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 April 2025

Case Number: T 1006/23 - 3.2.07

Application Number: 16770549.0

Publication Number: 3331768

IPC: B65B57/16, B65B11/02

Language of the proceedings: EN

Title of invention:
SELF PROPELLED WRAPPING MACHINE, SYSTEM AND METHOD

Patent Proprietor:
Noxon S.p.A.

Opponent:
Atlanta Stretch S.p.A.

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (yes)

Decisions cited:

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

Case Number: T 1006/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 15 April 2025

Appellant: (Opponent)	Atlanta Stretch S.p.A. Via Torrianese, 58 47824 Poggia Torriana (RN) (IT)
Representative:	Manzella & Associati Via dell'Indipendenza, 13 40121 Bologna (IT)
Respondent: (Patent Proprietor)	Noxon S.p.A. Strada Molino Magi 66 47892 Gualdicciolo, Acquaviva (SM)
Representative:	Cicconetti, Andrea Accapi S.r.l. Via de' Griffoni, 10/A 40123 Bologna (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 4 April 2023 rejecting the opposition filed against European patent No. 3331768 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Patton
Members:	S. Watson
	S. Ruhwinkel

Summary of Facts and Submissions

I. An appeal was filed by the opponent (appellant) against the decision of the opposition division rejecting the opposition against European patent No. 3 331 768.

II. The opposition was filed against only claims 1 to 7 and 16 to 18 of the patent as granted. It was based on the ground for opposition of lack of inventive step (Articles 100(a) and 56 EPC).

III. With its reply to the appeal, the patent proprietor (respondent) requested that the appeal be dismissed, or if the decision under appeal be set aside that the patent be maintained according to one of the sets of claims of the first to sixth auxiliary requests filed with the reply on 13 December 2023.

IV. In preparation for oral proceedings, the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 19 December 2024, according to which the decision under appeal should be set aside but that the patent could be maintained with the set of claims according to auxiliary request 4. This communication was based on the appellant's statement of grounds of appeal and its submissions of 14 November 2024 as well as the respondent's reply to the appeal.

V. The respondent replied to the board's communication with submissions of 13 February 2025.

VI. Oral proceedings before the board took place on 15 April 2025. During the oral proceedings the

respondent withdrew its main request as well as the first to third, fifth and sixth auxiliary requests.

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

VII. The final requests of the parties are as follows.

The appellant requested
- that the decision under appeal be set aside and
- that the patent be revoked, the opposition being limited to claims 1 to 7 and 16 to 18 of the granted patent only.

The respondent requested
- that the patent be maintained in amended form on the basis of the fourth auxiliary request filed on 13 December 2023 with the reply to the appeal.

VIII. The following documents are referred to in this decision:

D1: EP 0 143 404 A2
D2: US 2014/0223675 A1
D6: EP 2 623 010 A2
D11: US 2003/030398 A1.

IX. Independent claim 1 of the fourth auxiliary request reads as follows (feature labelling as used by the appellant):

F1 "Self-propelled wrapping machine (1) movable around a load (100) for wrapping the latter with a film (50) made of plastic material, comprising:

F2 - a self-propelled carriage (2) provided with

traction wheels (3), at least a directional wheel (4) and guide means (5) for guiding said carriage (2);

F3 - a column (6) that is fixed to said carriage (2) and slidably supports an unwinding unit(10) of said film (50);

characterized in that it comprises:

F4 - sensor means (11, 12, 13, 21) for detecting surfaces (S1, S2,...Sn) of said load (100) in their total extension and along a detection direction (Z) nearly orthogonal to a support plane (G) of said load (100) and/or external edges (E1, E2,...En) of said load (100) in their total extension and along said detection direction (Z), and processing related signals;

F5 - a control unit (20) for receiving from said sensor means (11, 12, 13, 21) said signals, calculating on the basis of said surfaces (S1, S2,...Sn) and/or external edges (E1, E2,...En) detected in their total extension by said sensor means (11, 12, 13, 21), a peripheral outline (150) of plan maximum overall dimensions of said load (100) and processing on the basis of said peripheral outline (150) a wrapping path (P) of said wrapping machine (1) around said load (100) so as to avoid collisions of said wrapping machine (1) with the latter, said control unit (20) further controlling said guide means (5) in order to guide said wrapping machine (1) along said winding path (P)."

X. The arguments of the parties relevant for the decision are dealt with in detail in the reasons for the decision.

Reasons for the Decision

1. *Fourth auxiliary request - claim 1 - Article 56 EPC*

The fourth auxiliary request differs from the contested patent as granted in that claims 16 to 18 have been deleted. Thus claim 1 of the fourth auxiliary request corresponds to claim 1 as granted.

The opposition division found that claim 1 as granted was inventive in view of the combinations of document D1 with either D2, D6 or D11 (see decision under appeal, point II.1.1.2).

1.1 The appellant contested this finding and argued that all the features of claim 1 were found in document D1, with the exception of part of feature F4, namely that in D1 the sensor means could not detect the surfaces and/or external edges of the load in "their total extension" as required by claim 1.

According to the appellant the objective technical problem to be solved could be regarded as avoiding collisions of the machine with protruding parts of the load, irrespective of the height at which the protrusions are located. A solution to this problem was found in any of documents D2, D6 and D11 which showed robots with sensors which were able to detect and avoid obstacles, over the whole height of the robot.

1.2 The respondent argued that document D1 also did not disclose feature F5.

1.2.1 In an alternative line of argument, the appellant argued that even if it was considered that feature F5

was not disclosed in document D1, this feature was found in documents D2 and D11, so that the subject-matter of claim 1 would still not be inventive in view of the combination of D1 with D2 or D11.

1.3 The board finds that document D1 does not disclose feature F5, in addition to not disclosing the part of feature F4 relating to the total extension of the surfaces and/or external edges of the load.

1.3.1 In document D1 the control unit uses the information from the sensors to determine whether the distance between the carriage and the load being wrapped is equal to a predetermined value. If the distance becomes larger or smaller, the guide means are steered accordingly (D1, page 7, line 13 to page 9, line 13).

From figure 9 of document D1 it can be seen that the carriage executes a wrapping path around the load.

However, this wrapping path has not been processed based on a peripheral outline of plan maximum overall dimensions of the load, which was calculated by the control unit from the detection of the total extension of the load, as required by feature F5.

In document D1 the control unit calculates a distance with respect to a specific point on the load and then adjusts the guiding means. Even if by the end of the operation the carriage has moved around the periphery of the load (as shown in D1, figure 9), at no point does the control unit calculate a peripheral outline based on the detection of the surfaces and/or external edges of the load in their total extension.

1.4 The respondent argued that the objective technical problem had to be considered as not only to avoid collisions, but also to minimise manual intervention during wrapping and minimise the duration of wrapping cycles.

1.5 In the board's view, even if the appellant's objective technical problem of avoiding collisions is used, the subject-matter of claim 1 is not obvious in view of D1 with any of D2, D6 or D11.

1.6 The appellant did not suggest that document D6 showed feature F5. Therefore, the combination D1 and D6 cannot lead to the subject-matter of claim 1 of the fourth auxiliary request.

1.7 The appellant argued that documents D2 and D11 did disclose this further differentiating feature (D2, paragraph [0022] and D11, paragraph [0114]).

1.8 The board however does not agree that these documents disclose feature F5.

1.8.1 Neither D2 nor D11 relate to wrapping machines so that no explicit disclosure of a wrapping path based on a calculated peripheral outline of a load can be found.

1.8.2 In document D2, paragraph [0022], a representation of a surface to be cleaned can be generated from the measuring devices (sensor means). This cannot be seen as equivalent to calculating a peripheral outline of plan maximum overall dimensions of a load and then on the basis of the peripheral outline processing a wrapping path. There is no disclosure that a peripheral outline of an object is calculated and that a path is based on this outline.

1.8.3 In document D11 (paragraph [0114]), although a "function path" is determined, there is no disclosure that a peripheral outline of an object is calculated on the basis of detected surfaces and/or external edges in their total extension, and a path is processed based on this outline. Instead, paragraph [0114] discloses that if an obstacle is detected in the function path, a new function path is calculated.

1.9 Therefore the combination of the teaching of D1 with either D6 or D11 does not lead to the subject-matter of claim 1 of the fourth auxiliary request.

2. In view of this conclusion it is unnecessary to consider the request of the respondent not to admit the above objection based on document D1 in combination with D11 against claim 1 into the appeal proceedings.

3. By the same token, it is unnecessary to consider the request of the appellant, made at the oral proceedings before the board, not to admit into the appeal proceedings the respondent's submissions on pages 3 and 4 of its letter of 13 February 2025 as said submissions do not play a role in the above reasons relating to auxiliary request 4.

4. The appellant raised the further objection that the subject-matter of claim 6 of the fourth auxiliary request was not inventive for the same reasons as for claim 1.

Claim 6 is directed to a "*[m]ethod for wrapping a load (100) with a plastic film (50) by means of a self-propelled wrapping machine (1) according to any preceding claims*", so that claim 6 comprises all the

features of claim 1 and its subject-matter is inventive for the same reasons as set out above.

5. As the objections raised do not prejudice the maintenance of the patent in amended form, the decision under appeal could be set aside and the case remitted to the opposition division with the order to maintain the patent on the basis of the fourth auxiliary request.

The respondent filed an amended description in which paragraphs [0024] and [0025] of the published patent are deleted and the variant of the self-propelled wrapping machine in paragraph [0066] of the published patent is specified as not being part of the invention. Neither the appellant, nor the board had objections against the amendments made.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:

   Claims: 1 to 15 of the fourth auxiliary request filed with letter dated 13 December 2023

   Description: pages 2 to 9 filed during oral proceedings on 15 April 2025

   Drawings: figures 1 to 5 of the patent specification.

The Registrar: The Chairman:

G. Nachtigall G. Patton

Decision electronically authenticated