438 as amended.
- II. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked, auxiliarily that the case be remitted to the opposition division for further discussion.

The respondent (proprietor) requested the decision under appeal to be set aside and that the patent be maintained on the basis of claims 1 to 7 filed during the oral proceedings before the Board.

- III. After the parties had been summoned to oral proceedings for 21 April 2009 the appellant indicated with letter dated 16 March 2009 that it would not attend them.
- IV. Present claim 1 reads as follows (for the amendments in comparison with claim 1 as maintained by the opposition division, see point 2.1):

"A structure for presses, especially for forming ceramic tiles, comprising a resistance structure constituted by

- a plurality of resistance elements (1) arranged facing one another each of one comprising an annular element (2) having an internal edge defining arc-shaped portions; the resistance elements (1) being assembled in a modular arrangement and organisation by virtue of which a variation in the number of the

elements (1) assembled enables a proportional variation in maximum absorbable pressing force;

- two segments (3) housed internally of each annular element (2) in opposite positions; said segments (3) exhibiting a first portion (30) of edge which is arc-shaped to couple with a correspondingly arc-shaped portion of the internal edge of each annular element (2); each of said segments (3) also exhibiting a second portion (31) of edge which is opposite to the first portion (30); the coupling of the first portions (30) in the corresponding arc-shaped portions conferring freedom of oscillation to each segment (3) with respect to the corresponding annular element (2), so that in any situation a relative adjustment is possible of the segments (3) themselves, in order to bring the segments (3) into a position at which the respective second portions (31) are both facing one another and parallel;
- means for maintaining the second portions (31) of edge of each resistance element (1) at a predetermined distance one from another, said means being housed in a space between the second portions (31);
- at least one power tool (5) which exerts a pressing action by compressing an object or powder material for pressing between two bodies, which power tool (5) is inserted between the facing second portions (31) of edge of said segments (3) in such a way as to transfer to said second portions (31) equal and opposite reactions resulting from said pressing action; whereby said means comprise two parallelepiped spacers (4), interposed between the facing second portions (31) of the segments (3) and set against two diametrically opposite tracts of each annular element (2) in such a way that a space is created between opposite sides of the two spacers (4) and the second portions (31), in

which space the power tool (5) is housed, and in such a way as to maintain the resistance elements (1) aligned consecutively at a predetermined reciprocal distance."

V. The following prior art documents considered in the decision under appeal have been relied upon by the parties

- D1: GB-A-809 361
- D2: US-A-4 615 208
- D3: US-A-3 527 076
- D4: US-A-3 687 066
- D5: US-A-3 064 558.

VI. In the impugned decision claim 1 as amended at the time has been considered as satisfying the requirements of Articles 84 and 123(2), (3) EPC, as being novel and as involving inventive step starting from D3 as closest prior art and taking into account documents D2, D3 or D5.

Concerning the examination of inventive step features M1 and M2 (see below) have been considered as distinguishing the subject-matter of claim 1 underlying the impugned decision from the structure for presses according to D3 (cf. reasons, no. 5).

In the appeal proceedings these features have been amended so that in claim 1 underlying the present decision they read as follows:

M1:

"the coupling of the first portions in the corresponding arc-shaped portions conferring freedom of oscillation to each segment with respect to the corresponding annular element, so that in any situation a relative adjustment is possible of the segments themselves, in order to bring the segments into a position at which the respective second portions are both facing one another and parallel"

and

M2:

"two parallelepiped spacers (are) set against two diametrically opposite tracts of each annular element in such a way that a space is created between opposite sides of the two spacers and the second portions, in which space the power tool is housed, and in such a way as to maintain the resistance elements aligned consecutively at a predetermined reciprocal distance.".

VII. The facts, evidence and arguments given in writing and essentially relied upon by the appellant can, as far as they are relevant to the present decision, be summarised as follows:

- (a) Since the opponent is the sole appellant the principle of prohibition of *reformatio in peius* should apply.
- (b) During the oral proceedings in the opposition proceedings an essential procedural violation occurred since an extensive presentation by the

proprietor read from a prepared text containing information and arguments put forward for the first time in the opposition (correctly : oral) proceedings should not have been allowed and since the request of the opponent, to take a copy of this text into the file, was refused.

- (c) The subject-matter of claim 1 as maintained infringes the requirement of Article 123(3) EPC since the feature of claim 3 according to which resistance elements are aligned **consecutively** is not comprised in that claim 1, though claim 3 as granted has been deleted and since feature M2 added to claim 1 was not part of the claims as granted.

- (d) Claim 1 lacks essential features. One reason is that the additional spacers referred to in the description are essential for the claimed structure for presses without a corresponding feature now being comprised in claim 1. A further reason is that according to the description it is essential that the press is free of welded joints and bolts, however a corresponding feature is missing in claim 1. To limit the structure for presses according to claim 1 to one being free of welded joints and bolts is in particular important since it relates to a characteristic relied upon by the respondent in its argumentation concerning inventive step.

- (e) The subject-matter of claim 1 does not involve an inventive step. Concerning features M1 and M2 referred to in the decision under appeal as distinguishing the subject-matter of claim 1 from

the structure for presses according to D3, it needs to be considered that these features are a mere juxtaposition of features.

Feature M1 solves, in the context of a modular press, the problem that freedom of oscillation should be conferred to the segments. The solution according to feature M1 can be arrived at from document D5 without inventive step being involved.

Feature M2 solves, in the context of a modular press, the problem of aligning the resistance elements. The solution according to feature M2 is obvious since a corresponding approach is known for presses of the kind disclosed in document D2.

Since the problems underlying features M1 and M2 are unrelated and the combination of these features lacks any appreciable synergy effect and moreover does not lead to any surprising technical effect, the combination of features M1 and M2 cannot be considered as contributing to inventive step.

Feature M1 moreover is purely a functional feature resulting from the coupling of the first portions of the segments in corresponding arc-shaped portions of the annular elements, which is also known from D5.

- (f) Furthermore the evaluation of the disclosure of D5 in the impugned decision and the conclusion drawn therefrom, namely that the feature of D5 corresponding to feature M1 relates only to an

equal distribution of stress, are not correct. The reason is that due to the provision of a piece of cloth impregnated with graphite a sliding between the semi-cylinders and the inner curved surface of the mantle of the press is secured. Since this known allowance of relative movement does not depend on a modular structure of the press it is evident that the person skilled in the art would have utilised it correspondingly in connection with presses having a modular structure.

Feature M2 leads to a modular arrangement of the elements of the press structure according to claim 1. The opinion expressed in the impugned decision that a feature corresponding to feature M2 is not disclosed in any of the available prior art documents is not correct, since a modular structure for the presses concerned is referred to in documents D2, D3 and D4.

In particular document D2 discloses, as can be derived from figure 11, members similar to the spacers as defined in feature M2 of claim 1. Due to the similarity it appears that the known elements have the function associated with the spacers of feature M2, namely to maintain the resistance elements aligned at a predetermined distance.

Furthermore it is common knowledge in the field of press construction that, during assembly of the press, spacers are preloaded, the preloading guaranteeing the alignment of the resistance elements during the use of the press.

Therefore it is disputed that feature M2 solves a problem which is not already solved by the prior art.

Consequently the subject-matter of claim 1 does not involve an inventive step in view of the combination of documents D3, D5 and D2.

VIII. The facts, evidence and arguments essentially relied upon by the respondent in the written and the oral proceedings can, as far as they are relevant to the present decision, be summarised as follows:

- (a) The submissions of the appellant dated 18 June 2007 and 16 March 2009 should not be allowed into the proceedings as being late filed.
- (b) Claim 1 comprises all essential features necessary to define the solution according to the invention. In particular it is not necessary to define in claim 1 that second spacers are provided since such spacers are not essential for the invention as they merely facilitate the assembly of the structure for presses according to claim 1. Beyond that they are neither required for the proper arrangement of resistance plates nor for the proper functioning of the press.

