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D E C I S I O N
du 29 avril 2003

N° du recours : T 1125/00 - 3.2.3

N° de la demande : 93500141.2

N° de la publication : 0593389

C.I.B. : E04F 10/06

Langue de la procédure : FR

Titre de l'invention :

Ensemble support de toile de store, à inclinaison réglable

Titulaire du brevet :

LLAZA S. A.

Opposante :

PRATIC F. LLI ORIOLIO SpA et al.

Référence :

-

Normes juridiques appliquées :

CBE Art. 56

Mot-clé :

"Activité inventive (confirmée)"

Décisions citées :

-

Exergue :

-



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D E C I S I O N
de la Chambre de recours technique 3.2.3
du 29 avril 2003

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Décision attaquée : Décision de la division d'opposition de l'Office européen des brevets signifiée par voie postale le 29 septembre 2000 par laquelle l'opposition formée à l'égard du brevet n° 0 593 389 a été rejetée conformément aux dispositions de l'article 102(2) CBE.

Composition de la Chambre :

Président : C. T. Wilson
Membres : J. du Pouget de Nadaillac
J. P. B. Seitz

Summary of Facts and Submissions

I. The appeal is directed against the decision posted 29 September 2000 of an opposition division of the EPO, which rejected the opposition filed against European patent EP-B-0 593 389.

II. Claim 1 of said patent reads as follows:

"Blind canvas supporting assembly of the type essentially embodying:

- (a) at least two supporting parts (1) designed to secure a link between the canvas supporting assembly and the building wall on which it has to be locked;
- (b) a box (2), with adjustable pitch with respect to said supporting parts (1), laterally delimited by two flanges (10),
- (c) a canvas winding roller (3), contained within said box (2);
- (d) a canvas (20) protecting profile (4) integral with box higher wall;
- (e) at least two hinged arms (5) integral with said box (2), in other words, tiltable at same time as said box.
- (f) a loading bar (6) integral with hinged arms free ends, the profile of which allows, in wound canvas position, to close the volume constituted by box (2) and a canvas protecting profile (4),

- hinged arms (5) being then in folded position within said volume;
- (g) an intermediate part (7) between each side flange (10) of box (2) and each supporting part (1);
 - (h) means allowing that said box (2) swivels and, with it, said canvas supporting assembly, with respect to said intermediate part (7), said means embodying a housing (8) acting as bearing for a tubular shaft (9) pertaining to said side flange (10),
 - (j) said housing (8) being associated to partly circular enlarged openings (11), which serve for passing screws (12) arranged through threaded holes (13) of flange (10); characterized in that
 - (k) it embodies a coupling member (14a) defined in a rim (14) which orthogonally extends from the rear of the intermediate part (7), said coupling member defining a slot (15), which serves as sliding guide with respect to a rail (16) which protrudes from one of supporting part (1) edges for attachment to the wall, designed to allow the box and blind assembly correct positioning with respect to said supporting parts (1)
 - (i) which embody first holes (41) and (42) to lock them on a wall or ceiling
 - (l) and rectilinear enlarged openings (19) which serve for passing screws (44) which also cross holes (17) pertaining to rim (14) to allow said intermediate part (7) be through to a standstill

at wished position, screwing said screws (44) in holes (38) of plates (37) which are housed in a slot (40) close to the edge of support (1) opposite to rail (16)."

The references (a) to (1) were added during the proceedings before the first instance in order to clearly distinguish the different features and, thus, do not belong to the granted claim.

III. The opponent, hereinafter the appellant, filed the appeal on 21 November 2000 and paid the appeal fee at the same time. In the statement of the grounds of appeal submitted on 26 January 2001, he based his appeal on the ground of Article 100(a) EPC concerning lack of inventive step in view of the following evidence considered by the first instance:

D1: EP-A-0 499 777

D2: DE-A-2 359 132

D5: Documents of ALCAN ALLUMINIO SpA (IT) concerning sales during the year 1991 of a blind canvas assembly according to attached drawings of SOLAR Systems (IT).

IV. In response to a communication of the board of appeal issued for preparation of oral proceedings, the respondent submitted on 31 March 2003 two sets of claims as first and second auxiliary requests.

Oral proceedings took place on 29 April 2003.

V. The appellant essentially argued as follows:

Starting from the blind known from D1, the distinguishing features of the present invention according to Claim 1, namely the features (j), (k) and (l) on page 5 of the impugned decision, were correctly determined by the first instance. Feature (j) concerns the tilting means of the box, whereas features (k) and (l) have only to do with the attachment of the blind to a wall. No functional link can be seen between these two groups of features, so the invention as claimed has to be regarded as a mere aggregation of features. The first instance correctly held that features (k) and (l) were derivable from D5, but argued that the teaching of D2 was not applicable to the device according to D1, so that feature (j) was inventive. This last argument cannot be accepted: D1 already teaches to support the canvas roller by means of axles at its ends which each rest in a bearing provided in the intermediate part and the tilting means comprise screws which press the roller flanges against said intermediate part. These screws are quite comparable to those of the tilting means according to D2, which pass through partly circular eyelets of the roller flanges so as to press the flanges against arms of the supporting means. D2, moreover, discloses L-shaped attachment means in the form of a single element. Therefore, the person skilled in the art has no difficulty to apply the teaching of D2 to the assembly according to D1.

VI. The counter-arguments of the proprietor of the patent, hereinafter the respondent, can be summarised as follows:

The blind systems according to the prior art document D2

and the prior use D5 are cumbersome and, in particular, they comprise tilting means on each side of the canvas roller, which are adjustable independently from each other. The teaching of both these prior art systems runs counter to the main object of D1. Therefore, the skilled person, who aimed at improving the assembly according to D1, **would** not have considered these two systems, even if he **could** have done so. Moreover, the present invention, as claimed, comprises a true combination of features, since feature (j) cooperates with feature (h): the tubular shafts of both roller flanges, which are each engaged in a bearing housing of the tilting means, facilitate the adjustment of the blind assembly on a wall or on a ceiling and provide low frictional forces when tilting takes place. Moreover, it is by means of a single element, namely the L-shaped intermediate part, that the different problems of the present invention are solved, since it is this element which provides the rim, the sliding slots, the housing for the tubular shaft of the flange and the partly circular enlarged openings of the tilting means.

- VI. The appellant requested to set aside the decision under appeal and to revoke the European patent.

The respondent requested that the appeal be dismissed and the patent be maintained as granted (main request). He auxiliarily requested that the decision under appeal be set aside and that the patent be maintained on the basis of either his first auxiliary request or his second auxiliary request both filed with letter received on 1 April 2003.

Reasons for the Decision

1. The appeal is admissible.

Before the first instance, the appellant and the respondent agreed that the European patent office should use the English language in the proceedings, although the official language of the patent in suit is French. The present decision is therefore written in English (see Decision J 18/90, OJ 1992, 511).

2. *Main request*

In the present proceedings, the novelty of the subject-matter of claim 1 according to the main request was no longer contested by the appellant. None of the cited prior art items shows a blind canvas supporting assembly comprising all the features of said claim 1.

3. It was also not contested that document D1 represents the prior art closest to the present invention, since it discloses a tiltable box-like assembly enclosing the canvas winding roller with two lateral flanges supporting at their forward ends the usual two hinged arms with the free ends of these arms holding the profiled loading bar, which in the folded position of the blind assembly closes the front side of the box volume. As a result, when adjustment of the tilting takes place, both hinged arms have the same inclination, so that the canvas can smoothly be wound and the load or other forces are uniformly distributed on the arms and/or on the canvas. Moreover, the box tilting axis is aligned with the axis of the canvas winding roller. Thus, a rather compact assembly is obtained, allowing its mounting between windows and balconies. The mounting procedure or the replacement of the blind canvas assembly can also be quickly realised, since it is

sufficient to position the whole box comprising all the above mentioned elements on the supporting means fixed on the building wall or ceiling and then to fixedly attach it thereto.

In D1, each supporting part for attachment to a wall is L-shaped and it supports at one end the whole canvas box, including the lateral flanges, by means of an intermediate plate, which is orthogonally arranged to the wall and adjusted in position by screws on the likewise orthogonal arm of the supporting part. This intermediate part is provided with a rather large circular opening, the axis of which corresponds to that of the canvas roller and which serves as a bearing housing for a clamping disc located on the external side of the intermediate plate. Screws act as clamping means between said external disc and the box flange, which is located internally, that is to say on the other side of the intermediate member. Thus, the disc together with the flange and the screws form the swivel or tilting means of the box according to D1.

4. According to the description of the opposed patent, the manufacturing, the mounting and the tilting of this kind of blind assembly is rather complicated, especially when it is long and thus heavy, lengths of more than 2,5 m being not exceptional. In particular, the supporting means have to be fixed very precisely on the wall or ceiling before mounting the box; the bearing means of the tilting arrangement also requires precise manufacturing and further provides high frictional forces, when tilting takes place, with the further disadvantage that the axis or "shaft" of each flange, which is formed by the disc combined with the flange through the use of screws, does not work as well as a

true shaft. Further, as indicated in column 5, first lines of D1, the box-like assembly can pivot about its axis without limitation, so that during the tilting adjustment the box assembly can swing downwards, rendering the tilting adjustment more difficult and even dangerous.

Thus, the problem to be solved by the present invention is to provide a box-like assembly of the same type, that is to say with the same advantages, and which at the same time is simple to manufacture, safe, easy to assemble and to position and in which the tilting means are easy to adjust.

5. This problem is solved by the introduction of the new features of claim 1 (the two-part form of claim 1 as granted was based on a different prior art document and thus is not relevant), namely:

- the following feature (h'), which is a partial feature of feature (h):

"the bearing housing (8) of the swivel means serves as bearing for a tubular shaft of the flange",

- together with features (j), (k) and (l).

As can be seen from figure 5 of the patent in suit, the tubular shaft according to feature (h') receives the axis of the canvas roller and helps to sustain the weight of the box assembly on the intermediate plate during a tilting adjustment of said box assembly, while having a reduced diameter compared to that of the disc according to D1, so that the frictional forces during tilting are reduced. It allows also to obtain the

advantage mentioned in the description, column 5, lines 38 to 46 of the patent in suit, namely to use the driving means of the canvas roller for tilting purposes. Thus, a true combination of features appears between features (h') and (j).

The partly circular enlarged openings of the intermediate part limits the tilting movement of the box assembly, so that the device is safer as is the case with the blind assembly according to D1. The whole construction is also more simple, in particular having regard to the axis of the flanges, and more easy to be mounted, the sliding means according to feature (k) providing more freedom for the mounting of the supporting means on the wall or ceiling.

6. According to the appellant, the partial solution concerning the tilting means is suggested by document D2.

This prior art, indeed, discloses tilting means for a blind canvas assembly in the form of partly circular enlarged openings , which serve for passing screws arranged through threaded holes. These means are associated with a bearing housing of the canvas roller. Feature (j) seems therefore to be suggested.

However, the application of this feature to the assembly of D1 has to be considered as the result of an ex post facto analysis, since it is questionable whether a skilled person, who aimed at improving the box-like blind assembly according to D1, would have considered the teaching of D2, which leads away from that of D1: in page 1 of D2, it is taught that a blind canvas roller forming a constructional unit with two lateral flanges

supporting the hinged arms is disadvantageous and it is therefore recommended to separate the flanges from the canvas roller and to fix them to orthogonal arms of the supporting parts by means of the above mentioned tilting means. Each flange has its tilting means and is adjusted independently from the other flange. Hence, D2 does not concern a tiltable box-like blind assembly; even if it is supposed that the skilled person would have looked for a partial solution of the above mentioned problem underlying the patent in suit, namely a solution concerning the tilting of the whole long box assembly, he would not have expected to find a solution in a document concerning the tilting of a single plate.

7. Moreover, D2 teaches to first mount each flange on its supporting part and then to introduce the canvas roller between the two flanges and to fix it into position at each end by introducing a bearing shaft laterally through openings of both the orthogonal arm of the supporting means and the flange. Thus, the skilled person, even if he would have considered the tilting means according to D2, would not have reached the solution of the present invention, since there is no suggestion in D2 or in D1 to provide the flange with a tubular shaft. In order to reach the tilting means as claimed, the skilled person would have to first select only a part of the teaching of D2 relative to the tilting means and then, in a further step, to imagine how the axis of the whole box-like assembly has to be realised. Thus, the combination of features (h') and (j) of claim 1 is not suggested by D2.
8. Under these conditions, it is superfluous to examine whether D5 would have suggested features (k) and (l) of claim 1, which concern the adjusting means of the

supporting parts.

It is nevertheless remarked that D5 also concerns a different kind of blind canvas assembly: the canvas roller is supported at each end by a profile with has two vertical legs extending downwards; these two legs are tiltable on another profiled element which is positioned between them and further adjusted and fixed at its rear side on a supporting plate by means of a sliding rail and screw arrangement. A box-like assembly is not disclosed and the tilting axes, which are independent from each other, do not correspond to that of the canvas roller. It is therefore not clear for which reason a skilled person would have considered this kind of blind canvas assembly, which shows no similarity to that according to D1.

Moreover, as disclosed above, the adjustable element of the means for supporting the assembly on a wall or ceiling is made of a profiled element, which is rather thick. Whether this element can suggest to use the intermediate plate according to D1 for the same purpose and to modify this plate into an intermediate plate provided with an orthogonal rim (feature (k) of claim 1), that is to say into an L-shaped intermediate part, is doubtful.

9. For all these reasons, the subject-matter of claim 1 is not directly derivable from a combination of D1 with D2 and/or D5 and thus implies an inventive step (Articles 52 and 56 EPC). Claims 2 to 11, which concern embodiments of the blind canvas assembly according to claim 1, can be maintained for the same reason.

An examination of the auxiliary requests of the

respondent is therefore unnecessary.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Counillon

C. T. Wilson