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**Datasheet for the decision
of 20 June 2024**

Case Number: T 1467/23 - 3.2.01

Application Number: 17197767.1

Publication Number: 3315032

IPC: A24C5/32, A24C5/47

Language of the proceedings: EN

Title of invention:

CONVEYOR DRUM FOR GROUPS COMPRISING TWO COAXIAL CIGARETTE
SEGMENTS SEPARATED BY AT LEAST ONE DOUBLE FILTER COMPRISING AT
LEAST ONE FRAGILE FILTER ELEMENT

Patent Proprietor:

G.D S.p.A.

Opponent:

Körber Technologies GmbH

Headword:

Relevant legal provisions:

EPC Art. 100(a), 54, 56

Keyword:

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

T 0439/22

Catchword:



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Case Number: T 1467/23 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 20 June 2024

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 June 2023 concerning maintenance of the
European Patent No. 3315032 in amended form.**

Composition of the Board:

Chairman

G. Pricolo

Members:

J. J. de Acha González

O. Loizou

Summary of Facts and Submissions

I. The appeals of the patent proprietor and the opponent lie against the interlocutory decision of the Opposition Division, which found that the contested patent, as amended in accordance with the auxiliary request 2 filed during the oral proceedings, complied with the requirements of the EPC.

II. The following documents are relevant for the present decision:

D2: EP 2813153 A1;

D9: US 2015/0291301 A1;

D10: EP 0395280 A2;

D11: WO 2017/203242 A1;

D12: Extract from Tobacco Encyclopedia, 1984, 6 pages;

D18: Brochure "Filter attachment unit MAX S" from Hauni-Werke Körber & Co. KG, Hamburg, March 1974;

D19: Extract from the brochure "Cigarette manufacture" by Hauni-Werke Körber & Co. KG, Hamburg, 1983;

D20: Brochure "Laser 300 S cigarette perforation system", Hauni Maschinenbau AG, Hamburg, October 1998;

D21: Brochure "Laser 500 Cigarette Perforation System", Hauni Maschinenbau AG, Hamburg, October 1998; and

D22: Newspaper article Hamburger Abendblatt from 03.06.2005.

III. Oral proceedings before the Board were held on 20 June 2024 as a videoconference.

The appellant (patent proprietor) requested that the decision of the Opposition Division be set aside and that the patent be maintained as granted (main request) or, in the alternative, that the appeal of the opponent be dismissed, or that the patent be maintained in amended form on the basis of one of the auxiliary requests 3 to 5 filed with their reply to the opponent's statement of grounds of appeal.

The appellant (opponent) requested that the decision of the Opposition Division be set aside and that the patent be revoked. Should the Board of Appeal maintain its view on feature 1e of claim 1 in D2 (see feature labelling below), the opponent requested further that the case be remitted to the Opposition Division for further prosecution.

In addition, the opponent requested stay of the proceedings in view of the referral to the Enlarged Board of Appeal in appeal proceedings T 0439/22 regarding the interpretation of features in a claim.

IV. Independent granted claim 1 reads as follows (feature numbering according to the decision under appeal):

- 1a:** *A conveyor drum (1) for groups (100) comprising two coaxial cigarette segments (101) separated by at least one double filter (102) comprising at least one fragile filter element (103),*
- 1b:** *the conveyor drum (1) being configured to operate in conjunction with an applicator roller (3) for applying a plug wrap (3a) to the group (100);*
- 1c:** *the conveyor drum (1) comprising an annular peripheral mantle (7) made of metal and*
- 1d:** *provided with a plurality of receiving portions (8)*

distributed at equal angular intervals along the periphery of the mantle (7),

- 1e:** *each receiving portion (8) defining a concave suction flute (8a) for housing a respective group (100), characterized in that*
- 1f:** *each receiving portion (8) has, only in a part of it designed to receive the double filter (102), at least one high-compliance section (9)*
- 1g:** *designed to receive the at least one fragile filter element (103) and configured to allow geometric displacement of the at least one fragile filter element (103) in a radial direction during a step of releasing a plug wrap (3a) onto the respective group (100).*

Reasons for the Decision

1. *Interpretation*

- 1.1 The parties disagreed on the interpretation of feature 1f, in particular the term "high-compliance section" of the part of the receiving portion designed to receive the double filter.
- 1.2 The Opposition Division considered that the term had no recognised technical meaning in the field of machines for manufacturing cigarettes. Accordingly, and taking the broadest possible interpretation with a technical sense, a recess (void, i.e. absence of material) providing the functional limitations of feature 1g qualified as a high-compliance section. Features 1f and 1g were silent on the presence (or absence) of material in the part of the receiving portion constituting the

high-compliance section (see points 7.4 and 8.3 of the contested decision).

The opponent followed the line taken by the Opposition Division and argued that, according to the technical teaching of granted claim 1, only a part of the conveyor drum must be present which allows a geometric displacement of the filter element. Due to the technically non-specific term "highly compliant", a cavity or a gap should also be understood as such, since a cavity (under the filter element) allows a geometric displacement of a filter element in this area.

1.3 According to established case law of the Boards of Appeal, the interpretation of a claim should be carried out through the eyes of a person skilled in the relevant technical field, in a manner that makes technical sense and by a mind that is willing to understand and not desirous of misunderstanding (see Case Law of the Boards of Appeal of the EPO, 10th edition 2022, II.A.6.1).

1.4 In the present case, the interpretation of "high-compliance section" adopted by the Opposition Division and the opponent, limiting it only to the function recited in feature 1g, is too broad. Feature 1f of claim 1 specifies that a part of the receiving portion has a high compliance section. Irrespective of the meaning of "high" within the term, a section compliant to a double filter which it receives, is a section that conforms to or adapts to the shape of said double filter. Furthermore, having regard to the other features of claim 1, said part of the receiving portion is a part of the concave suction flute of a conveyor drum which houses a group comprising two coaxial

cigarette segments separated by at least one double filter for applying a plug wrap. It is clear to the skilled person that a contact between the group and the flute is necessary in order to correctly apply the plug wrap to the group by applying pressure. Consequently, a void (gap, cavity or recess) in the flute cannot be said to be compliant to the double filter that it receives, but rather to be non-compliant, i.e. it does not conform to the double filter. A contact between the double filter and the flute is meant under the compliance section in feature 1f.

1.5 The opponent's request that the proceedings in the present case be stayed in view of the referral from case T 439/22, which had not yet been published at the date of the oral proceedings before the Board, is therefore moot. The request was conditional on the above-mentioned feature requiring using the description for interpreting it but this is not needed as explained above.

2. *Main request - Novelty over D11*

2.1 The subject-matter of claim 1 is new over D11 (Article 54 EPC).

2.2 The Opposition Division considered that D11 failed to disclose feature 1c of claim 1 because it lacked a direct and unambiguous disclosure of an annular peripheral metal mantle (see points 5.3 and 5.4 of the decision under appeal).

2.3 The opponent maintained that feature 1c was implicitly disclosed in D11. In particular, it pertained to common general knowledge - evidenced by D12 and D18 to D22 - that it had been common practice since the manufacture

of filter attachment machines and long before the priority date of the patent in suit to use metal for the manufacture of outer drum bodies of conveyor drums in the tobacco processing industry.

Accordingly, when the person skilled in the art read or spoke of conveyor drums, they always implicitly referred to metal conveyor drums made of metal, since metal was the only and realistic option for the manufacture of a conveyor drum receiving a plug wrap, in order to achieve the corresponding manufacturing accuracy and to discharge electrostatic charges. Document D9 also confirmed this view as stated in paragraph [0048].

- 2.4 According to established case law of the Boards of Appeal, *"an alleged disclosure can only be considered "implicit" if it is immediately apparent to the skilled person that nothing other than the alleged implicit feature forms part of the subject-matter disclosed"* (see Case Law of the Boards of Appeal of the EPO, 10th edition, 2022, I.C.4.3).

In other words, and in the case at hand, this requires that when the skilled person reads D11, it is immediately clear to them that it is feature 1c and only that feature that is to be included in the disclosed conveyor drum.

- 2.5 The Opposition Division's assessment in this respect is correct. A conveyor drum with an annular peripheral mantle made of metal does not derive directly and unambiguously from the explicitly disclosure in D11.

It is common ground that D11 does not explicitly disclose either the shape (annular peripheral ring) or the material of the conveyor drum 18. D11, when

describing the drum 18 of figure 3 and its various alternative partial cross-sections of one of its seats 23 in figures 4 to 6, refers only to a circumferential surface 20 of the drum 18.

The opponent's line of argument for the implicit disclosure of feature 1c is based on the alleged fact that all conveyor drums for filter cigarette machines consist only of an annular peripheral mantle made of metal. This is not persuasive, since the skilled person knows that there are also materials other than metal (including conductive materials) and shapes for the drum which could be used for the conveyor drum. The fact that it is usual in the industry to use such a shape and such a material as claimed - as evidenced by the cited documents and also by paragraph [0048] of D9, which states that metal flutes are typically used - does not mean that it is the only option available to the skilled person when reading D11. This question is rather a matter of inventive step.

The opponent's argument that the Opposition Division was wrong when stating that the skilled person might consider ceramic as a possible material because ceramic would be excluded as unsuitable fails to convince because anyway ceramic is only one of the possible materials that might be used instead of metal.

2.6 The patent proprietor's objection to the admissibility of the lack of novelty of the subject-matter of granted claim 1 over D11 can be left aside because the objection is not persuasive on the merits.

3. *Inventive step*

3.1 The subject-matter of claim 1 as granted involves an inventive step in view of D2 in combination with common

general knowledge of the skilled person in the art, D9 or D10 (Article 56 EPC).

- 3.2 When arguing on inventive step and starting from D2 as the closest prior art, the opponent considered, in line with the Opposition Division's assessment (see point 9 of the contested decision), that the subject-matter of granted claim 1 differed from the conveyor drum disclosed in D2 only by virtue of feature 1c. In particular, feature 1f was disclosed in D2 by the recesses 20 present in each suction groove 7 of the conveyor drum 4 (see figures 4 and 5). On the basis of this difference, the opponent formulated the inventive step objections according to the established problem-solution approach.
- 3.3 However, the assessment of the Opposition Division and that of the opponent is based on a broad interpretation of feature 1f as regards the term "high-compliance section". Since the interpretation is more restrictive, as explained above under point 1, and a void (recess in the part of the flute receiving the double filter) does not qualify as a high-compliance section of the part of the receiving portion designed to receive the double filter, D2 does not disclose feature 1f. As a consequence, none of the objections to inventive step raised by the opponent can succeed, since they are all based on the assumption that D2 discloses feature 1f of claim 1.
- 3.4 The opponent's request for remittal to the first instance department is also moot, since the request was conditional on the alleged non-disclosure of feature 1e in D2, which was raised for the first time by the patent proprietor in their statement of grounds of

appeal, and the disputed difference is not relevant for the present decision on inventive step.

4. It follows that the patent proprietor's appeal is allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



M. Schalow

G. Pricolo

Decision electronically authenticated