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D E C I S I O N
of 29 October 1999

Case Number: T 0272/94 - 3.2.5

Application Number: 87202548.1

Publication Number: 0275596

IPC: D01H 13/12

Language of the proceedings: EN

Title of invention:

Device for preventing the formation of yarn loops, and for saving the intaken yarn on the winding units

Patentee:

Savio S.p.A.

Opponent:

W. Schlafhorst & Co.

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

"No reply to objections made in a Board's communication"

Decisions cited:

-

Catchword:

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Boards of Appeal

Chambres de recours

Case Number: T 0272/94 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 29 October 1999

Appellant: Savio S.p.A.
(Proprietor of the patent) Via Udine 105
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Representative: Fusina, Gerolamo
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Respondent: W. Schlafhorst & Co.
(Opponent) Blumenberger Strasse 143 - 145
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 28 January 1994
revoking the European patent No. 0 275 596
pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: A. Burkhardt
Members: M. Ceyte
M. Vogel

Summary of Facts and Submissions

- I. The appellant is proprietor of European patent No. 0 275 596 (application No. 87 202 548.1).
- II. The patent was opposed by the respondent (opponent) on the ground of lack of patentability.

The following state of the art was *inter alia* opposed:

D1: JP-A-58 216 868 and English Abstract thereof

D3: DE-A-1 710 123

- III. By its decision posted on 28 January 1994 the Opposition Division revoked the patent.
- IV. On 25 March 1994 the appellant (patent proprietor) lodged an appeal against this decision with the appeal fee being paid at the same time.

The statement of grounds of appeal was filed on 19 May 1994.

- V. The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of claim 1 according to the main request or in the alternative on the basis of claim 1 according to the auxiliary request, both submitted with the statement of grounds of appeal.

"1. Anti-loop device in a cone winding unit in which a yarn (10) of a pirn (6) wound on a pirn tube (21) is unwound from the pirn (6) and wound on a cone and in

the path of the yarn (10) there are provided yarn knotting means comprising at least one catching nozzle movable in a yarn catching position, the device comprising a movable bar (2) for retaining the yarn (10), the movable bar (2) being located adjacent the upper end of the pirn (6) or the pirn tube (21), and an actuator (4) for moving said bar (2) into contact with the yarn (10) at the upper turns of yarn of said pirn (6) or with said pirn tube (21) to keep the yarn (10) tensioned during knotting or doffing, characterised in that said actuator (4) is responsive to yarn speed decrease in the stretch extending between the pirn (6) and a tensioning device (12) and is actuatable before the yarn speed decreases to zero, thereby causing said bar (2) to engage a still moving yarn (10)."

"1. Method for preventing loop formation in a cone winding unit when the winding is discontinued following a yarn breakage in the path between a feed pirn (6) and a produced cone or following cone doffing, in which a yarn (10) of a pirn (6) wound on a pirn tube (21) is unwound from the pirn (6) and wound on a cone and is maintained tensioned by at least one tensioning device (12) provided between the pirn (6) and the cone, and in which the broken yarn is retained by a bar (2) movable against the upper end of the pirn (6) or its tube (21) to keep the yarn tensioned during knotting or doffing, characterised in that it comprises:

- monitoring the speed of the yarn (10) in the stretch extending between the pirn (6) and the tensioning device (12); and
- actuating the bar (2) against the pirn (6) or its

tube (21) when the yarn speed in said stretch decreases and before the yarn speed decreases to zero, thereby causing the bar (2) to engage a still moving yarn (10)."

VI. In its statement of grounds of appeal, the appellant submitted that the main and auxiliary requests both relate to the same invention. The only difference is that the claimed invention is expressed in terms of structure in device claim 1 of the main request and in terms of steps in method claim 1 of the auxiliary request.

The essence of the invention which is defined in the characterising part of claim 1 of the two-requests lies in the actuation of the bar (2) when the yarn speed in the stretch decreases and before the yarn speed decreases to zero, thus causing the bar (2) to engage the still moving yarn.

There is no disclosure or suggestion of such inventive concept in documents D1 or D3.

VII. In its response to the statement of grounds of appeal the respondent submitted *inter alia* that the added feature in claim 1 of the two requests "thereby causing said bar a still moving yarn" is not disclosed in the original patent application and thus does not comply with Article 123(2) EPC.

VIII. In a communication dated 21 April 1998, the Board made following objections against the maintenance of the patent:

- (i) amended claim 1 of the main request does not seem to meet the requirement of Article 123(2) EPC,
- (ii) the subject-matter of this amended claim is apparently not inventive over document D1 and common general knowledge, and
- (iii) the method claims of the auxiliary request do not appear to comply with the requirement of Article 123(3) EPC.

Neither the appellant nor the respondent filed submissions in reply to the Board's communication.

Reasons for the Decision

1. The appeal is admissible.
2. *Main request*

Claim 1 according to the main request includes the added feature "thereby causing said bar to engage a still moving yarn 10"

The above-quoted feature is not disclosed in the patent application as originally filed.

On page 6, lines 7 to 14 of the original patent application, it is said the following:

"Before said speed of the yarn being wound decreases to

zero, and hence before the tension of the yarn 10, in the stretch extending from the pirn 6 to the first yarn-tensioning device 12, decreases down to a negligible value, letting the yarn along said stretch free of forming loops, **the device is actuated** by the drive source of the actuator 4, making the bar 2 advance or rotate, until it comes into contact with the yarn and the upper turns of the yarn of the pirn in the point 8" (emphasis added).

Thus the above quoted passage merely states, that the device is **actuated** before the yarn speed decreases to zero. This does not mean that as claimed in claim 1 the bar is caused to engage "a still moving yarn 10". Hence the added feature has no basis in the application as filed and therefore does not meet the requirement of Article 123(2) EPC.

The parties were invited to file observations within a period of 3 months on the Board's communication in which the reasoning given hereinabove was submitted.

The appellant was offered this way an opportunity to refute the Board's objections against the maintenance of the patent or to remove such objections by amending the patent. It has not availed itself of this opportunity. Thus the Board sees no reasons to deviate from such reasoning.

Therefore in the Board's judgement amended claim 1 does not comply with Article 123(2) EPC. Thus the main request must fail.

In the Board's communication it was also said that the

subject-matter of amended claim 1 apparently lacked an inventive step having regard to document D1 and common general knowledge. However this issue may be left undecided since the main request must fail on the grounds of non-compliance with Article 123(2) EPC.

3. *Auxiliary request*

Claim 1 according to the auxiliary request includes the same added feature "thereby causing the bar (2) to engage a still moving yarn". Accordingly, for the same reasons given hereinabove, amended claim 1 does not comply with Article 123(2) EPC. Therefore the auxiliary request must also fail.

Finally, since the Board comes to the conclusion that the auxiliary request must fail on the grounds of non-compliance with Article 123(2), it may also be left undecided whether the amended claims of this request meet the requirement of Article 123(3) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Townend

A. Burkhart