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**Datasheet for the decision
of 13 June 2022**

Case Number: T 0402/17 - 3.2.07

Application Number: 13382028.2

Publication Number: 2692668

IPC: B65G47/53, B65G47/90, B65G57/03

Language of the proceedings: EN

Title of invention:
Apparatus and method for palletizing multi-reference loads

Patent Proprietor:
Ulma Manutencion, S. Coop.

Opponent:
WITRON Logistik + Informatik GmbH

Headword:

Relevant legal provisions:
EPC Art. 56
RPBA 2020 Art. 13(2)

Keyword:
Inventive step - (yes)
Amendment to appeal case - justification by party (no)

Decisions cited:

Catchword:



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Case Number: T 0402/17 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 13 June 2022

Appellant: Ulma Manutencion, S. Coop.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 16 December
2016 revoking European patent No. 2692668
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman A. Pieracci
Members: V. Bevilacqua
R. Cramer

Summary of Facts and Submissions

I. The patent proprietor (appellant) lodged an appeal in the prescribed form and within the prescribed time limit against the decision of the opposition division to revoke the European patent No. 2 692 668.

II. The opposition had been filed against the patent as a whole based on the ground for opposition of lack of inventive step, pursuant to Article 100(a) EPC.

The opposition division found that this ground for opposition prejudiced the maintenance of the patent as granted. Since also the auxiliary request was found to lack inventive step, the opposition division revoked the patent.

III. With the statement setting out the grounds of appeal the appellant requested

that the decision under appeal be set aside and that the patent be maintained as granted (main request),
or, in the alternative,
that the patent be maintained as amended according to one of the first to sixth auxiliary requests, submitted with the statement setting out the grounds of appeal.

The appellant also requested

that the appeal fee be reimbursed,
and that document D6 be excluded from the proceedings.

The respondent (opponent) requested

that the appeal be dismissed,
or in the alternative,
that the case be remitted to the opposition
division for further prosecution on the basis of
the auxiliary requests.

- IV. In preparation for oral proceedings, scheduled at the parties' requests, the Board gave its preliminary assessment of the case by means of a communication pursuant to Article 15(1) RPBA 2020 according to which the appeal was likely to be allowed.
- V. The respondent reacted to the above communication submitting, with letter dated 24 June 2021, for the first time in the appeal proceedings substantive arguments in support of their request that the appeal be dismissed.
- VI. With letter dated 15 March 2022 the appellant reacted, filing new auxiliary requests 2A to 6A and withdrawing the requests for reimbursement of the appeal fee and for exclusion of document D6 from the proceedings.
- VII. Oral proceedings before the Board took place by videoconference on 13 June 2022.

At the conclusion of the proceedings the decision was announced. Further details of the proceedings can be found in the minutes thereof.

- VIII. The final requests of the parties are as follows:

The appellant requested that the decision under appeal be set aside and the patent be maintained as granted

(main request), or alternatively that the patent be maintained in amended form on the basis of the claims of one of the first to sixth auxiliary requests filed with the statement of grounds of appeal, or of one of auxiliary requests 2A to 6A filed with the letter of 15 March 2022.

The respondent requested that the appeal be dismissed or that the case be remitted to the opposition division for examination of the auxiliary requests.

IX. The lines of argument of the parties are dealt with in detail in the reasons for the decision.

X. The following documents are referred to in the present decision:

D1: EP 1 462 394 A2,

D6: JP H 11 199053.

XI. Claim 1 of the main request reads as follows:

"A palletizing device suitable for palletizing multi-reference loads on a pallet (6), comprising positioning means (10) configured to position at least one load (2) in a final position on the pallet (6) comprising first displacement means (11) for moving said at least one load (2) in a direction transverse to the pallet (6), and second displacement means (12) for moving said at least one load (2) in a direction longitudinal to the depth of the pallet (6) comprising at least one surface (50) on which the at least one load (2) is supported, the surface (50) being movable in the direction longitudinal to the depth of the pallet (6), said surface (50) having a width (d1) that is less than the width (d2) of the pallet (6), characterized in that the

first displacement means (11) comprise at least one surface (40) on which the load (2) is supported, the surface (40) being movable in the direction transverse to the pallet (6), the surface (40) being suitable for positioning said at least one load (2) in a final transverse position, the palletizing device (1) comprising fastening means (20, 21) for fastening said at least one load (2) configured to stabilize said at least one load (2) during the movement of said at least one load (2) from the final transverse position to the final position in the direction longitudinal to the depth of the pallet (6), wherein the fastening means (20, 21) comprise a first member (20) and a second member (21) configured to laterally fasten said at least one load (2) between both members (20, 21), said first member (20) and said second member (21) being arranged substantially orthogonal to the longitudinal depth direction."

Reasons for the Decision

1. *Revised Rules of Procedure of the Boards of Appeal (RPBA 2020) - transitional provisions*

The present proceedings are governed by the revised version of the Rules of Procedure which came into force on 1 January 2020 (Articles 24 and 25(1) RPBA 2020), except for Article 12(4) to (6) RPBA 2020 instead of which Article 12(4) RPBA 2007 remains applicable (Article 25(2) RPBA 2020).

2. Late filed objection - Admittance

- 2.1 During oral proceedings the respondent presented an inventive step objection based on a combination of document D1 with only the common general knowledge.

According to the respondent this objection was to be admitted as it had already been submitted at page 5 of its letter, dated 24 June 2021, sent in response to the Board's communication pursuant to Article 15(1) RPBA 2020.

- 2.2 The Board, following the appellant, is not convinced by the above respondent's justification for the late filing of a new inventive step objection submitted after notification of the summons to oral proceedings.

The admittance thereof being subject to Article 13(2) RPBA 2020, such an amendment of a party's case shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned, in this case the respondent.

The presence of exceptional circumstances cannot be acknowledged by the Board, because the respondent failed to provide reasons explaining why it was not possible to submit this inventive step objection based on a combination of document D1 with only the common general knowledge earlier in the proceedings, in particular with the reply to the statement of grounds of appeal.

As a consequence of the above the Board concludes that the conditions set out in Article 13(2) RPBA 2020 for admitting this late filed objection are not satisfied, and decides that this new objection is not admitted into the proceedings under Article 13(2) RPBA 2020.

3. Patent as granted: Lack of inventive step (Article 56 EPC)
- 3.1 The respondent acknowledged that all the features of claim 1 related to the fastening means (identified as features K-O at page 2 of the statement of grounds of appeal) are not disclosed in D1 and solve the (partial) problem of stabilizing loads during their movement in a direction longitudinal to the depth of the pallet.
- 3.2 The appellant argues that, starting from D1, a skilled person would not have been able to apply the fastening means of D6 (22,27) to the apparatus of D1, without having to perform major modifications to either the apparatus of D1, or to the fastening means of D6 (see page 20, first and second paragraph, of the statement setting out the grounds of appeal).
- 3.3 This is contested by the respondent, who argues that the skilled person would be able to readily transfer the technical concept of securing a load by two members from the front and back sides (with respect to the movement direction) instead of from the back side only in order to improve stability thereof without combining the whole configuration of the loading apparatus of D6 with that of D1, because the remaining parts of the apparatus of D1 can remain unchanged (letter of 24 June 2021, page 6).
- 3.4 The Board is not convinced that a skilled person aimed at solving the partial problem as formulated above, would, following a teaching coming from D6, provide a second holding member on the other side of the load. This is because the fastening means taught by D6 (22,27, see figure 12 and paragraph [0028]) are made to

move a row of cases which is as broad as the pallet, and are therefore too wide to be compatible with the second displacement means ("Beladezunge" 56, "Abstreifer" 57) of the apparatus of D1, which have to be capable of positioning single loads in a final position that requires transversal and longitudinal displacement.

This is because there is no mention at all in D6 that the fastening means (22, 27) have the function of stabilizing loads during movement in a direction longitudinal to the depth of the pallet (see claims 1, 4 and 5 of D6 clarifying that the function of the arm 22 is to be a locating member, determining a position of the loads).

On the contrary figures 12a and b of D6 show that, to improve load stability, high objects are flipped to their side.

As noted by the appellant (see the second paragraph at page 20 of the statement setting out the grounds of appeal), if the fastening means of D6 would be applied without modification to the apparatus of D1, it would no longer be possible to position a first load in a given row, and then, in a subsequent step, a second load next to it, in the same row.

According to D1 (see [0042], starting from line 26) the load (packing unit 15) is pushed with element 57 onto the loading plate 56 and then the loading plate 56 moves it (second displacement means) in a direction longitudinal to the depth of the pallet (the z-direction of figure 10) to the intended position.

Unloading occurs when the loading plate 56 withdraws while element 57 remains in its position.

Again, the apparatus of D6 is substantially different from the one of D1, because it has two elements which are extendable (22, 27, see the last two lines of page 7 of the translation thereof) to grip and displace a complete row of cases in a direction longitudinal to the depth of the pallet.

Unloading occurs (see the first lines of paragraph [0030]) when the gripping elements are retracted.

As a consequence of that the gripping elements 22 and 27 do not only act as fastening means in D6, but also as second displacement means.

Based on the above structural differences between the palletizers of D1 and of D6 the appellant convincingly argued that a skilled person starting from D1 would not be able to identify the the gripping elements 22,27 (see figures 12(a)-12(d)) of D6 as a straightforward solution to the partial problem of stabilizing, in the apparatus of D1, loads during their movement in a direction longitudinal to the depth of the pallet.

4. Conclusions

As a consequence of the above the Board decides that the appellant convincingly demonstrated that the opposition division wrongly concluded that the subject-matter of granted claim 1 lacks inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



G. Nachtigall

A. Pieracci

Decision electronically authenticated