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**Datasheet for the decision
of 9 October 2018**

Case Number: T 1333/17 - 3.2.07

Application Number: 13151713.8

Publication Number: 2599882

IPC: C14B1/58, C14B15/06, C14B1/26

Language of the proceedings: EN

Title of invention:
A pelt board

Patent Proprietor:
Dansk Mink Papir A/S

Opponent:
Jasopels A/S

Headword:

Relevant legal provisions:
EPC Art. 76(1), 123(3), 69

Keyword:
Divisional application - subject-matter extends beyond content
of earlier application (yes)
Claims- extended extent of protection

Decisions cited:

Catchword:



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Case Number: T 1333/17 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 9 October 2018

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 April 2017 concerning maintenance of the
European Patent No. 2599882 in amended form.**

Composition of the Board:

Chairman I. Beckedorf
Members: V. Bevilacqua
K. Poalas

Summary of Facts and Submissions

- I. Appellant 1 (opponent) and appellant 2 (patent proprietor) filed appeals against the decision of the opposition division maintaining the European patent No. 2 599 882 in amended form on the basis of the then amended auxiliary request 3. The grounds of opposition raised were those of Article 100 (a) EPC and those of Article 100 (c) EPC. The patent was granted from a divisional application originating from WO 2005/026394 (parent application, hereinafter referred to as D8).
- II. The opponent's appeal was initially directed to the revocation of the patent, whereas the patent proprietor's appeal was directed to the maintenance of the patent as granted or in amended form on the basis of any of the auxiliary requests 1, 2, 3, amended 3 and 4 attached to the decision under appeal.
- III. By communication pursuant to Article 15(1) RPBA the Board provided the parties with its preliminary opinion.
- IV. When responding to this preliminary opinion, the patent proprietor filed a new auxiliary request 1a replacing previous auxiliary request 1.
- V. Oral proceedings were held on 9 October 2018. For the further course of the oral proceedings, in particular the issues discussed with the parties, reference is made to the minutes.

At the end of oral proceedings the opponent confirmed its original request, namely
that the decision under appeal be set aside and
that the patent be revoked.

The patent proprietor 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 in amended form on the basis of one of the sets of claims filed as auxiliary request 1a and auxiliary requests 2, 3, amended 3 and 4,

whereby amended auxiliary request 3 was held by the opposition division in the decision under appeal to meet the requirements of the EPC.

The present decision was announced at the end of oral proceedings.

VI. **Claim 1 of the main request** reads as follows:

"A method for the drying out of the leather side of the pelt (4) from furred animals, where the pelt (4) is drawn onto and stretched on a pelt board (6), the walls of which define a cavity (8) whose surface has an open structure, with the leather side facing towards the pelt board (6), and where the pelt (4) is fixed in this position during the drying process by the drawing-on of a fixing-bag, which at least over a part of the lower end of the pelt (4), presses this against the board (6), and where the drying of the leather side of the pelt (4) is effected by replacement of the air inside the cavity (8) of the pelt board (6), and herewith that air which exists under the open structure, wherein the pelt board (6) consists of two similar half shells (48,50) combined with locking means (30)."

Claim 1 of auxiliary request 1a additionally comprises the following features added at the end of claim 1 of the main request:

"the locking means (30) consisting of screws or similar means, or of cooperating elements projecting from respective subtending sides (52, 54) of said half shells (48, 50), and which comprise a first projection (88) and a second projection (90) with opening (92) for receiving said first projection (88), the geometry of said opening (92) and said first projection (88) will mutually be fitted with second locking means, so that after being pressed into said opening (92), said first projection (88) is secured in a displaceable manner in said opening (92)."

Claim 1 of auxiliary request 2 additionally comprises the following features added at the end of claim 1 of the main request:

"and wherein subtending edges (36) of said half shells (48, 50) defining an envisaged first plane (38) which is substantially coincident with a first transverse axis (20) of the pelt board (6), the sides of the half shells (48, 50) facing away from each other extend in an arched manner and together constitute the surface (12) of the board (6), the cavity (8) stands in connection with the surface (12) via holes (10), and the board (6) comprises an opening to the cavity (8) in a foot end (16), a part of the surface has a longitudinal grooving (29) with the grooves arranged substantially parallel with the longitudinal axis (18) of the board, and second transverse grooving (31), the extent of which is limited to a part of the area (15) of the board (6) closest to the foot end (16), and at a distance from the foot end (16), where the extent of

this in the direction of the first transverse axis (20) and a second transverse axis (22) of the board (6) is substantially constant, to and including a part of the area (33) where the extent of the board in relation to the longitudinal axis (18) in the direction of the first transverse axis (20) and the second transverse axis (22) is substantially decreasing in the direction towards a front end (14), the two half shells (48, 50) together with a wedge-plate (64) constitute the pelt board."

Claim 1 of auxiliary request 3 additionally comprises the following features added at the end of claim 1 of the main request:

"and wherein the facing edges of the half shells (48,50') defining an envisaged first plane (38), and whose sides facing away from each other extend in an arched manner, and where the locking means (30) are arranged so that the two half shells (48, 50) are relatively displaceable away from and towards the first plane (38), between a first outer position where a slot-shaped opening (40) arises between the subtending sides (42, 44) of the half shells (48, 50) and a random position where said sides (42,44) can be in contact with each other."

Claim 1 of the amended auxiliary request 3, reads as follows (features added with respect to claim 1 of auxiliary request 3 are in bold, emphasis added by the Board):

"A pelt board (6) for use in the execution of **a method for the drying out of the leather side of the pelt (4) from furred animals, where the pelt (4) is drawn onto and stretched on a pelt board (6), the walls of which**

define a cavity (8) whose surface has an open structure, with the leather side facing towards the pelt board (6), and where the pelt (4) is fixed in this position during the drying process by the drawing-on of a fixing-bag, which at least over a part of the lower end of the pelt (4), presses this against the board (6), and where the drying of the leather side of the pelt (4) is effected by replacement of the air inside the cavity (8) of the pelt board (6), and herewith that air which exists under the open structure, wherein the pelt board (6) consists of two similar half shells (48, 50) combined with locking means (30), and which is suitable for use together with the system according to claim 2 comprising a board (6) where the drying of the pelt (4) takes place by drying out the leather side of a pelt (4) which has been drawn onto the board (6), stretched and secured in this position by a fixing bag, where the board (6) has a longitudinal axis (16), a first transverse axis (20) and a second transverse axis (22), a front end (14) for engagement in the cranium end of a pelt (4), and a foot end (16) which is preferably terminated at right-angles in relation to the longitudinal axis (16) of the board (6), the board (6) has at least a first and a second arched surface with an open structure which defines a cavity (8), and where the surfaces of the board (6) are in essence formed symmetrically around at least two of the defined axes (18, 20, 22), and where the board (6) comprises at least one opening to the cavity (8) in the foot end (16), wherein the pelt board (6) consists of two similar half shells (48,50) combined with locking means (30), wherein the facing edges of the half shells (48,50) defining an envisaged first plane (38), and whose sides facing away from each other extend in an arched manner, and where the locking means (30) are arranged so that the two half shells (48,50) are

relatively displaceable away from and towards the first plane (38). between a first outer position where a slot-shaped opening (40) arises between the subtending sides (42,44) of the half shells (48,50), and a random position where said sides (42,44) can be in contact with each other, **and wherein between the half shells (48,50) forcing means (46) are inserted for locking of the half shells (48,50) in the first outer position.**"

VII. The opponent argued substantially as follows.

D8 only disclosed locking means allowing a relative displacement of the two half shells of the pelt board, and methods in which forcing means were inserted between said half shells to lock them in a first outer position. The sentence at line 7 of page 37 of D8, where screws were mentioned, had to be construed taking the rest of the description into account as the disclosure of locking means made by screws, but also allowing said relative movement.

Claim 1 of the main request and of auxiliary requests 1a, 2 and 3 contravened the requirements of Article 76(1) EPC because they extended to methods in which pelt boards were used having locking means preventing relative displacement, and no forcing means were inserted between the half shells.

The protection of independent claim 1 of amended auxiliary request 3 was broader than the protection conferred by independent claims 1 and 2 as granted, in contravention with the requirements of Article 123(3) EPC. Compliance with the requirements of Article 123(3) EPC was not to be assessed by comparing the scope of amended independent claim 1 with the scope of any possible combination of granted independent and

dependent claims, such as granted claim 5, as this constituted an undue burden.

VIII. The patent proprietor argued substantially as follows.

D8 also disclosed methods using pelt boards where the locking means for the two half shells were not arranged so as to allow relative displacement of the shells away from and towards each other and therefore no forcing means were inserted between them. Such a mutual displacement was, even when taking the description as a whole into account, not to be seen as being an essential feature which was implicitly present in all the embodiments described in D8.

Taking all this into account the main request, as well as auxiliary requests 1a, 2 and 3 complied with the requirements of Article 76(1) EPC.

The subject-matter of claim 1 of amended auxiliary request 3 was already protected by claim 5 of the patent as granted, and, therefore, the requirements of Article 123(3) EPC were met by this request.

Reasons for the Decision

1. D8 - content of the disclosure

1.1 The patent proprietor argues that D8 also disclosed pelt boards where the locking means for the two half shells were not arranged so as to allow relative displacement of the shells away from and towards each other.

These embodiments were, so the patent proprietor, derivable from figures 3 and 14, together with the corresponding passages of the description, where such a relative displacement was not mentioned, and from page 37, line 7, where locking by screws was explicitly mentioned.

This interpretation was, according to this party, in agreement with the description of D8 taken as a whole, because a skilled reader immediately understood that avoiding clips and black spots was the primary objective to be achieved, whereby a quicker removal of the dried pelt from the pelt board, made possible by the relative displacement of the half shells, was clearly of secondary importance.

Such a mutual displacement, described at page 16 of D8 as being optional, could not be considered, as the appealed decision and the opponent did, as an essential feature which was implicitly present in all the embodiments described in D8.

The patent proprietor further argued that no displacement was possible and no forcing means could be inserted between the half shells, when these were locked by screws, as explained at page 37, line 7.

1.2 The Board disagrees.

Figure 14 and figure 15 relate to the same embodiment, referred to as "third embodiment" at page 41, lines 21-26 of D8.

Figure 15 clearly shows that also in this embodiment the locking means are realized by projections 88 and projections 90 with openings 92 corresponding to those

indicated with reference signs 88, 90 and 92 in figure 9 of D8 (see also page 37, lines 6-14).

As a consequence of that a skilled reader of D8 would immediately understand that the embodiment depicted in figures 14 and 15 comprises locking means which interact with forcing means (46, see figure 15), and are arranged so that the two half shells are relatively displaceable away from and towards the first plane.

Hence, the embodiment of figure 14 of D8 does not encompass locking means, which are arranged so that the two half shells are **not** relatively displaceable away from and towards the first plane (38) and which do not cooperate with forcing means.

The passage at page 16, lines 11-18, stating that it is **preferred** that the locking means are arranged so that the two half shells are relatively displaceable away from and towards the first plane and cooperate with forcing means does not amount to a disclosure of locking means firmly locking the two half shells to each other.

The sentence at line 7 of page 37, where **screws** are mentioned as constituting the locking means, is clearly in the context of the description of a method for drying out the leather side of a pelt in which the two half shells of the pelt board are displaced away from the first plane defined by the facing edges thereof by forcing means inserted between them (see page 36, line 27), and has to be construed taking this context into account.

This implies that in this particular context of the description such locking means made by screws also

allow the mutual displacement necessary for inserting the forcing means between the half shells.

In conclusion, **only** locking means allowing a relative displacement of the two half shells of the pelt board, and **only** methods in which forcing means were inserted between the half shells to put them in the first outer position are disclosed in D8.

2. Claim 1 of the main request - Article 76(1) EPC

In the method of claim 1 of the main request pelt boards are used in which two half shells are combined with locking means, but as these locking means are not further specified, this claim extends to embodiments in which the locking means prevent relative displacement of the shells away from and towards from each other.

As discussed above, such pelt boards made by two half shells firmly locked to each other were not disclosed in D8.

Taking this into account, claim 1 of the main request contravenes the requirements of Article 76(1) EPC.

3. Claim 1 of auxiliary request 1a - Article 76(1) EPC

The method of claim 1 of auxiliary request 1a encompasses embodiments in which the locking means simply consist of screws.

Said claim also contravenes the requirements of Article 76(1) EPC because it extends to pelt boards in which the two half shells are firmly screwed to each other. Thus, auxiliary request 1a cannot be allowed for the same reasons as the main request.

4. Claim 1 of auxiliary request 2 - Article 76(1) EPC

Claim 1 of auxiliary request 2 contravenes the requirements of Article 76(1) EPC for the same reasons already discussed in relation to claim 1 of the main request, as the locking means mentioned therein also extend to pelt boards made by two half shells firmly locked to each other.

5. Claim 1 of auxiliary request 3 - Article 76(1) EPC

The method claimed in claim 1 of auxiliary request 3 does not foresee the use of forcing means inserted between the half shells to lock them in a first (expanded) outer position. This claim therefore extends to methods for drying out the leather side of a pelt in which the half shells are not locked in such a position, or are locked by means which are not inserted between them.

As discussed above under point 1 such methods are not disclosed in D8.

As a consequence of that the subject-matter of claim 1 of auxiliary request 3 also contravenes the requirements of Article 76(1) EPC.

6. Claim 1 of amended auxiliary request 3

6.1 The opponent argued that the requirements of Article 123(3) EPC were not satisfied because the scope of protection of claim 1 of amended auxiliary request 3 was broader than the scope of protection conferred by claim 2 as granted.

According to the opponent the compliance with the requirements of Article 123(3) EPC had to be assessed by comparing the scope of independent claims only, because analysing the scope of any possible combination of independent and dependent claims constituted an undue burden.

6.2 The Board disagrees.

Article 69 EPC does not stipulate that the extent of the protection conferred by a European Patent is determined by the independent claims only, but by "the claims", which means all the claims.

As a consequence of that, an amended claim formulated as an independent claim does not contravene the requirements of Article 123(3) EPC if the extent of protection it confers is not extended when compared with the extent of protection conferred by a granted claim, even if such granted claim is formulated as a dependent claim.

The Board considers that **in the present case**, analysing the scope of granted claim 5 did not constitute an undue burden on a skilled reader.

The Board also concurs with the view of the patent proprietor that the subject-matter protected by claim 1 of amended auxiliary request 3 was already protected by granted claim 5 of the patent as granted that refers back to claims 4 and 2, and notes that this has not been contested by the opponent.

Based on all that, the Board concludes that Article 123(3) EPC does not forbid the amendments done in claim 1 of auxiliary request 3a.

- 6.3 The opponent, apart from the objection under Article 123(3) EPC, did not submit any further objections to amended auxiliary request 3 that, and the Board does not consider any other objection evident.
7. As a consequence, the Board finds that neither the patent proprietor nor the opponent submitted convincing arguments to overrule the decision under appeal.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated