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**Datasheet for the decision
of 4 July 2022**

Case Number: T 3246/19 - 3.2.01

Application Number: 09782454.4

Publication Number: 2331368

IPC: B60R13/08, B62D29/00

Language of the proceedings: EN

Title of invention:
REINFORCEMENT WITH CHANNEL DESIGN

Patent Proprietor:
Sika Technology AG

Opponent:
L & L Products Europe S.A.S.

Headword:

Relevant legal provisions:
EPC Art. 52(1), 56

Keyword:
Inventive step (no) - obvious combination of known features

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 3246/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 4 July 2022

Appellant: L & L Products Europe S.A.S.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
10 October 2019 concerning maintenance of the
European Patent No. 2331368 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: V. Vinci
O. Loizou

Summary of Facts and Submissions

I. The appeal filed by the appellant (opponent) is directed against the interlocutory decision of the opposition division to maintain the European patent No. 2 331 368 in amended form.

II. In its decision the opposition division found, inter alia, that the ground for opposition under Article 100(a) in conjunction with Article 54 EPC prejudiced the maintenance of the patent as granted, and that the patent could be maintained in amended form according to the auxiliary request 5. In particular, the opposition division held that the subject-matter of independent claim 1 according to the auxiliary request 5 involved an inventive step view of the following prior art:

O7: US 672 9425 B2

O9: EP 19 302 31 A1

III. With the communication according to Article 15(1) RPBA dated 19 March 2021 the Board informed the parties of its preliminary assessment of the case.

Oral proceedings pursuant to Article 116 EPC were held before the Board on 04 July 2022 by videoconference.

IV. 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 of the appellant (opponent) be dismissed.

V. Independent claim 1 of the patent as maintained by the opposition division reads as follows (labelling of the

features according to the decision under appeal):

1.1 *A reinforcement comprising:*

1.2 *a carrier (10) having a plurality of exterior walls (12) spaced from one another and defining a channel (18) extending substantially parallel to a longitudinal axis (A) defined by a cavity;*

1.3 *a material layer (22) disposed on at least one of said exterior walls (12) within said channel (18) such that an electrocoating material is able to flow through said channel (18) before said material layer (22) is expanded and*

1.4 *"said channel (18) is at least partially filled after said material layer (22) is expanded,*

characterized in that

1.5 *said exterior walls (12) each have an inner and an outer surface and wherein said material layer (22) is disposed on said inner and on said outer surface of at least one of said exterior walls (12), wherein said carrier (10) is disposed within the cavity and wherein a gap between said material layer (22) and said cavity is between 0.5 and 3 mm wherein said material layer (22) includes a structural foam, an acoustic foam, or an adhesive, and wherein said material layer (22) is beaded onto said carrier.*

Reasons for the Decision

Inventive step: Articles 52(1) and 56 EPC

1. Contrary to the assessment of the opposition division, the subject-matter of independent claim 1 as maintained does not involve an inventive step in the meaning of Articles 52(1) and 56 EPC.
2. With their appeal, the appellant (opponent) contested the view of the opposition division that the subject-matter of claim 1 of the patent as maintained was not rendered obvious by document 07 in combination with the teaching of document 09.

Closest Prior Art and Distinguishing Features

3. The parties agree with the finding of the opposition division that document 07 represented the closest prior art.
 - 3.1 However, it is contested whether the following two technical features of claim 1 can be directly and unambiguously derived from said closest prior art document.

"A reinforcement comprising a carrier"

- 3.2 The respondent (patent proprietor) put forward that, contrary to the assessment of the opposition division, this feature was not anticipated by 07. In this respect it was argued that the cited embodiment in figures 8A and 8B of this prior art document showed a reinforcement comprising two separated carriers (202,204) arranged slidable with respect to each other in order to adapt the size of the reinforcement to

those of the cavity of the structure to be reinforced, as opposed to claim 1 which was allegedly clearly limited to "a carrier (10)", i.e. to only one carrier. This interpretation of the language of the claim was allegedly supported by all the specific embodiments disclosed in the contested patent showing a single carrier.

3.3 The Board does not agree and in this respect shares the view of the opposition division and the appellant (opponent) for the following reasons:

As convincingly put forward by the appellant (opponent), the use of the indefinite article "a" in the expression "a carrier" of feature 1.2 of claim 1 does not limit the claim to only one carrier, as asserted by the respondent (patent proprietor), but merely requires that at least one carrier is provided, i.e. this expression does not exclude that the reinforcement may comprise more than one carrier or a carrier built up of a plurality of carrier elements as it is the case for the carrier of in figures 8A and 8B of 07. Furthermore, as rightly pointed out by the appellant (opponent), this interpretation of the expression "a carrier" as meaning one or more carriers is also supported by paragraph [0018], lines 43-46 of the contested patent. Therefore feature 1.2 of claim 1 is anticipated by document 07.

"material layer beaded onto the carrier"

3.4 The respondent (patent proprietor) concurred with the findings of the opposition division that the passage of document 07, column 3, lines 9-10 cited by the appellant (opponent), did not directly and unambiguously disclose that the material layer

(*"foamable or expandable material"* according to the terminology of document 07) was *"beaded"* onto the carrier as required by the last feature of claim 1. In support of this allegation the respondent (patent proprietor) asserted that the term *"beaded"* had a very specific technical meaning for the person skilled in the art implying the limitation that the material layer upon application onto the carrier showed a very specific form, namely a kind of crawler-shaped appearance (*"raupenförmig"* according to the german term used by the respondent during the oral proceedings). The respondent (patent proprietor) did not contest that according to 07 the material layer may be produced by extrusion as stated in the above cited passage, but argued that not every extrusion process mandatorily resulted in the layer material being *"beaded"* onto the carrier in the meaning conferred by the person skilled in the art to this allegedly specific term. The respondent (patent proprietor) thus concluded that as document 07 was completely silent on the shape assumed by the material layer upon application on the carrier, the feature of claim 1 that the *"material layer is beaded onto the carrier"*, contrary to the assessment of the opposition division, was not directly and unambiguously derivable from 07.

3.5 The Board is not convinced by the arguments of the respondent (patent proprietor) for the following reasons:

The Board observes that very specific meaning conferred by the respondent (patent proprietor) to the term *"beaded"* has not been supported by any piece of evidence and in this regard the appellant (opponent) correctly noted that the patent did not closely define what is intended by *"beaded"*. In fact, this term

appears only once in the description, namely in paragraph [0008] reading *"For example the material layer 22 may be over-molded or beaded onto the carrier 10"*. In addition the figures of the patent merely show a flat contact at the interface between the carrier and the material layer which in turn presents a flat upper surface. In view of the above the narrower interpretation of the term *"beaded"* adopted by the respondent (patent proprietor) when construing claim 1 is neither substantiated by any support document nor justified by the patent disclosure. Therefore, the Board concludes that the term *"beaded"*, contrary the respondent's (patent proprietor's) assertion, is generally understood by a person skilled in the art to mean that an element, i.e. the material layer, is fixed onto a substrate, i.e. the carrier, by any kind of connecting means or process i.e. those disclosed in column 3, lines 7-15 of 07. The Board thus follows the arguments and the conclusion of the appellant (opponent) that, contrary to the assessment of the opposition division, also this feature is anticipated by document 07.

3.6 Finally, it is uncontested that document 07 does not disclose the feature of claim 1 that:

"a gap between said material layer (22) and said cavity is between 0.5 and 3 mm"

whereby, for the reasons given under points 3.2 to 3.5 above, this teaching represents the only technical feature distinguishing the subject-matter of claim 1 from the technical disclosure of document 07.

Technical Problem

4. There is agreement that starting from 07 and in view of the above distinguishing feature the technical problem addressed by the contested patent is to be seen in optimizing the dimensioning of the gap between the material layer of the reinforcement and the cavity in such a way to ensure that all the surfaces inside the cavity are sufficiently reached and wetted when they are subjected to an electrocoating flow, while providing at the same time the required stability of the structural member to be reinforced.

Assessment of Inventive Step

5. The Board shares the view of the appellant (opponent) that starting from 07, the solution of the aforementioned technical problem as defined in claim 1 as maintained by the opposition division is rendered obvious by the information contained in document 09.
 - 5.1 The respondent (patent proprietor) essentially argued that it would not be obvious to apply the teaching of 09 to the reinforcement disclosed in document 07. In support of this they pointed out that document 09 concerned a reinforcement embodied as a single carrier with a predefined and fixed size, whereas the reinforcement according to 07 was characterized by a completely different concept based on the use of two complementary half-carriers which can be shifted relative to each other in order to adapt the width of the carrier to the width of the cavity. In the respondent's (patent proprietor's) opinion the person skilled in the art, in view of the different technical problem addressed by 07, i.e adaptation of the size of th reinforcement to the size of the cavity, and of the

above mentioned different constructional concept, would have had no motivation to optimize the gap between the material layer and the cavity of the reinforcement according to the teaching of O9 and this essentially because the possibility foreseen in O7, to adapt the size of the carrier to those of the cavity at any time, rendered an optimisation of the gap for the purpose of a reliable electrocoating flow unnecessary. The respondent (patent proprietor) further explained that such an optimization attempt of the gap in the reinforcement of O7 would be in contradiction with the basic concept of this prior art document and thus not obvious.

5.2 The Board is not convinced for the following reasons:

It is true as stressed by the respondent (patent proprietor) that document O7 is directed to a completely different problem, namely to realize a reinforcement which can be adapted to the size of the cavity. Furthermore, the teaching that an electrocoating may be provided on the surface defining the cavity is not explicitly mentioned. However, as put forward by the appellant (opponent) by referring to paragraph [0003] of the patent, it is well known in the relevant technical field to provide an electrocoating for anti-corrosion purposes on the internal surface of the cavity as indeed taught for example in O9. Therefore, the Board follows the argument of the appellant (opponent) that it falls within customary practice of a person skilled in the art, depending on the operational condition to which the reinforced structural member will be subjected, to provide an anti-corrosion protection as suggested by O9 which, as stressed by the appellant (opponent), also addresses the same technical problem of the contested patent (see

paragraph [0025]) and solves it, according to paragraphs [0017] and [0023], by adopting a preferred gap of 2 mm falling within the range defined in claim 1. The argument of the respondent (patent proprietor) that the above mentioned different structural concepts underlying the carriers of 07 and 09 would prevent the person skilled in the art from combining these documents is not convincing. In fact, as stressed by the appellant (opponent), the person skilled in the art realises that the solution proposed in 09 to the same technical problem as addressed by the contested patent is not dependent on the fact to have the carrier built up in one piece (fixed size) or in two pieces (adjustable size). In the first case the person skilled in the art would realise the claimed gap by previously manufacturing a carrier appropriately dimensioned with respect to the cavity while, in the second case, the size of the adjustable carrier will be set with respect to the size of the cavity according to the gap to be achieved.

- 5.3 For the reasons presented above the Board judges that, in order to solve the technical problem addressed by the contested patent, it would be obvious to apply the teaching of document 09 to the reinforcement of document 07, thereby arriving without inventive step to the subject-matter of claim 1 as maintained. Thus the subject-matter of claim 1 lacks inventive step in the meaning of Articles 52(1) and 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated