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D E C I S I O N
of 23 September 1997

Case Number: T 0853/95 - 3.2.5

Application Number: 87118526.0

Publication Number: 0271116

IPC: D06H 7/24

Language of the proceedings: EN

Title of invention:

Improvements to a vacuum-grip cutting table

Patentee:

Investronica S.A.

Opponent:

Gerber Garment Technology, Inc.

Headword:

-

Relevant legal provisions:

EPC Art. 123, 82, 56

Keyword:

"Amendments (admissible)"
"Priority (validly claimed)"
"Documents (not prepublished)"

Decisions cited:

-

Catchword:

-



Case Number: T 0853/95 - 3.2.5

D E C I S I O N
of the Technical Board of Appeal 3.2.5
of 23 September 1997

Appellant:
(Opponent)

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Respondent:
(Proprietor of the patent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 22 August 1995
rejecting the opposition filed against European
patent No. 0 271 116 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: G. O. J. Gall
Members: W. D. Weiß
H. P. Ostertag

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division on the amended form in which the patent No. 0 271 166 can be maintained.

Opposition was filed against the patent as a whole and based on Article 100(a) EPC in conjunction with Article 54 EPC (lack of novelty) as well as in conjunction with Article 56 EPC (lack of inventive step) and based on Article 100(c) EPC (extension of the subject-matter beyond the content of the application as originally filed).

The Opposition Division held that the grounds for opposition mentioned in Article 100(a) and (c) EPC did not prejudice the maintenance of the patent as amended during the oral proceedings of 11 July 1995 having regard to ten documents and an alleged prior use cited in the course of the opposition proceedings.

- II. The appellant, in its grounds of appeal, maintained the view that the subject-matter of the patent as amended before the Opposition Division offended against Article 123(2) as well as (3) EPC and, further, that this subject-matter did not involve an inventive step with respect to the disclosure of either document

D1 DE-A-3 630 363 (published 12 March 1987) and

D10 US-A-4 646 911 (published 3 March 1987).

He contended, that these two documents belonged to the state of the art because Claim 1 as amended before the Opposition Division did not refer to the same invention as the priority document.

III. The respondent, by letter dated 15 April 1996, filed a newly amended Claim 1 and an amended page of the description as an "auxiliary request".

The appellant, by letter of 6 June 1997, suggested that, if the respondent transformed this "auxiliary request" to his main request, he would "be ready to accept this main request" and no longer insist in oral proceedings being summoned.

The respondent, by letter of 23 July 1997, declared the "auxiliary request" of 15 April 1996 to be its main request.

The appellant, by letter of 20 August 1997, withdrew its prior request for oral proceedings.

IV. In summary, the following requests are the basis for the decision:

The respondent requests that the decision under appeal be set aside and that the patent be maintained in amended form based on the following documents

Claim 1 (titled "auxiliary request") received on 16 April 1996 by letter of 15 April 1997, and Claim 2 of the patent specification;

Description columns 1 and 2 (titled "auxiliary request") received on 16 April 1996 by letter of 15 April 1996, and columns 3 to 6 of the patent specification;

Drawings 1/5 to 5/5 of the patent specification.

The appellant "accepts" this request.

V. The wording of Claim 1 according to this request reads as follows:

"1. Conveyor table (14) for a numerically controlled cutting machine (1) for cutting vacuum gripped strip material (12), comprising a conveyor consisting of a succession (48) of tiles (58), linked to chains (50) which are driven by a conveyor drive motor (44), and of a plurality of bristle mats (64) forming a penetrable air-permeable cutting table, said bristle mats are fixed on the tiles (58), and a vacuum system with a stationary vacuum source (68), whereby the tiles (58) are parts of the vacuum system and having holes (59) on the upper surface for communication with the bristle mats and openings (62) at the underside aligned and communicating with holes (72) at the topside of a central tube (66) being moored to the frame of the machine and arranged transverse to the tiles and linked to the vacuum source (68), the tiles (58), on which the bristle mats are fixed, are hermetically sealed at the ends by end sections (60), characterised in that the tube (66) has on its upper face a plastic support strip (70) of low friction and with wide openings (72) corresponding with the openings (72) of the tube (66) and rubber strips (76) in contact with the plastic support strip and which rub on the bottom surface of the tiled, and that the tiles (58) are provided with gaskets (74) for preventing leaks between the tiles (58) to complete the hermetic vacuum seal of the inside face of the conveyor working surface."

Reasons for the Decision

1. *Amendments and priority*

- 1.1 The appellant has objected that the feature "... characterized in that the tube (66) has on its upper face a plastic support strip (70) of low friction and with wide openings (72) corresponding with the openings (72) of the tube (66) and rubber strips (76) in contact with the plastic support strip, ...", which had been introduced into Claim 1 during the examination proceeding with the aim to delimit its scope, had been taken out of the context of the particular embodiment represented by Figure 5 and the original Claim 5.

The present amended Claim 1 has taken this objection into account by the additional feature that the rubber strips "rub on the bottom surface of the tiles" which has been literally taken from Claim 1 as originally filed. Although this formulation was no longer mentioned in the patent specification as granted, it can still be clearly and unambiguously derived from Figure 5 of the patent specification.

- 1.2 The act of completing Claim 1 by the said additional feature simultaneously removed the basis for the objection that Claim 1 as granted did not refer to the same invention as the Spanish patent application No. 8 603 432 and, therefore, was not entitled to claim its priority date. Since the European patent application as originally filed is a literal translation of the priority document, the fact that the subject-matter of the present Claim 1 does not extend beyond the content of the application as filed implies that it refers to an invention which is contained in

the said Spanish application and that the priority date of 15 December 1986 has been validly claimed in this connection.

- 1.3 The paragraph in column 2, lines 32 to 40, of the patent specification EP-B1-0 271 116, which has now been cancelled in the amended description had rather the rank of a preferred embodiment than of an obligatory feature having a restricting effect on the scope of protection conferred by the claims. Consequently, this amendment does not offend against the provisions of Article 123(2) EPC.

2. *Inventive step*

Lack of inventive step has been contended on the basis of either of the documents D1 or D10.

Since the priority date of 15 December 1996 has been validly claimed for the subject-matter of Claim 1 as now amended (see point 1.2 above), these two documents do not constitute a state of the art in the meaning of Article 54 EPC.

Consequently, the objections which are grounded on these two documents are not relevant.

3. Since the dependent Claim 2, the description and the drawings are not subject to any further objection on the basis of the EPC the amended patent and the invention to which it relates meet the requirements of the Convention.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent in the following version:

Claim 1 (titled "auxiliary request") received on 16 April 1996 by letter of 15 April 1997, and Claim 2 of the patent specification;

Description columns 1 and 2 (titled "auxiliary request") received on 16 April 1996 by letter of 15 April 1996, and columns 3 to 6 of the patent specification;

Drawings 1/5 to 5/5 of the patent specification.

The Registrar:



A. Townend

The Chairman:



G. Gall