

T62

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Case Number: T 52 / 82

DECISION
of the Technical Board of Appeal 3.2.1
of 18 March 1983

Appellant: Maschinenfabrik Rieter A.G.
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Switzerland

Representative: Fentiman, Denis Richard
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Decision under appeal: Decision of Examining Division 084 of the European Patent
Office dated 27 November 1981 refusing European patent
application No 78 300 409.6 pursuant to Article 97(1)
EPC

Composition of the Board:
Chairman: G. Andersson
Member: C. Maus
Member: P. Ford

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Summary of Facts and Submissions

I. European patent application No. 78 300 409.6, filed on 21 September 1978 published under the number 0 001 359 and claiming the priority of a previous application of 23 September 1977, was refused by the decision of the Examining Division 084 dated 27 November 1981.

The decision was based on Claims 1 to 19 received on 8 December 1980.

II. In its decision, the Examining Division stated that the present Claim 1 contains generalisations of features as compared to the originally filed Claim 1 which are not supported by the disclosure in the original document. Therefore, this claim is not allowable having regard to Article 123(2) EPC. Having regard to the same Article, independent Claim 13 is also not allowable.

III. On 16 January 1982, the appellant lodged an appeal against this decision, with payment of the fee for appeal. The statement setting out the Grounds of Appeal was received on 19 March 1982.

The appellant maintained Claims 1 to 19 on which the decision was based. He was of the opinion that the broader claims were justified by the description. In case the Board should so desire, he was willing to amend Claims 1 and 13 to the extent, specified in the statement setting out the Grounds of Appeal.

IV. In a communication dated 21 October 1982 the appellant was notified that both texts of Claims 1 and 13 were not allowable having regard to Article 123(2) EPC.

- V. By letter of 2 December 1982, received on 4 December 1982, the appellant submitted new Claims 1 to 12 in replacement for all claims previously submitted.

Claim 1 reads as follows:

"1. A winding apparatus for winding endless filaments into packages on tubes (10,11) comprising a carrier (2) rotatable about an axis of rotation; at least two axially movable bobbin chucks (8,9) for taking up tubes (10,11), each said chuck having a mounting (12,14,16, 18,20,22; 13,15,17,19,21,23) on the carrier enabling rotation of the chuck about its own axis; a friction drive drum (30) spaced from said axis of rotation of said carrier for successively rotating said bobbin chucks about their axes thereof when a respective chuck (13) is brought into a predetermined winding position relative to said drive drum; and an accelerating ring (28) for accelerating a bobbin chuck by contact with the surface thereof prior to said bobbin chuck being brought into said winding position; characterised in that the accelerating ring (28) is fixed at the centre of the carrier (2); and each said mounting (12,14,16, 18,20,22; 13,15,17,19,21,23) includes a controllable means (22,23) for controllably pivoting the respective bobbin chuck between radially inner and outer positions relative to said axis of rotation of said carrier, wherein in said inner position said respective chuck can be driven by said accelerating ring, and in said outer position said respective chuck can be located in said winding position by angular disposition of said carrier about said axis of rotation thereof."

.../...

- VI. Concerning the wording of the original claims and description, reference is made to publication No. 0 001 359.

Reasons for the decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC; it is, therefore, admissible.
2. The appellant has abandoned independent Claim 13 and all claims depending on this claim. Therefore, it is incumbent on the Board to examine only whether Claim 1, in the wording received on 4 December 1982, is supported by the original document.
3. Present Claim 1 differs from original Claim 1 as to its substantive content as follows:

3.1 Preamble

- (a) The words "automatically exchanging" have been omitted.
- (b) The feature "rotatable disc" is amended into "carrier".
- (c) The phrase "circumference of the accelerating ring" is amended into "surface thereof" i.e. surface of the bobbin chuck.

3.2 Characterising portion

- (d) The feature "rotatable disc" is amended into "rotatable carrier" in this portion of the claim also.

.../...

(e) The words "about one of a plurality of shafts" have been omitted.

(f) The feature "in the region of one of a plurality of openings in the disc" has been omitted.

4. These amendments are permissible on the following grounds:

(a) The words "automatically exchanging" described no feature, but constituted a summarising statement of the function of the means specified in the subsequent phrase of Claim 1.

(b) The skilled reader learns from pages 1 and 2 of the description that the subject-matter of Claim 1 will overcome the disadvantages which in the applicant's opinion, the winding apparatus according to British Patent Specification 1 487 608 shows. From this, it follows that the preamble of Claim 1 is derived from that Patent Specification. The winding apparatus known from British Patent Specification 1 487 608 presents no rotatable disc but a pivotal arm (cf. page 1, lines 16 and 17 of the description and Claim 1 of the said British Patent Specification). According to the Siemens/electrode slide decision T 06/81 of the Board (cf. Official Journal EPO, May 1982, pages 183 to 187), the applicant cannot be refused, therefore, correction of the preamble, whereby the feature "rotatable disc" is replaced by the feature "carrier" as the common feature of the known apparatus and of the apparatus disclosed in the application in the present case.

(c) The new wording "surface thereof" means substantially the same as the phrase "circumference of the accelerating ring" in the original claim.

(d) In the original document, a skilled person would not find any indication that it is of importance for the solution of the problem stated in the description to replace the pivotable arm of the known apparatus by a rotatable disc. Consequently, he would understand immediately that the configuration of the carrier was of no consequence. It is, therefore, permissible to substitute the term "rotatable disc" by "rotatable carrier".

(e) For a pivotable bearing of the chucks, shafts are mandatory. Hence, it is not necessary to mention the shafts expressly.

(f) From the reasons given above (cf. paragraph (d)) it follows that the feature "in the region of one of a plurality of openings in the discs" can be deleted because it is only necessary if the carrier consists of a disc.

Therefore, the subject matter of present Claim 1 does not extend beyond the content of the application as filed.

Claim 1 thus meets in this respect the formal requirements of the Convention.

5. The Examining Division has not yet examined whether an apparatus according to Claim 1 is patentable. Under

these circumstances the Board deems it not timely to decide this issue, but makes use of the power, given to it by Article 111(1) EPC, to remit the case to the Examining Division for further prosecution.

For these reasons,

it is decided that:

The decision under appeal is set aside; the case is .
remitted to the Examining Division for further
prosecution.

The Registrar:

signed: J. Rückerl

The Chairman:

signed: G. Andersson