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**Datasheet for the decision
of 2 February 2018**

Case Number: T 0153/15 - 3.2.01

Application Number: 07113042.1

Publication Number: 1884386

IPC: B60J7/06

Language of the proceedings: EN

Title of invention:

Actuating system for a covering canvas

Patent Proprietor:

Marcolin S.r.l.

Opponent:

Dinamica S.r.l. in Liquidazione

Headword:

Relevant legal provisions:

EPC Art. 54(2), 56

Keyword:

Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 0153/15 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 2 February 2018

Appellant: Marcolin S.r.l.
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Respondent: Dinamica S.r.l. in Liquidazione
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Representative: Vanzini, Christian
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 November 2014 concerning maintenance of the
European Patent No. 1884386 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: H. Geuss
O. Loizou

Summary of Facts and Submissions

I. The appeal of the patent proprietor is directed against the interlocutory decision of the Opposition Division of the European Patent Office posted on 26 November 2014 concerning maintenance of the European Patent No. 1884386 in amended form.

II. The opposition division held inter alia that claim 1 of auxiliary request 1 was not novel over

US 5,429,408 (D24).

III. Oral proceedings were held on 2 February 2018.

The appellant (patent proprietor) having filed an amended description and deleted Fig. 9 of the patent as granted requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request as its sole request (previously filed as auxiliary request I with letter dated 17 April 2013).

The respondent (opponent) then withdrew all its objections regarding the sole request (previously filed as auxiliary request 1) and subsequently withdrew all requests.

IV. Claim 1 according to the sole request (according to the auxiliary request I, filed with letter of 17 April 2013) reads as follows:

Actuating system for a canvas (22) for covering containers (11) of vehicles or fixed containers for waste materials,
wherein the canvas (22) is hauled by one or more cable loops (18) set in motion by drive pulleys (16) that

transfer to them the motion necessary to move the canvas (22),
the actuating system comprising an independent functional unit in the form of a support structure (12) comprising drive pulleys (16) and transmission means (21, 32, 42) to transmit a rotary driving force to the drive pulleys (16),
wherein at least one drive pulley (16) is rotatably coupled with said structure (12),

characterized in that

the support structure (12) is adapted, in use, for being superimposed and fitted on top of the container (11) after the production of the container, so that the transmission means (21, 32, 42) are mounted on the support structure (12) on top of and transversally to the container (11),
said structure (12) comprising a frame (24, 26) that extends transversally to the container (11) and is suitable for being removably fixed on the top of the container,
said frame comprising at least one rib (24, 26) fixedly connected to it and mounted to support the canvas (22),
wherein the canvas (22) is supported by transversal ribs (20) the feet of which rest upon and slide on the edges of the container (11) hauled by the one or more cable loops (18).

V. The appellant's submissions may be summarized as follows:

The opposition division held that the transversal ribs (20), although recited in claim 1, do not form part of the subject-matter of claim 1.
However, this is not correct.

It is clear from the whole wording in claim 1 and in the patent specification that the transversal ribs are constituent parts of the claimed system. They play an important role since they slide directly on the edges of the container.

This feature is not shown in D24. The system of D24 uses ribs which slide in a kind of rail system, which has to be fixed to the container. This difference alone is sufficient to justify an inventive step.

- VI. The respondent / opponent withdrew all objections with respect to the present request.

Reasons for the Decision

1. The appeal is admissible.
2. The subject-matter of claim 1 according to the main request (filed as auxiliary request I with letter of 17 April 2013) is novel having regard to document D24, cf. Article 54 (2) EPC.
 - 2.1 In its decision (point 2.4.2) the opposition division states that the transversal ribs according to the last feature of claim 1 ("wherein the canvas (22) is supported by transversal ribs (20) the feet of which rest upon and slide on the edges of the container (11) hauled by the one or more cable loops (18)"), "are not forming part of the subject-matter claimed in claim 1".
 - 2.2 The Board does not share this opinion.

Claim 1 is directed to an "actuating system for a canvas for covering containers".

In the preamble, claim 1 defines that "the canvas is hauled by one or more cable loops set in motion by drive pulley". Both the cable loops and the drive pulley thus contribute "to move the canvas", i.e. to the actuation of the canvas. These elements thus form part of the actuation system for the canvas.

Analogous considerations apply to the last feature of claim 1, according to which the canvas is supported by transversal ribs the feet of which rest upon and slide on the edges of the container hauled by the one or more cable loops. It is clear from this definition that the transversal ribs also contribute to the actuation of the canvas and thus likewise form part of the subject-matter claimed in claim 1.

2.3 Document D24 does not disclose the above-mentioned feature according to which the canvas is supported by transversal ribs the feet of which rest upon and slide on the edges of the container hauled by the one or more cable loops.

D24 disclose bow members 50 corresponding to the transversal ribs according to the wording of claim 1. These bow members have end portions 50b, 50c, corresponding to the feet of the transversal ribs according to claim 1, that slide in respective support bars (40, 44) rigidly secured to the horizontal upper surface of the upper edge portion of the container's sidewall, for example by welding, cf. column 4, lines 30 et seq.

Consequently the feet of the transversal ribs in D24 do not have any direct contact with the edges of the container and do not slide on them. Nor are these feet

50b, 50c, suitable for sliding on the edges of the container, as their construction (see Figs. 5 and 6) is such as to require correspondingly shaped support bars mounted on said edges.

3. The Board holds that the subject-matter of claim 1 is also based on inventive step over D24. The above-mentioned distinguishing feature allows to dispense with longitudinally-extending supporting bars fixed to the container walls. There is no indication in D24 suggesting to the skilled person to dispense with the support bars by providing ribs having a structure allowing the feet to rest upon and slide on the edges of the container.

4. Considering that the Opposition Division rejected the claims according to the auxiliary request 1, which is now the sole request of the appellant, exclusively for lack of novelty over D24, and that the respondent withdrew all objections concerning the appellant's sole request, and that no further reasons are apparent to the Board for questioning the validity of the claimed subject-matter, the claims according to the sole request of the appellant together with the description as filed during oral proceedings and the figures of the patent as granted form a suitable basis for the maintenance of the patent in amended form.

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 in amended form on the basis of the following:

Description:

Columns 1 to 6, as filed during oral proceedings

Claims:

No 1 to 13 of the main request (previously filed as auxiliary request I with letter dated 17 April 2013)

Drawings:

Fig. 1 to 8 of the patent as granted.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated