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**Datasheet for the decision
of 29 April 2025**

Case Number: T 0802 / 23 - 3.2.01

Application Number: 12250019.2

Publication Number: 2622981

IPC: A44B13/00

Language of the proceedings: EN

Title of invention:

An eye fastener

Patent Proprietor:

Texco Hook & Eye Tape Ltd

Opponent:

Prym Intimates Hong Kong Limited

Headword:

Relevant legal provisions:

EPC Art. 123(3)

Keyword:

Amendments - allowable (no) - correction of errors (no) -
inescapable trap (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0802/23 - 3.2.01

D E C I S I O N of Technical Board of Appeal 3.2.01 of 29 April 2025

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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 February 2023 concerning maintenance of the
European Patent No. 2622981 in amended form.

Composition of the Board:

Chairman G. Pricolo

Members: V. Vinci

O. Loizou

Summary of Facts and Submissions

- I. The opponent filed an appeal against the interlocutory decision of the Opposition Division maintaining European Patent N° 2 622 981 in amended form.
- II. In the impugned decision the Opposition Division came to the conclusion that the patent as amended according to the auxiliary request 10 met the requirements of the Convention, and in particular that the amendments made to claim 1 did not extend the protection conferred (Article 123(3) EPC).
- III. Claim 1 in the form as maintained by the Opposition Division reads as follows:

"An eye fastener (200) formed integrally of a wire to define a first plane (S-S), a second plane (T-T), and a base plane (R-R), the eye fastener including: a base (202), formed from two anchor portions, defining the base plane (R-R), wherein each anchor portion forms a free end of the eye fastener (200), and two parallel leg portions (204) extending from the base (202) and joined via a generally C-shaped portion (206) to collectively form an eye (206) extending from the base and defining an opening through which a hook fastener may be releasably engaged, wherein the two parallel leg portions (204) are bent relative to the base plane (R-R) via first bent portions (220a) and via second bent portions (220b) such that the two parallel leg portions (204) between the first bent portions (220a) and the second bent portions (220b) define the first plane (S-S), and such that the C-shaped portion defines the second plane (T-T), wherein the second plane (T-T) is displaced relative to the first plane (S-S), whereby

the opening is displaced relative to the base plane (R-R), wherein the base plane (R-R) is parallel to the second plane (T-T), the fastener being characterized in that the first plane (S-S) and the base plane (R-R) define an obtuse angle (P) equal to that between the first plane (S-S) and the second plane (T-T)."

IV. Oral proceedings before the Board took place by videoconference on 29 April 2025.

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

The respondent (patent proprietor) did not attend the oral proceedings as announced with letter dated 4 April 2025. According to Rule 115(2) EPC and Article 15(3) RPBA 2020 the proceedings were continued in its absence.

Apart from the above mentioned letter, the respondent (patent proprietor) did not file any submissions during the appeal proceedings.

Reasons for the Decision

1. Contrary to the conclusions of the Opposition Division, the patent as maintained does not comply with the requirements of Article 123(3) EPC.

1.1 With the statement of grounds of appeal, the appellant contested the finding of the Opposition Division that the replacement of the feature of claim 1 as granted "*wherein each anchor point forms a free end of the eye fastener (200)*" by "*wherein each anchor portion forms a free end of the eye fastener (200)*" in claim 1 as maintained was in violation of the requirements of Article 123(3) EPC.

The Board agrees with the appellant, for the following reasons.

1.2 It is first noted that, as argued by the appellant, the expression "*wherein each anchor point forms a free end of the eye fastener (200)*" in claim 1 as granted does not contain an obvious error as regards the term "*anchor point*", and that the latter should be read as "*anchor portion*". Indeed, as acknowledged by the Opposition Division (see decision, point 10.2.1), an "*anchor point*" is not the same as an "*anchor portion*". It cannot thus be unequivocally concluded that the term "*anchor point*" in claim 1 as granted has to be read as "*anchor portion*". Furthermore, as further pointed out by the appellant, the use of the term "*anchor point*" is not inconsistent with the patent disclosure, in particular with Figures 10 and 13 which indeed show anchor points located at the free ends of the wire. Also this circumstance speaks against the presence of an obvious error.

1.3 According to Article 69(1) EPC, the extent of the protection conferred by a European patent or a European patent application shall be determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims (see also, in this respect, the Protocol on the Interpretation of Article 69 EPC).

1.4 When reading the above-mentioned expression in the context of claim 1 as granted, according to which the eye fastener is formed integrally of a wire, it is evident that the anchor points that according to the wording of the claim form the free ends of the eye fastener can only be the extremities, or ends, of the wire itself. Clearly, it is not the mathematical definition of "*point*" that applies here, as this definition would not make sense for an "*anchor point*", which, in order to fulfil its function, must certainly have an extension. Rather, "*point*" in claim 1 as granted can only be read with its other common acceptance of "*particular location*", whereby in the context of claim 1 the anchor points are at the locations at which the wire has its free ends.

1.5 Accordingly, claim 1 as granted is to be construed as referring to an eye fastener formed by a wire that has free ends.

1.6 This interpretation of "*anchor point*" is confirmed by the drawings (see Figs. 10 to 13 relating to an embodiment of the invention), which - as explained above - show that the wire has free ends. These free ends are moreover suitable for providing an anchoring function in relation to a material abutting against them. As regards to the description, it was undisputed in opposition proceedings (see decision, section

10.2.1) that the term "*anchor point*" was not disclosed in the application as filed.

1.7 Claim 1 as maintained by the Opposition Division recites, in contrast, that "*each anchor portion forms a free end of the eye fastener*". Accordingly, the free end of the eye fastener is a portion of wire and not necessarily an end of the wire itself. As brought forward by the appellant and discussed at the oral proceedings, claim 1 of the patent as maintained covers embodiments in which the eye fastener is made of a wire which does not have free ends in correspondence of the locations where the anchoring function is provided. For example, claim 1 of the patent as maintained covers an embodiment as in Figure 10 of the patent, in which however the two ends of the wire in the R-R plane are joined, the portions of the eye fastener in the R-R plane forming free ends of the fastener (free ends as seen along an axis perpendicular to the plane R-R). This exemplary embodiment falling within the scope of claim 1 of the patent as maintained was not covered by claim 1 as granted which required that the wire forming the eye fastener has free ends. Therefore, the patent has been amended in such away to extend the scope of the protection conferred, contrary to the requirements of Article 123(3) EPC.

1.8 At least for this reason and irrespective of the further objections raised with the statement of grounds of appeal of the appellant, claim 1 of the patent as maintained by the Opposition Division does not meet the requirements of the Convention.

2. As no further requests have been submitted by the respondent (patent proprietor), the patent as amended is to be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

H, Jenney

The Chairman:

G. Pricolo



Decision electronically authenticated