

Internal distribution code:

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

**Datasheet for the decision
of 16 December 2024**

Case Number: T 0505/23 - 3.2.07

Application Number: 13753292.5

Publication Number: 2890533

IPC: B26D3/16, B26D7/08, B26F3/06,
F16L33/207

Language of the proceedings: EN

Title of invention:
SECTIONED HOSE

Applicant:
Neoperl GmbH

Headword:

Relevant legal provisions:
EPC Art. 54
RPBA 2020 Art. 12(6)

Keyword:
Novelty - (no)
Late-filed request - no longer maintained in first-instance
proceedings (yes) - admitted (no)

Decisions cited:

Catchword:



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

Case Number: T 0505/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 16 December 2024

Appellant: Neoperl GmbH
(Applicant) Klosterrunsstr. 9-11
79379 Müllheim (DE)

Representative: Dickerson, David
Gartenstrasse 51
85354 Freising (DE)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 26 August 2022
refusing European patent application No.
13753292.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman A. Beckman
Members: S. Watson
E. Mille

Summary of Facts and Submissions

- I. An appeal was filed by the applicant (appellant) within the prescribed time limit and in the prescribed form against the decision of the examining division refusing patent application number 13 753 292.5.
- II. The examining division found that the subject-matter of claim 1 of the main request was not novel (Article 54 EPC) with respect to the disclosure of EP 1 880 812 A1 (referred to as document D1 in this decision) and did not fulfil the requirements of Article 84 EPC.
- III. With its statement of grounds of appeal of 18 December 2022 the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the set of claims according to the main request filed on 18 December 2014, or one of the first to fifth auxiliary requests, whereby the set of claims of the first auxiliary request was filed as auxiliary request on 2 January 2019, the set of claims of the second to fourth auxiliary requests were filed with the statement setting out the grounds of appeal and the set of claims of the fifth auxiliary request was filed as the fourth auxiliary request on 30 July 2020. The appellant also requested reimbursement of the appeal fee.
- IV. The board issued a communication with the preliminary opinion of the board pursuant to Article 15(1) RPBA dated 29 August 2024.
- V. On 14 October 2024, in response to the board's preliminary opinion, the appellant filed sixth and

seventh auxiliary requests and withdrew the first to fifth auxiliary requests. The request for reimbursement of the appeal fee was also withdrawn.

VI. Oral proceedings before the board were held on 16 December 2024.

At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

VII. The appellant's final requests are

- that the decision under appeal be set aside and
- that a patent be granted on the basis of the set of claims according to the main request filed on 18 December 2014, or on the basis of the sixth and seventh auxiliary requests filed with letter of 14 October 2024.

VIII. The arguments of the appellant relevant for the decision are dealt with in detail in the reasons for the decision.

IX. Independent claim 1 of the main request reads as follows:

"A hose (1) comprising:
a tube (2);
a tube encasement (3) encasing an outer circumference of said tube; and
a ring of tensioned material (4) around an outer circumference of said tube encasement, wherein said ring of tensioned material applies a first radial force onto said tube encasement and induces a second radial force from said tube encasement onto said tube, and

said hose comprises a cut surface that extends through an entire cross-section of said tube, said tube encasement and said ring of tensioned material."

- X. Independent claim 1 of the sixth and seventh auxiliary request reads as follows:

"A hose (1) comprising:
a tube (2);
a tube encasement (3) encasing an outer circumference of said tube; and
a ring of tensioned material (4) around an outer circumference of said tube encasement, wherein said ring of tensioned material applies a first radial force onto said tube encasement and induces a second radial force from said tube encasement onto said tube, said hose comprises a cut surface that extends through an entire cross-section of said tube, said tube encasement and said ring of tensioned material, and a product of said second radial force and a coefficient of friction between an inner circumference of said tube encasement and an outer circumference of said tube at a location of said second radial force is greater than at least one of 5 newton, 10 newton and 50 newton."

Reasons for the Decision

1. *Main request - claim 1 - novelty (Article 54 EPC)*

1.1 The appellant contested the examining division's findings that all features of claim 1 of the main request were disclosed in document D1.

1.2 According to the appellant, there was no direct and unambiguous disclosure of the feature that the ring of

tensioned material "induces a second radial force from said tube encasement onto said tube".

1.3 In the decision under appeal, the examining division reasoned that it was clear from D1 that the tube and the braided layer (encasement) touch one another. Therefore, the shrink sleeve or the tightly wound band used in D1 would cause at least some radial force to be transferred from the tube encasement to the inner tube (see decision under appeal, point II.1.2).

1.4 The appellant argued that although D1 taught that the sleeve or band should be tightly secured to the tube encasement (D1, paragraph [0009]), this was not a disclosure of a transfer of radial force from the sleeve or band to the tube encasement or from the tube encasement to the inner tube. According to the appellant, as document D1 was silent as to whether the tube encasement and the inner tube had any contact with one another, D1 did not directly and unambiguously disclose a radial force from the tube encasement to the inner tube.

1.5 The board notes that it is not necessary when assessing disclosure that a feature is explicitly disclosed in the prior art in order to be derivable in a direct and unambiguous manner for the skilled person, using their common general knowledge.

Features may also be implicitly disclosed, for example if they are an inherent result of other disclosed features (Case Law of the Boards of Appeal, 10th edition 2022 (CLB), I.C.4.3).

1.6 With its submissions of 14 October 2024 the appellant argued that a feature is only implicitly disclosed if

it is the inevitable result of the explicitly disclosed features. The appellant noted that T 1085/13 held that while common general knowledge could be used to understand a disclosure, it could not be used to supplement such a disclosure.

The appellant argued that D1 did not unambiguously disclose that the outer tube casing was in contact with the tube as the word used in document D1 ("*umschließende*") did not imply contact between elements. Therefore, document D1 only disclosed that the outer tube casing encircled the inner tube (D1, paragraph [0003]), the drawings of D1 were schematic drawings from which relative dimensions could not be determined.

1.7 The appellant further argued that for a radial force to be induced from the tube encasement onto the inner tube (from the heat-shrunk sleeve of D1), there would need to be sufficient deformation of the braided tube to overcome any gap between the tube casing and the inner tube.

The skilled person is aware that braided tube casings, as in document D1, typically exhibit significant resistance to inward radial compression as they are typically tightly braided. Document D1 itself describes that individual strands can be difficult to deform (D1, paragraph [0007]).

The skilled person is also aware that the braided tube casing can be manufactured at any diameter, independent of the outer diameter of the inner tube so that it typically has an inner diameter a fair degree larger than the inner tube.

For the above reasons, the appellant was of the view that the disclosure of D1 did not inevitably lead to a radial force being induced from the tube encasement to the inner tube and the examining division had not demonstrated any factual basis on which it could be determined that sufficient force was exerted on the tube casing to overcome the inherent ability of the tube casing to resist the force and induce radial force in the tube.

- 1.8 Although the board agrees with the appellant that the standard for disclosure for the assessment of novelty is that of direct and unambiguous disclosure, the board is not convinced by the appellant's arguments.

In the present case, the skilled person is aware from their common general knowledge that a sleeve which has been shrink-fitted onto a hose will exert radial force on that hose. This has not been disputed by the appellant.

In the board's view, document D1 does unambiguously disclose that the inner tube is enclosed by the metal and/or plastic web (D1, paragraph [0003]). The use of the word "*umschließende*" cannot be seen as rendering the disclosure ambiguous. The skilled person understands paragraph [0003] as requiring that an inner tube is encased by an outer braided tube.

It is then inevitable, when the sleeve is shrink-fitted using heat, onto the braided hose, as tightly as possible (D1, paragraph [0009] "*Schlauchfixierung sollte den Schlauch möglichst stramm und/oder formschlüssig umschließen*"), that some radial force is present in both the web and the inner tube.

The appellant's argument that there can be no radial force as there is no contact between the tube encasement and the inner tube is speculation on the part of the appellant that there is a sufficiently large and complete radial gap between the encasement and the inner tube completely preventing any transfer of radial force. The skilled person on reading D1 understands that the inner tube, which the web encloses, is in contact with the web.

The appellant's arguments that the braided casing is too rigid to transfer any force also cannot be followed. For the sleeve to be fixed as tightly as possible, some compression of at least some strands of the braiding must be present. Therefore, there will inevitably be some radial force induced in the inner tube.

1.9 The appellant has therefore not convincingly demonstrated the incorrectness of the decision under appeal on this point.

2. *Sixth and seventh auxiliary requests - admittance*

2.1 The sixth and seventh auxiliary requests were submitted after notification of the communication under Article 15(1) RPBA.

The appellant requested that the board exercises its discretion under Article 12(4) RPBA and admits the requests as the claims were not complex and aimed to address the issues which led to the decision under appeal without detriment to procedural economy.

2.2 However, the board notes that pursuant to Article 12(6), second sentence, RPBA, a board shall not admit

requests which were no longer maintained in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance. Therefore the board cannot admit requests which were not maintained by the appellant in the examination proceedings unless the circumstances of the case justify their admittance.

- 2.3 As noted by the appellant, claim 1 of the sixth and seventh auxiliary requests corresponds to claim 1 of the second auxiliary request of 18 December 2022 which was filed for the first time with the statement setting out the grounds of appeal.

As also noted by the appellant, this claim had however been submitted as claim 1 of the fourth auxiliary request of 30 July 2020 during examination proceedings and was discussed during the oral proceedings before the examining division of 9 November 2021 (as the third auxiliary request).

According to the minutes of the oral proceedings, at the end of the oral proceedings, the appellant maintained the main and second auxiliary requests and abandoned the first and third auxiliary requests (see minutes of oral proceedings before the examining division, page 2).

- 2.4 The appellant argued that the "formal non-presentation" of requests deemed not allowable at the end of the oral proceedings was standard practice at the EPO, out of courtesy to the examining division (see submissions of 14 October 2024, page 18).

- 2.5 However, the board notes that in addition to the fourth auxiliary request, found by the examining division to

meet the requirements of the EPC, the appellant also maintained both its main request and second auxiliary request. Therefore, the appellant clearly chose to maintain two of the four requests deemed not allowable, and not to maintain the other two, namely the first and third auxiliary requests.

Subsequently, the appellant also withdrew its approval of the text of the fourth auxiliary request in response to a communication under Rule 71(3) EPC and requested that examination be continued on the basis of the main request only (see appellant's submissions of 19 April 2022, point 1.)

- 2.6 The board therefore is of the view that as the appellant did not maintain its then third auxiliary request on which the present second auxiliary request is based, that the sixth and seventh auxiliary requests, based on the second auxiliary request are also requests which were not maintained in the proceedings leading to the decision under appeal.

The board cannot see any circumstances of the appeal case which would warrant their admittance. Therefore, according to Article 12(6), second sentence, RPBA, the board does not admit these requests.

3. *Conclusion*

As the subject-matter of claim 1 of the main request is not novel (Article 54 EPC) and the sixth and seventh auxiliary requests are not admitted into the appeal proceedings (Article 12(6) RPBA), the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



G. Nachtigall

A. Beckman

Decision electronically authenticated