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D E C I S I O N
of 15 April 1999

Case Number: T 0766/94 - 3.2.5

Application Number: 89202741.8

Publication Number: 0368391

IPC: B41F 31/08, B41F 35/00

Language of the proceedings: EN

Title of invention:
Device for the conveyance of pasty material

Patentee:
Stork Brabant B.V.

Opponent:
J. Zimmer Maschinenbau Ges.m.b.H.

Headword:
-

Relevant legal provisions:
EPC Art. 54, 123(2)

Keyword:
"Novelty (main request: no)"
"Addition of subject-matter (subsidiary request: yes)"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0766/94 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 15 April 1999

Appellant: Stork Brabant B.V.
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Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 21 July 1994 revoking European patent No. 0 368 391 pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: A. Burkhart
Members: S. Crane
J.-C. De Preter

Summary of Facts and Submissions

- I. European patent No. 0 368 391 was granted on 9 September 1992 on the basis of European application No. 89 202 741.8.
- II. The granted patent was opposed by the present respondents on the basis that its subject-matter lacked novelty and/or inventive step (Article 100(a) EPC).

The prior art particularly relied upon by the respondents in the course of the opposition proceedings was a leaflet entitled "roto Exzentrerschnecken-Maischepumpen- und Getränkepumpen" of the Pumpenfabrik Wangen KG (document D1).

- III. With its decision posted on 21 July 1994 the Opposition Division revoked the patent. The reasons given for the decision were that the subject-matter of claim 1 of the main and subsidiary requests then on file lacked respectively novelty and inventive step with respect to the disclosure of document D1.
- IV. An appeal against this decision was filed on 16 September 1994 and the fee for appeal paid at the same time. The statement of grounds of appeal was filed on 21 November 1994.

With the statement of grounds the appellants (proprietors of the patent) submitted new sets of claims according to a main and a subsidiary request for maintenance of the patent in amended form.

The respective claims 1 of these requests read as follows:

Main request:

"Device for the conveyance of pasty material, comprising at least one stock container for the pasty material, in addition to at least one pump provided with a pump feed and pump discharge, and distribution means for the pasty material, for the printing of materials, characterized in that the stock container (3) comprising pasty material is provided with an outflow aperture (5) which is directly and detachably connected to the pump feed, and which in the operating position for the removal of pasty material from the stock container (3) forms essentially the lowest level of the stock container."

Subsidiary request:

"Device for the conveyance of pasty material, comprising at least one stock container for the pasty material, in addition to at least one pump provided with a pump feed and pump discharge, and distribution means for the pasty material, for the printing of materials, characterized in that the stock container (3) comprising pasty material is provided with an outflow aperture (5) being provided with a shut-off element and which is directly and detachably connected to the pump feed, and which in the operating position for the removal of pasty material from the stock container (3) forms essentially the lowest level of the stock container."

The arguments put forward by the appellants in support of these requests were substantially as follows:

The technical problem to be solved was the reduction of wastage loss of pasty printing material associated with conventional set-ups in which the pasty material was removed from a stock container via a suction line which was simply inserted into the open container from above. Although in general terms the loss of pasty material when making a colour change had always been a major concern in the printing art, the particular loss associated with the pasty material remaining in the stock container and the suction line had been accepted as a necessary evil. The solution offered by the claimed invention was to make a direct connection between the bottom of the stock container and the pump feed inlet. This, at first sight simple, measure represented a distinct departure from established practice which brought a marked improvement in reducing overall loss of pasty material when a colour was changed. Document D1 was in no way associated with the technical field in which the invention lay or with the technical problem to be solved.

In claim 1 of the subsidiary request the additional feature of the provision of a shut-off element in the outflow aperture of the stock container had been incorporated to make yet a further distinction over the state of the art.

Oral proceedings were requested as an auxiliary measure.

V. With a counterstatement dated 7 April 1995 the

respondents requested that the appeal be dismissed.

They argued *inter alia* that the eccentric screw pump of document D1 was both known to the person skilled in the printing art and clearly suitable for pumping a pasty printing material so that the use of such a pump in a known device as set out in the preamble of claim 1 of the main request was obvious.

Claim 1 of the subsidiary request offended against Article 123(2) EPC since the only disclosure of an arrangement with a shut-off element in the outflow aperture of the stock container was where the shut-off element was provided in a removable bottom part of the stock container. The latter feature did not appear in claim 1 of the subsidiary request which had therefore been inadmissibly generalised.

VI. In a communication of 5 October 1998 pursuant to Article 11(2) RPBA, in preparation for oral proceedings to be held on 16 March 1999, the Board indicated that it was not clear whether the wording of claim 1 of the main request had the effect, envisaged by the appellants, of the restricting the device claimed to its use in conveying "pasty material for the printing materials", which pasty material was filled into the stock container before this was connected to the pump feed. The question of the novelty of claimed subject-matter with respect to document D1 was therefore still open to discussion.

Furthermore, in view of the emphasis placed by the appellants on the specific problems concerned with the conveying of pasty material (i.e. viscous printing ink)

in the printing industry the Board referred to GB-A-2 074 240 (document D13) which had been cited as an "X" - document in the search report. This document was directed to the conveying of viscous printing ink out of a container by means of a pump. In the embodiment of Figure 2 the open bottomed container was attached directly and detachably to the pump feed inlet. The Board could not therefore determine any distinction between the subject-matter of claim 1 of the main request and this prior art. If novelty of this subject-matter could be established then document D13 would appear to represent the best starting point for evaluating inventive step.

VII. With a letter dated 29 January 1999 the appellants stated that they would not be attending the oral proceedings. They made no substantive observations on the communication dated 5 October 1998.

With a communication dated 10 February 1999 the Board informed the parties that the oral proceedings had been cancelled.

Reasons for the Decision

1. The appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.
2. Document D13 relates to a device for distributing a pasty material, for example printing ink, cf. page 1, line 2. The device comprises a pump body defining an

open-topped pump cavity in the lower portion of which there is arranged a rotatably driven screw conveyor. The screw conveyor pumps the pasty material from the pump cavity to a distribution line. The pasty material can be fed manually into the pump cavity by an operator. Alternatively, in the embodiment of Figure 2, the pasty material is supplied in a stock container the open bottom end of which is inserted into the open top end of the pump cavity. In this embodiment it is evident that the bottom end of the stock container comprises an "outlet aperture" and the top end of the pump cavity comprises a "pump feed" in the terms of claim 1 of the main request and that in operation the stock container is arranged with respect to the pump feed as required by the claim.

Accordingly the subject-matter of claim 1 of the main request lacks novelty with respect to document D13 (Articles 52(1) and 54 EPC), and therefore, the main request must be rejected.

3. The objection of the respondents under Article 123(2) EPC to claim 1 of the subsidiary request was communicated to the appellants by the Board on 20 April 1995. The appellants have not commented on it. In the opinion of the Board the objection is justified for the following reasons. Claim 1 of the subsidiary request claims in general terms that the outflow aperture is provided with a shut-off element. However, the only disclosure in the original application of the stock container with a shut-off element in the outflow aperture is in the specific context of the embodiment of Figures 12 and 13, where that shut-off element is included in a removable bottom party of the stock

container with which it is intimately and inextricably associated. Furthermore, the only mention of the shut-off element in the original claims is in combination with this removable bottom part, see claims 11 and 12. The terms of claim 1 of the subsidiary request therefore constitute an inadmissible intermediate generalisation from the original disclosure which contravenes Article 123(2) EPC, and therefore, the subsidiary request must accordingly also be rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Townend

A. Burkhart