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**Datasheet for the decision
of 6 June 2025**

Case Number: T 0419/23 - 3.2.01

Application Number: 13001948.2

Publication Number: 2674074

IPC: A47C27/08

Language of the proceedings: EN

Title of invention:

Inflatable product with an internal tensioning structure

Patent Proprietor:

Intex Marketing Ltd.

Opponent:

Bestway Global Holding Inc.

Headword:

Relevant legal provisions:

EPC Art. 76(1)

Keyword:

Divisional application - subject-matter extends beyond content of earlier application (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0419/23 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 6 June 2025

Appellant: Intex Marketing Ltd.
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Representative: Gulde & Partner
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 20 December
2022 revoking European patent No. 2674074
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 in suit.
- II. With the notice of opposition, the opponent raised *inter alia* a ground for opposition under Article 100(c) EPC and alleged that the opposed patent, which originated from a divisional application of the earlier European patent application EP 2 654 514 (published under International Publication Number WO 2013/130117 A1), extended beyond the content of the earlier application.
- III. The opposition division decided that the subject-matter of the claims as granted extended beyond the content of the earlier application as filed.

The opposition division further held that auxiliary requests 0.5 and 1 - 21 also extended beyond the content of the earlier application.

Auxiliary requests 6D and 6E were not admitted.

- IV. Oral proceedings were held before the Board.
- (a) The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form based on the main request or one of the auxiliary requests 2a - 24a, 1b - 24b, 1c - 24c, 1d - 24d and 1e - 24e filed with the statement of grounds of appeal.

(b) The respondent (opponent) requested to dismiss the appeal.

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

*"An inflatable product (10) comprising:
a first PVC sheet (1);
a second PVC sheet (2) disposed opposite the first PVC sheet (1), the first and second PVC sheets (1, 2) being spaced apart when the product is inflated to define a gap, the first sheet and the second sheet cooperating to at least partially bound an inflatable chamber;
a plurality of tensioning structures (3, 303) spanning the gap between the first PVC sheet (1) and the second PVC sheet (2), each of the plurality of tensioning structures (3, 303) comprising:
a plurality of strands (32) uniformly spaced apart and substantially parallel to one another;
a first pair of weld strips (31, 31') having the plurality of strands (32) captured therebetween and one of the first pair of weld strips (31, 31') being welded to the first PVC sheet (1); and
a second pair of weld strips (31, 31') spaced from the first pair of weld strips (31, 31'), the second pair of weld strips (31, 31') having the plurality of strands (32) captured therebetween and, one of the second pair of weld strips (31, 31') being welded to the second PVC sheet (2), the plurality of strands extending across the first and second pairs of weld strips (31, 31');
wherein the first and second pairs of weld strips (31, 31') are made of PVC."*

Claim 1 of each of auxiliary requests 1b - 1e, 5a - 5e, 9a - 9e, 13a - 13e, 17a - 17e and 21a - 21e also

includes the following features of claim 1 of the main request:

"one of the first pair of weld strips (31, 31') being welded to the first PVC sheet (1)"

and

"one of the second pair of weld strips (31, 31') being welded to the second PVC sheet (2)".

Each of these features is amended in claim 1 of auxiliary requests 2a - 2e, 6a - 6e, 10a - 10e, 14a - 14e, 18a - 18e and 22a - 22e by

adding "weld strip" before "one" (i.e. "one weld strip of the first pair ... one weld strip of the second pair"),

and in claim 1 of auxiliary requests 3a - 3e, 7a - 7e, 11a - 11e, 15a - 15e, 19a - 19e and 23a - 23e by

adding "side" after "one" (i.e. "one side of the first pair ... one side of the second pair")

and in auxiliary requests 4a - 4e, 8a - 8e, 12a - 12e, 16a - 16e, 20a - 20e and 24a - 24e by

replacing "one" with "either side" (i.e. "either side of the first pair ... either side of the second pair").

VI. The appellant's arguments as far as they were relevant for the present decision can be summarized as follows:

(a) A suitable basis for the subject-matter according to claim 1 of the main request was found in paragraph [0085] of the description of the earlier application as originally filed.

(b) In the embodiment shown in figures 1 - 4 of the earlier application, a dual layer structure with two weld strips could only be provided with a

welding on one of the weld strips. Welds on both weld strips were technically not feasible.

- (c) The auxiliary requests used wordings that stressed that the welding was carried out on one weld strip only.

VII. The relevant arguments raised by the respondent can be summarized as follows:

- (a) The main request and all the auxiliary requests should not be admitted since they were only filed with the notice of appeal. They should have been filed in opposition proceedings.
- (b) Claim 1 of the main request provided a general definition of the connection between tensioning structure and sheets that went beyond the specific disclosure of the earlier application. The amendments to the main request hence introduced added subject-matter.
- (c) None of the auxiliary requests could remedy the objection of unallowable amendment with regard to the earlier application either.

Reasons for the Decision

Main request

1. The subject-matter of claim 1 of the main request extends beyond the disclosure of the earlier application as originally filed, contrary to Article 76(1) EPC.

- 1.1 As regards the main request underlying the decision under appeal, the opposition division held *inter alia* that the wording of claim 1 referring to at least one of the first/second pair of weld strips being welded to the first/second PVC sheet implied that either one of a pair of weld strips or both weld strips of the pair were welded to the respective sheet (see point 3.6 of the decision referring to features F5.3 and F5.5). The earlier application, however, only provided disclosure for only one of the weld strips being welded, but not both weld strips.
- 1.2 In claim 1 of the main request in appeal, the features F5.3 and F5.5 are amended by deleting the terms "at least" and read as follows:
 "*one of the first pair of weld strips (31, 31') being welded to the first PVC sheet (1)*"
and
 "*one of the second pair of weld strips (31, 31') being welded to the second PVC sheet (1)*".
- 1.3 There was agreement between the parties that paragraph [0085] is the only relevant passage in the earlier application that discloses the use of a pair of weld strips capturing the strands of the tensioning structure therebetween as required by claim 1 of the main request.
- 1.3.1 The Board notes that paragraph [0085] refers to an embodiment (shown in figures 10 and 11) whereby the tensioning structures 30 are "*manufactured as a dual layer structure using a pair of weld strips both above and below strands 32*" (lines 24 and 25 of paragraph [0085]). When implemented in an inflatable product, the tensioning structure "*can be welded to upper or lower*

material 1, 2 (Figs. 1, 3 and 4) on either side" (lines 28 and 29 of paragraph [0085]).

- 1.3.2 Figure 1 (to which paragraph [0085] refers) shows how the end of the tensioning structure is connected to the respective sheet: the part of the pair of weld strips that extends beyond the strands is bent by approximately 90 degrees to one of the sides.

In this context the Board understands the above-mentioned sentence in paragraph [0085]: "*can be welded to upper or lower material 1, 2 (Figs. 1, 3 and 4) on either side*", in the same sense as the respondent, i.e. "*on either side*" implies that the pair of weld strips is either bent to one side, or bent to the other side, and it is either the strip on the one side, or the strip on the other side of the pair that is welded to the PVC sheet.

- 1.3.3 As further described in paragraph [0084], the weld strips shown perpendicular to the sheets in the upper portion of Figure 1 then lay flat on the sheets upon welding as shown in the lower portion of Figure 1. Furthermore, figure 1 discloses side surfaces of the weld strips having same length and same thickness compared to the position of the strands encompassed by the pair of weld strips.

- 1.3.4 The earlier application hence provides only basis for a particular design for connecting the weld strips to the respective sheet whereby the pair of identical weld strips is bent to one side such that this side surface lays flat on the sheet.

(a) The appellant argued that paragraph [0085] was not restricted to this specific design but referred

only to a welding on either side. The term "on either side" in their understanding did not exclude that the welding could also be done on both sides.

- (b) The Board disagrees since paragraph [0085] explicitly refers to the welding according to figure 1 ("*can be welded to upper or lower material 1, 2 (Figs. 1, 3 and 4) on either side*") such that it is not possible to only consider the wording of paragraph [0085] alone. The welding mentioned in paragraph [0085] is further detailed in figure 1 and described in paragraph [0084].

The expression referred to by the appellant in paragraph [0085] is hence not an isolated disclosure but must be read in its context, i.e. considering the reference to figure 1 in paragraph [0085] showing a particular geometry of the tensioning structure with strands and weld strips, but also paragraph [0084] referring to the same figure.

- 1.3.5 Claim 1 of the main request, however, is not restricted to this particular design of the welding disclosed in paragraphs [0084], [0085] and figure 1 but provides a more general definition: Claim 1 also covers designs with both weld strips of a pair being welded at their side surfaces to a sheet (either by bending the weld strips to different sides such that they have a Y-shaped design, or by using weld strips of different length that allow after bending that one strip extends beyond the welded end of the other strip) or with the unbent weld strips being welded at their front face to the respective sheet.

- (a) At the oral proceedings the appellant confirmed that claim 1 can be read to cover these alternative designs of the connection between tensioning structure and sheet. The appellant further confirmed that these alternative designs can be put into practice.

The appellant, however, argued that the skilled person would in any case only use the allegedly more simple design shown in the lower part of figure 1 with two weld strips being bent to one side (such that their sides lay flat on the sheet), both having the same thickness and length.

- (b) In the Board's view, it is not relevant which design is likely to be used by the skilled person but it must be assessed whether the subject-matter of claim 1 was disclosed in the earlier application.

1.3.6 As discussed in detail at the oral proceedings, claim 1 of the main request provides a generalization of the specific design of the connection between the pair of weld strips and the respective sheet disclosed in the earlier application in connection with paragraph [0085]. As such, the amendments introduce new technical information, in the sense that the claimed subject-matter encompasses other designs than that specifically disclosed in the earlier application.

1.3.7 In this context it is irrelevant whether the earlier application provides a more general teaching than the specific teaching of paragraph [0085]; what counts is that for the embodiment of paragraph [0085] (and in particular for the feature that only one of the weld strips of a pair is welded to the respective sheet such

that the weld strips lay flat against the sheet), there is no basis for deriving that other embodiments, in general terms, are also disclosed.

- 1.4 The main request hence does not comply with the requirements of Article 76(1) EPC.

Auxiliary request 4a

2. The features of claim 1 of the main request leading to added subject-matter as discussed above, are amended in claim 1 of auxiliary request 4a by replacing "one" with "*either side*".

The features in question hence read as follows:

"either side of the first pair of weld strips (31, 31') being welded to the first PVC sheet (1)" ,

and

"either side of the second pair of weld strips (31, 31') being welded to the second PVC sheet (1)".

- 2.1 The appellant argued that this amendment overcame the objection of added subject-matter, claim 1 being restricted such that it did not cover designs with both strips of the pair of weld strips being welded to the respective sheet.
- 2.2 However, as pointed out by the respondent in their reply, this formulation does not clearly exclude that both weld strips of a pair are welded to the respective sheet. In fact, if the weld strips are next to each other in one plane (e.g. because they have different lengths), then still both weld strips may be welded as either side of the pair of weld strips would then be the same side of the two weld strips.

Accordingly, also claim 1 of these requests fails to comply with the requirements of Article 76(1) EPC for the same reasons as the main request.

Auxiliary requests 1b - 1e, 5a - 5e, 9a - 9e, 13a - 13e, 17a - 17e and 21a - 21e

3. Claim 1 of these requests includes the identical features discussed above with respect to the main request and thus for the same reasons as for the main request fails to comply with the requirements of Article 76(1) EPC.

Auxiliary requests 4b - 4e, 8a - 8e, 12a - 12e, 16a - 16e, 20a - 20e and 24a - 24e

4. Claim 1 of these requests includes the identical features discussed above with respect to the auxiliary request 4a and thus for the same reasons as for the auxiliary request 4a fails to comply with the requirements of Article 76(1) EPC.

Auxiliary requests 2a - 2e, 6a - 6e, 10a - 10e, 14a - 14e, 18a - 18e and 22a - 22e, and auxiliary requests 3a - 3e, 7a - 7e, 11a - 11e, 15a - 15e, 19a - 19e and 23a - 23e

5. The features discussed above with respect to the main request are amended in claim 1 of these auxiliary requests (see above point V) to read either:

"one weld strip of the first pair of weld strips (31, 31') being welded to the first PVC sheet (1)" , and

"one weld strip of the second pair of weld strips (31, 31') being welded to the second PVC sheet (1)"

or

"one side of the first pair of weld strips (31, 31') being welded to the first PVC sheet (1)" , and

"one side of the second pair of weld strips (31, 31') being welded to the second PVC sheet (1)".

6. These features do not restrict the claimed subject-matter to a product in which only one of the weld strips of a pair is welded to the respective sheet such that the weld strips lay flat against the sheet.
- 6.1 This was not contested by the appellant at the oral proceedings.
- 6.2 Therefore, claim 1 of these requests fails to comply with the requirements of Article 76(1) EPC for the same reasons as the main request.

Admissibility of all requests filed with the statement of grounds of appeal

7. In view of the above there is no need to deal with the objection of admissibility raised by the respondent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



H. Jenney

G. Pricolo

Decision electronically authenticated