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Datasheet for the decision of 7 September 2022

Case Number: T 0560/21 - 3.2.01

Application Number: 12728078.2

Publication Number: 2720939

IPC: B63C9/22

Language of the proceedings: EN

Title of invention:
AN EVACUATION SYSTEM

Patent Proprietor:
Viking Life-Saving Equipment A/S

Opponent:
Survitec Group Limited

Headword:

Relevant legal provisions:
EPC Art. 100(b), 83, 56

Keyword:
Sufficiency of disclosure - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
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Beschwerdekammern

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Case Number: T 0560/21 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 7 September 2022

Appellant: (Opponent)	Survitec Group Limited 1-5 Beaufort Road Birkenhead, Merseyside CH41 1HQ (GB)
Representative:	Foster, Mark Charles Mathisen & Macara LLP Charta House 30-38 Church Street Staines-upon-Thames, Middlesex TW18 4EP (GB)
Respondent: (Patent Proprietor)	Viking Life-Saving Equipment A/S Sædding Ringvej 13 6710 Esbjerg V (DK)
Representative:	Hoffmann, Claus Aligned A/S Strandvejen 125 2900 Hellerup (DK)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 19 March 2021 concerning maintenance of the European Patent No. 2720939 in amended form.**

Composition of the Board:

Chairman	G. Pricolo
Members:	J. J. de Acha González
	O. Loizou

Summary of Facts and Submissions

I. The appeal of the opponent lies against the interlocutory decision of the Opposition Division to maintain the European patent N° 2720939 in amended form according to the main request.

II. The Opposition Division found among others that:

- the patent disclosed the invention according to claims 1, 6 and 7 in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 83 EPC), and
- the subject-matter of claim 1 involved an inventive step in view of the following combinations of prior art (see below for the document numbering):
  - D1 with A7 and normal design procedures;
  - A14 with A18 (public prior use Pride of Hull); and
  - A3 with common general knowledge.

The following documents are relevant for the present decision:

D1: WO 00/29283 A,
D2: WO 00/32464 A,
A3: US 5 765 500 A,
A7:"Guidelines for the approval of inflatable life rafts to extended service intervals not exceeding 30 months" - 11 June 2009,
A14: "Report on the investigation of a fatal accident during a vertical chute evacuation drill from the UK registered ro-ro ferry P&OSL Aquitaine in Dover Harbour on 9 October 2002", and

A18: Batch of documents (A18.1 to A18.13) in support of an alleged public prior use of the MV Pride of Hull vessel, in the following referred to as the prior use.

III. Oral proceedings before the Board were held on 7 September 2022 in the form of a videoconference with the consent of the parties.

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 be dismissed (main request) or, in the alternative, that the case be remitted to the Opposition Division for further prosecution on the basis of the auxiliary requests 1 to 7 submitted with their reply or that the patent be maintained in amended form on the basis of one of said auxiliary requests 1 to 7.

IV. Claims 1, 6 and 7 of the main request read as follows:

"*1. An evacuation system (4) for a vessel (1) or offshore facility, comprising a storage unit (7) having a length, a width and a height defining a volume of the storage unit (7), the storage unit (7) in a storage situation houses*

- *inflatable floatable units (5), the inflatable floatable units (5) each having a capacity of more than 150 persons, and*
- *a deployment arrangement (8) having a displacement device (100), wherein a maximum height of the storage unit (7) is 2.7 metres, and the displacement device (100) is adapted to displace the inflatable floatable units (5) in a substantially horizontal and linear direction out*

of the storage unit (7) below the maximum height and subsequently lower the inflatable floatable units (5) into the water in a substantially vertical direction,

wherein the inflatable floatable units (5) are self-propelling and the storage unit (7) further comprises a climate device adapted to control the environment inside the storage unit (7)."

"*6. An evacuation system (4) according to claim 1 or 2, wherein the deployment arrangement (8) comprises an overhung transverse crane system, the transverse crane system comprising the displacement device, which displacement device is adapted to displace the crane system horizontally and linearly out of the storage unit (7) until the lifting platform is free to be lowered into the water.*"

"*7. An evacuation system (4) according to claim 6, wherein the displacement device of the overhung transverse crane system comprises at least two telescopic arms arranged above the lifting platform and below the maximum height of the storage unit.*"

Reasons for the Decision

Main request - version maintained by the Opposition Division

1. *Sufficiency of disclosure - Article 83 EPC*

1.1 The patent discloses the invention according to claims 1, 6 and 7 in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

1.2 The appellant essentially reiterated the lines of argument put forward during the opposition proceedings according to which the patent did not provide the skilled person with sufficient information on how to realise the climate device adapted to control the environment inside the storage unit (claim 1) and the overhung transverse crane system (claims 6 and 7).

In particular, the patent was silent on the way the climate device worked, which form it took and where it was placed. The patent left an extremely broad concept of the "climate device" such that the skilled person remained clueless on how to provide it.

What related the term "overhung transverse crane system" the patent specification explicitly stated that such a crane system was not shown in the embodiments of the invention (see paragraph [0113]). Figures 6a to 8 of the patent did not show such a transverse crane system contrary to the Opposition Division's view in

the contested decision, and consequently there was no enabling disclosure in that respect.

1.3 As pointed out by the appellant, the feature "a climate device adapted to control the environment inside the storage unit" is indeed very broad. However, the view of the respondent is correct that climate devices in order to control the environment (temperature, humidity, pressure) inside a delimited space are well known to the skilled person. The appellant failed to identify the reasons why the skilled person would not be in a position to provide such a climate device in the storage unit of the evacuation system according to the invention and merely asserted that the patent did not provide a detailed description of such climate devices without taking into consideration common general knowledge of the skilled person, let alone notorious knowledge.

The same reasoning presented above applies to the feature relating to the overhung crane system. The view of the appellant is correct that the patent does not show or specify any detailed overhung transverse crane system. The Opposition Division was incorrect in considering that figures 6a to 8 of the patent depicted such a crane system. The embodiments of those figures do not include a transverse crane housed in the storage unit. However, even if the patent is silent in that respect, the skilled person reading the specification and tackling its common general knowledge is in a position to provide an overhung transverse crane system according to claims 6 and 7. Such a crane system corresponds to a bridge crane housed in the storage unit wherein the bridge can cantilever from the side rails or guides out of the storage unit (see as an

example figures 8 and 9 of D2 referred to by the appellant as showing such a system).

2. *Storage unit - interpretation*

2.1 In the appellant's view the feature of claim 1 "a storage unit" did not require a unit that was not integral part of a vessel or offshore facility. In particular, claim 1 did not exclude that the walls of the claimed storage unit were part of the vessel. The storage unit of the system of claim 1 served the purpose of defining a volume. That said volume could be defined by walls of the vessel or of the offshore facility was encompassed by the language of claim 1. Figure 4b and paragraph [0103] of the contested patent supported this view since clearly the system was built into a cavity that was already present. Further, the wording "An evacuation system for a vessel or offshore facility" of claim 1 had to be interpreted analogously to the wording "a cylinder head for an engine". Clearly, the cylinder head was part of the engine and it could only work and perform its function when mounted into the engine. Consequently, it could not be seen as a stand alone part. The same applied to the storage unit of claim 1 with regard to the vessel or offshore facility.

2.2 The Board judges that the view of the Opposition Division in its decision and that of the respondent is correct. The storage unit of the claimed evacuation system for a vessel or offshore facility cannot be seen as a storage compartment of the vessel or offshore facility itself. The system is for a vessel or offshore facility, i.e. suitable for a vessel or offshore facility, and not part of the vessel or offshore facility as such. The storage unit is the housing of

the evacuation system because it is specified to house the inflatable floatable units and the deployment arrangement within the volume defined through its length, width and height. This interpretation derives directly from the wording of claim 1.
The argument of the appellant relating to the wording "An evacuation system for a vessel or offshore facility" as in "A cylinder head for an engine" cannot be followed. Such wordings refer to the suitability of the system for a vessel or offshore facility, or of the cylinder head for an engine, respectively. The claims are however directed to the system or cylinder head alone, not to the vessel (or offshore facility) or engine. Clearly, in both cases the protection is sought for the system or the cylinder head only, and both subsequently are intended to be mounted on or into a vessel (or offshore facility) or into an engine.
Accordingly, paragraph [0103]] of the patent merely discloses that the evacuation system according to the invention housed in its storage unit can be put on the deck or put into a cavity of the vessel (or offshore facility). The paragraph does not support the interpretation of the appellant.

3. *Inventive step - Article 56 EPC*

The subject-matter of claim 1 is not rendered obvious by the following combinations of prior art:

(i) starting from D1 in combination with A7 and/or common general knowledge;

(ii) in view of the prior use (pride of Hull) evidenced by A14 and A18; and

(iii) starting from A3 in view of common general knowledge.

3.1 When starting from D1 and bearing in mind the interpretation as acknowledged above for the claimed storage unit of the system, the subject-matter of claim 1 differs from the system disclosed in D1 at least on account of the following feature:

(a) the storage unit houses a deployment arrangement having a displacement device adapted to displace the inflatable floatable units in a substantially horizontal and linear direction out of the storage unit below the maximum height and subsequently lower the inflatable floatable units into the water in a substantially vertical direction.

3.2 The appellant submitted that D1 disclosed one alternative to the system of the embodiment shown in figures 1 to 8 in which the dry cassette was pushed out in a straightforward manner for example with the aid of some type of roller arrangement (see page 6, lines 21 ff.). Accordingly, as regards feature (a) above, the subject-matter of claim 1 would only differ from that system of D1 in that the storage unit houses the deployment arrangement. The deployment arrangement with the displacement device for the inflatable floatable units of claim 1 was thus already known from D1. In the appellant's view housing that deployment arrangement in a storage unit in its storage situation would be obvious for the skilled person bearing in mind its common general knowledge or the teaching of A7 in order to provide a stand alone system adapted to be directly mounted into the vessel or the offshore facility.

3.3 The line of argumentation of the appellant is judged to be based on hindsight. The displacement device for the inflatable units in D1 is mounted within the storage room of the vessel (see figures 1 to 3 of D1, wherein instead of turning the cassette out of the vessel, it

would be pushed out longitudinally - the cassette mounted transversely to the direction of the vessel - see page 6, third paragraph of D1). Accordingly, the longitudinal movement is applied by an arrangement which interacts directly with the vessel itself for pushing it out. Even if the skilled person were prompted to house the whole cassette of D1 into a storage unit, he would still lack the teaching, either derived from common general knowledge or from A7, that hints him to arrange the cassette into a storage unit such that the displacement device responsible for the horizontal and linear motion is also housed in it and not located outside and in interaction with the vessel or offshore facility. This horizontal and linear displacement which subsequently allows the lowering of the floatable units by positioning them beyond the limits of the vessel (or offshore facility) could be also applied from the outside to the whole storage unit and, accordingly, not necessarily housed within it. Consequently, it is not obvious for the skilled person starting from the system of D1 and bearing in mind its common general knowledge or the teaching of A7 to house the claimed displacement device within a storage unit of the evacuation system.

3.4 The objection of the appellant when starting from the prior use was based on the assumption that the displacement device providing the linear and horizontal movement was housed in a storage unit (the "housing" disclosed on page 7, third paragraph under point 1.2.3 and diagram 1 of A14). However, as pointed out by the Opposition Division in its decision (see point 6.2.4) the housing referred to in that passage is part of the vessel and therefore does not correspond to the storage unit claimed (see point 2 above).

3.5 The appellant's line of argument when starting from A3 did not even consider that the subject-matter of claim 1 differed from the embodiment of figure 8 of A3 on account of feature (a). The appellant asserted that the room 12 of the vessel represented the storage unit. As pointed out before, this is an incorrect interpretation of claim 1. Additionally, it is noted that the support frame 5 in figure 8 of A3 can be seen as the storage unit of claim 1. However, the substantially horizontal telescopic mechanism 27 responsible for the horizontal and linear displacement of the inflatable floatable units is located outside the storage unit (support frame 5). Accordingly and in analogous manner as for the system of D1, the skilled person would not find any hint in its common general knowledge to integrate the support frame and the telescopic mechanism further into a storage unit and arrive at the subject-matter of claim 1 in an obvious manner.

3.6 Since the objections starting from the public prior use and A3 are not persuasive in the substance, the objections raised by the respondent on their admissibility and on the public availability of the prior use can remain unanswered.

4. It follows from the above that the decision of the Opposition Division is to be confirmed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Voyé G. Pricolo

Decision electronically authenticated