The statement of the description of the patent in suit according to which the structure of the press is free of welded joints and bolts does not need to be incorporated into claim 1 as an essential feature, since this claim comprises, in positive

formulation, features defining all essential elements, like the resistance elements, annular rings, segments and spacers, which form the structure for presses this claim is directed to.

- (c) Claim 1 involves an inventive step since features M1 and M2, distinguishing the subject-matter of claim 1 from the structure for presses according to D3, lead in combination to the synergistic effect that the press can easily be assembled, while during its use all segments are allowed to oscillate such that relative adjustment of the segments is possible.

- (d) Furthermore the subject-matter of claim 1 cannot be arrived at in an obvious manner even taking account of the available prior art documents. D3 considered as closest prior art does not give an indication leading towards a modular structure as defined in claim 1. In case the person skilled in the art intends to build a modular press starting from D3, it would simply start from the basic structure of the press according to D3 as the structure for each individual module and multiply these modules as required.

The subject-matter of claim 1 also involves an inventive step considering document D3 in combination with documents D2 or D5.

IX. In the annex to the summons to oral proceedings dated 14 January 2009 the Board gave its preliminary opinion with respect to the alleged procedural violation, the requirements of Articles 123 (2) and (3) EPC, the

construction of claim 1 and 6 question of inventive step concerning the subject-matter of claim 1 as maintained.

Reasons for the decision

1. Procedural matters

- 1.1 In the annex to the summons for oral proceedings dated 14 January 2009 (in the following referred to as: annex) the Board expressed its provisional opinion with respect to the alleged procedural violation and the request for remittal of the case. Since the appellant had not stated which new material or new facts had been admitted wrongly by the opposition division and that new arguments could in any case be submitted at any time into proceedings, it could not see a substantial procedural violation having been committed, so that the requirements for immediate remittal of the case were not fulfilled (point 8).

The appellant has not made any further submission concerning this issue in its reply to the annex with letter dated 16 March 2009.

The Board sees no reason to change its provisional opinion and thus, for the reasons given, concludes that the available facts do not allow the conclusion that during the oral proceedings before the opposition division a substantial procedural violation occurred and that therefore the requirements for an immediate remittal of the case according to Article 11 RPBA are not fulfilled.

1.2 Concerning the opinion of the respondent that the submissions of the appellant filed after its grounds of appeal should be disregarded, the Board is of the opinion that - as admitted by the respondent in the oral proceedings - no new issues were raised which could not be dealt with by the respondent and the Board so that there is no reason to not admit these submissions. Moreover, the later submissions made with letter dated 16 March 2009 can be seen as being a direct response to questions raised by the Board in the annex and have to be considered already for this reason alone.

1.3 The request of the respondent, filed with letter dated 16 December 2008, to disregard the late request of the appellant for oral proceedings need not be dealt with in view of the respondent's request for oral proceedings and the Board's decision to hold them.

2. *Amendments - Articles 84 and 123(2) and (3) EPC*

2.1 The feature of claim 1 concerning the provision of the two segments for each annular element has been amended in the appeal proceedings as follows, wherein features deleted are struck through and features added are in bold type:

"- two segments (3) housed internally ~~to the~~ **of each** annular element (2) in opposite positions; said segments (3) exhibiting a first portion (30) of edge which is arc-shaped to couple with a correspondingly arc-shaped portion of the internal edge of ~~said~~ **each** annular element (2); **each of** said segments (3) also

exhibiting a second portion (31) of edge which is opposite to the first portion (30);".

Feature M1 has been amended to read

"the coupling of the first portions (30) in the corresponding arc-shaped portions conferring freedom of oscillation to each segment (3) with respect to the corresponding annular element (2), so that in any situation a relative adjustment is possible of the segments (3) ~~itself~~ **themselves**, in order to bring the segments (3) into a position at which the respective second portions (31) are both facing one another and parallel;".

