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**Datasheet for the decision  
of 8 March 2016**

**Case Number:** T 0400/14 - 3.2.07

**Application Number:** 06724421.0

**Publication Number:** 1888242

**IPC:** B02C18/22

**Language of the proceedings:** EN

**Title of invention:**

SCRAP SHREDDER WITH TWO PUSHERS

**Patent Proprietor:**

SATRIND S.p.A.

**Opponent:**

HERBOLD MECKESHEIM GMBH

**Headword:**

**Relevant legal provisions:**

EPC Art. 52, 54, 56, 114(2)

**Keyword:**

Late submitted material -  
documents admitted by first instance (no)  
Novelty - (yes)  
Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 0400/14 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 8 March 2016**

**Appellant:** HERBOLD MECKESHEIM GMBH  
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**Respondent:** SATRIND S.p.A.  
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**Representative:** Cohausz & Florack  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 16 January 2014 rejecting the opposition filed against European patent No. 1888242 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** H. Meinders  
**Members:** K. Poalas  
C. Brandt

## Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the decision rejecting its opposition against the European patent No. 1 888 242.
- II. Opposition had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty and lack of inventive step).
- III. With the notice of opposition the opponent filed *inter alia* the following documents:

D2: DE-U-29 702 875;

D4: DE-A-35 35 406;

D5: DE-U-81 27 166.

With telefaxes of 25 October 2010 and 4 November 2013 the opponent had filed the following additional documents in the opposition proceedings:

D6: JP-A-2001286782;

D7: translation of D6 into English;

D8: "S400 forced Feed Hopper with 2 hydraulic Rams", brochure of SID S.A.;

D9: affidavit of Mr. Donat Bösch;

A1: "Telefonvorwahl (Schweiz)", a Wikipedia article.

- IV. The opposition division did not admit documents D6 to D9 nor A1 into the proceedings and it further found that the grounds of opposition under Article 100(a) EPC do not prejudice the maintenance of the patent as granted.
- V. In its statement setting out the grounds of appeal the appellant requested that the decision under appeal be

set aside and that the patent be revoked in its entirety. As an auxiliary measure it requested oral proceedings.

VI. In its reply to the statement setting out the grounds of appeal the respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained as granted. As an auxiliary measure it requested oral proceedings.

VII. In its communication pursuant to Article 15(1) RPBA annexed to the summons for oral proceedings set for 6 April 2016, the Board gave its provisional opinion that it saw no deficiencies in the opposition division's exercise of discretion not to admit documents D6 to D9 and A1 into the proceedings, nor a need itself to admit them. Further, it could not follow the appellant's arguments concerning lack of novelty and lack of inventive step of the subject-matter of claim 1 of the patent as granted.

VIII. With its submission dated 25 February 2016 the appellant withdrew its request for oral proceedings, informed the Board that it would not attend the scheduled oral proceedings, and declared expressly its agreement with a decision reached in written proceedings.

IX. In view of the above, the Board cancelled the oral proceedings and decided the case in written proceedings.

X. Claim 1 of the patent as granted reads as follows:

"Scrap shredder (1) including at least a loading compartment (3), a rotor (4) positioned in a seat open

underneath made in the bottom wall of the loading compartment (3) and a pair of opposite mobile pushers (5, 6) pushing alternatively towards the rotor (4) the scrap falling from the loading compartment (3), characterised in that the pushers (5, 6) slide on planes (12, 11) which are horizontal or inclined relative to the horizontal, and in that the front ends of the pushers (5, 6) are facing one another and in that each pusher (5, 6) has an alternate movement opposite to that of the other pusher (6, 5)".

### **Reasons for the Decision**

1. *Admission of documents D6 to D9 and A1 into the proceedings*

1.1 Under points 3.1 to 3.6 of its above-mentioned communication pursuant to Article 15(1) RPBA the Board gave the following provisional opinion concerning the admission of documents D6 to D9 and A1 into the proceedings:

*"3.1 According to Article 114(2) EPC the European Patent Office may disregard facts of evidence which are not submitted in due time by the parties concerned.*

*3.2 In the present case the opposition division in exercising its discretion according to Article 114(2) EPC did not admit documents D6 to D9 and A1 into the opposition proceedings, see point 2 of its decision.*

*3.3 In its statement setting out the grounds of appeal the appellant requests the admission of said documents into the appeal proceedings, see point II. It argues that these documents are prima facie relevant and should therefore be admitted into the proceedings.*

*3.4 According to the established jurisprudence of the Boards of Appeal, a Board should only overrule the way in which a department of first instance has exercised its discretion when deciding on the particular case if it concludes that it has done so according to the wrong principles, or without taking into account the right principles, or in an unreasonable way, see Case Law of the Boards of Appeal, 7th edition 2013, IV.C.1.3.3, second paragraph.*

*3.5 In the present case the appellant did not submit that any of the aforementioned deficiencies applied to the exercise of discretion by the opposition division, nor does the Board recognise such a deficiency.*

*3.6 For the above-mentioned reasons, the Board sees no reason to overrule the opposition division's exercise of discretion in not admitting documents D6 to D9 and A1 into the opposition proceedings. Since there is no change in this situation, it does not see the need either itself to admit said documents into the appeal proceedings".*

- 1.2 The above has neither been commented on nor was it contested by the appellant in its submission dated 25 February 2016.

Under these circumstances, the Board having once again taken into consideration all the relevant aspects concerning said issue sees no reason to depart from the above preliminary opinion.

Documents D6 to D9 and A1 are therefore not in the proceedings.

2. *Claim 1 of the patent as granted - Novelty*

2.1 Under points 4.1 to 4.5 of its above-mentioned communication pursuant to Article 15(1) RPBA the Board gave the following provisional opinion concerning novelty of the subject-matter of claim 1:

*"4.1 Under points 3.1 and 3.2 of its decision the opposition division gave reasons why it considered the subject-matter of claim 1 being novel over each one of the disclosures of documents D2 and D4.*

*4.2 Instead of presenting arguments why the above-mentioned reasoning of the opposition division is wrong (or no longer applicable) the appellant referred under point III.2 of its statement setting out the grounds of appeal only to the corresponding part V of its notice of opposition.*

*4.3 According to the established jurisprudence of the Boards of Appeal merely referring to one's own first instance submissions cannot normally replace an explicit account of the legal and factual reasons for the appeal, which should deal with the impugned decision, as it is. References to earlier submissions, even when taken together with the contested decision, do not as a rule clearly indicate which grounds of the decision are regarded as incorrect or not (or no longer) applicable, and why. The Board and the other should not have to consider the merits of the appeal by making investigations of their own, see Case Law of the Boards of Appeal, 7th edition 2013, IV.E.2.6.4 a), third paragraph.*

*4.4 For the above-mentioned reasons the appellant's novelty objections based on D2 and D4 cannot be*



*considered as substantiated.*

*4.5 Moreover, the Board cannot see at the moment why the opposition division's finding on novelty under points 3.1 and 3.2 of the impugned decision is wrong".*

- 2.2 The above has neither been commented on nor was it contested by the appellant in its submission dated 25 February 2016.

Under these circumstances, the Board having once again taken into consideration all the relevant aspects concerning said issue sees no reason to depart from the above preliminary opinion.

The subject-matter of claim 1 is therefore novel over each one of the disclosures of documents D2 and D4.

3. *Claim 1 of the patent as granted - Inventive step*

- 3.1 Under points 5.1 to 5.2 of its above-mentioned communication pursuant to Article 15(1) RPBA the Board gave the following provisional opinion concerning the presence of inventive step in the subject-matter of claim 1:

*"5.1 The Board notes that the appellant sees the difference of the invention of claim 1 over the apparatus known from D5 only in the provision of a second pusher (2.3), which increases the throughput capacity of the shredder known from D5 even further. The appellant forgets to mention the other differences over the shredder of D5, which are features 5.1, 5.2, 5.3, 7, 8, 9 and 10 for the second pusher. Starting from the shredder of figure 2 of D5 it appears that a complete redesigning of the shredder is necessary,*

*which is hardly to be considered "obvious". Starting from the shredder of figure 1 of D5 it is to be noted that the vertical wall 12 forms an important function of guiding the material to the shredder and of countering the function of pusher 10 when the latter breaks up any bridges formed in the scrap material. At present the Board does not see why the skilled person would eliminate these functions in favour of a second pusher, or what in his general technical knowledge would bring him to replace the wall 12 by a second pusher. It is clear that he "could" do this, but not that he "would" do so.*

*5.2 Therefore, the Board is of the preliminary opinion that the skilled person starting from the shredder known from D5 would not arrive at the scrap shredder according to claim 1 without the exercise of an inventive activity".*

3.2 The above has neither been commented on nor was it contested by the appellant in its submission dated 25 February 2016.

Under these circumstances, the Board having once again taken into consideration all the relevant aspects concerning said issue sees no reason to depart from the above preliminary opinion.

It considers therefore that the subject-matter of claim 1 involves inventive step.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Nachtigall

H. Meinders

Decision electronically authenticated