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D E C I S I O N
of 14 March 2002

Case Number: T 0089/00 - 3.2.3

Application Number: 91919598.2

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Language of the proceedings: EN

Title of invention:
Safety device for parallelepipedic box

Patentee:
M W TRADING APS

Opponents:
PATACO AG
PLESCON LIMITED
FORS FRANCE

Headword:
-

Relevant legal provisions:
EPC Art. 100(c)

Keyword:
-

Decisions cited:
T 0260/85; T 0064/96; T 0415/91

Catchword:
-



Case Number: T 0089/00 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 14 March 2002

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Decision under appeal:

**Interlocutory decision of the Opposition Division
of the European Patent Office posted 13 January
2000 concerning maintenance of European patent
No. 0 620 888 in amended form.**

Composition of the Board:

Chairman: C. T. Wilson

Members: J. du Pouget de Nadaillac
J. P. B. Seitz

Summary of Facts and Submissions

- I. The appeals are directed against the interlocutory decision dated 13 January 2000 of an opposition division of the European Patent Office, which maintained the European patent EP-B-0 620 881 in an amended form, rejecting the grounds of opposition according to Article 100(a), (b) and (c) EPC alleged by the three opponents.

The appellants (opponents) I, II and III filed a notice of appeal respectively on 14 February, 25 January and 10 March 2000, each paying the appeal fee at the same time. The statements of grounds of appeal were received on 17, 18 and 16 May 2000 respectively.

- II. In response to a communication of the board of appeal pursuant to Article 11(2) RPBA, the respondent, proprietor of the patent, filed on 11 February 2002 two new sets of claims and amended pages of the description as main and auxiliary requests.

Claim 1 according to each request reads as follows, claim 1 of the auxiliary request differing from that of the main request by the addition of or replacement by the words in bold and in brackets :

"A theft-prevention device to be placed on a parallelepipedic box, comprising a frame (10) constructed to enclose the box and provided with a sensor for the actuation of an electric alarm system, said frame having two flat sides and four narrow sides one of said narrow sides forming an insert opening (11) for the box, (auxiliary request, addition: **lock means**

including) a lock mechanism (13) on said frame which can be adjusted between an engaged position and a disengaged position, said lock mechanism preventing in the engaged position thereof that a box inserted into the frame is withdrawn therefrom, and a latch mechanism (24) maintaining the lock mechanism in the engaged position thereof, which can be actuated by an external magnet for releasing the lock mechanism for adjustment to the disengaged position and thus withdrawal of the box from the frame through the insert opening, **characterised** in that the lock mechanism ("lock mechanism" is replaced in the auxiliary request by "**the lock means further**") comprises a hook-shaped lock tongue (29) which is displaceably and pivotably mounted to the frame for displacement along one of said narrow sides, which extends transversely of said insert opening, and that the lock mechanism is constructed to keep, in the engaged position thereof, the lock tongue engaged with the frame, in a position at the insert opening (11), wherein withdrawal of the box from the frame (10) is blocked, the lock tongue with the lock mechanism in the disengaged position being free to be withdrawn from the blocking position at the insert opening by displacement and pivoting."

III. Oral proceedings took place on 14 March 2002. In these proceedings, only the ground of opposition according to Article 100(c) EPC was discussed.

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

The deletion in claim 1 of both requests of the "lock bolt" or of the equivalent lock means mentioned in the original disclosure of the patent in suit infringes

Article 123(2) EPC. Such means are structural and thus are to be distinguished from the "lock mechanism" which can only be considered as functional means. The present invention, as originally disclosed, always comprises three essential structural means, namely a lock tongue which closes the insert opening, the lock bolt or its equivalents which in the engaged position blocks the lock tongue in its closing position, and the latch mechanism which locks the lock bolt in the engaged position thereof. It is always a three step mechanism which was disclosed, and the deletion of one step or one structural means, here the lock bolt or a functional equivalent, results in subject-matter which extends beyond the content of the original disclosure of the patent.

V. The respondent replied as follows:

According to the novelty test the invention does not need to be limited to the embodiment described in the patent description. It can include a lock mechanism of another type. In the description the rotary bolt is only considered as "preferred" embodiment, thus it is not essential. Therefore, a skilled man reading the description would consider a lock mechanism with other means, focussing essentially on the function of this mechanism which is to engage the lock tongue with the frame, so as to close the insert opening. Whether or not the lock tongue as such belongs to the lock mechanism is not important. The inventive idea of the present invention is to be seen in the mere presence of a lock mechanism of any kind, which blocks the lock tongue in its closing position, providing an engagement between the lock tongue and the frame.

VI. The appellants requested that the decision under appeal be set aside and that the European patent No. 0 620 888 be revoked.

The respondent requested that the decision under appeal be set aside and that the patent be maintained on the basis of either its main request or its auxiliary request, both filed with letter dated 7 February 2002.

Reasons for the Decision

1. The appeals are admissible.
2. In the introductory part of the description of the patent in suit, as originally filed, it is indicated that the present invention relates to a theft-prevention device comprising a frame with an insert opening for the box to be enclosed in said frame, a lock mechanism **including a lock bolt** and a latch mechanism which maintains the lock bolt in an engaged position. It was known to unlock this mechanism by means of a magnet, which attracts the latch mechanism (a spring blade) and thereby liberates the lock bolt, this bolt being then manually rotated so as to free the box. This device was mentioned as being known in the prior art, but only used for rather little boxes, for example boxes for compact discs, **the rotary bolt** preventing withdrawal of the box from the frame **by direct engagement with the box**. It is then explained that the present invention aims at providing a similar device for boxes of greater dimensions, for example boxes for video cassettes, which are manufactured with greater tolerances, that is to say with greater

dimensional deviations, and further are made of yieldable and elastic material, so that the rather small rotary bolt of the previously known theft-prevention device is no longer suitable to prevent withdrawal of the box from the frame. The present invention nevertheless wishes to use the same lock mechanism and solves the whole problem by adding to this lock mechanism a lock tongue, which instead of engaging the box as was the case with the rotary bolt, has a hook long enough in the engaged position to block the insert opening of the frame, the lock tongue itself being blocked into its engaged position by the rotary bolt of the previously known lock mechanism. When the rotary bolt is made free according to the above explained process, the lock tongue can be displaced and swung out of the insert opening.

3. In the part of the description, which describes the invention in a detailed way, in the drawings and in the claims as originally filed, the lock means are permanently disclosed as comprising the lock mechanism known from the prior art, namely a lock mechanism with its housing, the lock (or "rotary") bolt and the latch mechanism (or latch spring). The lock means further comprises a lock tongue, which is given as being locked by the rotary bolt. On page 7, regarding the passage beginning with the lines 20 and 21, it is indeed indicated that the lock mechanism in the engaged position "keeps the lock tongue locked", but reference is simultaneously made to Figure 2 which shows a finger of the rotary bolt inside a cut of the lock tongue and the sentence which follows this passage specifies that it is the disengagement of the rotary bolt which allows the lock tongue to move freely. The component, rotary bolt, is therefore disclosed as being essential for the

operation of the device according to the present invention, in contradiction to the conclusion of the decision under appeal.

In the last paragraph of the description, it is further said:

"The lock mechanism described with the rotary bolt is preferred because such a lock mechanism can be made small and compact, but it is within the scope of the invention to provide a lock means of another type for example a lock mechanism which has a linearly displaceable lock bolt or a pivoted clasp".

This passage indeed suggests to replace the **rotary** bolt by other equivalent means, such as a lock bolt or a pivotable clasp, but contrary to the respondent's opinion, it does not suggest **to delete these means as such**. On the contrary, the whole teaching of the documents of the patent as originally filed is that, in the theft-preventing position, the lock tongue is kept at the insert opening, being blocked in position by the lock bolt, which itself cannot moved or rotate since it is engaged by the latch mechanism. When one wishes to unlock the device, first the latch spring has to be moved away from the lock bolt, which in turn can be rotated or moved so as to liberate the lock tongue. Thus, what is disclosed is clearly a three component two stage operation of a mechanism and there is also no suggestion that the lock mechanism as such could be of another type, in particular without rotary bolt or equivalent means.

4. Reading claim 1 of each request in the light of the description, one could think that the expression "lock

mechanism" in fact means "lock bolt or equivalent means", since it is indicated that the latch mechanism maintains the lock mechanism in the engaged position, which apparently implies two separate constructional components. However, the arguments of the respondent/patentee in the oral proceedings have shown that, as a matter of fact, he interpreted these claims in a broader way, considering essentially the functional meaning of the terms "lock mechanism" of claim 1, whatever the structural means under these terms are, and in his opinion, the teaching of the patent is merely the use of a lock tongue blocked in the engaged position by a lock mechanism, that is to say a two component one stage operation device: for example, it would be sufficient to disengage the lock mechanism in order to free the lock tongue.

5. However, as seen above, such an interpretation cannot be deduced from the patent documents as originally filed and is even in contradiction with the teaching of these documents, which require the use of a lock bolt or equivalent means. Thus, the main argument of the respondent, that a person skilled in the art would have deduced the deletion of these structural means from the documents of the patent in suit as filed, cannot be accepted. According to the jurisprudence of the boards of appeal, a distinction must be made between what the original documents of a patent **directly and unambiguously** disclosed to a skilled person and what said skilled person on the basis of this disclosure may do upon reflexion and using his imagination. His thinking is not part of the content of the original documents of the patent (T 260/85, OJ 1989, 105; T 64/96; T 415/91).

Since the litigious essential feature is missing from claim 1 of both requests, which therefore infringe Article 100(b) EPC, neither request is allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside;
2. The patent is revoked.

The Registrar:

The Chairman:

A.Counillon

C.T.Wilson