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**Datasheet for the decision
of 14 October 2014**

Case Number: T 1660/10 - 3.2.05

Application Number: 04000941.7

Publication Number: 1450090

IPC: F16L 3/13

Language of the proceedings: EN

Title of invention:

Retaining member

Patent Proprietor:

ITW Automotive Products GmbH & Co. KG

Opponent:

Veritas AG

Headword:

-

Relevant legal provisions:

EPC 1973 Art. 54, 56

Keyword:

Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:

-



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1660/10 - 3.2.05

D E C I S I O N
of Technical Board of Appeal 3.2.05
of 14 October 2014

Appellant:
(Opponent)

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Respondent:
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Representative:

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Decision under appeal:

**Interlocutory decision of the opposition
division of the European Patent Office posted on
7 May 2010 concerning maintenance of the
European Patent No. 1450090 in amended form.**

Composition of the Board:

Chairman: M. Poock
Members: H. Schram
M. J. Vogel

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal on 19 July 2010 against the decision of the opposition division posted on 7 May 2010 concerning maintenance of European patent Nr. 1450090 in amended form on the basis of the sole request of the respondent (patent proprietor). The statement of grounds was filed on 17 September 2010.

Claim 1 as maintained reads as follows:

"A retaining member in plastic, suited for retaining at least one line on a support (45), comprising: - a basic body (2) with a mounting area (3) for mounting on the support (45) and at least one retaining area (9, 10) with at least one cylindrical cup-shaped seating (23 to 26) for at least one line to be inserted through an insertion slot (19 to 21) of the line seating (23 to 26), the line seating (23 to 26) at the inside having a plurality of resilient ribs (32 to 34) spaced in circumferential direction of the line seating (23 to 26), a first group of ribs (32', 33') having a larger dimension than the ribs (32'', 33'') of a second group, characterized in that the ribs (32', 33') of the first group have a larger overhang than the ribs (32'', 33'') of the second group such that normally only the ribs (32', 33') of the first group are in contact with an accommodated line, wherein the ribs (32, 34) project alternately at a larger and a smaller overhang beyond the inside of the line seating (23 to 26) or the lining (29 to 31), and wherein the ribs (32', 33') of the first group have a smaller spring constant than the ribs (32'', 33'') of the second group."

The opposition division held that the grounds of opposition under Article 100(a) EPC 1973 (lack of

novelty, Article 54 EPC 1973, and lack of inventive step, Article 56 EPC 1973) did not prejudice the maintenance of the patent in amended form.

II. The appellant requested that the decision under appeal be set aside and that the patent in suit be revoked.

The respondent requested that the appeal be dismissed.

III. The documents referred to in the appeal proceedings included the following:

E1 US-A 4,881,705;

E2 US-A 5,184,794;

E4 US-A 5,460,342;

E6 US-A 6,089,513.

IV. In a communication dated 18 June 2014 annexed to the summons to attend oral proceedings the board expressed its provisional opinion (point 5.5) that the subject-matter of claim 1 as maintained appeared to be new with respect to inter alia documents E1 and E6.

Point 5.4 of said communication reads as follows:
"Document E6 discloses (see column 2, lines 21 to 35, and figures 1 and 2) an assembly 1 for fastening and retaining pipes comprising a protection element 3 and a retaining element 2 (supporting element 2) defined by a clip 4 molded from synthetic plastic material, which clip has a seat 8 for a pipe 9. Seat 8 has a semi-cylindrical surface and two stirrup elements 48 defined by a pair of flexible arms 49 joined centrally to a radial appendage 50 (column 4, lines 27 to 38, and

figure 2). At mouth 11 walls 16, 17 of clip 4 comprise opposed elastic projections 18 (see column 2, lines 56 to 67, and figures 1 and 2), ie at a location where the surface of seat 8 consists of two planar walls and is no longer cylindrical. These projections 18 do not qualify as a "second group of ribs" as defined in claim 1 as amended. Document E6 does not disclose the last feature of the preamble of claim 1 as amended (there is only one group of ribs on the cylindrical cup-shaped seating), and does not disclose any of the features of the characterizing part of claim 1 as amended."

In point 4.2 of said communication the board stated the following: "Document E6 was filed for the first time by the appellant with its statement setting out the grounds of appeal. It is established case law of the Boards of Appeal of the EPO that whether or not late filed documents are admitted into the appeal proceedings is at the discretion of the board and depends inter alia on their relevance and the reasons given by the parties why these documents were not filed earlier. The board is currently not inclined to admit said document into the appeal proceedings in exercising its discretionary power under Article 114(2) EPC, since this document does not appear to be prima facie more relevant than the documents on file (see point 5.4). If the parties wish to rely on said document during oral proceedings, it needs to be shown why it is more relevant than the documents on file or why it is to be admitted."

V. In reply to the summons the appellant informed the board on 9 July 2014 that it will not be attending the oral proceedings. Subsequently, the scheduled oral proceedings were cancelled by the board.

VI. The arguments of the appellant can be summarized as follows:

Document E1 showed a retaining member comprising a line seating (inner shell 6) at the inside having a plurality of resilient ribs (nodes 4; protrusions of inner shell 6 between nodes 4) spaced in circumferential direction of the line seating (inner shell 6), a first group of ribs (nodes 4), whereby the ribs of the first group have a larger dimension and a larger overhang than the ribs of the second group. The subject-matter of claim 1 as maintained was therefore not new with respect to documents E1. The subject-matter of claim 1 as maintained was also not new with respect to document E6.

Document E2 represented the closest state of the art. This document disclosed (see figure 5) a retaining member 11 with a single rib located in the middle of the closed (bottom) portion of said retaining member, said rib having a smaller dimension and a smaller overhang than the ribs (wings 15). In the language of claim 1 as maintained said wings 15 and said single rib belonged to a first and second group of ribs, respectively. The subject-matter of claim 1 as maintained differed from the retaining member as disclosed in said document in that the retaining member comprised a second group of ribs rather than a single rib. Document E4 disclosed (column 3, lines 11 to 13, and figure 1) a retaining member 1 with retaining portions 2, 2', 2'', whose upper surfaces were reinforced by an outwardly extending rib 17 shown as a shaded portion. Parts of said rib 17 extended between the resilient arms 16 for holding a line which prevented that the line could make contact with the retaining portion. The person skilled in the art

derived the teaching from document E4 that it was beneficial to apply ribs having a smaller dimension and a smaller overhang than arms 16 in between said arms. The person skilled in the art, starting from the retaining member known from document E2, and seeking to prevent that the pipeline 14 touched the seating of the wings 15, would apply the teaching of document D4 and would therefor arrive at the subject-matter of claim 1 as maintained without exercising inventive skills.

VII. The arguments of the respondent can be summarized as follows:

In the decision under appeal the opposition division correctly held (see point 3.1 of the reasons) that the final product shown in figure 1 of document E1 showed a single type of ribs, namely the protrusions or nodes 4, whereas the element 6 formed valleys between the ribs 4. The point of view of the appellant that the line seating itself exhibited a rib-like structure was absurd ("unsinnig"). Claim 1 as maintained was therefore clearly new with respect to document E1. Document E6 was filed late and, since it was not novelty destroying for claim 1 as maintained, it should not be admitted into the appeal proceedings.

Document E2 showed (see figure 5) a retaining member (rod holder 1) having three pairs of ribs (wings 15) extending from the right- and left-side of the rod holder. The lower pair of wings and effectively either the upper pair of wings or the middle pair of wings engaged pipe 14, for pipes having a large or small diameter, respectively. Figure 5 of document E2 showed only one rib at the bottom portion of the rod holder. The purpose of first group of ribs in claim 1 as amended was that normally only these ribs were in

contact with an accommodated line, whereas the purpose of second group of ribs was that they could support the line in case of intense pressure. Document D4 disclosed a retainer element 2 whose upper surfaces were reinforced by rib 17. The part of said rib 17 that extended into the interior of the retainer element did not form a second group of ribs in the sense of the invention, since their purpose was to reinforce the surface element, not to support the line in case of intense pressure. The person skilled in the art had no motivation to combine the documents E2 and E4. It followed that the subject-matter of claim 1 as amended was not obvious to the person skilled in the art.

Reasons for the Decision

1. The appeal is admissible.
2. *Late-filed document*

The provisional reasons given by the board in its communication dated 18 June 2014 as to why the late-filed document D6 did not appear relevant to the issues of novelty, Article 54 EPC 1973, and inventive step, Article 56 EPC 1973, have not been contested by the appellant.

Exercising its discretion pursuant to Article 114(2) EPC and Article 13(1) RPBA, the board disregards document D6, which was not submitted in due time.

3. *Ground for opposition under Article 100(a) EPC 1973 in combination with Article 54 EPC 1973*

Claim 1 as maintained defines a cylindrical seating "having a plurality of resilient ribs" (cf the preamble

of said claim), which ribs "project alternately at a larger and a smaller overhang beyond the inside of the line seating" (cf the penultimate feature of the characterising part of said claim).

Document E1 discloses (see column 2, lines 52 to 67, and figure 1) a holding element 1 with an inner shell 6 having, at the inside, a plurality of nodes 4, which are partly embedded in the inner shell. The inner shell 6 and the part of the nodes 4 embedded therein define a cylindrical seating. The different materials of the inner shell 6 and the nodes 4 are joined together by a two-component injection moulding process, cf column 2, line 67 to column 3, line 2. The part of the nodes that project beyond the inside of said cylindrical seating form ribs. This document discloses therefore only one group of ribs in the sense of claim 1 as maintained.

It follows that the subject-matter of claim 1 as maintained is novel with respect to document E1.

4. *Ground for opposition under Article 100(a) EPC 1973 in combination with Article 56 EPC 1973*

4.1 The problem the invention according to the patent in suit seeks to solve is to provide a retaining element of a plastic which enables the pressure surges transmitted via the lines to be isolated better from the support, cf paragraph [0006].

This object is solved by the subject-matter of claim 1 as maintained, in particular by providing a cylindrical cup-shaped seating having on its inside ribs of a first group which alternate with ribs of a second group, whereby the ribs of the first group have a larger

overhang, a smaller diameter and a smaller spring constant than the ribs of the second group.

4.2 The prior art cited by the appellant

4.2.1 Document E2 discloses (see column 1, lines 14 to 26, and figure 5) a prior art rod holder 11 molded from a resin material having a rectangular trough-shaped (auxiliary) holding portion 13 formed with six flexible wings 15. These wings 15 form a first group of ribs in the sense of the patent in suit. Figure 5 shows a single central protrusion (without a reference numeral) at the bottom of holding portion 13. This is in contrast to the retainer member of claim 1 as amended, which requires that its seating has on its inside ribs of a second group which alternate with ribs of the first group. It may be noticed that the actual invention of document E2 resides in the construction of the pair of C-shaped clips of the second clamp member 112, namely that each of said clips is provided with a resilient outwardly extending projection 2 (column 3, lines 13 to 22).

The notion "overhang" in the first characterizing feature of claim 1 as maintained, viz "the ribs (32', 33') of the first group have a larger overhang than the ribs (32", 33") of the second group such that normally only the ribs (32', 33') of the first group are in contact with an accommodated line" makes sense for a cylindrical cup-shaped seating, cf paragraph [0033] and figure 3 of the patent in suit. It is measured from the inside of the line seating, cf the wording of the claim: "... overhang beyond the inside of the line seating". Since document E2 does not disclose that the line seating (holding portion 13) is cylindrical, the "overhang" of the six flexible wings 15 or of the

central protrusion cannot be determined in a meaningful way.

Document E2 is silent about the material(s), dimension(s) and spring constant(s) of the flexible wings 15 and of the single protrusion. Document E2 does not therefore disclose the third characterizing feature of claim 1 as maintained, viz "wherein the ribs (32', 33') of the first group have a smaller spring constant than the ribs (32", 33") of the second group".

- 4.2.2 Document E4 discloses (see column 2, lines 57 to column 3, line 11, and figures 1 and 5) a retainer element 1 of molded plastic having three rectangular trough-shaped retaining portions 2, 2', 2", each provided with six elastic and resilient arms 16: two at the closed end and two at the right- and left-hand side of the retaining portion, respectively. This document does not disclose that the retaining portions 2, 2', 2" ("line seatings") are cylindrical, see comments in point 4.2.1 above. It may be noticed that the actual invention of document E4 resides in the construction of the mounting region 3 (column 1, lines 28 to 37, and claim 1).

Document E4 further discloses that the upper surfaces of the retainer regions 2, 2', 2" are reinforced by an outwardly extending rib 17. This reinforcing element is shown in figure 1 as a shaded area surrounding the retainer regions 2, 2', 2". The reinforcing element is also present on a part of the right hand side and left-hand side of the retaining portion. This document does not disclose that the parts of the reinforcing element present on the inside of the retaining portions are resilient. These parts do not therefore qualify as a "second group of resilient ribs" as defined in claim 1 as maintained.

4.3 Since neither document E2 nor document E4 disclose (cf point 4.2 above) a retaining member comprising at least one cylindrical cup-shaped seating having two groups of resilient ribs (cf the preamble of claim 1 as maintained) it will be clear that the person skilled in the art, starting from the retaining member known from document E2, and combining that document with the teaching of document E4, namely to reinforce the rod holder by an outwardly extending rib, will not arrive at the subject-matter as of claim 1 as maintained.

The subject-matter of claim 1 as maintained is therefore not obvious to the person skilled in the art and hence involves an inventive step, Article 56 EPC 1973.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated