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**Datasheet for the decision
of 21 March 2022**

Case Number: T 2635/19 - 3.2.01

Application Number: 12181965.0

Publication Number: 2530008

IPC: B63B1/06

Language of the proceedings: EN

Title of invention:

A vessel with an improved foreship arrangement

Patent Proprietor:

Ulstein Design & Solutions AS

Opponent:

Verkfræðistofan Skipatækni ehf./
Nautic ehf.

Headword:

Relevant legal provisions:

EPC Art. 100(c), 76(1), 111(2)
RPBA 2020 Art. 13(1)

Keyword:

Grounds for opposition - subject-matter extends beyond content of earlier application (no)

Amendment to appeal case - amendment gives rise to new objections (yes) - amendment detrimental to procedural economy (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2635/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 21 March 2022

Appellant: Ulstein Design & Solutions AS
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 July 2019
revoking European patent No. 2530008 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
A. Jimenez

Summary of Facts and Submissions

- I. The appeal of the proprietor is directed against the decision of the Opposition Division to revoke European Patent No. 2 530 008.
- II. The Opposition Division held that the granted patent and the amended patent according to the auxiliary request 1 contravened the requirements of Article 76(1) EPC so that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent. Late filed auxiliary request 2 was not admitted into the proceedings since it did not *prima facie* overcome the deficiency of the previous requests.
- III. Oral proceedings by videoconference were held before the Board on 21 March 2022.
- IV. The appellant (patent proprietor) requested that the decision under appeal be set aside and that the case be remitted to the opposition division for further prosecution on the basis of the patent as granted (main request) or, in the alternative, on the basis of auxiliary request A filed during the oral proceedings, auxiliary requests 1 to 3 filed with the statement of grounds of appeal or auxiliary request 4 filed with letter of 1 December 2020.

The respondent (opponent) requested that the appeal be dismissed.

- V. Claim 1 as granted reads as follows (feature numbering as used by the appellant):

- A *"A vessel comprising a foreship arrangement, which foreship consists of the part of the ship in front of the vessel's midship mark (2) and which vessel has a transversely symmetrical hull shape about its center line (CL) and a substantially conventional bow form below its design water line (T_{dwl}),*
- B *wherein the bottom is flat or has a deadrise and merges into the bilge at a given bilge radius,*
characterized in that
- C *the stem line (1) of the vessel starts at the base line (3) at first point (A) and then rises with an increasing curvature whilst being drawn forwards in the length direction (x) to a second point (B) at or just above the design water line (T_{dwl}), and from the second point (B), the stem line (1) rises further, but with a diminishing curvature and backwards, in the negative length direction (x), until it reaches a third point point (C), and*
- D *the frame lines (10, 20, 30, 40, 50) of the foreship of the hull increase in width from the center line (CL) and are slightly outwardly sloping from the bilge up to a given height, wherein at the level of the forecastle deck (E1, E2, E3, E4, E5) the outwardly sloping frame line (10, 20, 30, 40, 50) form is terminated and is run upwardly as a curved line form back towards the center line (CL),*
- E *so as to provide a decreasing buoyancy increase, in the upward direction from a position at or above the design water line (T_{dwl})."*

Claim 1 of auxiliary request A differs from granted claim 1 in that the wording "at or" in feature E has been deleted.

Claim 1 of auxiliary request 1 reads as follows (features added with respect to granted claim 1 underlined by the Board):

"A vessel comprising a foreship arrangement, which foreship is intended for displacement hulls and consists of the part of the ship in front of the vessel's midship mark (2) and which vessel has a transversely symmetrical hull shape about its center line (CL) and a substantially conventional bow form below its design water line (T_{dwl}), wherein the bottom is flat or has a deadrise and merges into the bilge at a given bilge radius, **characterized in that** the stem line (1) of the vessel starts at the base line (3) at first point (A) and then rises with an increasing curvature whilst being drawn forwards in the length direction (x) to a second point (B) ~~at or~~ just above the design water line (T_{dwl}) being slightly above the design water line (T_{dwl}), and from the second point (B), the stem line (1) rises further, but with a diminishing curvature and the frame lines (10, 20, 30, 40, 50) of the foreship of the hull, which start at points (D1, D2, D3, D4, D5) and run almost perpendicularly from the center line (CL), increase in width from the center line (CL) and are slightly outwardly sloping from the bilge up to a given height, wherein at the level of the forecastle deck (E1, E2, E3, E4, E5) the outwardly sloping frame line (10, 20, 30, 40, 50) form is terminated and is run upwardly as a curved line form back towards the center line (CL), so as to provide a decreasing buoyancy increase, in the upward direction from a position at or above the design water line (T_{dwl}), and thus, when the bow of the vessel meets incoming waves, the submerged volume increase is

reduced, the buoyancy increase is reduced and the retardation force increase is reduced, and the entry angle of the bow at the design water line (T_{dwl}), and in a plane coincident with the horizontal plane (the xy plane) is in the range of 16-25 degrees relative to the center line (CL)."

Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the feature:

"the entry angle of the bow at the design water line (T_{dwl}), and in a plane coincident with the horizontal plane (the xy plane) is in the range of 16-25 degrees relative to the center line (CL)."

is replaced by the following feature:

"which corresponds to reduce the negative effects that the commonly known bow shapes have by designing the foreship to have slender water lines so that the submersion of the facing volume takes place over a considerable period of time, which means that the vessel cuts into the wave and the wave laps over the bow form and out to the side such that the buoyancy force is distributed over time and the retardation forces are substantially reduced."

Claim 1 of auxiliary request 3 is a combination of the features of claim 1 of auxiliary requests 1 and 2.

Claim 1 of auxiliary request 4 reads as follows (features added to claim 1 of the main request are underlined; deleted features are indicated by strikethrough):

"A vessel comprising a foreship arrangement, which foreship is intended for displacement hulls and consists of the part of the ship in front of the vessel's midship mark (2) and which vessel has a transversely symmetrical hull shape about its center line (CL) and a substantially conventional bow form below its design water line (T_{dwl}), wherein the bottom is flat or has a deadrise and merges into the bilge at a given bilge radius, characterized in that the stem line (1) of the vessel starts at the base line (3) at first point (A) and then rises with an increasing curvature whilst being drawn forwards in the length direction (x) to a second point (B) ~~at or~~ just above the design water line (T_{dwl}) being slightly above the design water line (T_{dwl}), and from the second point (B), the stem line (1) rises further, but with a diminishing curvature and backwards, in the negative length direction (x), until it reaches a third point (C), and the frame lines (10, 20, 30, 40, 50) of the foreship of the hull, which start at points (D₁, D₂, D₃, D₄, D₅) and run almost perpendicularly from the center line (CL), increase in width from the center line (CL) and are slightly outwardly sloping from the bilge up to a given height, wherein at the level of the forecastle deck (E₁, E₂, E₃, E₄, E₅) the outwardly sloping frame line (10, 20, 30, 40, 50) form is terminated and is run upwardly as a curved line form back towards the center line (CL), ~~so as to provide a decreasing buoyancy increase, in the upward direction from a position at or above the design water line (T_{dwl})~~."

Reasons for the Decision

1. *Main request - inadmissible extension - Article 100(c) EPC*

- 1.1 The subject-matter of independent claim 1 as granted goes beyond the content of the earlier application as originally filed.

The current European patent is granted from a European divisional application whose earlier application under Article 76 EPC is 06716749.4. This latter application derives from the international application published as WO 2006/096066 A, which is the earlier application as originally filed and is referred to in the following.

- 1.2 It was common ground that feature E of claim 1 is not explicitly disclosed in the earlier application as originally filed. It was also common ground that frame lines outwardly sloping in an upward direction provide an increasing buoyancy increase when submerging the vessel in that direction, whereas inwardly sloping frame lines provide a decreasing buoyancy increase. Vertical frame lines, i.e. in the upward direction where the vessel is submerged, provide a constant buoyancy increase when submerging the vessel in that direction. The same applied for the stem line when rising whilst being drawn forwards, backwards and rising in a vertical direction.

The appellant essentially argued that feature E was a direct technical consequence of the structural features C and D of claim 1. In particular, according to feature C the stem line was sloping backwards from a point at or just above the design water line. According to

feature D the frame lines were sloping inwardly from a point at the forecastle deck, which according to common general knowledge was the deck of the forward upper portion of the hull, which undisputedly was located above the design water line. Consequently, there was a position in the foreship arrangement of the vessel of claim 1 situated at or above the design water line where all the lines defining the hull of the foreship were running inwardly. Accordingly, this amounted to provide a decreasing buoyancy increase in the upward direction from a position at or above the design water line, i.e. feature E of granted claim 1. Further, it derived from the wording of claim 1 that the decreasing buoyancy increase did not refer to the whole claimed vessel but to the foreship arrangement of the vessel.

1.3 According to established case law of the Boards of Appeal the criterion for assessing whether the subject-matter of a European patent extends beyond the content of the earlier application as originally filed is the "gold standard", i.e. whether the claimed subject-matter is derivable directly and unambiguously for the skilled person from the earlier application as originally filed (see e.g. points 4.3 and 4.6 in the Decision of the Enlarged Board of Appeal G 2/10, OJ EPO 2012, 376).

1.4 The undisputed technical conclusions relating to the contribution of the geometry of the lines of the hull of the foreship to the buoyancy change when the vessel is submerged in the upward direction (i.e. the change in volume resulting from the shape of the lines of the hull when the vessel is submerged vertically) are shared. Accordingly, since the stem line runs inwardly up from a point at or just above the design water line and the frame lines run inwardly from a point at the

level of the forecastle deck, which necessarily is located above the design water line and above a position just above the design water line, there is a position above the design water line and located at the level of the forecastle deck from which a decreasing buoyancy increase in the upward direction is provided. According to feature E this position is defined in a more general way, since feature E stipulates that the decreasing buoyancy increase may take place at any point at or above the design water line. Feature E cannot therefore be the technical consequence of features C and D: it is not possible to conclude, directly and unambiguously, that features C and D unequivocally result in a buoyancy increase which is decreasing from a position located between the design water line and the position at the level of the forecastle deck where the frame lines run towards the center line. As argued by the respondent, the skilled person cannot conclude directly and unambiguously from the wording of claim 1 whether the decreasing increase of volume provided by the rearward sloping stem line could balance out the increasing volume increase in the upward direction provided by the outwardly sloping frame lines until the position at the level of the forecastle deck in which the frame lines run back towards the center line. Nor is there any basis in the earlier application as originally filed for such conclusion.

Consequently, the decreasing buoyancy increase in the upward direction provided from a position at or above the design water line and up until the position at the level of the forecastle neck, where the outwardly sloping frame line form is terminated and is run upwardly as a curved line form back towards the center line, included in granted claim 1 represents an

inadmissible extension of subject-matter of the earlier application as originally filed.

It is further noted that the claimed decreasing of buoyancy increase in the upward direction relates to the foreship of the vessel and not to the complete vessel since that behaviour is described within the claim with reference to the lines of the hull of the foreship arrangement.

2. *Auxiliary requests A, 1, 2 and 3*

2.1 The subject-matter of claim 1 of the auxiliary requests A, 1, 2 and 3 goes beyond the content of the earlier application as originally filed for the same reasons as presented above for granted claim 1 (Articles 100(c) and 76(1) EPC).

2.2 The subject-matter of claim 1 of auxiliary request A differs from that of granted claim 1 in that the alternative in feature E "at the design water line" has been deleted. Claim 1 of auxiliary request A still contains added subject-matter for the positions above the design water line up to the position at the level of the forecastle deck where the frame lines form changes to be running back towards the center line.

2.3 Claim 1 of auxiliary request 1, 2 and 3 includes also feature E of granted claim 1.

The appellant held that the further features added to claim 1 in each of the auxiliary requests 1, 2 and 3 aimed at clarifying feature E such that their addition ensured obtaining the result as given by feature E because all structural requirements defined in claim 1

of each of the requests automatically lead to realizing feature E.

This is not persuasive since the features added to claim 1 do not further define the shape of the lines of the hull of the foreship in the upward direction upon which the variation of buoyancy is defined by feature E. All added features are either not structural features but functional features or features defining the entry angle of the bow on an horizontal plane relative to the center line. Consequently, these features do not contribute in any way to achieving feature E because it still cannot be ascertained out of the wording of claim 1 that in a position between the design water line and the position at the level of the forecastle deck where the frame lines run inwardly to the center line a decreasing buoyancy increase in the upward direction is provided.

2.4 The admissibility objections raised by the respondent for auxiliary request A, filed during the oral proceedings in front of the Board, and for auxiliary request 2, which was not admitted by the Opposition Division in its decision, can therefore be left aside.

3. *Auxiliary requests 4 - Admissibility*

3.1 The auxiliary request 4 was filed during the appeal proceedings by the appellant with letter of 1 December 2020.

3.2 Under Article 13(1) RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) any amendment to a party's appeal case after it has filed its grounds of appeal or reply is subject to the party's justification for its amendment and may be admitted only at the

discretion of the Board. The Board shall exercise its discretion in view of, *inter alia*, the current state of the proceedings, whether the amendment is detrimental to procedural economy, and, in the case of an amendment to a patent, whether the party has demonstrated that any such amendment, *prima facie*, overcomes the issues raised by another party in the appeal proceedings or by the Board and does not give rise to new objections.

3.3 In the present case claim 1 of auxiliary request 4 no longer includes the conflicting feature E which results in added subject-matter with respect to the earlier application as originally filed as pointed out above for the higher ranking requests. However, the omission of feature E gives rise to a new objection under Article 123(3) EPC, as this amendment is susceptible of inadmissibly extending the protection conferred by the granted patent.

The Board further notes that the objection under Articles 100(c) and 76(1) EPC in respect of feature E was submitted already with the notice of opposition. This objection was the subject of discussion during the opposition proceedings, and in particular at the oral proceedings during which the patent proprietor was given further opportunity to file amended requests specifically in view of this objection (see minutes points 7.1, 7.2, 8.1, and 10.1). During opposition proceedings the patent proprietor never chose to react to this objection by deleting feature E. Under these circumstances the Board considers that the appellant should have filed auxiliary request 4 during the opposition proceedings. However, even assuming that there was a justification for not filing this request in the opposition proceedings, there is no justification for filing this request only after the respondent's reply to the statement of grounds of

appeal.

The contested decision specifically refers to the fact that deleting feature E "*would amount to an infringement of the provisions of Article 123(3) EPC*" (see point 13.3 of the reasons). Hence, at least on receipt of the written decision the appellant was made aware that the deletion of feature E would have triggered a discussion relating to the provisions of Article 123(3) EPC. Under these circumstances the Board considers that the appellant should have filed this request at the latest with the statement of grounds of appeal, such as to trigger the discussion on the requirements of Article 123(3) EPC at the beginning of the appeal proceedings and not at a later stage, after the respondent's reply was filed.

- 3.4 For these reasons the Board exercised its discretionary power not to admit auxiliary request 4 in the appeal proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated