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Datasheet for the decision of 13 June 2016

Case Number: T 1307/13 - 3.2.01

Application Number: 04775361.1

Publication Number: 1663755

IPC: B61G5/02, B61G9/10

Language of the proceedings: EN

Title of invention:
COLLISION PROTECTION IN A COUPLER FOR RAIL-MOUNTED VEHICLES, AND A COUPLER EQUIPPED THEREWITH FOR PERMANENTLY CONNECTING TWO RAIL-MOUNTED VEHICLE UNITS

Patent Proprietor:
DELLNER COUPLERS AB

Opponent:
Voith Turbo Scharfenberg GmbH & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 54, 56
RPBA Art. 13(1)

This datasheet is not part of the Decision.
It can be changed at any time and without notice.

Keyword:
Novelty, inventive step (yes)
Availability to public (no)
Objection relating to validity of priority (late filed, not admitted)

Decisions cited:

Catchword:

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Case Number: T 1307/13 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 13 June 2016

Appellant: (Opponent)	Voith Turbo Scharfenberg GmbH & Co. KG Gottfried-Linke-Strasse 205 38239 Salzgitter-Watenstedt (DE)
Representative:	Meissner Bolte Partnerschaft mbB Widenmayerstrasse 47 80538 München (DE)
Respondent: (Patent Proprietor)	DELLNER COUPLERS AB Vikavägen 144 S-791 95 Falun (SE)
Representative:	Brann AB P.O. Box 3690 Drottninggatan 27 103 59 Stockholm (SE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 11 April 2013 rejecting the opposition filed against European patent No. 1663755 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	C. Narcisi
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The Opposition filed against European patent no. 1 663 755 was rejected by the decision of the Opposition Division dated 11 April 2013. Against this decision an appeal was lodged by the Opponent on 29 May 2013 and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 21 August 2013.

II. Oral proceedings were held on 13 June 2016. The Appellant (Opponent) requested that the impugned decision be set aside and that the patent be revoked. The Respondent (Patentee) requested that the appeal be dismissed.

III. Claim 1 as granted reads as follows:

"Collision protection for couplings for rail-mounted vehicles of the type that comprises a coupling element (1) in which two parts (6,7) translationally movable in relation to each other are included, between which at least one energy extincting or energy absorbing element (23, 24) of deformable character is arranged, characterized in that the energy-extincting element consists of a tube (23, 24), which is deformable by radial compression as a consequence of having a first, tapering end portion (34) inserted into a thinner bore (25, 26) in a first part (7) and an opposite, free end (39) distanced from the second part (6) in order to, upon displacement of the two parts (6, 7) in the direction of each other, be pressed axially into the bore, more precisely after rupture of one or more triggering members (19), which initially hold together said parts in a fixed state in which the deformation tube (23, 24) is completely inactive."

IV. The Appellant's arguments may be summarized as follows:

The subject-matter of claim 1 is not new in view of a public prior use by the Patentee as proved by documents MBP1 (Print (1 page) from an Internet page of the Patentee ("AnsaldoBreda awarded Dellner Couplers a contract ...")), MBP2 (Print (1 page) from an Internet page of the Patentee ("Articulated Joint With Integrated ...")), MBP3 (Print (1 page) from an Internet page of the Patentee ("Articulated Joint With Integrated ...)), MBP4 (Copy of an E-mail communication from 26 September 2012), MBP5 (Print from the "Internet Archive Wayback Machine" (two pages)), MBP6 (Copy of a notice of infringement dated 16 December 2003 filed at a Swedish court), MBP7 (Translation of MBP6 in English), MBP8 (Copy of a letter dated 27 January 2003 to Dellner Couplers AB), MBP9 (Photograph of a coupler), MBP10 (Copy of a translation in German of a protocol of a "Descrizione-Proceedings" against AnsaldoBreda SpA (investigation which took place at the AnsaldoBreda SpA factory on 18 November 2003)), MBP11 (Subcontract between AnsaldoBreda SpA and Dellner Couplers AB), MBP12 (Packing notes to AnsaldoBreda SpA (five pages)), MBP13 (technical drawing "Articulated Joint 1003361" dated 8 April 2002) and MBP14 (Collection of documents (18 pages) relating to infringement proceedings instigated by Voith Turbo). The above documents provide sufficient evidence that at least three different public prior uses did occur, in particular through Internet-publication (see MBP1 to MBP5), through documents produced and disclosed during infringement proceedings (see MBP6-MBP8, MBP14) and through the delivery of an "Articulated Joint" to the AnsaldoBreda SpA factory on 11 March 2003 (see MBP12, MBP11).

From the photograph in MBP2, MBP3 it can be clearly inferred that a collision protection device having the following specific features was made publicly available: "a tube (23, 24), which is deformable by radial compression as a consequence of having a first, tapering end portion (34) inserted into a thinner bore (25, 26) in a first part (7) and an opposite, free end (39) distanced from the second part (6) in order to, upon displacement of the two parts (6, 7) in the direction of each other, be pressed axially into the bore" (hereinafter designated as feature (i)), "more precisely after rupture of one or more triggering members (19), which initially hold together said parts in a fixed state in which the deformation tube (23, 24) is completely inactive" (hereinafter designated as feature (ii)). It is also stated in MBP2 that joints of this kind (designated as "Articulated Joint, Type 909"), comprising two parts movable relatively to each other, were introduced into the market on 24 September 2002 (that is well before the relevant priority date of the contested patent, i.e. 10 September 2003). Hence, the other features of claim 1 being known from MBP1-MBP4, the subject-matter of claim 1 lacks novelty.

MBP14 also corroborates the occurrence of a public prior use of the mentioned "Articulated Joint", particularly in view of the letter dated 28 February 2003 (written by the Patentee's patent attorneys to the Appellant's patent attorneys) and of the photographs (some in colour) on page 4 therein. In the photograph on page 4 of this letter (bottom of the page) features (i) and (ii) are clearly recognizable, and this is corroborated by the further indications "but still the concept remains with deformation tube integrated behind pivot and on one side only" (see same letter, page 4) and "Dellner Couplers always wanted to

keep the vertical loads (fatigue) and deformation loads separated and not integrated" (same letter, page 5). In addition, in the mentioned letter the Appellant was offered the opportunity, if needed, to be provided with technical drawings ("Werkstattzeichnungen") of the mentioned joints or couplers.

Finally, MBP12 likewise proves that a joint of the type "Articulated Joint, Type 909" was made public by delivery to AnsaldoBreda prior to the priority date of the contested patent. This is the same type of joint as shown in technical drawing MBP13 (dated of 8 April 2002), disclosing all the features of contested claim 1. The delivery did not take place under a confidentiality or secrecy agreement, for the clauses 25.1 and 25.2 in subcontract MBP11 only cover the disclosure of any information related to implementation of the subcontract. Also, contract A1 (between AnsaldoBreda and Danish Railways DSB) is in this respect no more relevant than subcontract MBP11.

Moreover, notwithstanding the fact that MBP13 was made available to public only through inspection at the AnsaldoBreda SpA factory and after the relevant priority date, nonetheless said priority claim has not been proved to be valid. Therefore MBP13 can also be regarded as being publicly disclosed by prior use.

The subject-matter of claim 1 is not inventive over documents D1 (or D2), D3 and D8. The skilled person, starting from D1, would aim at providing a more compact device (see patent specification, hereinafter designated as EP-B, paragraphs [0005], [0006]), which at the same time also reduces stress that affects the deformation tube during normal operation of the articulation joint (or coupler device) (EP-B, [0010]).

The first object would be obviously attained by adopting the arrangement as shown in D3, disclosing a tubular deformation element, having an inwardly tapered end, which is deformed during a crash by radially inward compression. The second object would be attained by translating the corresponding arrangement as shown in D8 to the device of D1, wherein according to D8 a triggering element is provided, such that if the acting force during crash exceeds a predetermined threshold a gap is closed and the deformation element is compressed radially inwardly. Consequently, the skilled person would arrive in an obvious manner at features (i) and (ii) by obvious combination of D1 with D3 and D8. Alternatively, the skilled person starting from D1 (or D2) would obviously arrive in a similar way at the claimed subject-matter in view of D8 and MBP14 (see indication in the cited letter that "Dellner Couplers always wanted to keep the vertical loads (fatigue) and deformation loads separated and not integrated"), for the cited indication in MBP14 would give the skilled person an unambiguous and clear suggestion or hint to provide a gap between the free end of the deformation tube and the second movable part.

V. The Respondent's arguments may be summarized as follows:

The evidence submitted allegedly proving a public prior use is clearly not sufficient to demonstrate that any public prior use disclosing the claimed subject-matter has actually occurred.
In particular, as to documents MBP1 to MBP4, examination of the photographs included in these documents does not allow to recognize clearly and unambiguously any of aforesaid features (i) or (ii). Therefore, even assuming pre-publication on the

Internet of these documents (quod non), no anticipation of the claimed subject-matter could thereby result.

Concerning MBP14 (specifically the letter dated 28 February 2003), no photograph included therein shows any of features (i) or (ii) and no offer was made in any of these letters to provide the Appellant with technical drawings. In addition, the indication about keeping "vertical loads (fatigue) and deformation loads separated and not integrated" bears absolutely no relation to the statement in D1 to the effect that the "deformation element is integrated without clearance and backlash in the joint assembly" (D1, paragraph [0017], "das Deformationselement in der Gelenkanordnung spielfrei integriert ist"). Thus, this statement does not allow to deduce anything about the possible presence of a gap at the free end of the deformation element.

As to MBP12, delivery of the joint to the AnsaldoBreda SpA factory took place under a confidentiality agreement, as clearly and unambiguously derivable from subcontract MBP11 (clauses 2.2.5, 2.2.7, 25.1, 25.2) and contract A1 (clauses 4.3, 29.1). Hence, this delivery constitutes no public prior use.

Both line of arguments against inventive step starting from D1 must fail, given that the skilled person would find no hint or suggestion in the mentioned documents to dispose a gap at an end of the deformation element and to arrange triggering members, which trigger radial compression of the deformation element after their rupture.

Reasons for the Decision

1. The appeal is admissible.

2. The alleged public prior uses do not prejudice maintenance of the patent as granted, essentially because no evidence was provided that on any of these occasions the entirety of the features of claim 1 was disclosed, irrespective of whether or not these prior uses were public. Document MBP13, on the other hand, can by no means be regarded as being evidence of a prior use, for it relates to actions and facts which did not take place prior to the priority date of the contested patent (see hereinafter).

   Starting with MBP1 to MBP4 the Board notes that none of these pages published on the Internet provides photographs which show clearly and unambiguously the above mentioned features (i) (i.e. "a tube (23, 24), which is deformable by radial compression as a consequence of having a first, tapering end portion (34) inserted into a thinner bore (25, 26) in a first part (7) and an opposite, free end (39) distanced from the second part (6) in order to, upon displacement of the two parts (6, 7) in the direction of each other, be pressed axially into the bore") and (ii) (i.e. "more precisely after rupture of one or more triggering members (19), which initially hold together said parts in a fixed state in which the deformation tube (23, 24) is completely inactive"). In particular, these photographs do not show clearly and unambiguously that a tapered end portion of the tube, which constitutes the deformation element (or energy-extincting element), is inserted into a thinner bore formed in a first part of the coupling member. Further, it cannot likewise be deduced from these photographs that the opposite end of

the tube is free and distanced (thereby forming a gap) from the the second part of the coupling member and that the illustrated bolts (visible in MBP3) actually act as a triggering element. The text also does not provide any indication supporting the Appellant's contentions. Therefore, the subject-matter of claim 1 is new over MBP1 to MBP4, regardless of their actual publication date (Article 54 EPC).

Concerning MBP14 (see in particular letter dated 28 February 2003) the same applies as for MBP1 to MBP4, insofar as the photographs on page 4 of this letter do not disclose anything more than the photographs in MBP1 to MBP4, in particular features (i) and (ii) are not shown.

Taking into account the mentioned text passages in the aforesaid letter does not alter the above conclusion. Indeed, the indication about "vertical loads (fatigue) and deformation loads separated and not integrated" solely implies that vertical loads and deformation loads are decoupled (to the extent to which that is possible) in Dellner's "Articulated Joint", no hint being given on how this is actually implemented. The Appellant's contention that this could technically only be achieved through the arrangement of a gap, between one end of the tube and the second part of the coupler (according to feature (i)), was not proved or demonstrated to any sufficient extent or degree. In particular, the Appellant's reference to D1 (paragraph [0017], see above) is entirely misplaced, for the above indication in MBP14 does not even mention a deformation "tube", let alone a clearance or gap, nor does it refer in any manner to a decoupling between vertical and deformation loads in relation to a deformation tube and a clearance gap.

Also, the indication "but still the concept remains with deformation tube integrated behind pivot and on one side only" (in the same letter) does not state anything more than the fact that the deformation tube is provided only on one side of the pivot, no information being given here about any gap or clearance.
For these reasons the subject-matter of claim 1 is new over MBP14 (and the mentioned letter included therein).

Document MBP12 (packing notes providing evidence for the delivery of Dellner's "Articulated Joint" to a factory of AnsaldoBreda SpA) does not give any information as to actual physical configuration and structure of the joint delivered, nor was any evidence presented that public disclosure occurred during transportation or afterwards by employees of AnsaldoBreda SpA. Quite to the contrary, subcontract MBP11 (see clauses 25.1 25.2) amply demonstrates that a confidentiality agreement existed between AnsaldoBreda and Dellner Couplers AB. In effect, the wording "not to directly or indirectly disclose any information and documentation, also of a technical nature, correlated with the implementation of the Subcontract" leaves no doubt as to the fact that any technical information correlated with the implementation of the subcontract MBP11, including of course the technical features of the joint itself, were subject to a confidentiality agreement. Consequently, this confidentiality agreement obviously applies also to technical drawing MBP13. Therefore, it must be concluded that no public prior use took place by the delivery of said joint to AnsaldoBreda SpA.

3. It is also noted that documents MBP10, MBP9, MBP13, MBP6 (or MBP7) could not corroborate the allegation of

a public prior use since they either relate to an investigation which took place at a factory of AnsaldoBreda SpA on 18 November 2003, thus after the relevant priority date (10 September 2003) of the contested patent (see MBP10, BMBP9, MBP13), or they were anyway produced after said priority date (see MBP6, MBP7). These documents therefore do not form part of the state of the art (Article 54 (2) EPC). The Appellant's objection against the validity of the priority claim was put forward only during oral proceedings and was therefore not admitted to the appeal proceedings since it was late filed. In effect, there was no valid reason or justification (adduced by the Appellant) for raising this objection at this very late stage in the proceedings. The Appellant clearly was aware from the very early stage of the opposition proceedings that the aforesaid documents could not possibly constitute evidence available to public, this obviously on account of the priority date of the contested patent. The Board also clearly referred to this point in the communication annexed to the summons to the oral proceedings (see point 2), as did the Respondent in its reply (dated 13 December 2013) to the statement of grounds of appeal. For these reasons it was decided not to admit to the appeal proceedings the objection raised against the validity of the priority claim (Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal)).

In conclusion, the alleged prior uses do not prejudice maintenance of the patent as granted.

4. The subject-matter of claim 1 involves an inventive step over D1, D3 and D8 as well as over D1, D3, and MBP14. In effect, as stated by the Respondent, even on the assumption that the combination of said documents

would be obvious for the skilled person (quod non), nonetheless features (i) and (ii) would not result from this combination, for these features are not disclosed or suggested in any of these documents. In particular, no triggering elements are disclosed or suggested in any of these documents, which initially hold together said first and second parts of the coupling assembly in a fixed state in which the deformation tube is completely inactive, and which rupture if a collision takes place. These technical features also do not come within the scope of the skilled person's customary practice (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated