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D E C I S I O N
of 1 October 2001

Case Number: T 0022/98 - 3.2.6

Application Number: 89910698.3

Publication Number: 0451150

IPC: B23D 35/00

Language of the proceedings: EN

Title of invention:

An improved cutter assembling means for slitters and the like

Patentee:

AKV-ORTIC Aktiebolag

Opponents:

- I. Simons, Bernd, Dipl.-Ing.
II. FIMI S.p.A. Fabbrica Impianti Macchine Industriali
III. Sundwiger Eisenhütte Maschinenfabrik
IV. Josef Fröhling GmbH Walzwerkmaschinenbau

Headword:

Cutter assembling means/AKV-ORTIC

Relevant legal provisions:

EPC Art. 54, 56
EPC R. 55(c), 56(1)

Keyword:

"Admissibility of opposition (yes)"
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:

T 0222/85, T 0328/87, T 0522/94, T 0234/86

Catchword:

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Case Number: T 0022/98 - 3.2.6

D E C I S I O N
of the Technical Board of Appeal 3.2.6
of 1 October 2001

Appellant: Josef Fröhling GmbH Walzwerkmaschinenbau
(Opponent IV) Finkenstrasse 19
D-57462 Olpe/Biggeseesee (DE)

Representative: Walter, Helmut, Dipl.-Ing.
Aubinger Strasse 81
D-81243 München (DE)

Respondent: AKV-ORTIC Aktiebolag
(Proprietor of the patent) Kvarngatan 13
S-714 00 Kopparberg (SE)

Representative: Fücksle, Klaus, Dipl.-Ing.
Hoffmann Eitle
Patent- und Rechtsanwälte
Postfach 81 04 20
D-81904 München (DE)

Party as of right: Simons, Bernd, Dipl.-Ing.
(Opponent I) Tannenweg 2
D-40670 Meerbusch (DE)

Party as of right: FIMI S.p.A. Fabbrica Impianti Macchine
(Opponent II) Industriali
Via dell'Industria, 1
I-22060 Vigano' Brianza (Como) (IT)

Representative: Fusina, Gerolamo
Ing. Barzanò & Zanardo Milano S.p.A.
Via Borgonuovo, 10
I-20121 Milano (IT)

Party as of right: Sundwiger Eisenhütte Maschinenfabrik
(Opponent III) Stephanopeler Strasse 22
D-58675 Hemer (DE)

Representative: Simons, Johannes
COHAUSZ & FLORACK
Postfach 33 02 29A
D-40435 Düsseldorf (DE)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted 4 November 1997
rejecting the opposition filed against European
patent No. 0 451 150 pursuant to Article 102(2)
EPC.**

Composition of the Board:

Chairman: P. Alting van Geusau
Members: H. Meinders
J. C. M. De Preter

Summary of Facts and Submissions

I. The appeal is from the decision of the Opposition Division posted 4 November 1997 rejecting the oppositions against European Patent No. 0 451 150.

From the opposition proceedings the following documents are relevant for the present appeal proceedings:

D1: DE-A-3 223 748

D2: DE-A-2 924 707

D3: DE-A-2 330 911.

The decision under appeal further relied on an alleged prior public use asserted by Opponent IV (the present Appellant) as having taken place by the sale and delivery of slitting machines to the firm Wieland-Werke, supported by the following documents:

D4: Delivery notes 975, 991 and 012

D5: Drawings 1250-3220, pages 1 and 2

D7: Photographs 1227 and 1281

D8: Declaration Mr Schulz.

This alleged sale of slitting machines is hereinafter referred to as "the prior use".

The Opposition Division held the oppositions (there were four opponents) admissible, and further held that the patent was sufficient in its disclosure of the

invention, the invention was susceptible of industrial application and that the subject-matter of the claims involved novelty and inventive step over the alleged prior use.

II. Against this decision an appeal was filed by the Appellant (Opponent IV) on 5 January 1998, with payment of the appeal fee on that same day. The statement of grounds of appeal was filed on 5 March 1998.

III. The Appellant requested that the absence of inventive step of the claimed subject-matter be established and that the patent be revoked in its entirety.

The Respondent (Patentee) requested that the appeal be dismissed and alternatively an oral hearing be arranged. It maintained its objection that the opposition of the Appellant was inadmissible.

The parties as of right (Opponents I, II and III) did not file any submissions.

IV. Claim 1 reads as follows [with typing errors corrected]:

"A cutter assembling means for slitters for metal strips, the s[l]itter comprising two parallel arbors (12,13) extending between two frame portions and journaled therein, sets of cutters and spacers on each arbor,
one of the frame portions (10) comprising driving means for rotating the arbors, the opposite frame portion (11) being movable to permit said sets to be mounted and dismounted,
characterized by

a hydraulic cylinder (23) for turning the movable frame portion (11) outwardly around a vertical shaft (22) for laying adjacent ends of the arbors free, re-assembling means (29) with pairs of parallel arbors (30) on which the cutters and the spacers may be threaded, said re-assembling means being rotatable and movable axially towards and away from the arbor (11) ends

a store (33) from which the re-assembling means (29) will be equipped with cutters and spacers, supported by a computer, programmed with a cutting plan, one on the s[l]itter assembled off-pusher (32) for moving used sets to the re-assembling means (29) a pusher (31) on the re-assembling means (29) for moving new prepared sets to the arbors (12,13), and hydraulic piston means working from outside the movable frame portion (11) for actuating mean[s] (15,16,17) inside the arbors (12,13) for clamping and releasing the sets on the arbors and simultaneously and firmly journal[ing] the adjacent arbor ends to said frame portion (11)".

IV. The arguments of the Appellant can be summarised as follows:

The prior use constituted the closest prior art, disclosing a cutter assembling means for slitters with all the features of claim 1, except for:

- (a) the computer supporting the store, programmed with a cutting plan and
- (b) the hydraulic piston means working from outside the movable frame portion for actuating means inside the arbors for clamping and releasing the

sets of cutters and spacers on the arbors and simultaneously and firmly journalling the adjacent arbor ends to said frame portion.

Feature (a) could not be considered to lend inventive step to the subject-matter of claim 1, as the automation of industrial processes like cutting metal strips from metal sheet was normal technical practice for the skilled person in this field of technology. Such practice was for instance illustrated by D3.

Feature (b) could neither provide support for inventive step, as the concept of external hydraulic means for clamping and releasing items on a shaft was known from the neighbouring field of lathes as disclosed in D1 or D2. This concept could easily be transferred, without inventive skills, to the arbors of a slitting machine. The additional feature of journalling the adjacent arbor ends to the movable frame portion did not solve a problem and therefore did not involve inventive step.

V. The Respondent's submissions can be summarised as follows:

The opposition of the Appellant should be held inadmissible as it was only based on an alleged prior use which had been inadequately substantiated within the opposition period.

Further, the skilled person, even when starting from the prior use arrangement, was not led in an obvious manner by the available prior art (D1-D3) to the absorbent article as claimed, which therefore was based on an inventive step. In fact, the prior use arrangement also did not disclose a re-assembling means

being axially movable towards and away from the arbor ends. In the prior use it was the slitter means moving axially towards and away from the re-assembling means.

Reasons for the Decision

1. The appeal is admissible.
2. *Admissibility of the opposition of the Appellant (Rule 55(c) EPC)*
 - 2.1 One prerequisite for an opposition to be admissible is that at least for one ground of opposition there is an indication of the facts, evidence and arguments presented in support of that ground (Rule 55(c) EPC). The Respondent argued that the opposition of the Appellant, which was based solely on an alleged prior use, did not fulfil this requirement and therefore the opposition should be considered inadmissible.
 - 2.2 According to the established case law of the Boards of Appeal in case of prior public use the requirements of Rule 55(c) EPC will only be satisfied if there is **sufficient** indication of the **relevant** facts, evidence and arguments so that the Opposition Division (and the patent proprietor) are able to properly understand the reasoning and the merits of the Opponent's case in relation to the grounds of opposition (see T 222/85, OJ 1988, 128). The Opposition Division should be able to determine the following details of the prior use:

what was made available to the public **when** and under **which circumstances** (see e.g. T 328/87, OJ 1992, 701

and T 522/94, OJ 1998, 421).

2.3 The Respondent argued that there were inconsistencies between the two photographs (D7) as well as between the photographs (D7), the drawings (D5) and the declaration ("Eidesstattliche Versicherung" - D8). It was not clear whether the photographs concerned one and the same machine and whether the machine in the photographs was actually the one represented in the drawings because the latter were apparently drafted on 13 and 15 May 1987, i.e. after the alleged delivery as supported by D4. The photographs, drawings and the declaration further did not conclusively disclose the re-assembling means being **axially** movable in respect of the slitting machine.

2.3 What the Respondent in fact argues is that the facts and evidence indicated and submitted by the Appellant do not provide indubitable proof that the features of the prior use machine actually correspond to the features of claim 1.

However, according to the established case law of the Boards of Appeal the sufficiency of the indication of facts and evidence in the notice of opposition for the purpose of admissibility must be distinguished from the strength of the opponent's case, i.e. whether the facts and evidence submitted actually **prove** what is alleged (see T 222/85, *supra*).

The EPC does not require an opposition to be conclusive so as to be admissible (see T 234/86, OJ 1989, 79). This is derivable from Rule 55(c) EPC in conjunction with Rule 56(1) EPC, the former only referring to the necessity to provide an "indication of the facts,

evidence and arguments" in support of a ground of opposition.

- 2.4 The Opposition Division considered in its decision that the oppositions (thus including the opposition of the present Appellant) were sufficiently substantiated.

The Board concurs with the Opposition Division's judgment that the Appellant's notice of opposition and its annexes sufficiently specify what was the object of the sale and delivery to the firm Wieland-Werke AG and when and under which circumstances this sale and delivery took place so as to fulfil the requirements of Rule 55(c) EPC.

The opposition of the Appellant is therefore admissible.

3. *Novelty (Article 54 EPC)*

Novelty was not an issue between the parties in the appeal proceedings. As none of the documents available in the file, nor the prior use on its own, discloses all features of claim 1, the Board is satisfied that the subject-matter of claim 1 is novel.

4. *Inventive step (Article 56 EPC)*

- 4.1 The Board agrees with the Appellant that the prior use, if proven, would be the most appropriate state of the art from which to start the discussion on inventive step.

- 4.2 When comparing the subject-matter of claim 1 with the arrangement of the alleged prior use the Board notes at

least the following differences:

- the store from which the re-assembling means will be equipped with cutters and spacers is supported by a computer, programmed with a cutting plan,
- hydraulic piston means are provided, which work from outside the movable frame portion for actuating means inside the arbors for clamping and releasing the sets on the arbors and simultaneously and firmly journalling the adjacent arbor ends to said frame portion.

4.3 The features mentioned above assure that the slitting machine can easily be adapted to different slitting operations and that it operates with a high precision.

The object of the invention of the patent in suit is therefore to provide the appropriate cutting arrangement to the slitting machine more easily and more efficiently, to perform this function with as little manpower as possible and to assure the accuracy of cutting (see the patent in suit, column 1, line 47 - column 2, lines 9).

4.4 The Appellant argued that the provision of a computer to support the store from which the cutters and spacers were to be provided, according to a cutting plan, would be normal technical practice for the skilled person at the priority date of the patent in suit. Everywhere in industry such kind of automation of internal processes was carried out, so as to make more efficient use of materials and other resources. D3 was an example of such automation.

In general the Board can agree with the Appellant that it is the permanent task of the skilled person to consider which processes in his field of technology are susceptible to (further) automation. For the skilled person in the field of cutting sheet metal the performing of store management in connection with the expected cutting operations is one of those processes. This distinguishing feature, on its own, therefore would not be sufficient to guarantee an inventive step.

- 4.5 The Respondent argued that one should not consider the distinguishing features of claim 1 separately, but that they should be seen in their context with the other ones. In this respect the computer had a function within the slitting machine as a whole and helped in equipping the arbors in an automated fashion.

The Board wishes to remark here that claim 1 does not mention the function of the computer in relation to an automated equipping of the arbors with cutters and spacers; it merely indicates that the store management is performed with the aid of a computer with a cutting plan. The actual withdrawal of cutters and spacers from the store, the mounting thereof on the arbors in the re-assembling means, the movement of the re-assembling means to the slitting machine, etc. can, according to the present wording of the claim, still be performed by hand, i.e. without automation by the computer. The step of automation of store management as mentioned in claim 1 is therefore not linked to other steps in the performance of the slitting machine.

- 4.6 The Appellant argued that the provision of hydraulic piston means working from outside the movable frame portion for actuating means inside the arbors for

clamping and releasing the sets of cutters and spacers on the arbor, etc. did not involve an inventive step. The skilled person would derive in an obvious way from the neighbouring field of lathes, in the present case illustrated by either D1 or D2, that such means could be provided.

- 4.7 As claim 1 specifies that sets of cutters and spacers are mounted on each arbor and are pushed onto the arbor as a set, it is evident that the clamping and releasing of the cutters has to have a component of movement in the axial direction of the arbors. Further, the hydraulic means performing this function together with the means inside the arbors, participate in firmly journalling the arbor ends to the movable frame portion simultaneously with the clamping action.

The teachings of D1 and D2 focus on the radial clamping of items on shafts. The shaft ends remain free. Thus these documents cannot provide the skilled person with a teaching of axially clamping and releasing cutters and spacers on arbors and at the same time providing a firm journalling of the arbor ends by the same hydraulic means working from outside the frame portion in which these ends are journalled, nor render such a teaching obvious.

- 4.8 The Respondent further argued that the simultaneous journalling of the arbor ends to the movable frame portion did not solve a technical problem and therefore this feature need not be considered for inventive step.

In a slitting machine as the one of claim 1, wherein the arbor ends have to be freed of the frame to be able to mount cutters and spacers thereon, the proper

journaling of these arbor ends during operation is definitely a technical problem. If in addition the hydraulic means should be capable of firmly journaling the arbor ends to the movable frame portion, this can only mean that the clamping action on the cutters and spacers is performed by a movement which is directed axially outwards. This provides a technical solution to the problem discussed above.

4.9 The Board therefore considers that the distinguishing feature of the hydraulic means clamping and releasing the cutters and spacers as well as firmly journaling the arbor ends to the movable frame portion establishes inventive step of the subject-matter of claim 1 over the slitting machine of the alleged prior use (Article 56 EPC).

4.10 Whether the prior use actually took place in the form as alleged is therefore a matter which needs no further investigation.

In view of the above considerations the argument of the Respondent, that the slitting machine of claim 1 further differed from the machine in the prior use through the re-assembling means being axially movable in respect of the slitting machine, needs no further discussion.

4.11 As the Respondent only requested oral proceedings in the event the appeal would not be dismissed, no oral proceedings were necessary.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau