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**Datasheet for the decision
of 6 October 2020**

Case Number: T 2067/18 - 3.2.01

Application Number: 10737118.9

Publication Number: 2582575

IPC: B63H20/02, B63H20/06,
B63H20/08, B63H20/36, B63B7/08

Language of the proceedings: EN

Title of invention:

APPARATUS FOR MOVING AN OUTBOARD MOTOR INSTALLED ON A BOAT AND
BOAT WITH FOLDAWAY OUTBOARD MOTOR

Patent Proprietor:

Siner "G" S.r.l.

Opponent:

Atmosphère S.r.l.

Headword:

Relevant legal provisions:

EPC Art. 54, 84
RPBA Art. 12(4)

Keyword:

Novelty - main request (yes)

Late-filed evidence - admitted (no)

Claims - clarity - not open to examination

Decisions cited:

G 0003/14

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 2067/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 6 October 2020

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
6 June 2018 concerning maintenance of the
European Patent No. 2582575 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
O. Loizou

Summary of Facts and Submissions

I. The appeal of the opponent lies against the decision of the Opposition Division to maintain the European patent 2582575 in amended form according to the auxiliary request 3 filed with letter of 16 March 2018.

II. In the contested decision the following pieces of prior art are cited among others:

D1: GB 1 129 478,
D2: US 4 279 602,
D3: GB 919 895,
D4: US 2 905 132,
D5: AU 2009225271 A1, and
D6: US 6 007 391.

With the statement of grounds of appeal the opponent filed for the first time the following evidence:

A1: IT 1347241,
A3: US 4 465 423 A, and
A4: US 2003 196582 A1.

III. With the statement of grounds of appeal, the appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed, or, in the alternative, that the patent be maintained in amended form according to the auxiliary request as filed with the reply.

- IV. In a communication dated 22 November 2019 pursuant to Article 15(1) RPBA 2007 (Rules of Procedure of the Boards of Appeal OJ EPO 2007, 536) the Board presented its preliminary view of the case in preparation to the oral proceedings set for 24 March 2020. In particular, the Board reasoned why it considered that the subject-matter of claim 1 of the main request corresponding to auxiliary request 3 before the Opposition Division, was new in view of D2 and why it intended not to admit the new evidence filed with the statement of grounds of appeal on which the appellant based the only objections on inventive step raised for the subject-matter of claim 1. Further, it pointed out that claim 1 of the main request was not open for a clarity examination since it corresponded to granted claim 6.
- V. Due to the COVID-19 pandemic the oral proceedings were rescheduled for 2 September 2020. With a further communication according to Article 15(1) RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) in preparation to those oral proceedings the Board stated that there was no reason to change its preliminary view of the case since the parties had not made any further submissions after the communication of 22 November 2019.
- VI. With letter of 27 August 2020 the appellant informed the Board that it would not attend the scheduled oral proceedings before the Board.
Oral proceedings were then cancelled.
- VII. Claim 1 of the main request is identical to claim 6 as granted and reads as follows:

"A semirigid inflatable boat (B) with foldaway outboard motor (A) of the type that comprises bottom boards (6)

delimited by sides and a transom (3) extending upwardly from said bottom boards (6), the outboard motor (A) being coupled, even indirectly, to the transom (3) of the boat, comprising a panel (5), for the coupling of said motor (A), which is at least rotatably coupled, by virtue of articulation means (7), to at least one portion of said boat (B) chosen between the transom (3) and the bottom boards (6), said panel (5), by virtue of the action of said articulation means (7), being movable from a first configuration for navigation, in which said panel (5) is partially superimposed on said transom (3) and extending upwardly therefrom and rigidly coupled thereto, to a second configuration for housing the boat (B), in which said panel (5) is rotated substantially at right angles to said transom (3), in said second configuration said panel (5) being almost parallel to the plane of the bottom boards (6) of the boat (B), and further comprising at least one track which is jointly connected to said bottom boards (6) for the sliding engagement of at least one slider (8) that constitutes one of said articulation means (7), said slider (8) being provided with at least one upper hinge (9) with which said panel (5) is associated, in said first configuration for navigation said hinge (9) keeping said panel (5) substantial superimposed on said transom (3) with said slider (8) arranged along the tracks proximate to said transom (3), in said second configuration for housing the boat (B) said panel (5) being rotated, about said hinge (9), and moved forward toward the stem following a translational motion toward the stem of said at least one slider (8) along the respective tracks."

Reasons for the Decision

1. Main request - novelty

The appellant submitted in the grounds of appeal that the subject-matter claim 1 is not new in view of the boat disclosed in D2. However, in those submissions the appellant also admits that D2 does not disclose a semirigid inflatable boat but a non-inflatable boat and considers that such a difference is irrelevant since the claimed subject-matter may be integrally referred to any kind of boat, including the boat of D2.

The Board disagrees and shares the view of the respondent. Claim 1 is directed to a semirigid inflatable boat and consequently it is limited to an inflatable boat. Since D2 refers only to a rigid non-inflatable (sailboat) having a hull, a keel, a transom and a deck it cannot anticipate the subject-matter of claim 1. The subject-matter of claim 1 differs thus from the boat according to D2 at least in that the boat is inflatable.

Consequently, the subject-matter of claim 1 of the main request is new in view of D2 (Article 54 EPC).

2. Admissibility of new evidence - A1, A3 and A4

Documents A1, A3 and A4 were filed for the first time with the statement of grounds of appeal.

According to Article 12(4) RPBA 2007 (provision that applies to the current case pursuant to Articles 24 and 25(2) RPBA 2020) the Board has the power to hold

inadmissible facts and evidence which could have been presented in the first instance proceedings.

Claim 1 of the main request is identical to granted claim 6 which was opposed during the opposition proceedings on the ground of lack of inventive step in view of combinations of prior art documents D1 to D6, all dealt with in the contested decision (see point 5.2 of the decision of the Opposition Division).

The appellant, however, with the appeal does not contest the findings of the Opposition Division in view of that evidence and files new evidence A1, A3 and A4 and argues on lack of inventive step for the subject-matter of claim 1 on that basis only (see grounds of appeal page 3). This runs counter the primary object of the appeal proceedings which pertains to the review of the decision under appeal in a judicial manner.

The Board shares the view of the respondent (see point A. of the reply) that the appellant not only could but should have filed this new evidence already with the notice of opposition since the subject-matter under discussion is that of granted claim 6. The appellant fails to give any reason why this evidence was filed for the first time with the appeal and the Board is unable to identify in the course of the opposition proceedings any justification for it.

Accordingly, the Board exercising its power pursuant to Article 12(4) RPBA does not admit documents A1, A3 and A4 into the appeal proceedings (see Case Law of the Board of Appeal of the EPO, 9th Edition, V.A.4.11.3 a)).

3. Main request - inventive step

In its decision the Opposition Division found that the subject-matter of claim 1 of the main request involved an inventive step in view of the following combinations of prior art:

- (i) D1 or D2 with D6,
- (ii) D3 with D2 and D6,
- (iii) D4 with D2 and D6, and
- (iv) D5 with D2 and D6.

As mentioned above, the appellant with the appeal does not contest the findings of the Opposition Division in its decision but only raises new lines of attack for inventive step based on the newly filed evidence A1 and A3.

Since the new evidence has not been admitted into the appeal proceedings, these objections do not form part of the current appeal proceedings either.

As no further objections on inventive step for the subject-matter of claim 1 are present (Article 56 EPC), the Board has no reason to deviate from the decision of the Opposition Division in this matter.

4. Main request - clarity

The appellant further objects that claim 1 lacks clarity and conciseness (Article 84 EPC).

According to the decision of the Enlarged Board of Appeal G 3/14, in considering whether, for the purposes of Article 101(3) EPC, a patent as amended meets the requirements of the EPC, the claims of the patent may

be examined for compliance with the requirements of Article 84 EPC only when, and then only to the extent that the amendment introduces non-compliance with Article 84 EPC.

In the case at hand, claim 1 of the main request corresponds to claim 6 as granted. Accordingly, the amendment to the patent cannot introduce a non-compliance with Article 84 EPC and therefore claim 1 of the main request is not open for examination of the requirements of Article 84 EPC.

5. It follows from the above that the appeal of the opponent is not allowable and must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated