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**Datasheet for the decision
of 20 June 2018**

Case Number: T 1174/14 - 3.2.06

Application Number: 04077813.6

Publication Number: 1524339

IPC: D01H4/48

Language of the proceedings: EN

Title of invention:

Service trolley for open-end spinning machines

Patent Proprietor:

Savio Macchine Tessili S.p.A.

Opponent:

Rieter Ingolstadt GmbH

Headword:

Relevant legal provisions:

EPC Art. 84

RPBA Art. 13(1)

Keyword:

Amendments, clarity of amended claim (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1174/14 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 20 June 2018

Appellant: Rieter Ingolstadt GmbH
(Opponent) Friedrich-Ebert-Strasse 84
85055 Ingolstadt (DE)

Representative: Bergmeier, Werner
Canzler & Bergmeier
Patentanwälte Partnerschaft mbB
Friedrich-Ebert-Straße 84
85055 Ingolstadt (DE)

Respondent: Savio Macchine Tessili S.p.A.
(Patent Proprietor) Via Udine 105
33170 Pordenone (IT)

Representative: Mitola, Marco
Jacobacci & Partners S.p.A.
Via Berchet, 9
35131 Padova (IT)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
4 April 2014 concerning maintenance of the
European Patent No. 1524339 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
J. Hoppe

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division in which it found that European patent No. 1 524 339 in an amended form met the requirements of the EPC. The appellant requested that the decision be set aside and the patent be revoked.
- II. The respondent (proprietor) requested that the appeal be dismissed.
- III. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the subject-matter of claim 1 seemingly failed to meet the requirement of Article 123(2) EPC.
- IV. Oral proceedings were held before the Board on 20 June 2018, during which a new main request was filed to replace the former main request. The final requests of the parties were as follows:

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

The respondent requested that the patent be maintained according to the new main request filed during the oral proceedings.
- V. Claim 1 of the main request reads as follows (with added paragraph annotation as used in the opposition division's decision):

"a. Service trolley for open-end spinning machines equipped with

- b. members or groups of members dedicated to single or multiple operations in the intervention cycles on spinning stations, the spinning station comprising a spinning unit and a collection unit for collecting yarn on a cone, and a compensator for compensating variations in length of the path of the yarn between the spinning unit and a deposit point of the yarn on the cone,
- c. such members of the trolley being managed by the trolley's own control unit,
- d. wherein each member or group dedicated to the steps of the intervention cycle is independent from the others,
- e. being equipped with independent and controlled actuation
- f. as well as with sensors for checking whether or not the thread is present in the predetermined position for the various steps,
- g. wherein the actuation of the members or of the groups dedicated to the steps of the intervention cycle is carried out either with brushless motors driven in frequency or with stepper motors driven in steps
- h. to obtain angular positions, speeds and accelerations that are controlled in every step of their operation, in the two directions of rotation,
- i. or with a pneumatic piston whereas their speed and position control is carried out with an encoder and/or with end stop probes, and
- j. wherein the actuation of the members or of the groups dedicated to the steps of the intervention cycle is carried out with the driving of the motors, as far as speed and angular position are concerned, according to the driving that is imparted by the control unit of the trolley,
- k. which coordinates the operation of the various parts on-board of the trolley itself with that of the

spinning unit during the intervention cycles,

l. the control unit of the trolley being connected also to a control unit of the spinning unit during the intervention cycles

m. and being able to receive a signal detected with a sensor of the presence of the thread arranged at the start of the path of the thread in the collection unit preceding the compensator in the spinning station."

VI. The appellant's arguments relevant to the present decision may be summarised as follows:

The new main request should not be admitted into the proceedings as it was late filed and at least *prima facie* not allowable. Its claim 1 lacked clarity. It was unclear to what the control unit of the service trolley was 'also connected'. There was no other element in claim 1 to which the control unit of the service trolley was defined as being connected, so the terminology 'also connected' made no sense. Technically, it could not be the intervention members on the trolley itself as the respondent argued; before an intervention cycle was started by the service trolley, the control unit of the trolley did not need to be connected to the intervention members since no action was required of them. Only on starting an intervention cycle did the control unit of the trolley initiate a data connection with the intervention members. As a consequence, the item(s) to which the control unit of the trolley was additionally connected was, at least *prima facie*, not the trolley's own intervention members.

VII. The respondent's arguments relevant to the decision may be summarised as follows:

Claim 1 was clear. The trolley had two operating conditions: an intervention cycle and a non-intervening status. When not intervening, the trolley's control unit was connected only to the intervention members on the trolley. During an intervention cycle, the trolley's control unit was additionally connected to the spinning unit of a spinning station, as indicated in feature '1' of claim 1. From this it followed that the additional connection implied by the expression 'connected also' in feature '1' was to the intervention members located on the trolley. Even though none of the words 'connect', 'connection' or connected appeared elsewhere in claim 1, it was evident to the skilled person that the word 'managed' in feature 'c' implied the presence of a data connection between the members of the trolley and its control unit. Col. 9, lines 25 to 30 and line 46 indicated that the inventive trolley, connecting directly to the spinning unit of a spinning station, was able to respond faster to yarn breakage.

Reasons for the Decision

1. New main request
- 1.1 Admittance (Article 13(1) RPBA)

In appeal proceedings, the Rules of Procedure of the Boards of Appeal (RPBA) apply. Article 12(2) RPBA specifies that the statement of grounds of appeal and reply must contain the party's complete case. After filing the grounds of appeal or reply, any amendment to a party's case may be admitted and considered at the Board's discretion, which is set out in Article 13(1) RPBA, such discretion being exercised *inter alia* in view of the need for procedural economy. As is

established case law of the Boards of Appeal, such procedural economy implies that amended requests should at least be *prima facie* allowable in order to be admitted.

- 1.2 The respondent filed the new main request during oral proceedings. The request represented a change to the respondent's complete case and its admittance may be considered at the Board's discretion under Article 13(1) RPBA.
- 1.3 In the present request, compared to the previous main request, the word 'also' has been added to feature '1' of claim 1. This change introduced a lack of clarity into claim 1 since it is unclear as to what the control unit of the trolley is now 'also' connected in addition to the control unit of the spinning unit during the intervention cycles. Other than in feature '1', claim 1 does not include mention of the control unit of the trolley being 'connected' to anything at all. At least, therefore, on a *prima facie* basis, the expression 'also connected' is unclear, contrary to the requirements of Article 84 EPC, as it is not clear to what the control unit of the trolley is also connected.
- 1.4 The respondent contends that the additional item(s) to which the control unit of the trolley is connected was(were) the members dedicated to operations in the intervention cycles i.e. those members in feature 'c' of claim 1; this is not accepted by the Board.
 - 1.4.1 First, from a linguistic point of view alone, feature 'c' fails to mention any 'connection' between the trolley's control unit and the members of the trolley such that, at least on a *prima facie* basis, the skilled person would not understand from reading the claim that

the members of the trolley are the additional item(s) to which the control unit of the trolley was 'also connected'. The respondent's argument that the members of the trolley 'being managed' by the trolley's own control unit implied a 'connection' between the two would also not, at least on a *prima facie* basis, be interpreted by the skilled person as implying the data connection must be the connection with those members rather than some other unspecified entity/entities, not least since the additional step of interpreting the verb 'managing' as encompassing the specific 'data connection' would be required. In addition the description also does not identify to which item the control unit of the trolley was 'also connected'. It is mentioned neither in column 9 lines 9 to 14 nor elsewhere in the description.

1.4.2 Furthermore, as also argued by the appellant, prior to an intervention cycle starting, the members of the trolley are inactive such that there is no requirement for a data connection between the trolley's control unit and its members at this time. It thus follows that the skilled person would not see the members of the trolley in feature 'c' as *prima facie* being those item(s) to which the trolley control unit was also connected.

1.4.3 The respondent's further argument regarding the inventive trolley being able to respond faster to yarn breakage does not address the clarity objection, since it fails to provide any clear indication of what item is necessarily additionally connected to the control unit of the trolley other than the spinning unit.

1.5 Claim 1 thus *prima facie* fails to meet the requirements of Article 84 EPC.

1.6 Therefore, the subject-matter of claim 1 is not *prima facie* allowable, which would be necessary for fulfilling the need for procedural economy and consequently admitting the request into the proceedings. Accordingly, the Board exercised its discretion under Article 13(1) RPBA not to admit this request into the proceedings.

1.7 It is noted that the Board also found the subject-matter of claim 1 to *prima facie* not meet the requirement of Article 123(2) EPC (see the minutes of the oral proceedings). The reasons for this finding however do not need to be included in this decision in view of claim 1 already *prima facie* not meeting the requirements of Article 84 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



M. H. A. Patin

M. Harrison

Decision electronically authenticated