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**Datasheet for the decision
of 5 September 2023**

Case Number: T 0331/20 - 3.2.08

Application Number: 15169772.9

Publication Number: 2949407

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B21D43/00, B21F1/04

Language of the proceedings: EN

Title of invention:
DRAWING UNIT FOR ELONGATED PRODUCT AND CORRESPONDING DRAWING
METHOD

Patent Proprietor:
M.E.P. Macchine Elettroniche Piegatrici S.p.A.

Opponent:
Schnell S.p.A.

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (yes)



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Case Number: T 0331/20 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 5 September 2023

Appellant: M.E.P. Macchine Elettroniche Piegatrici S.p.A.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
29 November 2019 concerning maintenance of the
European Patent No. 2949407 in amended form.**

Composition of the Board:

Chairwoman P. Acton
Members: M. Foulger
C. Schmidt

Summary of Facts and Submissions

I. With the decision posted on 29 November 2019, the opposition division decided that the patent and the invention to which it related according to the then valid first auxiliary request met the requirements of the EPC. They found that claim 1 of the then valid first auxiliary request involved an inventive step over the teachings of

D10 (US 2002/0029322 A1) combined with
D4 (EP 0 824 982 A1).

II. Both parties filed an appeal against this decision. At the end of the oral proceedings before the Board, the appellant (patent proprietor) withdrew its appeal. Thus, in the following the appellant (opponent) will be termed "appellant" and the appellant (patent proprietor) will be termed "respondent".

III. The parties final requests were as follows:

The appellant requested that the decision under appeal be set aside and that the patent be revoked.

The respondent requested that the opponent's appeal be dismissed.

IV. Claim 1 as found allowable by the opposition division reads:

(Feature references added in bold)

"**(a)** Drawing unit for drawing at least one long metal product (P),

(b) configured to make said at least one long metal

product (P) advance along a nominal axis of feed (A) and

(c) provided with at least a first motorized roll (13) and

(d) with at least two second rolls (14) operating at the periphery of said first roll (13) and

(e) defining, with the latter, respective passage gaps (15),

(f) wherein said at least two second rolls (14) are located one on one side and the other on the other side of the axis (N) orthogonal to the nominal axis of feed (A) that passes through the center of rotation of the first roll (13),

(g) wherein said second rolls (14) are associated to movement members (21) to move said second rolls (14) in a parallel form with respect to each other and in a direction substantially orthogonal to said nominal axis of feed (A) in order to adjust said passage gaps (15),

(h) said passage gaps (15) having, during use, along the straight line (R) that joins the center of said first roll (13) with the center of the respective second roll (14), an amplitude (G) that is bigger in size than the nominal diameter (D) of said metal product (P),

(i) wherein each of said second rolls (14) defines a respective lying plane (β) disposed substantially orthogonal to the nominal axis of feed (A) of the metal product (P) and on which the axis of rotation (Y) of the second roll (14) lies,

(l) at least two of said second rolls (14) are disposed so that they have the respective lying planes (β) intersecting the bulk of their respective first roll (13)

(m) said drawing unit being characterized in that it comprises support rolls (24, 25, 26) located upstream and downstream of said at least one drawing unit (11,

12) and operating in cooperation with the nominal axis of feed (A) of said metal product (P)."

V. The following documents have been discussed in appeal proceedings:

D1: ITUD2012A000211

D4: EP 0 824 982 A1

D10: US 2002/0029322 A1

VI. The appellant argued essentially the following:

a) Inventive step

The subject-matter of claim did not involve an inventive step with regard to the combination of the teachings of D10 with D4 or the teachings of D4 with D10.

b) Admission of novelty objection with respect to D1

D1 had always been in the proceedings and also lack of novelty had been raised against the patent as granted. This objection was not therefore to be considered as being a change in the appellant's case.

VII. The respondent argued essentially the following:

a) Inventive step

Neither D4 nor D10 disclosed feature (m) of claim 1. The combination of the teachings of these documents therefore did not lead to the subject-matter of claim 1.

b) Admission of novelty objection with respect to D1

This constituted a change in the appellant's case and should therefore not be admitted at such a late stage in the proceedings.

Reasons for the Decision

1. Inventive step with regard to D4 and D10

1.1 The appellant argued that the drawing unit disclosed in D10 was the closest prior art because it shared the most features with the claimed drawing unit.

It is common ground that D10 discloses (in Figures 1 and 6) the following features of claim 1 (references in parentheses refer to D10):

(a) Drawing unit for drawing at least one long metal product (3),

(b) configured to make said at least one long metal product advance along a nominal axis of feed (Fig. 1) and

(c) provided with at least a first motorized roll (1) and

(d) with at least two second rolls (4, 5) operating at the periphery of said first roll and

(f) wherein said at least two second rolls are located one on one side and the other on the other side of the axis orthogonal to the nominal axis of feed that passes through the center of rotation of the first roll (see Fig. 1),

(g) wherein said second rolls are associated to movement members to move said second rolls in a parallel form with respect to each other and in a direction substantially orthogonal to said nominal axis of feed in order to adjust said passage gaps

("pressing-in mechanism (not shown)" paragraph [0041]),
(h) said passage gaps having, during use, along the straight line that joins the center of said first roll with the center of the respective second roll, an amplitude that is bigger in size than the nominal diameter of said metal product (see Fig. 1),
(i) wherein each of said second rolls defines a respective lying plane disposed substantially orthogonal to the nominal axis of feed of the metal product and on which the axis of rotation of the second roll lies (see Fig. 1),
wherein
(1) at least two of said second rolls are disposed so that they have the respective lying planes intersecting the bulk of their respective first roll (see Fig. 1).

1.2 The respondent argued that feature **(e)**, whereby the first and second rolls defined respective passage gaps, was not known from D10. The appellant considered that these gaps were at least implicit in the disclosure of D10.

As the question of inventive step can be decided irrespective of this feature, see below, it is not necessary for the Board to decide this point.

1.3 It was not disputed that feature **(m)**, wherein the drawing unit comprises support rolls located upstream and downstream of said at least one drawing unit and operating in cooperation with the nominal axis of feed of said metal product, was not explicitly disclosed in D10.

However, the appellant argued that support rolls as specified in feature **(m)** of claim 1 were implicit in the arrangement of D10 on the grounds that the wire

must be fed somewhere which would require support rolls.

The Board did not find this convincing. As D10 relates to wire feeding, in particular for arc welding (D10, paragraph [0002]), it is for example, equally possible that the wire goes directly into the MIG gun nozzle. Feature **(m)** cannot therefore be regarded as being implicit in the disclosure of D10.

- 1.4 The subject-matter of claim 1 therefore differs from the disclosure of D10 in that it comprises support rolls located upstream and downstream of said at least one drawing unit and operating in cooperation with the nominal axis of feed of said metal product (feature **(m)**).
- 1.5 The appellant suggested that the objective technical problem was to control the path followed by the wire.
- 1.6 The appellant further argued that D4 disclosed the differentiating feature **(m)** and the skilled person would, in order to solve the problem of controlling the wire path, apply this to the drawing unit of D10.

In D4, the appellant identified rolls 16a and 24 as support rolls. They argued that a roll was to be regarded a "support roll" independently from the force of gravity and was to be interpreted in the sense that it has a guiding function.

The Board considers that a "support roll" must be interpreted using the usual meaning of the word "support", e.g. holding up, or sustaining the weight of, an object; keeping an object upright. The Board therefore considers that a "support roll" is a roll

whose primary purpose is to support the product. Rolls as shown in D4 in the deflection assembly 16 would not fall under this definition because they are there to cause the formation of a desired curve (D4, col. 7, l. 9 - 17). The rolls 16a and 24 identified by the appellant are placed above the wire and thus cannot contribute to supporting the wire. Hence, they cannot be regarded as "support rolls".

Thus, a combination of the teachings of D4 and D10 would not lead the skilled person to the subject-matter of claim 1 as found allowable by the opposition division.

Therefore, the subject-matter of claim 1 involves an inventive step.

2. Inventive step - D9 and D10

In the statement setting out the grounds of appeal, the appellant "relies" on the analysis presented in the notice of opposition. An attack based on D9 against the subject-matter of this request was however neither mentioned in the notice of opposition nor dealt with in the impugned decision. This attack does not meet the requirements of Article 12(2) RPBA 2020 and therefore the Board exercised its discretion under Article 12(4) RPBA 2020 and did not admit it into the proceedings.

3. Admission of novelty objection with respect to D1

This objection was not raised in opposition proceedings; indeed the decision under appeal states in paragraph 4.2 that novelty was not contested by the opponent. Instead the lack of novelty over D1 of the

request found allowable by the examining division (which was auxiliary 1 in the proceedings before the examining division) was mentioned for the first time in the opponent's letter setting out the grounds of appeal (page 20, last paragraph) as a consequence of the opponent's view that D1 belongs to the prior art. The novelty objection based on D1 was then filed (again) with the opponent's letter dated 24 July 2023.

It could be argued that the mere conclusion from the priority assessment to the question of novelty over D1 does not constitute a proper novelty objection. The consequence of this would be that this objection was raised for the first time only with the opponent's letter dated 24 July 2023 and its admissibility would be governed by Article 13(2) RPBA. However, in favor of the opponent, the Board accepts the conclusion from the priority assessment to the question of novelty as a valid novelty objection. Thus for the assessment of admissibility of this objection Article 12(2) RPBA 2020 applies.

According to this provision, a party's appeal case shall be directed to the requests, facts, objections, arguments and evidence on which the decision under appeal was based. Clearly this objection was not part of the decision under appeal and therefore in view of the object of the appeal proceedings to review the decision under appeal in a judicial manner, in accordance with Article 12(6) RPBA 2020, the Board did not admit this argument into the appeal proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated