Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 15 September 2023

Case Number: T 1166/21 - 3.2.01

Application Number: 14739328.4

Publication Number: 3014052

IPC: E21B33/064

Language of the proceedings: EN

Title of invention:
SYSTEMS AND METHODS FOR TETHERING SUBSEA BLOWOUT PREVENTERS

Patent Proprietor:
Trendsetter Vulcan Offshore Inc.

Opponents:
Equinor Energy AS
Kongsberg Maritime AS, Oil and Gas

Headword:

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 13(2)

Keyword:
Amendments - intermediate generalisation - allowable (no)
Amendment after summons - exceptional circumstances (no) - cogent reasons (no) - taken into account (no)

Decisions cited:
G 0002/10

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1166/21 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 15 September 2023

Appellant: (Patent Proprietor)	Trendsetter Vulcan Offshore Inc. 16225 Park Ten Place Pl. Suite 135 Houston TX 77084 (US)
Representative:	Hamer, Christopher K. Mathys & Squire The Shard 32 London Bridge Street London SE1 9SG (GB)
Respondent: (Opponent 1)	Equinor Energy AS Forusbeen 50 4035 Stavanger (NO)
Representative:	Dehns St. Bride's House 10 Salisbury Square London EC4Y 8JD (GB)
Respondent: (Opponent 2)	Kongsberg Maritime AS, Oil and Gas P.O. Box 306 1301 Sandvika (NO)
Representative:	Onsagers AS P.O. Box 1813 Vika 0123 Oslo (NO)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 25 May 2021 revoking European patent No. 3014052 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	M. Geisenhofer
	A. Jimenez

Summary of Facts and Submissions

I. The appeal was filed by the appellant (patent proprietor) against the decision of the opposition division to revoke the patent.

II. During the opposition proceedings, the opponents raised the grounds for opposition under Article 100(a) EPC (lack of novelty and lack of inventive step), 100(b) EPC and 100(c) EPC.

III. The appellant submitted during opposition proceedings an amended main request (filed on 7 February 2019), auxiliary requests 1 - 6 (filed on 24 January 2020) and auxiliary requests 7 - 29 (filed on 22 January 2021).

IV. The opposition division decided that the subject-matter of the claims of all requests extended beyond the content of the application as filed, and hence revoked the patent.

V. Oral proceedings were held before the Board.

(a) The appellant (patent proprietor) requested that the decision of the opposition division be set aside and the patent be maintained in amended form based on the main request or on one of the auxiliary requests 1-29 as filed during opposition proceedings, or on one of the auxiliary requests 30 and 31 as filed with the statement of grounds of appeal, or on the auxiliary request 32 as filed during the oral proceedings before the Board.

(b) The respondent (opponent 1) requested that the appeal be dismissed.

(c) The further respondent (opponent 2) did not file submissions but only informed the Board that they would not attend the oral proceedings.

VI. Claim 1 of the main request reads as follows:

"*A system (100, 200) for tethering a subsea blowout preventer (BOP) (41), the system (10) comprising:*
a plurality of anchors (110, 210) disposed about the subsea BOP (41) and secured to the sea floor (12), wherein each anchor (110, 210) is a pile embedded in the seabed, each anchor (110, 210) having an upper end (110a) disposed above the sea floor (12) and a lower end (110b) disposed in the seabed below the sea floor (12);
characterised in that the system (100, 200) comprises:
a plurality of tensioning systems (140, 220, 320), wherein one tensioning system (140, 220, 320) is coupled to an upper end (110a) of each anchor (110, 210);
a plurality of flexible tension members (160), wherein each tension member (160) extends from a first end coupled to the subsea BOP (41) to a second end coupled to one of the tensioning systems (140, 220, 320);
wherein each tensioning system (140, 220, 320) is configured to apply a tensile preload (L) to one of the tension members (160);
wherein each tensioning system (140, 220, 320) is a winch (140, 220, 320) configured to pay in and pay out the corresponding tension member (160)."

Claim 10 of the main request further claims a method for tethering a subsea blowout preventer using the system of claim 1.

Claim 1 of auxiliary request 1 and claim 1 of auxiliary request 2 are identical to claim 1 of the main request.

Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 in that it additionally requires the system to comprise

"*a plurality of pile top assemblies (123, 212), wherein one pile top assembly (129, 212) is mounted to an upper end (110a) of each anchor (110, 210)*".

Furthermore, it is clarified that "*each tensioning system is coupled to one of the pile top assemblies (120, 212)*".

Claim 1 of auxiliary request 4 and claim 1 of auxiliary request 5 are identical to claim 1 of auxiliary request 3.

Claim 1 of auxiliary request 6 differs from claim of auxiliary request 3 in that it additionally recites the following features:

"*wherein each winch (140, 220, 320) includes a spool (141, 222, 322) rotatably coupled to the corresponding anchor (119, 219) and a locking mechanism (150, 224, 324) configured to prevent pay out of the corresponding tension member (160) from the spool (141, 222, 322)*"

and

"*wherein the spool (141, 222, 322) has an axis of rotation*".

Claim 1 of auxiliary request 7 differs from claim of auxiliary request 6 in that it additionally recites the following feature:

"*wherein each anchor is an elongate rigid member with a vertically orientated central or longitudinal axis (115) and a cylindrical outer*

surface (111) extending between upper and lower ends (110a, 110b)"

Claim 1 of auxiliary request 8 and claim 1 of auxiliary request 10 are identical to claim 1 of auxiliary request 6.

Claim 1 of auxiliary request 9 and claim 1 of auxiliary request 11 are identical to claim 1 of auxiliary request 7.

Claim 1 of auxiliary request 12 is based on the main request but additionally recites the following features:

"*a plurality of pile top assemblies (120, 212), wherein one pile top assembly (120, 212) is mounted to an upper end (110a) of each anchor (110, 210)*";
"*wherein each winch (140, 220, 320) is fixably mounted to an upper end (121a, 216a) of an adapter (121, 216) included in each pile top assembly (120, 212)*";
"*wherein each winch (140, 220, 320) includes a spool (141, 222, 322) rotatably coupled to the corresponding anchor (110, 210) and a locking mechanism (150, 224, 324) configured to prevent pay out of the corresponding tension member (160) from the spool (141, 222, 322)*"; and
"*wherein the spool (141, 222, 322) has an axis of rotation*".

Claim 1 of auxiliary request 13 is based on claim 1 of the auxiliary request 12 but additionally requires the following feature:

"*wherein each anchor is an elongate rigid member with a vertically orientated central or longitudinal axis (115) and a cylindrical outer*

surface (111) extending between upper and lower ends (110a, 110b) and each anchor comprises an annular lip or flange (112) extending radially outward from the outer surface (111) proximal the upper end (110a)"

Claim 1 of auxiliary request 14 and claim 1 of auxiliary request 16 are identical to claim 1 of auxiliary request 12.

Claim 1 of auxiliary request 15 and claim 1 of auxiliary request 17 are identical to claim 1 of auxiliary request 13.

Claim 1 of auxiliary request 18 is based on claim 1 of the auxiliary request 12 but additionally requires that the system comprises

"*a guide (125) for each tension member (160) secured to an upper end (121a, 216a) of an adapter (121, 216) included in each pile top assembly (120, 212)*".

Claim 1 of auxiliary request 19 is based on claim 1 of the auxiliary request 13 but additionally requires that the system comprises

"*a guide (125) for each tension member (160) secured to an upper end (121a, 216a) of an adapter (121, 216) included in each pile top assembly (120, 212)*".

Claim 1 of auxiliary request 20 and claim 1 of auxiliary request 22 are identical to claim 1 of auxiliary request 18.

Claim 1 of auxiliary request 21 and claim 1 of auxiliary request 23 are identical to claim 1 of auxiliary request 19.

Claim 1 of auxiliary request 24 is based on claim 1 of auxiliary request 12 but additionally requires the following features:

"*wherein each locking mechanism (150, 224, 324) includes a spool ring (151) coupled to the spool (141, 222, 322), a hub (152) fixably coupled to the anchor (110, 210), and a lock ring (153) slidably mounted to the hub (152)*";

"*wherein the spool ring (151) includes a plurality of internal splines (151a, 153b), the hub (152) includes a plurality of external splines (152a, 153a), and the lock ring (153) includes a plurality of external splines (152a, 153a) and a plurality of internal splines (151a, 153b)*";

"*wherein the external splines (152a, 153a) of the hub (152) mate and intermesh with the internal splines (151a, 153b) of the lock ring (153); wherein the internal splines (151a, 153b) of the spool ring (151) are configured to mate and intermesh with the plurality of external splines (152a, 153a) of the lock ring (153)*"; and

"*wherein the lock ring (153) is configured to move axially along the hub (152) between an unlocked position with the external splines (152a, 153a) of the lock ring (153) axially spaced apart from the internal splines (151a, 153b) of the spool ring (151) and a locked position with the external splines (152a, 153a) of the lock ring (153) intermeshing with the internal splines (151a, 153b) of the spool ring (151).*"

Claim 1 of auxiliary request 25 is based on claim 1 of auxiliary request 13 but additionally requires the following features:

"*wherein each locking mechanism (150, 224, 324) includes a spool ring (151) coupled to the spool (141, 222, 322), a hub (152) fixably coupled to the anchor (110, 210), and a lock ring (153) slidably mounted to the hub (152)*";

"*wherein the spool ring (151) includes a plurality of internal splines (151a, 153b), the hub (152) includes a plurality of external splines (152a, 153a), and the lock ring (153) includes a plurality of external splines (152a, 153a) and a plurality of internal splines (151a, 153b)*";

"*wherein the external splines (152a, 153a) of the hub (152) mate and intermesh with the internal splines (151a, 153b) of the lock ring (153)*";

"*wherein the internal splines (151a, 153b) of the spool ring (151) are configured to mate and intermesh with the plurality of external splines (152a, 153a) of the lock ring (153)*"; and

"*wherein the lock ring (153) is configured to move axially along the hub (152) between an unlocked position with the external splines (152a, 153a) of the lock ring (153) axially spaced apart from the internal splines (151a, 153b) of the spool ring (151) and a locked position with the external splines (152a, 153a) of the lock ring (153) intermeshing with the internal splines (151a, 153b) of the spool ring (151)*".

Claim 1 of auxiliary request 26 and claim 1 of auxiliary request 28 are identical to claim 1 of auxiliary request 24.

Claim 1 of auxiliary request 27 and claim 1 of auxiliary request 29 are identical to claim 1 of auxiliary request 25.

Claim 1 of auxiliary request 30 differs from claim 1 of auxiliary request 29 in that it specifies that the tension member extends from a first end "*coupled to a frame of the subsea BOP*".

Claim 1 of auxiliary request 31 is based on claim 1 of auxiliary request 30 but further specifies that the spool is rotatably coupled "*to the adapter (121, 216)*" instead of to the corresponding anchor, and that the locking mechanism is coupled "*to the spool (141, 222, 322) and the adapter (121, 216)*".

Claim 1 of auxiliary request 32 reads as follows:
"*A system (100, 200) for tethering a subsea blowout preventer (BOP) (41), the system (10) comprising:*
a plurality of anchors (110, 210) disposed about the subsea BOP (41) and secured to the sea floor (12), wherein each anchor (110, 210) is a pile embedded in the seabed, each anchor (110,210) having an upper end (11 0a) disposed above the sea floor (12) and a lower end (11 0b) disposed in the seabed below the sea floor (12), wherein each anchor is an elongate rigid member with a vertically orientated central or longitudinal axis (115) and a cylindrical outer surface (111) extending between upper and lower ends (110a, 110b) and each anchor comprises an annular lip or flange (112) extending radially outward from the outer surface (111) proximal the upper end (110a), and
a plurality of pile top assemblies (120, 212), wherein one pile top assembly (120, 212) is mounted to an upper end (110a) of each anchor (110, 210);
characterised in that the system (100, 200) comprises:

a plurality of tensioning systems (140, 220, 320), wherein one tensioning system (140, 220,320) is coupled to an upper end (110a) of each anchor (110,210);
a plurality of flexible tension members (160), wherein each tension member (160) extends from a first end coupled to a frame (47) of the subsea BOP (41) to a second end coupled to one of the tensioning systems (140, 220, 320);
wherein each tensioning system (140, 220, 320) is configured to apply a tensile preload (L) to one of the tension members (160);
wherein each tensioning system (140, 220, 320) is a winch (140, 220, 320) configured to pay in and pay out the corresponding tension member (160);
wherein each winch (140,220, 320) is fixably mounted to an upper end (121a, 216a) of an adapter (121, 216) included in each pile top assembly (120,212);
wherein each winch (140, 220, 320) includes a spool (141, 222, 322) rotatably coupled to the adapter (121, 216) and a locking mechanism (150, 224, 324) coupled to the spool (141, 222, 322) and the adapter (121, 216), the locking mechanism configured to prevent pay out of the corresponding tension member (160) from the spool (141, 222, 322) and to releasably lock the spool (141,222,322) relative to the adapter (121, 216), wherein the spool (141, 222, 322) has an axis of rotation;
wherein each locking mechanism (150, 224, 324) includes a spool ring (151) coupled to the spool (141, 222, 322), a hub (152) fixably coupled to the anchor (110, 210), and a lock ring (153) slidably mounted to the hub (152);
wherein the spool ring (151) includes a plurality of internal splines (151a, 153b), the hub (152) includes a plurality of external splines (152a, 153a), and the lock ring (153) includes a plurality of external

splines (152a, 153a) and a plurality of internal splines (151a, 153b);
wherein the external splines (152a, 153a) of the hub (152) mate and intermesh with the internal splines (151a, 153b) of the lock ring (153);
wherein the internal splines (151a, 153b) of the spool ring (151) are configured to mate and intermesh with the plurality of external splines (152a, 153a) of the lock ring (153);
wherein the lock ring (153) is configured to move axially along the hub (152) between an unlocked position with the external splines (152a, 153a) of the lock ring (153) axially spaced apart from the internal splines (151a, 153b) of the spool ring (151) and a locked position with the external splines (152a, 153a) of the lock ring (153) intermeshing with the internal splines (15la, 153b) of the spool ring (151);
wherein the pile top assembly (120) includes an adapter (121) removably mounted to the upper end (110a) of pile (110), a plurality of uniformly circumferentially-spaced locking rams (130) attached to adapter (121);
wherein adapter (121) is a generally cylindrical sleeve having a first or upper end(121a), a second or lower end (121b), a radially inner annular shoulder (122), and a receptacle (123) extending axially from lower end (121b) to inner annular shoulder (122);
wherein receptacle (123) is sized and configured to receive upper end (110a) of anchor (110) and an annular funnel (124) is disposed at lower end (121b) to facilitate the receipt of anchor (110) and coaxial alignment of anchor (110) and adapter (121);
wherein adapter (121) is generally coaxially aligned with anchor (110), and upper end (110a) axially abuts shoulder (122), wherein upper end (110a) of anchor (110) is seated in receptacle (123) and releasably locked therein with locking rams (130);

wherein a guide (125) for tension member (160) is secured to upper end (121a) and tension member (160) extends from the winch (140) through guide (124) to end (160a) and guide (125) is configured to direct tension member (160) as it is paid in and paid out from winch (140);
wherein locking rams (130) are actuated to engage and disengage upper end (110a) of pile (110), which is coaxially disposed in receptacle (123), and releasably lock pile top assembly (120) to pile (110);
wherein each ram (130) includes a double-acting linear actuator (131) mounted to adapter (121) between upper and lower ends (121a, 121b) and a gripping member or ram block (132) coupled to the actuator (131)
wherein each gripping member (132) is mounted to the radially inner end of the corresponding actuator (131) and extends into receptacle (123);
wherein actuators (131) are actuated to move gripping members (132) radially inward into engagement with outer surface (111) of pile (110) and radially outward out of engagement with pile (110);
wherein locking rams (130) are axially positioned along adapter (121) such that when actuators (131) are operated to move gripping members (132) into engagement with outer surface (111), each gripping member 132 is axially disposed immediately below annular lip or flange (112), such that when gripping members (132) are moved into engagement with outer surface (111) of pile (110), friction between gripping members (132) and outer surface (111) and axial engagement of gripping members (132) with annular lip or flange (112);
prevent adapter (121) from being removed from pile (110)."

VII. The appellant's arguments can be summarized as follows:

(a) The opposition division erred when deciding that all requests filed in opposition proceedings (main request and auxiliary requests 1 - 29) were amended in such a way that they contained subject-matter extending beyond the content of the application as filed.

(b) Auxiliary requests 30 and 31 (filed with the grounds of appeal) were a reaction to the opposition division's decision and hence should be admitted into the appeal proceedings.

(c) Claim 1 of auxiliary requests 30 and 31 contained all relevant features disclosed in the embodiment described in figures 1, 2, 8 and 9 of the application as originally filed.

(d) Auxiliary request 32 (filed during oral proceedings before the Board) was a further attempt to remedy the objection of unallowable amendment, in particular with regard to the Board's preliminary opinion.

VIII. The respondent's arguments can be summarized as follows:

(a) Claim 1 of any of the requests 1 - 30 on file was an unallowable intermediate generalisation of what was disclosed in the application as originally filed.

(b) Auxiliary requests 30 and 31 should have been filed during opposition proceedings and hence should not be admitted into the appeal proceedings.

(c) Auxiliary request 32 should not be admitted pursuant to Article 13(2) RPBA since there were no exceptional circumstances justified by cogent reasons by the appellant.

Reasons for the Decision

Main request

Amendments (Article 123(2) EPC)

1. The opposition division decided that the subject-matter according to claim 1 of the main request is an unallowable intermediate generalisation of the embodiment shown in the application as originally filed.

1.1 They held that feature 1B1 ("*each anchor is a pile embedded in the seabed, the pile having an upper end disposed above the sea floor and a lower end disposed in the seabed below the sea floor*") was disclosed in paragraph [0060], whereas feature 1F ("*each tensioning system is a winch configured to pay in and pay out the corresponding tension member*") was disclosed in paragraph [0047] and in originally filed claim 6. However, these passages disclosed that each feature was inextricably linked to a plurality of further features, respectively, that were omitted when drafting claim 1 of the main request.

1.2 The appellant argued as follows:

1.2.1 The invention consisted in attaching the tension members to the piles at a location above the sea floor. This allowed for a linear extension of the tension

member since the end of the tension member attached to the pile was above the mud level of the seabed, the mud hence not deviating the prestressed tension member from its linear extension. Furthermore, displacing the point of attachment a distance above the seabed allowed for a flatter angle of the tension members thus maximising the horizontal component of the force exerted onto the BOP (blow out preventer).

The appellant referred to paragraphs [0050] - [0052] as a disclosure of this inventive concept (see grounds of appeal, points 4.0.2 - 4.0.5). Furthermore, they referred to the declarations of Lyle Finn, Joseph Pallini and Early Denison filed on 3 August 2023.

In the appellant's opinion, the skilled person understood that the only relevant feature being functionally required for achieving the alleged effects and cited in paragraph [0060] would be feature 1B1 such that this feature could be isolated and the further features cited in paragraphs [0060] - [0066] could be omitted.

1.2.2 The appellant further argued that paragraph [0060] was a general passage whereas paragraphs [0061] - [0066] were a more detailed description of the claimed system. The skilled person hence understood that the features cited in paragraph [0060] were not linked to the features of the other paragraphs, this being in particular apparent from the last six lines of paragraph [0060].

1.2.3 Feature 1F in turn was in the appellant's view a generalisation that was allowable due to the disclosure of paragraph [0072]. The frame mentioned in this

paragraph was not inextricably linked to the general principle of pre-tensioning the tension members.

1.3 Contrary to the appellant's arguments, the Board considers features 1B1 to be inextricably linked to the features of paragraphs [0061] - [0064] concerning how to attach the tension members to the piles.

1.3.1 In the Board's view, the application as originally filed did not present the invention merely in the general context of providing tension members attached to the pile at a location above the seabed to avoid catenary effects in the tension members.

(a) Paragraph [0050] explains that the tension members (referred to as "*spans*" in this passage) extend at an acute angle such that the force L due to prestressing the tension members has a horizontal component L_h and a lateral/vertical component L_l. No mention of mud and/or the mud hindering the tension member to adapt a perfectly linear extension is mentioned in paragraphs [0050] - [0053].

(b) Furthermore, paragraph [0050] refers in the first line to the winches being positioned proximal to the sea floor (and not significantly above), and it is explained in the last lines of the passage that the angle of the tension members should be between 10° and 60°, preferably between 30° and 45° - hence not as flat as possible.

1.3.2 The declarations of Lyle Finn, Joseph Pallini and Early Denison are not relevant in this context since these declarations do not deal with the issue of clear and unambiguous disclosure in the application as originally

filed ("gold standard", see e.g. G 2/10), which is relevant when assessing the compliance of amendments with the requirements of Article 123(2) EPC, but rather to what the skilled person might regard as a general "inventive concept", or might contemplate, when reading the application as filed (see e.g. the declaration of Lyle Finn, point 3: "*From my analysis of WO 2014/10026 A2, I consider the principal contribution made by the inventors to be the identification of a problem, in the form of well head fatigue*", and point 8: "*To me, Figures 1 and 2, for example, illustrate a particular way in which the inventive concept can be worked, but other configurations and components come to mind*". Similar statements are made in the declarations of Mr Pallini, see e.g. points 2 and 6, and of Mr Denison, see e.g. points 3 and 8).

It thus can be left open whether the late filed declarations can be admitted into the proceedings.

1.3.3 The Board cannot recognize a different level of abstraction between paragraph [0060] and the following paragraphs either.

(a) Paragraph [0060] refers "*to Figures 1, 2, 8, and 9*" and paragraphs [0061] - [0063] refer "*to Figures 8 and 9*" - hence one and the same embodiment. This is also confirmed by the brief description of the drawings in paragraphs [0020] and [0021].

(b) The last six lines of paragraph [0060] only state that different types of piles exist whereby the type used depends on the soil characteristics into which the pile is driven. The type of pile is, however, not specified in claim 1 and does not

influence the attachment mechanism used between tension member and upper end of the pile.

Paragraphs [0060] and [0061] - [0063] hence must be considered as an interconnected disclosure of the embodiment shown in figures 1, 2, 8 and 9.

1.4 Concerning feature 1F, the Board notes that paragraph [0072] discloses a reference to other embodiments arranging the tensioning systems at the BOP instead of at the pile. The presence of further, different embodiments however does not alter the disclosure of the embodiment in suit. These additional embodiments might only provide disclosure for other combinations of features.

1.5 The application as originally filed thus provides in figures 1, 2, 8 and 9, taken in combination with paragraphs [0060] - [0063] of the description, a disclosure for a connection between tension member and pile involving the following features:

(i) A pile top assembly is mounted to the upper end of each pile. This pile top assembly is connected to the pile using an adapter which engages a lip or flange that extends radially outward from the outer surface of the pile proximal to the upper end of the pile.

(ii) The adapter is a generally cylindrical sleeve having a first or upper end, a second or lower end, a radially inner annular shoulder and a receptacle extending axially from the lower end to the shoulder.

(iii) The adapter is removably mounted and comprises a plurality of uniformly circumferentially-spaced locking rams attached to the adapter.

(iv) The receptacle of the adapter is sized and configured to receive the lip or flange at the upper end of the pile and the locking rams comprise gripping members and a doubleacting linear actuator. The locking rams are axially positioned along the adapter such that when the actuators are operated to move the gripping members into engagement with the outer surface of the pile, each gripping member is axially disposed immediately below the annular lip or flange.

(v) The winch in turn is fixed at the adapter and includes a spool rotatably coupled to the corresponding pile, and a locking mechanism configured to prevent pay out of the corresponding tension member from the spool.

1.5.2 Feature 1B1 ("*each anchor is a pile embedded in the seabed, the pile having an upper end disposed above the sea floor and a lower end disposed in the seabed below the sea floor")* is again taken from the embodiment disclosed in the description, this feature being in close structural and functional relationship with the above identified features (i) - (iv). Indeed all these features interact in order to provide the connection between the respective tension member and the pile.

1.5.3 In particular, in the disclosed embodiment where the anchor is a pile having an upper end disposed above the sea floor, there is also provided a pile top assembly 120 releasably mounted to the upper end of the pile, the pile top assembly having an adapter 121 to which the winch 140 is mounted (see paragraph [0061] and [0062]). The releasable mounting of the pile top assembly is achieved, in particular, by means of the cooperation between a locking ram 130 and an annular lip or flange 112 (Figure 9) extending radially outward from outer surface 111 proximal upper end 110a of the pile (see paragraph [0060]). As a matter of fact, when the gripping member 132 of the locking ram moves into engagement with the outer surface of the pile, axial engagement of the gripping member with the lip prevents the adapter from being removed from the pile (see paragraph [0063]). Hence, there is a functional and structural link between the feature that the pile has an upper end disposed above the sea floor and the features of the embodiment that the pile top assembly is releasably mounted to the upper end of the pile by means of the locking ram cooperating with the lip or flange member.

There is no basis in the application as filed for an embodiment in which the anchor is a pile having an upper end disposed above the sea floor in accordance with feature 1B1 and in which the tensioning system is coupled thereto by any possible means as in accordance to the wording of claim 1.

Whether the skilled person would realize that other coupling means (fixed or releasable, with or without the lip and the locking ram) would be feasible, goes beyond what is the clear and unambiguous disclosure of the application as filed. Simply stated, there is no

such general disclosure and thus the amendment made to claim 1 introduces new technical information as compared to the application as filed.

1.6 With regard to the lip, the appellant argued that it was only present in the embodiment of figures 1, 2, 8 and 9 but not in the embodiment of figures 18 - 21. Figure 21 would disclose an alternative to the lip cooperating with locking rams.

1.6.1 Figure 21 shows a detail of the system disclosed in figures 18 - 20. As set out in paragraph [0082], "*the anchors and the tensioning members are each as previously described*", i. e. the anchors of the embodiment of figures 1, 2, 8 and 9 which include a lip (see paragraph [0060]: "each anchor 110 has... an annular lip or flange 112 (Figure 9)..."). Hence, the anchors of the embodiment of figures 18 - 21 also include a lip.

1.6.2 The cap and the cooperating anchor adapter disclosed in [0093] are hence not an alternative to the locking rams engaging the lip of the first embodiment but an additional detail allowing to first fix the cap on the pile and only then plug in the releasable anchor adapter. The sentence "*The upper end 110a of pile 110 is seated in receptacle 214b and fixably secured to cap 213*" implicitly refers to the mechanism of the first embodiment using locking rams engaging the lip on the pile.

1.7 The Board therefore shares the opposition division's decision with regard to the main request: claim 1 of the main request is amended in such a way that it contains subject-matter which extends beyond the

content of the application as filed, contrary to Article 123(2) EPC.

Auxiliary requests 1 - 31

2. The opposition division held that the amendments to auxiliary requests 1 - 29 do not comply with Article 123(2) EPC either.

2.1 Claim 1 of auxiliary requests 1 -29 include feature 1B1 of claim 1 according to the main request. However, in none of the requests claim 1 includes the combination of the feature relating to the lip on the pile with the features relating to the locking rams cooperating with the lip. Hence, auxiliary requests 1 to 29 fall for lack of compliance with the requirements of Article 123(2) EPC, analogously as the main request.

2.2 The same applies to auxiliary requests 30 and 31 submitted with the statement of grounds of appeal, as claim 1 thereof includes feature 1B1 but not the above-mentioned features (lip / locking ram) in combination.

Auxiliary request 32

3. Auxiliary request 32 was submitted during oral proceedings before the Board.

3.1 The appellant argued that auxiliary request 32 in claim 1 defined all features disclosed in combination in paragraphs [0060] - [0064] and hence remedied the deficiency of the higher ranked requests. Furthermore, the fact that the feature relating to the locking rams was missing in claim 1 was only brought up by the Board

for the first time in the communication under Article 15(1) RPBA 2020.

3.2 The Board notes that the respondent raised in their reply to the appellant's grounds of appeal on page 39 in point 18.3 the following argument:

"For example, the annular lip/flange 112 is provided to act as an interface with the locking rams 130 as shown in figure 9 and discussed in [0063]. Thus these features are inextricably linked as they function together to lock the adapter to the anchor and the isolation of the lip from other features of the embodiment presents an unallowable intermediate generalisation".

3.3 The Board thus did not raise a new point in their communication under Article 15(1) RPBA 2020. It was a point already mentioned by the respondent with their reply dated 15 February 2022, for which the appellant had sufficient time to react by filing amendments before summons were issued on 25 May 2022.

3.4 In the absence of exceptional circumstances, justified by cogent reasons, the Board sees no reason to take auxiliary request 32 into consideration in the exercise of its discretion pursuant to Article 13(2) RPBA 2020.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

L. Stridde G. Pricolo

Decision electronically authenticated