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**Datasheet for the decision
of 14 October 2019**

Case Number: T 0374/17 - 3.2.04

Application Number: 09748355.6

Publication Number: 2348809

IPC: A01F15/07

Language of the proceedings: EN

Title of invention:

A BALE-WRAPPING MACHINE

Patent Proprietor:

Idough Investment Company

Opponent:

McHale Engineering

Headword:

Relevant legal provisions:

EPC Art. 54(1), 54(2), 56

Keyword:

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 0374/17 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 14 October 2019

Appellant 1: McHale Engineering
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Appellant 2: Idough Investment Company
(Patent Proprietor) Bagenalstown
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Representative: Tomkins & Co
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
8 December 2016 concerning maintenance of the
European Patent No. 2348809 in amended form.**

Composition of the Board:

Chairman C. Heath
Members: S. Hillebrand
J. Wright

Summary of Facts and Submissions

I. Both parties have appealed against the interlocutory decision of the Opposition Division of 8 December 2016 according to which the patent in amended form met the requirements of the EPC, in particular those of Articles 123(2) and 56 EPC (Article 101 (3)a) EPC).

In the contested decision, reference is made to the following documents:

- D1: "Tanco Autowrap 1510/1514 Operators Handbook" published online on 27 August 2007
- D3: EP 1 386 532 A1
- D4: EP 0 234 763 A1.

II. Final requests of Appellant 1 (Opponent) are that the decision under appeal be set aside and that the patent be revoked.

Final request of Appellant 2 (Patent Proprietor) is that the patent be maintained on the basis of auxiliary request 6, i.e. in the form upheld by the Opposition Division.

III. Claim 1 of auxiliary request 6 reads:

"A bale-wrapping machine (1) for wrapping a bale (6) of material with a wrapping material, comprising:
means (5) for engaging a bale (6) for wrapping and for rotating the bale (6) about a substantially horizontal axis;
a main rotary wrapping arm (7) for supplying a first strip of wrapping material to the bale (6) as the bale is turned about the horizontal axis; and an auxiliary rotary wrapping arm (12) for supplying a second strip of wrapping material to the bale (6) as the bale is turned about the horizontal axis;

wherein the auxiliary arm (12) is pivotable relative to the main arm (7), wherein the auxiliary arm (12) is movable between a 'rest' position, in which it is arranged adjacent to the main arm (7) and the wrapping arms (7, 12) are disposed behind the bale to be wrapped, and a wrapping position, in which the auxiliary arm (12) is arranged substantially opposite the main arm (7); and further comprising a single cut-and-hold mechanism (11), wherein the cut-and-hold mechanism is arranged to cut and hold both strips of wrapping material and is arranged behind the bale (6) to be wrapped."

- IV. Appellant 1 (Opponent) essentially relies on the following arguments.
- The subject-matter of claim 1 lacks novelty over D3. The subject-matter of claim 1 lacks an inventive step starting from D3 as closest prior art and considering D3 alone or in combination with D1 or D4 as well as starting from D1 or D4 and considering D1 and D4 in combination with each other and/or D3. An objection under Article 100b) / 83 EPC is raised in the appeal brief but not taken up and maintained in the oral proceedings.
- V. Appellant 2 (Patent Proprietor) essentially relies on the following arguments.
- The subject-matter of claim 1 is new and involves an inventive step with regard to the disclosure of D3.

Reasons for the Decision

1. Interpretation of Claim 1

1.1 Claim 1 is based on a combination of original and granted claims 1, 3 and 8 to 11.

The term "behind", which stems from original and granted claims 8, 10 and 11, is a relative expression depending on the point of view taken. Consequently, it has to be construed in the light of the description. Paragraph [0021] of the general part of the patent specification outlines the features of granted claim 8 and contains the following specific definition of the term "behind":

"between the machine and the bale, or at a machine-facing end of the bale".

1.2 In the Board's view, this gives a clear instruction to a skilled person where to arrange the folded wrapping arms in their rest position and the cut-and-hold device: between one of the bale's "ends" or sides and the "machine", in particular the stationary parts of the machine such as the supporting structure or frame.

1.3 For the above reasons, the Board does not agree with the interpretation of "behind" given by Appellant 1 as behind a circular side of the bale and opposite the side from which the bale is loaded and unloaded.

2. Novelty - Claim 1

2.1 D3 in paragraphs [0012] and [0018] describes the cut-and-hold devices 18, 19, 53, 54 as being arranged at the *sides* of a bale. D3, however, is silent as to the location of the bale and the cut-and-hold devices with respect to the "machine". At most, it could be derived from paragraph [0028] that the cut-and hold-devices are arranged *laterally* with regard to the "machine", since a film extending between such a cut-and-hold device and a film roll on one of the two wrapping arms would collide with *lateral* bale gripper arms of certain types of prior art bale wrapping machines.

However, there is no direct and unambiguous disclosure in D3 of the cut-and hold mechanism being "behind the bale" as claimed. Therefore, the subject-matter of claim 1 is new in the sense of Article 54(1), (2) EPC with regard to D3.

2.2 Furthermore, given the Board's interpretation of the term "behind the bale", Appellant 1's (Opponent) argument that from paragraph [0028] of D3 a single cut-and-hold device of a two-armed bale wrapping machine located opposite of the lateral bale gripper arms with regard to the bale is "behind the bale", is moot.

3. **Inventive step - Claim 1**

3.1 D3 does not provide any specific constructive details of a two-armed bale wrapping machine comprising an auxiliary wrapping arm pivotable relative to a main wrapping arm. It merely indicates general features of a two-armed bale wrapping machine in paragraph [0028] and in the general part of the description (paragraph [0005], column 2, lines 13-20 and 26-35).

3.2 When faced with the problem of putting into practice such two-armed bale wrapping machine, a person skilled in the art would therefore look for suggestions in the three-armed and four-armed embodiments shown in Figs. 1 to 5 of D3. It is noted that the embodiment of Figs. 6 to 8 does not seem to comprise a *main* and an *auxiliary* wrapping arm moveable from a working position (opposite each other) into a rest position (adjacent to each other) as defined in claim 1.

It appears that in each of Figs. 1 to 5, a part of a stationary rack or frame ("Rahmengerstell") 12, 42 of the machine extends diagonally with regard to the bale, i.e. angled with respect to all sides of the bale. None of the cut-and hold-devices 18, 19, 53, 54 can be considered as being arranged between an "end" or a side of the bale and the (prolongated) part of the rack/frame 12, 42 of the machine, thus *behind the bale* in the sense of claim 1 (see point 1.2, above). Neither can any of the pairs of adjacent, folded wrapping arms shown in Figs. 2 and 5 be considered to be arranged in this manner.

3.3 Since the claimed arrangement "behind the bale" is therefore neither suggested, nor obviously derivable from the disclosure of D3, the Board concludes that the subject-matter of claim 1 involves an inventive step in

the sense of Article 56 EPC with regard to this disclosure.

3.4 Nor does the Board come to a different conclusion when starting from the problem defined by the Appellant 1 (Opponent), namely adapting the two-armed bale wrapping machine of D3 to be suitable for bale stacking. According to this line of argumentation, this problem would obviously be solved by arranging the wrapping arms in their rest position and a single cut-and-hold device *behind the bale*. Or, in other words, in the position of the cut-and-hold device 18 of D3, Figs. 1, 2 at an axial opposite end of the bale *behind the bale* (see appeal grounds, page 3, second paragraph). This would also be suggested by D1 and D4, which disclosed bale wrappers suitable for stacking (see appeal ground, point 3.8).

3.5 The Board notes that this solution to the problem does not lead to an arrangement of the cut-and-hold device 18 behind the bale as claimed, i.e. between the end of the bale and the rack/frame 12 as shown in Fig. 2 of D3. Therefore, the argument is moot. Neither does Appellant 1 (Opponent) mention, nor does the Board recognise any need or motivation for modifying the relative arrangement of cut-and-hold device and rack/frame of D3 in order to solve the suggested problem (bale stacking), as the bale is already accessible for stacking.

3.6 Furthermore, the Board considers D1 and D4 to be less promising starting points than D3 for obtaining the subject-matter of claim 1. D3 is the only cited document which discloses the concept of assigning two film rolls (each supported by a wrapping arm) to one cut-and-hold device (column 2,

lines 17-20) for an at least two-armed bale wrapping machine (paragraphs [0002] -[0006], [0028], claims 1 to 11, 14 to 17).

D1 and D4 both disclose bale wrapping machines with only one wrapping arm. The two-armed TWIN model of D1's AUTOWARP comprises two cut-and-hold devices 6, none of them being arranged *behind the bale*, i.e. at the machine-facing end of the bale or between the bale and the support frame 9 of the machine (lower figure on page 4 and page 5, 4th paragraph).

Therefore, arguments starting from D1 or D4 cannot challenge the above positive assessment of inventive step.

4. **Allowability - Auxiliary Request 6**

4.1 Appellant 1 (Opponent) did not raise further objections with regard to auxiliary request 6 during oral proceedings.

Neither is the Board aware of deficiencies which might prejudice the maintenance of the patent in the amended form of auxiliary request 6.

4.2 The Board therefore concludes that, taking into consideration the amendments made by Appellant 2 (Patent Proprietor), the patent and the invention, to which it relates, meet the requirements of the EPC. Consequently, corresponding to the Opposition Division's decision, the patent can be maintained in the amended form of auxiliary request 6 (Article 101(3) (a) EPC).

5. Result

5.1 With its appeal, the patent proprietor had originally requested as a main request that the patent be maintained as granted. As the final requests of the patent proprietor correspond to maintenance of the patent in the version as maintained by the opposition division, the Board can only dismiss the patent proprietor's appeal for want of any higher-ranking requests.

5.2 As the opponent had requested revocation of the patent in its entirety, and the Board has concluded that the patent can be maintained in the version held to be allowable by the opposition division, also the opponent's appeal has to be dismissed.

Order

For these reasons it is decided that:

Both appeals are dismissed.

The Registrar:

The Chairman:



G. Magouliotis

C. Heath

Decision electronically authenticated