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**Datasheet for the decision  
of 17 March 2021**

**Case Number:** T 0725/18 - 3.2.01

**Application Number:** 11154659.4

**Publication Number:** 2489528

**IPC:** B60C27/10, B60C27/06

**Language of the proceedings:** EN

**Title of invention:**  
Anti slip device for a wheel

**Patent Proprietor:**  
König IP AB

**Opponent:**  
RUD Kettenfabrik Rieger & Dietz GmbH & Co

**Headword:**

**Relevant legal provisions:**  
EPC Art. 100(a), 54  
RPBA Art. 12(4)

**Keyword:**  
Novelty - Main request and first auxiliary request (no)  
Late-filed requests - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

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Case Number: T 0725/18 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 17 March 2021**

**Appellant:** König IP AB  
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**Representative:** Grünecker Patent- und Rechtsanwälte  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 16 January 2018  
revoking European patent No. 2489528 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** H. Geuss  
**Members:** J. J. de Acha González  
A. Jimenez

## Summary of Facts and Submissions

- I. The appeal of the patent proprietor lies against the decision of the Opposition Division revoking European patent n° 2489528.
- II. In its decision the Opposition Division found among others that the subject-matter of claim 1 of the granted patent as well as of the auxiliary request 1 lacked novelty pursuant to Article 54 EPC in view of EP 0 292 315 A1 (D2).
- III. Oral proceedings by videoconference were held before the Board on 17 March 2021.
- IV. The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted, as a main request, or, in the alternative, that the patent be maintained in amended form in accordance with one of the first to third auxiliary requests filed with the statement of grounds of appeal.

The respondent (opponent) requested that the appeal be dismissed or, if the Board considered that any of the requests of the appellant (patent proprietor) were novel, that the case be remitted to the Opposition Division for further prosecution.

- V. Granted claim 1 reads as follows (feature numbering according to the impugned decision):
  1. "An anti slip device (1 0) for a wheel (40) having a

- first side (40a), a second side (40b) and a tread (41), said anti slip device (10) comprising
2. a first connection arrangement (11) adapted to be positioned substantially adjacent said first side (40a) of said wheel (40),
  3. a second connection arrangement (12) adapted to be positioned substantially adjacent said second side (40b) of said wheel (40), and
  4. at least one anti slip member (13) extending between said first connection arrangement (11) and said a second connection arrangement (12),
  5. said at least one anti slip member (13) is adapted to provide said tread (41) of said wheel (40) with an anti slip surface and,
  6. a securing arrangement (100) for securing said anti slip device (10) to said wheel (40), said securing arrangement (100) comprises a flexible elongated element (30), having a first and a second end (30a, 30b),
  7. said first connection arrangement (11) comprises a first arc formed portion (20) having a first end (21) and a second arc formed portion (22) having a first end (23),
  8. said flexible elongated element (30) extends displaceably between, and past, a first working point (21a) on said first arc formed portion (20) and a second working point (23a) on said second arc formed portion (22), enabling upon tightening of said flexible elongated element (30) said first ends (21, 23) of said arc formed portions (20, 22) to be displaced towards each other to a position at which said anti slip device (10) can be secured to said wheel (40), characterized in that
  9. said flexible elongated element (30) is configured to extend across said tread (41) of said wheel (40) at a first position, and in that

10. said first ends (21, 23) of said first and second arc formed portion (20, 22) are arranged substantially opposite of said first position, with respect to said first connection member (11) and said wheel (40), after said anti slip device (10) has been mounted on said wheel (40)."

Claim 1 of the first auxiliary request differs from granted claim 1 in that feature 7 further includes the following feature:

"... said first and second arc formed portions (20, 22) having their own structural integrity, thus retaining their arc form without any external influences or manipulation,"

Claim 1 of the second auxiliary request differs from granted claim 1 in that feature 7 has been amended as follows:

"said first connection arrangement (11) **consists of** a first arc formed portion (20) having a first end (21) and a second arc formed portion (22) having a first end (23),"

Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that feature 7 has been further amended as follows:

"said first connection arrangement (11) consists of a first arc formed portion (20) having a first end (21) and a second arc formed portion (22) having a first end (23), **said first and second arc formed portions (20, 22) having their own structural integrity, thus retaining their arc form without any external influences or manipulation,**".

## **Reasons for the Decision**

1. *Main request and first auxiliary request - Novelty*
- 1.1 The subject-matter of granted claim 1 as well as the subject-matter of claim 1 of the first auxiliary request are not new in view of the anti slip device disclosed in D2 (Article 54 EPC).
- 1.2 Since claim 1 of the first auxiliary request includes all the features of granted claim 1 the lack of novelty of the subject-matter of the former claim 1 applies also to the subject-matter of the latter claim 1.
- 1.3 The appellant (patent proprietor) argued in the written procedure that the elements 8 could not be seen as the claimed first connection arrangement, which was positioned adjacent the first side of the wheel, and distinguished from the second connection arrangement, that was positioned adjacent the second side of the wheel, and from the anti-slip members on the tread, which extended therebetween (see features 2 to 4 of claim 1) due to the fact that the displacement of said two elements 8 was through a rotation of such elements around the axis of respective screws 14 that fixed the elements 8 to the other side of the wheel.  
During the oral proceedings the appellant further defended that the device disclosed in D2 was structurally and functionally very different from that of the contested patent. Additionally, the end portions of elements 8 were straight and not curved, thus not

arc formed portions as required by claim 1. Such ends should be understood as the punctual end of elements 8, i.e. the end line parallel to the wire, and not as a portion. Further, the interpretation of claim 1 should be such that the first connection arrangement comprised exclusively the first and second arc formed portions and not further elements. In contrast, the device from D2 included more than just two arc formed portions.

1.4 The Board disagrees and shares the view of the Opposition Division in its decision (see page 11 of the decision) and that of the respondent (opponent) (see reply bridging paragraph between pages 15 and 16). Not the complete band members 8 represent the first connection arrangement but the end portions of the band members 8 which are positioned substantially adjacent to the first side of the wheel W and are connected via the fastening cord 11. These end portions amount to a connection arrangement since they connect and fix the anti-slip device to the wheel, and, specifically, to one side of the wheel in the same way as the first connection arrangement of the patent does. The fact that the band members integrate the anti-slip members is not excluded from the subject-matter of claim 1 and equates to the embodiment of the invention in figures 1 to 3 of the patent where the second connection arrangement 12 and the anti-slip members 13 constitute different sections of the same chain (see figure 1). Further, the end portions of elements 8 are not to be solely considered as being the end edges of band members 8. These end portions of band elements 8 which are positioned substantially adjacent the inner side of the wheel are indeed formed as an arc along the section depicted in figure 3 of D2 and explicitly disclosed in the description of D2 (see lower band member 8 in figure 3 and also column 2, lines 47 ff.). In addition,



the claim wording is not limiting the first connection arrangement as only comprising the first arc formed portion and the second arc portion. The first connection arrangement can indeed include other portions and elements. It might be, as the appellant submitted, that the specification of the patent and the preferred embodiments disclosed therein are only showing first connection arrangements comprising only two arc formed portions. However, the wording of the claim as such is broader than how the appellant interpreted it. Additionally, the claim does not need any reference to the description of the patent for interpretation since as such the claim makes technical sense to the skilled person. Lastly, that the structure and functionality of the anti slip device of D2 differs from the one shown in the specification of the patent is not relevant when assessing novelty of the subject-matter of claim 1. What matters is whether the anti slip device disclosed in D2 falls under that subject-matter claimed. This is indeed the case.

2. *Second and third auxiliary requests - admissibility*

2.1 The second and third auxiliary requests were submitted by the appellant (patent proprietor) for the first time with the statement of grounds of appeal.

2.2 Article 12(4) RPBA 2007 (Rules of Procedure of the Boards of Appeal OJ EPO 2007, 536) applies to the current appeal (see Article 25(2) RPBA 2020; Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63). Under this provision the Board has the power to hold inadmissible requests which could have been presented in the first instance proceedings.

2.3 In the present case the appellant (patent proprietor) justified the filing of these auxiliary requests at the appeal stage in view of the fact that, at the oral proceedings, the Opposition Division changed its preliminary view on lack of novelty over D2, and therefore the amendments had become necessary in order to better distinguish the subject-matter of claim 1 from D2. Further, in view of the developments during the oral proceedings before the Opposition Division, it did not have the possibility to present these auxiliary requests during the opposition proceedings since the Opposition Division already stated during the oral proceedings that subject-matter of claim 1 lacked novelty not only in view of D2 but also in view of D7. Since the current second and third auxiliary requests were directed to overcome the novelty problem only in view of D2 but not in view of D7, it was allegedly not possible to present these requests before the Opposition Division during the oral proceedings.

2.4 The Board, however, sees no reasons in the course of the opposition proceedings that justify the filing of these requests in appeal proceedings. The arguments of the opponent as regards lack of novelty in view of D2 were already present in its notice of opposition and the appellant should have from the outset of the opposition proceedings reacted with its requests accordingly.

As regards the change of view of the Opposition Division during the oral proceedings with respect to novelty in view of D2, it is the nature of a preliminary opinion that it is not binding of the final decision and the appellant (patent proprietor) should have expected that the lines of argument of the opponent could persuade the Opposition Division and

should have filed auxiliary requests as fall-back positions accordingly (cf. Case Law of the Boards of Appeal, 9th edition, III.B.2.3.7).

The Board states there is no principle right in inter-partes proceedings for a party to get a valid opinion of the deciding body with respect to the submitted arguments before having the possibility to adjust its requests accordingly.

- 2.5 The argument of the appellant that the present second and third auxiliary requests would not have been admitted during the oral proceedings after the negative conclusion of the Opposition Division on novelty for the first auxiliary request with respect to D2 and D7 is not relevant for the present decision. The corresponding objections were on file since the filing of the notice of the opposition and the outstanding objections did not change.

The appellant should have been aware that the oral proceedings could lead to situations in which it would not only be unable to maintain its maximum position, but would also be unable to formulate potential fallback positions. If such a fallback position has not been defined by a suitable request beforehand it may occur that it is not possible to do so during the oral proceedings. This results in the subject-matter of the potential fallback position not being part of the Opposition Division's decision.

In the present case, this means that the fact that the appellant did not submit suitable requests before the oral proceedings in due time led to the situation that it was obliged to file requests during the oral proceedings which had to cope with all objections as

announced by the Opposition Division at that time (lack of novelty over D2 and D7) and thereby to refrain from filing the current second and third auxiliary requests that just deal with the novelty issue over D2.

Hence, the appellant should have filed in the course of the opposition proceedings - preferably with the reply to the notice of opposition, but at the latest before the oral proceedings within the given time limits - the requests it deems necessary to overcome the objections that in its view are validly raised in order to maintain its patent in a form that it approves including the relevant fallback positions.

- 2.6 Under these circumstances the Board exercising its discretionary power under Article 12(4) RPBA 2020 did not admit auxiliary requests 2 and 3 into the proceedings.

## **Order**

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

1. The appeal is dismissed.

The Registrar:

The Chairman:



D. Magliano

H. Geuss

Decision electronically authenticated