The features following feature M1 have been amended to read

"- means for maintaining the second portions (31) of edge **of each resistance element (1)** at a predetermined distance one from another, said means being housed in a space between the second portions (31);

- at least one power tool (5) which exerts a pressing action by compressing an object or powder material for pressing between two bodies, which power tool (5) is inserted between the facing second portions (31) of edges of said segments (3) in such a way as to transfer to said second portions (31) equal and opposite reactions resulting from said pressing action;".

The last feature of claim 1 essentially corresponding to feature M2, has been amended to read

"whereby said means comprise two parallelepiped spacers (4), interposed between the facing second portions (31) of the segments (3) and set against two diametrically opposite tracts of each annular element (2) in such a way that a space is created between opposite sides of the two spacers (4) and the second portions (31), in which space the power tool (5) is housed, and in such a way as to maintain the resistance elements (1) aligned **consecutively** at a predetermined reciprocal distance."

2.2 With the exception of feature M2 the amendments have been made in order to further clarify, for the purposes of Article 84 EPC, the features added to claim 1 in the opposition proceedings, by bringing the claim in the proper plural form with respect to the expressions "annular element" and "segment" and by adding the qualifier "of each resistance element (1)" with respect to the first use of the expression "second portions (31) of edge".

2.3 Concerning feature M2 the amendment concerns the provision of the expression "consecutively" which the Board considers as being necessary in view of the requirement of Article 123(2) EPC, for the reasons that follow.

2.3.1 Claim 3 as filed originally, which essentially has been introduced into claim 1, defines that the resistance elements are arranged facing one another and aligned consecutively at a predetermined reciprocal distance. The same arrangement is referred to in the description of the application as filed originally with respect to the illustrated embodiment (page 4, line 27 - page 5, line 1). A corresponding arrangement of resistance

elements is shown in figures 3 - 5 of the application as filed originally. Thus there is a consistent disclosure of the resistance elements being aligned consecutively.

- 2.3.2 The respondent argues that the spacers are also disclosed in the application as originally filed as means for maintaining the resistance elements aligned and at predetermined distances (page 5, lines 2 - 8), without indicating that the resistance elements are **consecutively** aligned.

The Board firstly notes that this disclosure is not in contradiction with the ones referred to above, according to which the resistance elements are aligned consecutively at a predetermined reciprocal distance. Secondly the Board considers, in the context of the disclosure of the application as originally filed as a whole, that this part of the description further describes what was mentioned previously (the consecutive alignment) and not a disclosure on its own of another, new, type of arrangement.

- 2.4 Contrary to the view expressed by the appellant the extent of protection of claim 1 has, due to the addition of features to claim 1 as granted, therefore not been extended.

- 2.4.1 The addition of features in the opposition proceedings and the introduction of the term "consecutively" during the appeal proceedings lead to a further limitation of the subject-matter of independent claim 1, thus complying with Article 123(3) EPC. Nowhere does the EPC require that the amendments to the main claim may only

have their origin in the claims as granted, as apparently held by the appellant.

- 2.4.2 The added feature "consecutively", being further limiting in the sense that there now should be at least three resistance elements, complies also with the principle of *reformatio in peius*, which is applicable in the present case in which the opponent is the sole appellant.
- 2.4.3 The clarifications of claim 1 (see point 2.2) neither pose problems with the requirements of Article 123(2) EPC.
- 2.5 As indicated above, claim 1 underlying the impugned decision has been amended in the appeal proceedings in essence only by the necessary addition of the term "consecutively". With respect to the amendments carried out in the opposition proceedings the Board concurs with the reasoning given in the impugned decision.
- 2.6 The further amendment of claim 6 concerns a necessary correction with respect to the dependency of this claim. The amendment of the description concerns the necessary correction of a reference numeral related to a feature corrected during the opposition proceedings.

All the amendments thus fulfil the requirements of the EPC.

3. *Construction of claim 1*

- 3.1 In its annex the Board had indicated, with respect to the clarity objections raised by the appellant, that

this has to be examined. The objections concern the mention of additional spacers and the structure of the press being free of welded joints and bolts, which have to be considered as features essential for defining the subject-matter of claim 1. The structure according to claim 1 cannot be free from welded joints and bolts since the upper body 7 must, as can be derived from figure 2, be linked to the segments. Since such features are not comprised in therein, this claim is unclear.

The Board is of the opinion that the objections of the appellant concerning missing essential features are, if considered, in substance not justified for the reasons that follow. In that case the procedural question of whether these objections are occasioned by amendments made to claim 1 as granted or whether they cannot be dealt with in opposition (appeal) proceedings since they concern claim 1 as granted and lack of clarity does not constitute a ground for opposition (Article 100 EPC), needs not be dealt with.

3.2 At the oral proceedings before the Board the respondent argued, in line with its arguments given in the response dated 9 March 2005 to the grounds of appeal, that claim 1 defined the structure for presses wherein all essential elements, as well as their structure and interaction were sufficiently defined. No further elements, such as welded joints and bolts and additional second spacers, were required.

3.3 The Board shares the respondent's opinion as will be outlined in the following.

Firstly, the Board notes that the second spacers, which according to the description of the patent in suit "can" be provided (column 5, lines 5 - 8), are optional and thus not essential elements for the structure defined by claim 1.

Secondly, with respect to the statement of the description according to which "The structure of the press is free of welded joints and bolts" (column 5, lines 9, 10), the Board is of the opinion that a corresponding feature excluding certain connection elements for the structure defined by claim 1 would be superfluous, since the claim already positively defines the required elements forming and maintaining the structure itself: the annular elements aligned consecutively, the arc-shaped inner portions, and the arc-shaped segments which are free to oscillate, kept apart by the spacers, leaving a space for the power tool.

According to the patent in suit "The power tool comprises a lower body 6 and an upper body 7 between which objects or the material to be pressed can be inserted ..." (column 4, lines 28 - 33; figures 1, 2, 5). From the disclosure of the patent in suit it is clear that the lower and upper body do not form part of the structure of claim 1 (cf. column 3, lines 48 - 58; figures 1 - 5), but relate to the power tool with which this structure is to operate, which features need not necessarily be further defined in the claim. This deals therefore with the argument of the appellant that the upper body must be linked to the segments such that the structure cannot be free from welded joints and bolts.

Finally, as can be derived from the following reasoning with respect to inventive step, an additional feature relating to the structure of the press being free of welded joints and bolts has no bearing on the presence of inventive step, as that is guaranteed already by the structural and functional features defined in claim 1.

4. *Inventive step*

4.1 It is uncontested that, in line with the impugned decision and as referred to in the annex, D3 constitutes the closest prior art.

D3 discloses a structure for presses including two spacers 3, 4 interposed between facing portions of yokes 1, 2. These spacers have the function to provide a space in which a power tool 17, 18, 19, 20 can be housed. In this known press stand a resistance element is formed by the yokes and a tape sheath 10 wound around the yokes (cf. column 2, lines 62 - 72; column 3, lines 8 - 17; figures 2, 3). A number of such press stands can be assembled to form a larger operating length (column 3, lines 24 - 27).

Unlike the spacers according to claim 1 the spacers according to D3 do not have the second function as defined by feature M2, according to which the spacers are provided such that the resistance elements are maintained aligned consecutively at a predetermined reciprocal distance.

Taking the different structure and function of the spacers according to claim 1 and D3 into account, the structure for presses according to claim 1 is, as

correctly indicated in the impugned decision (reasons, no. 5) and uncontested by the parties, distinguished from the one according to D3 by features M1 and M2 (cf. point 2.1 above).

5. Concerning the effect of features M1 and M2 the Board in its annex (point 11.3) gave its preliminary opinion that they cooperate within the combination of features of claim 1, leading, in citation from the annex, to the following effects:

"According to **feature M1** the **coupling** of the first portions has the effect of conferring freedom of oscillation to each segment with respect to the corresponding annular element; **feature M2** seems to contribute to such oscillation being made possible in that **two parallelepiped spacers** are provided **in such a way** that a **space is created** between opposite sides of the two spacers and of the second portions, in which space the power tool is housed. Additionally according to feature M2 provision of the spacers has the effect to **maintain the resistance elements aligned** at a predetermined reciprocal distance."

The appellant maintained in its reply to the annex with letter dated 16 March 2009 its position that features M1 and M2 are in juxtaposition and do not lead to a synergy effect, without however giving reasons going beyond the ones already given in the grounds of appeal and discussed by the Board in the annex. Thus the Board sees no reason to depart from its preliminary opinion, as given above.

5.1 Considering the effects provided by features M1 and M2 within the combination of features of claim 1 the Board concludes that the problem to be solved, starting from the structure according to D3, resides in how to provide the structure with a freedom of oscillation conferred to each segment with respect to the corresponding annular element, while maintaining the resistance elements aligned consecutively at a predetermined reciprocal distance, without a complex structure being required.

This problem is in line with the one stated in the patent in suit (column 1, line 55 - column 2, line 2), the one underlying the impugned decision (reasons, no. 5) and with the approach for determining the problem as outlined by the Board in the annex (point 11.2).

5.2 This problem is solved by the structure of claim 1 comprising features M1 and M2.

Within this solution the spacers according to feature M2 have a double function, namely

- (i) to be interposed between second facing portions of the segments and set against two diametrically opposite tracts of each annular element in such a way that a **space is created** between opposite sides of the two spacers and
- (ii) in such a way as to **maintain the resistance elements aligned consecutively** at a predetermined reciprocal distance.

This double function has been acknowledged by the appellant, which, in its reply to the annex with letter dated 16 March 2009 refers to feature M2 actually being a double pronged feature since on the one hand the spacers serve to provide a space in which the power tool is housed and on the other hand the spacers maintain the resistance elements aligned.

5.3 Concerning the examination of whether the solution according to claim 1 is obvious in view of the available prior art the Board does not see any convincing reason for considering the opinion expressed in the impugned decision, according to which the subject-matter of claim 1 involves inventive step, as not being correct.

5.3.1 With respect to the structure for presses according to document D3 the Board is of the opinion that in the impugned decision (reasons, no. 5) D3 has correctly been considered as disclosing spacers which, however, do not serve to align a plurality of resistance elements (cf. point 5.1 above).

Consequently D3 considered on its own cannot lead to the provision of spacers as defined by feature M2. In this connection the Board finds the reasoning of the impugned decision to be correct in that, where D3 mentions a plurality of such resistance elements combined in order to provide a press with a larger length (cf. D3, column 3, lines 24 - 27) this would result in a mere repetition of the individual spacers disclosed in D3, but not in the provision of spacers

consecutively aligning the plurality of resistance elements as defined by feature M2 (reasons, no. 5).

5.3.2 The Board considers the view expressed by the appellant, according to which document D5 teaches that prismatic yokes 10 held apart by spacers 11 are allowed to oscillate in the manner defined by feature M1 (cf. D5, column 2, lines 35 - 53; figures 4, 5) as being in line with the impugned decision (reasons, no. 5) and to be correct. The Board, however, finds the opinion expressed in the impugned decision also as valid, according to which the press structure according to D5 does not comprise a plurality of resistance elements in a modular arrangement and for that reason does not give an indication leading to the consecutive alignment of a plurality of such resistance elements (feature M2).

The Board agrees with the appellant (cf. grounds of appeal, page 6, paragraph 4) that allowing freedom of oscillation within the structure of the press according to D5 does not depend on the modularity of a press and that, in the manner disclosed in D5 for a single press, a plurality of such presses could be arranged by repeating the known structure.

In the view of the Board such an approach to arrive at a modular press would lead, as stated by the appellant, to a repetition of the known structure, but, as indicated by the respondent, not to one with spacers according to feature M2 having both the functions i) and ii) as outlined above (cf. point 5.2).

5.3.3 Concerning document D2 the following has been stated in the annex by the Board (point 11.4): The appellant

objects to the finding of the impugned decision with respect to D2, according to which the function of the spacers is not related to maintaining the resistance elements aligned at a predetermined reciprocal distance. One essential argument is that the spacers according to claim 1 of the patent in suit and the ones according to D2 are of similar structure and thus possibly of similar function as well. According to another argument the fact that the structure according to D2 comprises connectors does not necessarily lead to the known spacers having a different function as the ones according to claim 1, considering that these connectors may mainly function for a connection in the stand-by-condition.

According to the respondent D2 discloses a press structure within which members 12, 13 and structures 15 - 16 are reciprocally linked in order to form a closed annular *enbloc* structure by means of connectors 20 - 23, adhesives or a coupling, such that the members 12, 13 and the structures 15, 16 cannot move and deform independently of each other."

In its reply to the annex the appellant with letter dated 16 March 2009 referred, as in the grounds of appeal, to figure 11 of D2 alleging that the known spacers 26, 27 on the one hand provide a space in which a power tool can be housed (function i)) and on the other hand maintain the resistance elements aligned as can be arrived at from figure 11 (function ii)).

5.3.4 The Board considers the opinion of the respondent to be correct, namely that the structures 15 - 16 are reciprocally linked to form with members 12, 13 an

enbloc structure (cf. D2, column 2, lines 38 - 59; figures 1 - 3, 5, 11) of resistance elements which, however contrary to feature M1, is not able to confer freedom of oscillation to the pressure distribution plates 36, 37.

Moreover, although side plates 26 and 27 interfit frame members 12c - 12e as shown in figure 11 (cf. D2, column 3, lines 30 - 42) this cooperation cannot suggest the arrangement of resistance elements as defined by feature M2 (function ii)). The reason is that the structure according to D2 does not comprise individual resistance elements, which have to be maintained in aligned arrangement, but an *enbloc* structure of resistance elements in which, due to the assembly and connection of the individual elements into this *enbloc* structure, all these elements are maintained aligned. The Board thus finds the opinion of the impugned decision (reasons, no. 5) to be correct, according to which the function of the spacers 26, 27 is not related to function ii) of feature M2, namely to maintain the resistance elements aligned in a predetermined reciprocal distance.

The Board likewise finds the opinion of the respondent to be correct that within D2 the function of holding pressure distribution plates 36, 37 apart is not disclosed for the side plates 26, 27 (function i) of feature M2 but, as also referred to in the impugned decision, the function of providing guidance for member 35 moving longitudinally with a plunger (column 3, lines 30 - 42; figure 11).

5.3.5 Thus taking the structural differences between the structure for presses according to present claim 1 and the structures according to D2, D3 and D5 as well as the resulting functional differences into account, the Board comes to the conclusion that the conclusion of the impugned decision that claim 1 involves an inventive step (Article 56 EPC) is correct.

This applies likewise taking documents D1 and D4 into consideration, which are referred to in the grounds of appeal and in appellant's letter dated 26 September 2008 as disclosing modular presses. Concerning these documents it has neither been alleged nor is it evident that considering their teachings would not lead to the modular structure for presses having a structure different to the one disclosed for a press in each particular document, but instead one as defined in claim 1.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of:
 - claims 1 to 7 filed during the oral proceedings;
 - description columns 3 and 4 filed during the oral proceedings and
 - columns 1, 2 and 5 filed during the oral proceedings of 7th of February 2007;
 - figures 1 to 5 of the patent as granted.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders