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**Datasheet for the decision  
of 31 March 2020**

**Case Number:** T 2511/17 - 3.2.01

**Application Number:** 13783541.9

**Publication Number:** 2877777

**IPC:** F21S8/02, B60Q3/02, F21V21/04,  
F21V21/30

**Language of the proceedings:** EN

**Title of invention:**  
RECESSED LIGHTING FIXTURE

**Patent Proprietor:**  
SG Armaturen AS

**Opponent:**  
Unilamp Norden AS

**Headword:**

**Relevant legal provisions:**  
EPC Art. 100(b), 100(a)

**Keyword:**  
Sufficiency of disclosure - (yes)  
Fresh grounds for opposition in appeal proceedings - not  
admitted

**Decisions cited:**

T 0177/08, T 1172/08, T 1691/11, G 0010/91

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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Case Number: T 2511/17 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 31 March 2020**

**Appellant:** Unilamp Norden AS  
(Opponent) Industriveien 11  
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**Representative:** Protector IP AS  
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**Respondent:** SG Armaturen AS  
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**Representative:** Zacco Norway AS  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 15 September 2017 rejecting the opposition filed against European patent No. 2877777 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** S. Mangin  
P. Guntz

## **Summary of Facts and Submissions**

- I. The appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition filed against the patent in suit (hereinafter "the patent").
  
- II. The opposition division held that the patent disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC). No further grounds for opposition having been submitted, the opposition division decided to reject the opposition.
  
- III. With the statement of ground of appeal, the appellant explained why it disagreed with the decision of the opposition division on sufficiency of disclosure and requested that the decision under appeal be set aside.  
  
With the reply, the respondent (patent proprietor) requested that the appeal be dismissed.
  
- IV. With letter dated 16 November 2018 the appellant filed evidence in support of objections of lack of novelty and inventive step of claim 1 of the patent as granted.  
  
With letter dated 22 January 2019 the respondent objected to the introduction of these fresh grounds for opposition in conformity with G 10/91.
  
- V. With the communication accompanying the summons for oral proceedings, the Board expressed its preliminary opinion that the invention was sufficiently disclosed and that the fresh grounds for opposition could not be

considered according to G 10/91.

VI. With letter of 24 March 2020, the appellant withdrew the request for oral proceedings, acknowledged that the issues of novelty and inventive step were late filed and would not be discussed further, and submitted further arguments in respect of sufficiency of disclosure.

VII. The oral proceedings were then cancelled and the present decision was taken in written proceedings.

VIII. Claim 1 of the main request (with the feature numbering used by the opposition division) reads as follows:

F1) A recessed lighting fixture (1) comprising  
F2) a lamp holder (6)  
F3) and a housing (2),  
F4) wherein the housing (2) is provided with a central opening (4),  
F5) wherein the central opening (4) is surrounded by a first circumferential wall portion (5) defining on the outside of the housing (2) a recess for receiving the lamp holder (6),  
F6) wherein the lamp holder (6) is provided with an opposite second circumferential wall portion (12),  
F7) wherein the lamp holder (6) is movably connected to the housing (2) by means of a gimbal mechanism comprising a gimbal frame (7) rotatably connected to the housing (2) by one or more first connection means (8) such that the gimbal frame is rotatable about a first rotational axis (9),  
F8) wherein the lamp holder (6) is rotatably connected to the gimbal frame (7) by one or more second connection means (10) such that the lamp holder (6) is rotatable about a second rotational axis (11)

substantially perpendicular to the first rotational axis (9),  
characterized in that  
F9) the gimbal frame (7) is connected to the housing (2) by the first connection means (8) inside the housing (2),  
F10) wherein the gimbal frame (7) extends from said first connection means (8), over the first and second wall portions (5, 12), and into the inside of the lamp holder (6) through one or more recesses or openings (13) in the lamp holder (6),  
F11) and wherein the lamp holder (6) is rotatably connected to the gimbal frame (7) by said second connecting means (10) inside the lamp holder (6).

## **Reasons for the Decision**

### 1. Sufficiency of disclosure - Article 100(b) EPC

The patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

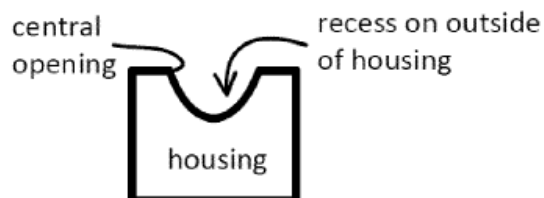
#### 1.1 In the present invention the outside of the housing 2 has been defined as the side of the recess defined by the first circumferential wall portion 5 for receiving the lamp holder (see features F5 and F9 of claim 1 and paragraph [0025], lines 6-9 of the description) and the inside of the housing as the space on the other side of the first circumferential wall portion 5 (see paragraph [0025], lines 9-14). The outside of lamp holder 6 has been defined as the side defined by the second circumferential wall 12 towards the housing and the inside of the lamp holder 6 as the side where the lamp is located (see feature F10 and paragraph [0025], lines

14-19 of the description). Therefore the definition of the inside and the outside of the housing 2 and of the lamp holder 6 are laterally reversed, but clear and consistent throughout the description and the claims and the skilled person can carry out the invention.

1.2 The appellant is of the opinion that there is a substantial discrepancy between the invention, as defined by claim 1 and construed by the skilled person reading claim 1, and the embodiments disclosed in the description, such that the patent does not clearly and sufficiently disclose the invention i.e. a recessed lighting fixture falling within the scope of claim 1.

1.2.1 In particular the appellant is of the opinion that feature F9 of claim 1: "the gimbal frame (7) is connected to the housing (2) by the first connection means (8) inside the housing (2)" would be construed by any skilled person to mean that the gimbal frame 7 is enclosed inside the housing 2, i.e that the housing 2 surrounds the gimbal frame 7. However based on the description, paragraphs [0024]-[0033] inside the housing is defined as meaning the opposite.

1.2.2 Furthermore to illustrate his interpretation of claim 1 in particular feature F4 and F5, the appellant submits the following drawing with letter dated 24 March 2020:



- 1.2.3 The appellant further notes that in feature F11, the same term "inside" is intended to mean inside the lamp holder and not outside, thus having its ordinary meaning.
- 1.2.4 The appellant cites the following decisions T 0177/08, T 1772/08 and T 1691/11 to support that the description may be used to determine the scope of the claims only if the feature is unclear, which is not the case for the feature F9.
- 1.3 The Board cannot follow the line of argumentation of the appellant.
  - 1.3.1 The Board agrees with the appellant that it is established case law that discrepancy between the claims and the description is not a valid reason to ignore the clear linguistic structure of a claim and to interpret it differently (T 431/03) or to give a different meaning to a claim feature which in itself imparts a clear credible technical teaching to the skilled reader (T 1018/02; see also T 1395/07). In some circumstances, the description can be used as the patent's "dictionary" to assess the correct meaning of ambiguous terms used in claims (see in this respect "Case Law of the Boards of Appeal of the European Patent Office, 9th Edition, July 2019, Chapter II.A. 6.3.3). However, if a term used in a claim has a clear technical meaning, the description cannot be used to interpret such a term in a different way. In case of a discrepancy between the claims and the description, the unambiguous claim wording must be interpreted as it would be understood by the person skilled in the art without the help of the description (T 2221/10).



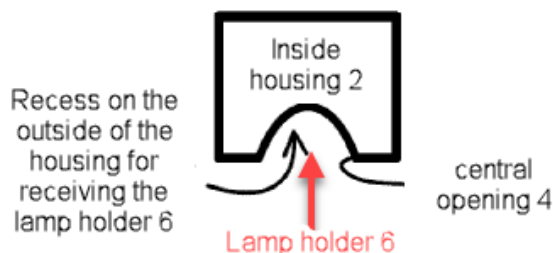
1.3.2 However in the present case feature F9 should be read together with the rest of the features defined in claim 1 in particular features:

F4) wherein the housing (2) is provided with a central opening (4)

F5) wherein the central opening (4) is surrounded by a first circumferential wall portion (5) defining on the outside of the housing (2) a recess for receiving the lamp holder (6).

Feature F5 of claim 1 clearly and unambiguously defines that the side of the recess where the lamp holder (6) is placed is the outside of the housing (2). While this definition of the outside and inside of the housing may not be the intuitive one for an ordinary person, it is to be noted that for the skilled person in the present technical field this definition it is not illogical since a recessed lighting fixture is a lighting fixture that is installed into a hollow opening in a ceiling or wall. With this knowledge, if the frame of reference is placed in the hollow opening of the ceiling or wall then the outside of the housing is defined as feature F5 foresees and the inside towards the hollow opening in the wall or ceiling.

1.3.3 Furthermore the Board is of the opinion that the above-mentioned drawing submitted by the appellant is in line with the meaning of features F4 and F5 of claim 1 and is consistent with the description and the figures. Turning the drawing 180 degrees as illustrated below corresponds to the housing depicted on the figures of the patent.



Therefore the wording of claim 1 is clear and consistent with the description.

- 1.3.4 Similarly to feature F9, feature F11: "wherein the lamp holder (6) is rotatably connected to the gimbal frame (7) by said second connecting means (10) inside the lamp holder (6)" should be read together with the rest of the features of claim 1 in particular features F9 and F10, according to which the gimbal frame (7) is connected by the first connection (8) inside the housing (2) and extending over the first wall portion (5) of the housing (2) and the second wall portion (12) of the lamp holder (6) and into the inside of the lamp holder 6. Thus reading features F9, F10 and F11 together it appears that the inside of the lamp holder is on the side of the recess.

While the inside of the lamp holder has not been defined using the same frame of reference as the housing, it is clear from the wording of claim 1 in particular features F9-F11, which side is the inside and which side is the outside of the lamp holder.

- 1.3.5 To conclude, there are no inconsistencies between the definition of the inside/outside of the housing between claim 1 and the description. To understand feature F9, there is thus no need to refer to the description. A reading of the claim as a whole is sufficient to

understand that the outside of the housing 2 is on the side of the recess, where the lamp holder is placed and thus the inside of the lamp holder is on the opposite side.

1.3.6 The appellant quoted from T 0177/08 the following passage: "If it is intended that a term which is in no need of any interpretation is given a new meaning, then the definition for this new meaning must be put into the claims. Third parties cannot be expected to check every single term of the claims for a potentially different meaning that might be hidden somewhere in the description". The appellant further cited T 1172/08 which stated "Reading the patent proprietor's interpretation into claim 1 would require the skilled reader to completely ignore the wording of granted claim 1, which per se was not technically meaningless, with the consequence that the wording of claim 1 would merely serve as an empty shell. This was clearly not in the sense of Art. 69 EPC nor in the sense of the protocol on its interpretation. Moreover the interest of third parties in legal certainty would be completely ignored if the patent proprietor's interpretation were found to be acceptable" and T 1691/11: "the clear linguistic structure of the claim did not allow for any different interpretation. Additionally, a discrepancy between the claims and the description was not a valid reason to ignore the clear linguistic structure of a claim and thus to interpret the claim differently (see also T 431/03). When the wording of a claim is perfectly clear it needs to be considered under Article 83 EPC, rather than undertaking another speculative interpretation of the claim."

1.3.7 The Board considers that present claim 1 is in line with the above quoted decisions. "Inside the housing"

in feature F9 does not need to be construed on the basis of any supplementary means of interpretation as its meaning is defined by feature F5 of claim 1 itself. Therefore third parties would not need to consult the description to understand the meaning of "inside the housing" and legal certainty is respected.

2. Fresh grounds for opposition - Novelty and inventive step - Article 100(a) EPC

The opponent raises for the first time in appeal an objection of lack of novelty and inventive step of claim 1 with his letter of 16 November 2018.

According to G 0010/91 fresh grounds for opposition may be considered in appeal proceedings only with the approval of the patentee. Since the respondent (patentee) objected to their introduction (see point IV above), the new grounds of opposition under Article 100(a) EPC are not considered.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated