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**Datasheet for the decision
of 5 July 2021**

Case Number: T 2855/18 - 3.2.04

Application Number: 14003537.9

Publication Number: 2875707

IPC: A01B3/46

Language of the proceedings: EN

Title of invention:

Transporting and working system for plough of the carried type

Patent Proprietor:

Moro Aratri S.R.L.

Opponent:

Amazonen-Werke
H. Dreyer GmbH & Co. KG

Headword:

Relevant legal provisions:

EPC Art. 108, 123(3), 56
EPC R. 99(2)
RPBA Art. 12(4)

Keyword:

Admissibility of appeal - appeal sufficiently substantiated
(yes)

Late-filed request - submitted with the statement of grounds
of appeal

Amendments - allowable (no)

Inventive step - (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2855/18 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 5 July 2021

Appellant: Moro Aratri S.R.L.
(Patent Proprietor) Via Gentile 209
24056 Fontanella (BG) (IT)

Representative: Garavelli, Paolo
A.BRE.MAR. S.R.L.
Consulenza in Proprietà Industriale
Via Servais 27
10146 Torino (IT)

Respondent: Amazonen-Werke
(Opponent) H. Dreyer GmbH & Co. KG
Am Amazonenwerk 9-13
49205 Hasbergen-Gaste (DE)

Representative: Grünecker Patent- und Rechtsanwälte
PartG mbB
Leopoldstraße 4
80802 München (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 26 October 2018
revoking European patent No. 2875707 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman A. de Vries
Members: G. Martin Gonzalez
W. Van der Eijk

Summary of Facts and Submissions

I. The appeal was filed by the proprietor against the decision of the opposition division to revoke the patent in suit.

II. Opposition was based inter-alia on Article 100(a) EPC for lack of inventive step.

The opposition division held that claim 1 of the patent as amended (main request) lacked an inventive step having regard inter-alia to the following evidence:

D1 DE 2 423 142

D2 DE 1 632 762

D10 DE 40 31 503 C2

III. In preparation for oral proceedings, scheduled for 15 July 2021, the board issued a communication, dated 18 November 2020, setting out its provisional opinion on the relevant issues.

With an email of 18 June 2021 the appellant-proprietor stated that they would not attend the scheduled oral proceedings.

The board then cancelled the oral proceedings scheduled for 15 July 2021. The board decided in written proceedings.

IV. The appellant-proprietor requests that the decision under appeal be set aside and a patent be granted according to a new main request filed with the statement of ground of 12 February 2019.

The respondent-opponent requests that the appeal be dismissed.

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

"Transporting and working system for plough (1) of the carried type, said system comprising:

- at least one supporting structure (3) of the ploughshares (5) of the plough (1); and
- at least one head (7) connected on one side to said supporting structure (3) and on another side to tractor means of said plough (1);
- a wheel (9) connected to said supporting structure (3) and adapted, during the transporting phase of said plough (1), to assume a non-pivoting operating position for the transport while said head (7) assumes a steering position with respect to the tractor means, and, during the working phase of said plough (1), to assume an operating working position to keep a correct working depth of the plough (1) by alternating the right or left position in synchronism with the working side of the plough (1), while said head (7) assumes a fixed or half-fixed positions with respect to the tractor means, during the working phases, by overturning the plough (1) from the right side to the left side and vice versa, the wheel (9) being adapted to change its own position to be adapted to the correct working side, through a lateral half-rotation with respect to the plough (1), with the rotation axis which is parallel to the running direction, instead of being perpendicular; and
- a blocking device (11) for blocking further rotation of the wheel (9) about said axis upon reaching the correct position thereof, which position includes a transport position that is

associated with a quarter-rotation of the wheel (9);

characterized in that said head (7) is adapted to assume a fixed or half-fixed position during the working phase, in order not to allow, or allow in a limited way, the rotation with respect to the tractor means referred to a vertical axis with respect to the ground, said head (7) being further adapted to assume a steering position during the transporting phase, such as to allow the rotation with respect to the tractor means referred to a vertical axis with respect to the ground, in order to consider the tractor-plough connection as articulated, and in that it is further equipped with an oil-dynamic actuator (13), preferably of the piston type, adapted to adjust the working depth with a command from the tractor means and to adjust the distance of the plough (1) from the ground during the transport."

VI. The appellant-proprietor argued as follows:

Amended claim 1 according to the main request better distinguishes the new and inventive features of the invention. This amended version of claim 1 therefore involves an inventive step over the cited prior art.

VII. The respondent-opponent argued as follows:

The proprietor's appeal is inadmissible, because its sole request in appeal is inadmissible. The amendments to claim 1 of the main request extend its scope beyond that conferred by the granted patent. It thus offends against Article 123(3) EPC. The subject-matter of claim 1 of the main request is obvious over a combination of the teachings of D1, D2 and D10 and it does not therefore involve an inventive step.

Reasons for the Decision

1. Admissibility of the appeal; admission of main request

The respondent-opponent requests to dismiss the appeal as inadmissible and not to admit the main request. In its communication, section 4.1, the board gave its provisional opinion that the appeal was admissible, as the appellant-proprietor in their grounds explain why the amendments in the main request address the reasons of the decision under appeal:

"4.1 The appellant-proprietor indicates on pages 4-6 of the grounds of appeal, why in their opinion the new features introduced by way of amendment in the main request address the sole reason of the Opposition Division for revoking the patent (inventive step), see section 4 of the impugned decision. This fulfills the requirement in Article 108 EPC in conjunction with Rule 99(2) EPC to give sufficient reasoning in the statement of grounds why the amendments are considered apt to remedy the deficiencies identified by the Opposition Division, see also in this respect Case Law of the boards of Appeal, 9th edition 2019 (CLBA) V.A.2.6.5.c.

As otherwise all formal requirements are met, the appeal appears to be admissible."

Moreover, the board was of the provisional opinion that the main request, because it added further limiting features vis-a-vis the cited prior art, appeared to be a legitimate reaction to the decision, and could thus be admitted, section 4.2 of the board's preliminary opinion:

"4.2 In the cases cited in CLBA, V.A.2.6.5.c where the appeal was held to be admissible, there was also no issue of non-admissibility of the new main request. In those cases the amendments were seen to attempt to address the reasons for revocation. Indeed, see CLBA, V.A.4.11.3 g), requests which further limit subject-matter by inclusion of features of dependent claims are seen to be a normal and legitimate reaction to the decision and are therefore normally admitted under Art 12(4) RPBA. That appears to be the case here, where features of granted dependent claims 5 and 6 are added to previous claim 1 to further differentiate from the cited prior art. That they then also incorporate an optional feature of those claims is irrelevant, as it does not limit the subject-matter. Thus there is no issue under Rule 80 EPC.

The Board is also unable to see any abuse or strategic benefit in filing the new main request only now in appeal. Nor does the fact that the appellant chose not to attend the oral proceedings mean that they have forfeited any right to file further amendments. There is no legal basis in the EPC for such an implication. Attending oral proceedings is not an obligation of the parties. Rather, all the circumstances of the case should be taken into account. In the present case the appellant did respond to the opposition and to the preliminary opinion of the Opposition Division by filing an amended main request and arguments, thereby addressing the objections then on file, though they did not then attend the oral proceedings. The new request appears to be a legitimate reaction of the losing party to the reasons for revocation of the patent in the impugned decision. The Board is unable to see why this new request could and should have been presented earlier.

Thus the new main request also appears to be admissible under Article 12(4) EPC 2007."

The respondent-opponent did not file a reaction in writing to this provisional opinion and the board sees no reason to change its position. In the light of the board's final decision to dismiss the appeal as unallowable in accordance with the respondent's main request (to dismiss the appeal), the board sees no reason to further hear the party on either issue. It thus finds the appeal admissible and decides to admit the main request.

2. Background

The patent is directed to a transporting and working system for a plough of the carried type, see specification paragraph [0001]. The system comprises a supporting structure with ploughshares extending at opposite sides. The plough has thus two opposite working sides. Switching working side is done by turning the plough by 180 degrees - a half-rotation. The plough has also a wheel connected to the supporting structure. The wheel is adapted to change its own position with respect to the plough through a lateral half-rotation about an axis parallel to the running direction, to be switched to the new working side, when the plough is overturned. A blocking device blocks further rotation of the wheel with respect to the plough about said axis upon reaching the working position, see paragraph [0013] and granted claim 1. For the transport position, the wheel can be rotated a quarter-rotation to assume a position completely below the plough, see figures 5 and 6. The system can also be equipped with an oil actuator to regulate the working

depth and to adjust the distance of the plough from the ground during transport, see paragraph [0017].

3. Main request - Extension of protection, Article 123(3) EPC.

3.1 The respondent-opponent objects that the scope of the amended claim 1 extends beyond that conferred by the granted patent and therefore infringes Article 123(3) EPC.

The board has set out its provisional opinion in this respect in its written communication as follows:

"5. Extension of protection, Article 123(3) EPC.

5.1 The amended claim omits the feature of granted claim 1 that the blocking device blocks the wheel at the correct position "after the half rotation". The new feature reads

"a blocking device (11) for blocking further rotation of the wheel (9) about said axis upon reaching the correct position after the half rotation thereof, which position includes a transport position that is associated with a quarter-rotation of the wheel (9)".

Embodiments maintaining the wheel in the working position (after half-rotation) by other means, for instance stabilized by the plough's weight or by a limit stop, were not covered by the granted claim and would fall now under the scope of present claim 1.

5.2 The Board considers that the Opposition Division was wrong to hold the granted feature to be implicit in amended claim 1, see decision section 3.2. They held it

to be implicit when read in combination with the previous features of the claim. However these features do not define any "correct position", but that a "correct working side, [is achieved] through a lateral half-rotation". Whether the "correct working side" corresponds to "the correct position" of the amended feature or not is left open in the claim. It can thus not be read that requiring blocking at the "correct position" implies necessarily blocking at "the correct working side" or "after the half rotation".

5.3 Since this granted feature has been omitted the amended claim contravenes the provisions of Article 123(3) EPC."

- 3.2 The appellant-proprietor refrained from presenting further comments on the issue.

Absent any further submission from the appellant-proprietor, the board sees no reason for deviating from its provisional opinion. It thus holds that claim 1 of the main request contravenes the provisions of Article 123(3) EPC.

4. Main request - Inventive step

- 4.1 In their written submissions the appellant-proprietor argues that claim 1 of the main request involves an inventive step having regard inter-alia to the teachings of D1, D2 and D10.

- 4.2 In its written communication, the board gave its preliminary opinion on this issue as follows:

"6. Inventive step

6.1 *The appellant-proprietor does not contest the conclusion of the Opposition Division that the subject-matter of claim 1 before it lacked an inventive step starting from D1, in combination with D2. Absent any submissions, the Board sees no reasons to doubt the correctness of this assessment.*

The Division held that D1 does not disclose that the wheel is adapted, during the transporting phase of the plough, to assume a non-pivoting operating position for the transport, while the head assumes a steering position with respect to the tractor means. The Opposition Division considered these distinguishing features to relate to one of in principle two possible options to provide a steering solution for a plough when attached to a tractor. The problem to be solved was therefore seen, as how to provide a suitable alternative way of achieving a plough that is steerable during transport.

6.2 *The new features are essentially different in substance and effect (see below) and can thus be assessed separately for inventive step. These new features, not disclosed by D1, require an oil-dynamic actuator to adjust the working depth and to adjust the distance of the plough from the ground during the transport. They thus provide a further adjustable plough system.*

In this respect, document D10 teaches a hydraulic cylinder 22 to adjust the support wheel 7 and so provide working depth adjustability to the plough, see paragraphs [0011] and [0030]. Although not explicitly described, the distance of the plough from the ground during the transport is also adjustable, since the adjustable support wheel 7 is also used for transport,

see D10 paragraphs [0005]-[0007] and figure 1. Thus D10 provides the same technical advantages as are sought by the skilled person, namely achieving further adjustability. They would therefore find it very relevant to solve the above formulated problem. Hence the skilled person would consider the provision of an hydraulic cylinder for adjusting the height at the supporting wheel 15 of D1 as a matter of obviousness in order to provide further adjustment possibilities in the light of the teachings of D10.

6.3 Claim 1 appear thus to lack an inventive step."

- 4.3 The appellant-proprietor refrained from presenting further comments on the issue.

Absent any further submission from the appellant-proprietor, the board sees no reason for deviating from its provisional opinion. It thus holds that claim 1 of the main request does not involve an inventive step in the sense of Article 56 EPC.

5. With their statement of grounds the appellant-proprietor auxiliarily requested oral proceedings, but with their letter dated 18 June 2021 they announced that they would not attend the oral proceedings scheduled for 15 July 2021. According to generally established practice, the board considers such statement as equivalent to a withdrawal of the request for oral proceedings, see Case Law of the Boards of Appeal, 9 edition 2019, III.C.4.3.1.

The Board is further satisfied that by its communication dated 18 November 2020 the appellant-proprietor was made aware of the central points underlying this decision and that they have therefore

had sufficient opportunity to take a position thereon. It is thus satisfied that the requirements of Article 113(1) EPC have been met.

6. For the above reasons the board holds that, taking into consideration the amendments made by the appellant-proprietor in the main request filed on 12 February 2019, the patent and the invention to which it relates do not meet the requirement of the Convention and it must consequently be revoked pursuant to Article 101(3) (b) EPC. The board thus upholds the opposition division's decision to revoke the patent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



N. Schneider

A. de Vries

Decision electronically authenticated