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**Datasheet for the decision
of 14 March 2025**

Case Number: T 0021/24 - 3.2.07

Application Number: 17707847.4

Publication Number: 3423365

IPC: B65D6/06, B65D21/02, B65D25/00

Language of the proceedings: EN

Title of invention:
GOODS DELIVERY SYSTEM

Patent Proprietor:
Ocado Innovation Limited

Opponents:
BITO-Lagertechnik Bittmann GmbH
Autostore Technology AS (opposition withdrawn)

Headword:

Relevant legal provisions:
EPC Art. 111(1), 113(1), 123(2)
EPC R. 103(1)(a), 111(2)
RPBA 2020 Art. 11, 12(8), 15(1)

Keyword:

Form of decision - decision in writing without oral proceedings
Amendments - allowable (no)
Substantial procedural violation - appealed decision sufficiently reasoned (no)
Remittal - fundamental deficiency in opposition proceedings (yes)
Reimbursement of appeal fee - (yes) - appealed decision reasoned (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0021/24 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 14 March 2025

Appellant: Ocado Innovation Limited
(Patent Proprietor) The IP Department c/o
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Appellant: BITO-Lagertechnik Bittmann GmbH
(Opponent 1) Obertor 29
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Representative: Richardt Patentanwälte PartG mbB
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 October 2023 concerning maintenance of the
European Patent No. 3423365 in amended form.**

Composition of the Board:

Chairman V. Bevilacqua
Members: A. Cano Palmero
E. Mille

Summary of Facts and Submissions

- I. The patent proprietor and opponent 1 (appellants) lodged appeals within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent No. 3 423 365 in amended form on the basis of the then auxiliary request 1.
- II. Two oppositions were filed against the patent in its entirety and were based on Article 100(a) EPC (lack of novelty and inventive step), Article 100(b) EPC (insufficiency of disclosure) and Article 100(c) EPC (unallowable amendments).
- III. Opponent 2 withdrew its opposition on 27 July 2023 and therefore ceased to be a party to the present proceedings.
- IV. Opponent 1 initially requested

that the decision under appeal be set aside and that the patent be revoked.
- V. The patent proprietor initially requested

that the decision under appeal be set aside, and that the patent be maintained in amended form according to the set of claims according to the main request,

or, in the alternative,

that the appeal of opponent 1 be dismissed, *i.e.* that the patent be maintained in the form held by the opposition division to meet the requirements of the EPC (auxiliary request 1),

or, in the alternative,
that the patent be maintained in amended form
according to one of the sets of claims filed as
auxiliary requests 2 to 30 filed with the reply to
the statement setting out the grounds of appeal of
opponent 1.

- VI. In preparation for oral proceedings, requested by the parties, the board communicated its preliminary assessment of the case in a communication pursuant to Article 15(1) RPBA, according to which the appeal of the patent proprietor was likely to be dismissed. In addition, the decision under appeal should be set aside and the case remitted to the opposition division for further prosecution. The board further indicated that a decision on the merits of the case could be issued in writing in the event that the appellants withdrew their requests for oral proceedings.
- VII. Both appellants (the patent proprietor with letter dated 3 February 2025 and opponent 1 with letter dated 28 February 2025) withdrew their respective requests for oral proceedings. They further requested a decision in writing and that the case be remitted to the opposition division for further prosecution.
- VIII. The lines of argument of the appellants relevant for the present decision are dealt with in detail in the reasons for the decision.
- IX. Independent claim 1 of the main request with the feature labelling used by the appellants reads as follows:
- "1.1 A re-usable, stackable container for use in a goods handling system,

- 1.2 the container comprising an inner part (1) and an outer part (2),
 - 1.3 the inner part (1) being slidably engaged within the outer part (2),
 - 1.4 whereby the interior of the container is accessible by relative sliding movement of the inner part (1) and the outer part (2),
 - 1.5 the container comprising five closed sides
 - 1.5.1 such that, when two or more containers are stacked together, goods stored therein remain secured within the container
- characterized in, that
- 1.6 the container comprises one or more internal hooks on which bags can be secured."

X. Since the wording of the claims of auxiliary requests 1 to 30 is not relevant for the present decision, there is no need to reproduce it here.

Reasons for the Decision

1. *Procedural matters - decision in writing*
- 1.1 The case is ready for decision which is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA and with Articles 113 and 116 EPC.
- 1.2 The board communicated its preliminary assessment of the case to the parties by means of a communication pursuant to Article 15(1) RPBA, according to which:
 - the appeal of the patent proprietor should be dismissed,
 - the decision under appeal was likely to be set aside,
 - the case should be remitted to the opposition division for further prosecution, and

- the appeal fee paid by opponent 1 should be reimbursed in full.

- 1.3 In response to the communication, both appellants withdrew their respective requests for oral proceedings and requested a decision in writing and that the case be remitted to the opposition division for further prosecution.
- 1.4 Since the appellants were informed of the board's preliminary assessment of the case, on which the present decision is based, the principle of the right to be heard pursuant to Article 113(1) EPC is observed since that provision only affords the opportunity to be heard and the parties' written submissions are fully taken into account.
- 1.5 As a consequence, oral proceedings were cancelled, and the board is in a position to take the present final decision on the basis of the contested decision to be reviewed and the extensive written submissions of the appellants (Article 15(3) RPBA), while preserving their rights under Articles 113 and 116 EPC.
- 1.6 The reasons for the decision given below follow the board's preliminary opinion provided in the communication pursuant to Article 15(1) RPBA which was neither commented upon nor contested in substance by the appellants (see the letter of the patent proprietor dated 3 February 2025 and the letter of opponent 1 dated 28 February 2025).
- 1.7 Under these circumstances, the board - having once again taken into consideration all the relevant aspects put forward in the parties' written submissions - sees

no reason to deviate from its above-mentioned preliminary opinion and confirms it.

Patent proprietor's appeal

2. *Main request - Added subject-matter, Article 123(2) EPC*

2.1 The patent proprietor argued that the opposition division erred in its finding in point 2.2 of the reasons for the decision under appeal that the subject-matter of claim 1 according to the main request, and in particular feature 1.5,

"when two or more containers are stacked together such that goods stored therein remain secured within five closed sides of the container,"

extended beyond the application as originally filed.

In particular, the patent proprietor indicated that the skilled person would understand that the concept of providing access to the interior of the container, *i.e.* the container being in an open configuration, is at odds with the concept of securing goods within the container, and therefore were to be regarded as opposite concepts. The open configuration allowed goods to be removed, while securing the goods prevented such removal. Therefore, the skilled reader would understand that access was provided only when the container was open, and that goods remained secured when the container was closed. The possibility of goods being secured and removable (when the container was open) lacked technical sense and was therefore ruled out by the skilled reader, so that there was no extension of subject-matter beyond the original application.

2.2 The board disagrees and rather concurs with the opposition division and with the arguments of opponent 1 that, contrary to the patent proprietor's arguments, a skilled reader would not consider, looking at claim 1, that the accessibility to the interior of the container is in contradiction to the goods remaining secured. There is in fact no reference to a removal of goods in claim 1 according to the main request. It follows that claim 1 of the main request requires that when two or more containers are stacked together, the goods remain secured within five closed sides of the container in all spatial configurations, including the open configuration.

However, as acknowledged by the patent proprietor itself, according to the original disclosure, when the container is open, goods are no longer secured within five closed sides (see the closed configuration shown in figure 3a of the patent in suit, the open configuration shown in figure 3b).

Since the subject-matter of claim 1 of the main request covers the possibility that goods are secured within five closed sides also in an open configuration when two or more containers are stacked together, its subject-matter extends beyond the original disclosure.

2.3 In sum, the board concurs with the opposition division that claim 1 of the main request does not meet the requirements of Article 123(2) EPC.

2.4 The patent proprietor's appeal is thus to be dismissed.

Opponent 1's appeal

3. *Auxiliary request 1 - Lack of reasoning, Rule 111(2) EPC; substantial procedural violation*

3.1 According to the minutes of the first oral proceedings before the opposition division held on 23 May 2023, opponent 1 made an objection of lack of sufficiency of disclosure (see page 2, after the interruptions 14:07-14:17 and 14:33-14:40). This objection was therefore discussed between 14:40 and 14:50. Further, according to the minutes, the chairman of the opposition division announced that the invention was sufficiently disclosed.

3.2 However, as correctly indicated by opponent 1, the appealed decision is deficient and has to be set aside, because the issue of sufficiency of disclosure was not considered at all for any request.

3.3 The patent proprietor merely argued, in relation to the above mentioned deficiency, which was clearly identified by opponent 1, that the "little time" spent by the opposition division discussing these arguments was merely due to the fact that they lacked any merit.

3.4 The board notes that according to the established jurisprudence (see the Case Law of the Boards of Appeal, 10th edition 2022, III.K.3.4.3 and III.K.3.4.4) a decision should consider the essential facts, evidence and arguments in detail and contain the logical chain of reasoning which led to the conclusion drawn. The patent proprietor's allegation that the arguments of opponent 1 lacked any merit cannot amount to a justification not to observe the absolute

requirement that the decision be reasoned according to Rule 111(2) EPC.

3.5 The board thus concludes that the lack of reasoning in the decision under appeal as regards sufficiency of disclosure amounts to a fundamental deficiency, and therefore to a substantial procedural violation because a fundamental procedural right of opponent 1 has been violated.

3.6 As a consequence of this substantial procedural violation the appealed decision is to be set aside, and the auxiliary request of the patent proprietor, namely that the appeal of opponent 1 be dismissed, cannot be allowed.

4. *Reimbursement of the appeal fee paid by opponent 1, Rule 103(1) (a) EPC*

As a further consequence of the above assessed substantial procedural violation, the board finds that a full reimbursement of the appeal fee paid by opponent 1 is equitable according to Rule 103(1) (a) EPC.

5. *Remittal of the case to the opposition division for further prosecution, Articles 111(1) EPC and 11 RPBA*

5.1 Rule 111(2) EPC gives parties to EPO proceedings a fundamental procedural right to be provided with the reasons for a decision.

5.2 Lack of compliance therewith is considered by the board as a fundamental deficiency occurred during opposition proceedings within the meaning of Article 11, second sentence, RPBA.

- 5.3 Such a fundamental deficiency is regarded by the board as amounting to a "special reason" within the meaning of Article 11 RPBA, which justifies a remittal to the opposition division for further prosecution, in accordance with Article 111(1) EPC.
- 5.4 The board notes that such a deficiency is not a minor defect. Furthermore, the fundamental deficiency in the decision under appeal as discussed above also prevents the board from any meaningful review of the opposition division's findings on the merits of the case as to whether or not the requirements of Article 83 EPC are met by any of the patent proprietor's requests.
- 5.5 In view of the above, the board orders the remittal of the case to the opposition division for further prosecution.

Order

For these reasons it is decided that:

1. The appeal of the patent proprietor is dismissed.
2. The decision under appeal is set aside.
3. The case is remitted to the opposition division for further prosecution.
4. The appeal fee paid by opponent 1 is reimbursed.

The Registrar:

The Chairman:



G. Nachtigall

V. Bevilacqua

Decision electronically authenticated