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Aktenzeichen / Case Number / N^o du recours : T 285/84

Anmeldenummer / Filing No / N^o de la demande : 79 300 968.9

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 006 316

Bezeichnung der Erfindung : Papermaking machine
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : D21F1/08

ENTSCHEIDUNG / DECISION

vom / of / du 29.04.1986

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Asten Group Inc.

Filztuchverwaltungs GmbH

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE

Art. 52(1), 56 "Inventive step"

Art. 54(3) "State of the Art"

Art. 104(1), "Costs incurred before the Opposition
Division and the Board of Appeal"

Leitsatz / Headnote / Sommaire

Summary of Facts and Submissions

- I. European patent No. 6 316 was granted to the Respondent on 11 May 1983 with 6 claims in response to the European patent application No. 79 300 968.9 filed on 29 May 1979 claiming the priority of two earlier applications of 30 May 1978 and 5 February 1979.
- II. The Appellant filed opposition against the European patent on 29 October 1983 requesting that the patent be completely revoked for lack of patentability within the terms of Articles 52, 54 and 56 EPC, and for lack of sufficient disclosure of the invention within the terms of Article 100(b) EPC.

The Respondent requested rejection of the opposition and maintenance of the patent unamended and asked that the opposition be dismissed with special costs.

- III. The Opposition Division rejected the opposition in a decision of 22 November 1984 and decided that each party must bear its own costs.
- IV. The Appellant filed an appeal on 4 December 1984 paying the fee at the same time. The Statement of Grounds were filed the next day. The Appellant maintained the objection of lack of sufficient disclosure of the invention within the terms of Article 100(b) EPC, and further argued that the subject-matter of the European patent extended beyond the content of the application as filed, contrary to Article 100(c) EPC. The Appellant also maintained the objection of lack of novelty or at least of lack of inventiveness in view of DE-A-1 786 129 (Art. 100(a) EPC).

The Appellant requested that the decision of the Opposition Division be set aside and the patent be revoked.

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 285 /84

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 29.04.86

Appellant :
(Opponent)

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Respondent :
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Decision under appeal :

Decision of Opposition Division of the
European Patent Office dated 22.11.1984
rejecting the opposition filed against
European patent No. 006 316 pursuant to
Article 102(2) EPC.

Composition of the Board :

Chairman : C. Maus

Member : P. Delbecque

Member : P. Ford

Summary of Facts and Submissions

1. European patent No. 6 316 was granted to the Respondent on 11 May 1983 with 6 claims in response to the European patent application No. 79 300 968.9 filed on 29 May 1979 claiming the priority of two earlier applications of 30 May 1978 and 5 February 1979.

- II. The Appellant filed opposition against the European patent on 29 October 1983 requesting that the patent be completely revoked for lack of patentability within the terms of Articles 52, 54 and 56 EPC, and for lack of sufficient disclosure of the invention within the terms of Article 100(b) EPC.

The Respondent requested rejection of the opposition and maintenance of the patent unamended and asked that the opposition be dismissed with special costs.

- III. The Opposition Division rejected the opposition in a decision of 22 November 1984 and decided that each party must bear its own costs.

- IV. The Appellant filed an appeal on 4 December 1984 paying the fee at the same time. The Statement of Grounds were filed the next day. The Appellant maintained the objection of lack of sufficient disclosure of the invention within the terms of Article 100(b) EPC, and further argued that the subject-matter of the European patent extended beyond the content of the application as filed, contrary to Article 100(c) EPC. The Appellant also maintained the objection of lack of novelty or at least of lack of inventiveness in view of DE-A-1 786 129 (Art. 100(a) EPC).

The Appellant requested that the decision of the Opposition Division be set aside and the patent be revoked.

The Appellant requested oral proceedings according to Article 116(1) EPC.

- V. The Respondent submitted his reply on 1 April 1985, requesting dismissal of the Appeal and reconsideration of the Opposition Division's decision that no costs should be awarded to the Respondent.

Subsidiarily the Respondent requests oral proceedings.

- VI. During the procedure before the Board, new claims and new parts of the description were submitted on 17 March 1986.

Claim 1 reads as follows :

- "1. A papermaking machine having a dryer section including a plurality of dryer cylinders which emit heat for drying a wet paper web, a dryer fabric which is passed over the said cylinders in succession in contact with a portion of the circumference of each said cylinder the web being conveyed in use of the machine, on one side of the fabric as the fabric and the web pass partially about said cylinders, and the said fabric being arranged to pass from the last of the cylinders to the first of the cylinders along a return path wherein the fabric is out of contact with any of said cylinders and wherein the dryer fabric comprises an elongate web formed of a plurality of strands and having a plurality of interstices, said strands being partially coated with a resin having a quantity of metallic particles therein, characterised in that the said resin partially fills the said interstices,

without covering the sides of the fabric, whereby to impart a reduced air permeability to the fabric (4) and to increase the thermal conductivity of the fabric and to reduce the heat emissivity of the fabric."

For the first two objections raised by the Appellant, the Respondent refers to the arguments brought forward during the Opposition procedure. As to the third objection (Art. 100(c) EPC), the Respondent submits that this objection is a new one, too late to be entertained. It is further submitted that when deciding if there is extension of the subject-matter of the application as filed, the application as a whole is to be considered including the description and the figures.

VII. With a letter of 17 March 1986 the Appellant further objects that the application lacks novelty according to Art. 54(3) EPC against Respondent's older application 79 300 502.6 (4480).

VIII. During the oral proceedings which took place 29 April 1986, the Appellant maintained the request for revocation of the patent in its entirety.

The Respondent requested that the appeal be dismissed and the patent be maintained in the amended form proposed in the letter of 17 March 1986.

The Respondent maintained his request for reconsideration of the Opposition Division's decision that that no costs should be awarded to the Respondent in respect of the first instance proceedings.

Reasons for the Decision

1. The appeal complies with Articles 106-108 and Rule 64 EPC. It is therefore admissible.

- 2.1 The amendments of the patent specification, identified "A" - "D", of 17 March 1986 do not give rise to any objections.

The amendments of the independent claim (Claim 1) are necessary to remove an inconsistency with the different situations in the different machines according to Figures 1a to 1c.

The amendments of Claim 5 are required in order to make the wording consistent with the wording of the claim on which it depends.

The amendments in the description are proposed for the sake of consistency with the amended claims, for correcting clerical errors or for clarification.

- 2.2 The subject-matter of the current version of Claim 1 does not extend beyond the content of the application as filed.

It is true, as the Appellant asserts, that the original Claim 1 mentions that the fabric has on its back side a coating and further, that the coated back side effects a reduction in heat emissivity. However, from the original description with Figure 5 it results clearly that the coating of the back side is a step in the process and that the coated back side is a stage during the process, the treated surface of the fabric being then wiped clean with a doctor blade (page 5, 3rd and 4th from last lines of the original description). Furthermore, on page 6, lines 21 to 23 it is mentioned that the quantity of resin applied to

the fabric is sufficient to substantially impregnate the interstices of the fabric, such as shown in Figures 3 and 4. The end product as represented in Figure 5 clearly shows that neither the face side nor the back side is covered by the resin.

- 2.3 The newly formulated Claim 1 therefore does not conflict with the terms of Art. 100(c) EPC.
3. As furthermore the features of the first part of Claim 1 are in combination part of the closest prior art as represented by FR-A-1 603 267, Rule 29(1)(a) EPC is complied with and there are no formal objections against Claim 1 (cf. also the following paragraph 4).
4. According to Article 54(3) and Article 89 EPC, the content of an European application, of which the date of filing (or of priority) is prior to the date of filing (or of priority) of the examined European application, shall be considered as being comprised in the state of the art. The Board cannot accept the submission of the Appellant that the subject-matter of present Claim 1 lacks novelty within the meaning of Article 54(3) EPC having regard to European application 79 300 502.6 (4480). The dryer fabric of the machine according to Claim 1 is not identical with the fabric according to that prior European application because Claim 1 of the patent comprises a feature - the resin having a quantity of metallic particles therein - which is not disclosed in the prior European application published under number 4480. The opinion of the Appellant that this feature is an equivalent is not substantiated as the prior application does not disclose the presence of particles in the resin. The subject-matter of Claim 1 of the European patent is therefore new against the earlier European application 4480. That earlier European application 4480 can therefore not be maintained against the patent.

5. As far as novelty over FR-A-1 603 267 (or the corresponding DE-A-1 786 129) is concerned, the Board comes to the same conclusions as the Opposition Division: see para. 3 of the decision under appeal. In particular, the feature of Claim 1 that the resin partially fills the interstices of the fabric is not to be found in these prior art documents.

The subject-matter of Claim 1 is thus novel.

6. According to the findings of the Board, the machine as claimed in this claim involves an inventive step. The problem objectively determined in the light of the state of the art is to improve the efficiency of the dryer sections of the machine disclosed in FR-A-1 603 267 by
- imparting a reduced air permeability to the dryer fabric.
 - increasing the thermal conductivity of the fabric;
 - reducing the heat emissivity of the fabric.

Efficiency is improved in a machine as claimed by the combination of features.

In the prior art documents there is no indication which would lead a skilled person to ensure that the sides of the fabric remain uncoated and that the resin only partially fills the interstices of the fabric.

7. The Board also agrees with the view of the Opposition Division that according to Article 104(1) EPC each party

must bear its own costs and no new arguments were brought by the Respondent on the point. No evidence was taken during the first instance proceedings and there were no oral proceedings at that stage. It follows from the provisions of Article 104(1) EPC that the Opposition Division had no power to make a special apportionment of costs in these circumstances.

8.

The Board can find no reasons of equity to justify ordering either party to pay to the other any costs incurred in the oral proceedings held on 29 April 1986.

Order

For these reasons it is decided that :

The decision of the Opposition Division is set aside.

The case is remitted to the Opposition Division with the order to maintain the patent on the basis of the following documents :

- amended Claims 1 and 5, submitted on 17 March 1986,
- granted Claims 2 to 4 and 6,
- specification as granted with the amendments A to D, submitted on 17 March 1986,
- drawings as granted.

Each party to meet the costs it has incurred both before the Opposition Division and before this Board.

The Registrar

B A Norman

The Chairman

C Maus