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**Datasheet for the decision
of 24 November 2021**

Case Number: T 2607/19 - 3.2.01

Application Number: 15166068.5

Publication Number: 2944408

IPC: B23D47/04, B23D59/00,
B23Q11/00, B23Q11/08, B27B5/065

Language of the proceedings: EN

Title of invention:
MACHINE FOR CUTTING WOOD OR PLASTIC PANELS

Patent Proprietor:
BIESSE S.p.A.

Opponent:
HOMAG Plattenaufteiltechnik GmbH

Headword:

Relevant legal provisions:
EPC Art. 52(1), 56
RPBA 2020 Art. 13(2)

Keyword:

Inventive step (yes) - non-obvious modification
Amendment after expiry of period in R. 100(2) EPC
communication - taken into account (no) - exceptional
circumstances (no) - cogent reasons (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2607/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 24 November 2021

Appellant: HOMAG Plattenaufteiltechnik GmbH
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 July 2019 concerning maintenance of the
European Patent No. 2944408 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: V. Vinci
A. Jimenez

Summary of Facts and Submissions

- I. The appeal filed by the opponent is directed against the interlocutory decision of the opposition division to maintain the European patent No. 2 944 408 in amended form.

In its decision the opposition division held that the the ground for opposition raised by the opponent under Article 100(a) in combination with Articles 56 EPC was prejudicial to the maintenance of the patent in amended form according to the main request, but that the patent as amended according to the auxiliary request 2 filed during the oral proceedings met all the requirements of the EPC. In particular, the opposition division found that the subject-matter of the independent claim 1 of the auxiliary request 2 was novel in the meaning of Article 54 EPC and involved an inventive step in the meaning of Article 56 EPC in view of the following state of the art:

E1: DE 20 2011 101 665 U

E2: Prior use of a machine for cutting wood or plastic panels type "*HPP300/43/43/R*" exhibited at the "*Ligna 2013*", substantiated by the evidence E2a to E2i.

- II. With a communication under Rule 100(2) EPC dated 13 July 2020 the Board informed the parties of its preliminary, non binding assessment of the appeal. Summons to oral proceedings were issued on 02 October 2020.

Oral proceedings took place before the Board on 24

November 2021 per videoconference.

- III. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed (and so that the patent be maintained in the form allowed by the opposition division).

- IV. Claim 1 of the patent as maintained by the opposition division reads as follows (labelling of the features of the claim introduced by the Board):

1.0 *"A machine for cutting wood or plastic panels (2) comprising*

1.1 *a supporting surface (P) for the panels (2);*

1.2 *a cutting station (8);*

1.3 *a feeding device (30) to feed the panels (2) through the cutting station (8) in a first direction (4);*

1.4 *a cutting device (9), mounted in the cutting station (8) to move along a cutting plane (T), perpendicular to the first direction (4), and to cut the panels (2) in a second direction (5), transverse to the first direction (4);*

1.5 *a pressing device (13),*

1.5a *which extends over the supporting surface (P) parallel to the second direction (5), is mounted in the*

cutting station (8) so as to move in a third direction (7), orthogonal to said first and second directions (4, 5), between a locking position of the panels (2) against the supporting surface (P) and a releasing position;

1.5b comprises, in turn, two plates (14), mounted on opposite sides of the cutting plane (T) in the first direction (4), and

1.5c has an inner cavity (17), which is delimited, in the first direction (4), by the two plates (14) and is connected to a pneumatic suction device (18);

1.5d a limit stop member (19), mounted on the side of the supporting surface (P) at the cutting station (8) to allow the panels (2) to be correctly positioned in the second direction (5), the limit stop member (19) having an inner chamber (20), which is connected to a pneumatic suction device (21), and communicates with the outside through a plurality of suction holes (22);

1.6 a blowing device (23) to remove processing powders and/or shavings generated by the cutting device (9);

1.6a each plate (14) of the pressing device (13) is delimited, in the first direction (4), by an inner face (15) facing the cutting plane (T) and by an outer face (16), which is opposite to the inner face (15);

1.7 the blowing device (23) comprises

1.7a at least one retaining wall (24a, 24b), which is mounted on the outside of the plates (14) of the pressing device (13) and extends over the supporting surface (P) parallel to the second direction (5);

1.7b *blowing means (28), mounted between the retaining wall (24a, 24b) and the plates (14) of the pressing device (13) above surface (P); and*

1.7b1 *oriented so as to lead processing powders and/or shavings to the inner chamber (20) through the suction holes (22);*

1.7c *further blowing means (29), which are distributed along at least one of the plates (14) of the pressing device (13) in the second direction (5) and are oriented so as to lead processing powders and/or shavings to the inlet of the inner cavity (17);*

1.7d *said further blowing means (29) being arranged at the inner face (15) and/or the outer face (16) of at least one of the plates (14)."*

Reasons for the Decision

New objection under Articles 52(1) and 54 EPC

Admissibility

1. For the first time during the appeal oral proceedings the appellant (opponent) raised an objection of lack of novelty in respect of the subject-matter of claim 1 of the patent as maintained in view of the technical content of the public prior use E2. The respondent (patent proprietor) requested not to admit this novelty attack into the appeal proceedings as late filed.
- 1.1 The novelty attack submitted by the appellant (opponent) for the first time in the appeal oral proceedings results in an amendment to the appellant's appeal case in the meaning of Article 13 RPBA in the

version 2020 which applies to the present appeal in view of the transitional provisions of Article 25 RPBA 2020. Article 13(2) RPBA 2020 foresees that any amendment to a party's appeal case made after the expiry of a period specified by the Board in a communication under Rule 100(2) EPC, as it is the case here, shall in principle not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

- 1.2 The appellant (opponent) explained that the auxiliary request 2 which was found allowable by the opposition division and thus corresponds to the main request in appeal was late filed during the opposition oral proceedings, whereby they did not have enough time to realize that the technical content of the public prior use E2 was not only relevant for the question of the alleged lack of inventive step of the subject-matter of the amended claim 1, but also potentially novelty destroying. Therefore, it was impossible for the appellant (opponent) to develop and submit the novelty attack during the opposition oral proceedings. Furthermore, in response to the objection of the respondent (patent proprietor) as to why no novelty attack was filed with the statement of the grounds of appeal, the appellant (opponent) explained that both the new interpretation of the technical content of the public prior use E2 and of the actual limitation imposed by features 1.7b and 1.7b1 of claim 1, on which the reasoning underlying the contested novelty attack was based, became evident only shortly before the appeal oral proceedings. It was further observed that similar considerations regarding the components of the pressurized air flow exiting the blowing means were presented with the letter dated 11 September 2020 in

respect of the blowing means of the cutting machine known from document E1.

- 1.3 The Board observes that the public prior use E2 originated from a company belonging to the same group of the appellant (opponent) and that its technical content was deeply discussed since the beginning of the opposition proceedings. Under these circumstances, it is assumed that the appellant (opponent) should and could have been aware from the beginning of any technical aspect of the cutting machine according to the public prior use E2 which could have been potentially relevant for the subject-matter of claim 1 as maintained, taking also into account that this claim is based on a combination of claims as originally filed (see point 26. of the contested decision). In view of the facts above, the Board considers the allegation of the appellant (opponent) to have been surprised by the amendments in claim 1 of the auxiliary request 2 filed at the opposition oral proceedings questionable. In any case, the above described developments in the opposition oral proceedings, i.e. the submission of the amended auxiliary request 2, do not amount to "*exceptional circumstances*" and do not justify the behaviour of the appellant (opponent) presenting for the first time during the appeal oral proceedings a fully new novelty attack which, if not during the opposition oral proceedings, could have been submitted with the grounds of appeal. Furthermore, the considerations in the letter dated 11 September 2020 referred to by the appellant (opponent) were only made in the context of the original inventive step attack based on the combination of the public prior use E2 with document E1 and no novelty attack was envisaged in any way.

- 1.4 In view of the above, the Board does not identify any exceptional circumstances justified by cogent reasons for admitting the new novelty attack into the appeal proceedings. This late filed attack is thus disregarded under Article 13(2) RPBA 2020.

Inventive Step: Articles 52(1) and 56 EPC

2. The subject-matter of claim 1 of the patent as maintained involves an inventive step in the meaning of Articles 52(1) and 56 EPC as correctly assessed by the opposition division in the contested decision.
- 2.1 It is common ground that the public prior use E2 as substantiated by the uncontested evidence E2a-E2g and E2i represents a state of the art according to Article 54(2) EPC and also the closest prior art in respect of the subject-matter of claim 1 as maintained.
- 2.2 The appellant (opponent) contested the conclusion of the opposition division and reiterated the view expressed during the opposition oral proceedings that the subject-matter of claim 1 as maintained does not involve an inventive step in view of the public prior use E2 in combination with the teaching of document E1.

Interpretation of the feature 1.7b1

- 2.3 An important point under discussion relates to the limitations imposed by the formulation of feature 1.7b1 that the blowing means (28) are

"...oriented so as to lead processing powders along at least to the inner chamber (20) through the suction holes;"

2.4 The appellant (opponent) argued that blowing means mounted in such a way that the resulting main blowing direction is directed perpendicularly to the supporting surface of the cutting machine, as it is the case of the blowing means provided along the external plates of the pressing device of the machine of E2, or perpendicularly to the cutting plane, as it is the case of the holes (552) in figure 8 of E1, would also give rise to an horizontal component of the pressurized air blow parallel to the cutting direction, i.e. directed towards the chamber of the limit stop member of E2 shown on page 2 of E2c, thereby fulfilling the evacuating functionality defined by feature 1.7b1 of claim 1. In this respect it was observed that the flow of pressurized air exiting the nozzle of the blowing means is more or less conically shaped thereby producing a component of the pressurized air blow parallel to the cutting direction and thus suitable for leading processing powders and/or shavings to the inner chamber of the limit stop member of the machine according to E2. Furthermore, a pressurized air blow impacting a surface perpendicularly opposed thereto, will be reflected in such a way to create again a component directed somehow parallelly to that surface. The appellant (opponent) thus concluded that the required functionality of leading processing powders and/or shavings in a direction substantially parallel to the cutting path according to feature 1.7b1 does not impose the limitation alleged by the opposition division and by the respondent (patent proprietor) that the axis of the nozzles of blowing means (28) defined in feature 1.7b is also oriented essentially parallel to the cutting path.

2.5 The Board does not follow this interpretation of the wording of claim 1 for the following reasons:

As convincingly argued by the respondent (patent proprietor), the person skilled in the art construing the claim by a mind willing to understand realizes that what is actually meant by the teaching of features 1.7b and 1.7b1 read in combination and in view of following feature 1.7c is that the axis of the nozzles of the blowing means (28) is essentially parallel to the main direction of the pressurized air flow generated thereby which, in order to effectively lead processing powders and /or shaving to the chamber (20), is in turn substantially parallel to the cutting path. Therefore, the Board follows the interpretation of the respondent (patent proprietor) that features 1.7b and 1.7b1, read in combination, unambiguously indicate that the blowing means (28) is mounted with its main blowing direction, i.e. the direction of the axis of the nozzle, directed towards the inner chamber (20) of the limit stop member (19) and thus essentially parallel to the cutting direction. This interpretation is confirmed by the following feature 1.7c of claim 1 introducing further and distinct blowing means (29) which, unlike the blowing means (28) of feature 1.7b, are differently oriented so as to direct the pressurized air blow and thus the processing powders and/or shavings only towards to the inlet of the inner cavity (17), as it can be also deduced from the representation in figures 2 and 3 of the contested patent with corresponding description.

2.6 In conclusion, the Board follows the interpretation of the respondent (patent proprietor) according to which the blowing means (28) is mounted on the cutting machine with their main blowing axis oriented towards the perforated surface of the inner chamber (20), i.e. essentially parallel to the cutting direction (see

direction (5) in figure 1).

Distinguishing features

2.7 It is uncontested that the axis of the nozzles of the blowing means provided between at least one of the retaining walls and the opposed plate of the pressing device of the cutting machine according to the public prior use E2 (i.e. the "Abblaserohre") is directed towards the supporting surface, as confirmed by the declaration of Mr. Kress's labelled E2f, pages 4 and 5, which reads in particular *"Jedes der beiden Abblasrohre war in Langsrichtung des Abblasrohres mit Offnungen versehen, wobei die Offnungen nach unten zum Maschinentisch gerichtet waren"*. The declaration of Mr. Roller filed as document E2j in appeal proceedings with letter dated 11 September 2020, irrespective of its admissibility, does not add any information and is thus irrelevant in this respect. Therefore, in view of the interpretation given above, the Board concludes that the subject-matter of claim 1 of the patent as maintained differs from the technical content of the public prior use E2 at least in the features 1.7b and 1.7b1.

2.8 For the sake of completeness, it is noted that the respondent (patent proprietor) questioned whether features 1.7c and 1.7d of claim 1 can be considered directly and unambiguously disclosed in the public prior use E2 as asserted by the appellant (opponent). However, the Board considers that an assessment of these features can be let aside because, as explained in the following paragraphs, the subject-matter of claim 1 as maintained already involves an inventive step under the distinguishing features 1.7b and 1.7b1

alone.

- 2.9 The parties agree that the known cutting machine is already provided with blowing means integrated in the supporting surface (i.e. not according to feature 1.7b) and oriented in such a way to perform the functionality defined by feature 1.7b1 (see nozzles embedded in the supporting surface shown in the figures of the evidence E2c). However, this blowing means become ineffective, at least in respect of the required powders evacuating functionality, when large panels covering almost all the supporting surface are processed.
- 2.10 The technical problem underlying the contested patent as it results from the technical distinguishing features at stake can thus be seen as to improve the public prior use cutting machine regarding the capability of conveying, under any working conditions, processing powders and/or shavings to the suction holes of the inner chamber arranged at the end of the cutting path which is clearly visible in the photos on page 2 of evidence E2c.
- 2.11 The appellant (opponent) argued that starting from the cutting machine according to the public prior use E2 and aiming to solve the above technical problem it would be possible to arrive to the subject-matter of claim 1 by simply relocating (or by additionally providing) the blowing means integrated in the support surface of the known cutting machine onto the inner surface of the retaining walls. It was alleged that such modification, which would solve the technical problem at stake, would be obvious in view of document E1 which also deals with the evacuation of the processing powders and/or shavings from the cutting

area. The appellant (opponent) drew the attention in particular to paragraphs [0021],[0023] and [0024] of E1 in combination with the embodiment in figure 8 disclosing a retaining wall provided with blowing means (holes 552) integrated in the lower portion thereof. It was observed that the passage in paragraph [0024], lines 6-9, would teach the possibility to provide the blowing means (holes 55) on the lower end of the retaining wall and thus not necessarily integrated therein as shown in the embodiment of figure 8, whereby the person skilled in the art by simply replacing the retaining wall of the known cutting machine by the retaining wall of the cutting machine of document E1 would fulfill feature 1.7b. Regarding feature 1.7b1, the appellant (opponent) acknowledged that E1 taught that the pressurized air exiting the holes (552) was oriented perpendicular to the saw blade as confirmed by the first lines of paragraph [0025]. However, it was alleged that it would be obvious for the person skilled in the art, in view of the technical problem to be solved, to modify this orientation in order to replicate the functionality of the blowing means already present on the supporting surface of the cutting machine of E2, thereby fulfilling the functionality required by feature 1.7b1 and arriving without inventive step to the subject-matter of claim 1 of the patent as maintained. The appellant (opponent) identified a clear hint to this final modification in the last line of paragraph [0025] indicating the possibility of modifying the orientation of the blowing direction of the holes (552). Furthermore, paragraph [0021] of E1 disclosed an embodiment according to which the holes (552) directed the compressed air flow around the cavity provided for conveying the powders and/or shavings (reference was made to the formulation "*in den Bereich um die und/oder in die Ausnehmung*"). From this

teaching the appellant (opponent) derived an obvious hint that the direction of the pressurized air blow exiting the holes (552) may be oriented in such a way to perform the functionality of feature 1.7b1, i.e. in a direction parallel to the cutting path.

2.12 The arguments of the appellant (opponent) are not convincing for the following reasons:

Document E1 discloses a similar cutting machine and also addresses the problem of the evacuation/suction of the processing powders and/or shavings produced during the cutting operation (see paragraphs [004] to [006]). The Board concurs with the appellant (opponent) that the person skilled in the art would at first consider this document in an attempt to find therein a suitable solution to be successfully applied to the cutting machine of the public prior use E2. However, as convincingly put forward by the respondent (patent proprietor), the person skilled in the art would immediately realize that the only blowing means foreseen in the cutting machine according to E1 consists in the holes (552) integrated in or arranged on the retaining wall shown in figure 8 which are oriented in such a way to direct the pressurized air flow horizontally and towards the cutting plane (see paragraphs [0025] and [0069]) and hence not oriented in a direction essentially parallel to the cutting direction. After all, as correctly observed by the respondent (patent proprietor), as no limit stop member positioned at the end of the cutting path and provided with an inner chamber associated with suction means is foreseen in the cutting machine of E1, there was not need to provide additional blowing means leading the processing powders in a direction parallel to the cutting path. Therefore, the Board concurs with the

respondent (patent proprietor) that the person skilled in the art, after having properly analyzed the technical content of E1 and realized that this document is completely silent regarding the evacuation of the processing powders towards vacuum means positioned at the end of the cutting path, would not consider it when seeking for a solution to the technical problem at stake. Even by assuming that the person skilled in the art, in order to improve the cutting machine of the public prior use E2, would consider the teaching of E1, he/she would not arrive without inventive step to the subject-matter of claim 1 for the following reasons:

- 2.13 Contrary to the view of the appellant (opponent), the Board concurs with the respondent (appellant) that the person skilled in the art would have no motivation to replace the retaining wall of the cutting machine according to the public prior use E2 with the retaining wall shown in figure 8 of E1. This modification would only provide additional blowing means acting more or less in the same way as the blowing means provided along the plates of the pressing device of the public prior use E2 (see "vorderes und hinteres Abblaserohre"), i.e. a pressurized air flow directed towards the saw blade, whereby no contribution to the solution to the technical problem at stake would be provided. Furthermore, even this non-obvious modification would not directly lead to the subject-matter of claim 1 because, in order to also achieve the functionality defined by feature 1.7b1, it would be necessary to modify the orientation of the nozzles/holes (552) provided in/on the retaining wall, which as stated in paragraphs [0025] and [0069] of E1 is directed towards the saw blade. As correctly observed by the respondent (patent proprietor), the only

adjustment of the orientation of the holes (552) clearly derivable from E1 is an adjustment in a vertical plane (see last 5 lines of paragraph [0025]), while fulfilling the orientation of the blowing means (28) defined by features 1.7b and 1.7b1 read in combination would require an adjustment in an horizontal plan which is thus not rendered obvious by document E1.

2.14 In conclusion, the Board shares the view of the opposition division and of the respondent (patent proprietor) that it would not be obvious to replace the retaining wall of the cutting machine of the public prior use E2 by the retaining wall disclosed in figure 8 of document E1, and that even this replacement would not directly and obviously lead to the subject matter of claim 1 because, as explained under point 2.13 above, further constructional modifications would be required for which no hint can be found in the cited prior art.

2.15 As no further inventive step attacks have been brought by the appellant (opponent), the Board confirms the decision of the opposition division that the subject-matter of claim 1 of the patent as maintained involves an inventive step over the prior art in the meaning of Articles 52(1) and 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated