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D E C I S I O N
of 29 April 2002

Case Number: T 0571/01 - 3.2.4

Application Number: 92112590.2

Publication Number: 0513853

IPC: A45C 5/04

Language of the proceedings: EN

Title of invention:

Luggage case

Patentee:

SAMSONITE CORPORATION

Opponent:

Valigeria Roncato S.p.A.
C & C Luggage Manufacturing Co. Ltd

Headword:

-

Relevant legal provisions:

EPC Art. 100(a)(b)(c), 56, 84

Keyword:

"New grounds for opposition - introduction not approved by
patentee"

"Inventive step - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 0571/01 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 29 April 2002

Appellant: Valigeria Roncato S.p.A.
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Respondent: SAMSONITE CORPORATION (a Delaware Corporation)
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 5 March 2001
rejecting the oppositions filed against European
patent No. 0 513 853 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: C. A. J. Andries

Members: M. G. Hatherly

H. Preglau

Summary of Facts and Submissions

I. The opposition division's decision to reject the oppositions against European patent No. 0 513 853 was posted on 5 March 2001.

On 2 May 2001 the appellant (opponent I) filed an appeal and paid the appeal fee. A statement of grounds was filed on 3 July 2001.

II. Claim 1 as granted reads:

"A luggage case (11) comprising two shells (12, 13), each shell having a peripheral side wall (15, 17), the side walls forming the front (18), back (19) and end walls (20) of the case, the two shells being hinged together at the back wall (19) and having latches (24, 25) for releasably fastening the edges of the shells together when the case (11) is closed, the periphery of each shell being formed with a projecting lip (33, 30), two latches (24, 25) being located near the corners between the front and end walls (20) of the case, the lips having gaps in the regions of the two latches (24, 25), the gaps in a first of the shells (12) having an edge moulding with a recess (93) therein, the two latches (24, 25) being mounted on the outside of the other of the shells (13), each of the two latches (24, 25) including a hooked latch member (54), the arrangement being such that when the case is closed, the hooked latch member (54) is engageable over the moulding and into the recess (93) in the lips of the said first shell (12), the latch having a toggle action to draw the shells together as the latch is being fastened, and when the latch is so fastened the outer surface of the hooked latch member (54) fits within the

gap in each lip (33, 30) and is substantially flush with the outer surfaces of the lips (33, 30)."

III. The appellant cited the following documents in the appeal proceedings:

R1a = D2 GB Registered Design 1 016 030

R1b = D3 GB Registered Design 1 016 033

R3 US-A-4 522 312

R4 US-A-4 509 622

R5 FR-A-1 368 150

R6 DE-A-2 253 024 (equivalent of D1)

R7 US-A-2 415 220

R8 GB-B-2 031 853

R9 FR-A-2 455 552

R10 = D5 GB Registered Design 1 021 940

R11 Declaration of Yunis Zekaria dated 13 December 1991 concerning the Delsey "Visa" range of suitcases

R12 GB-A-1 544 080

R13 = D6 US-A-3 967 708

R14 DE-U-8 327 697.1

D1 AU-A-47945/72

D4 FR-A-2 526 401

D7 US-A-3 642 102

D8 US-A-1 667 014

NR1 Declaration of Steve Scelba relating to the
"Pullman case", dated 11 December 1993

NR2 US-A-2 604 961

NR3 US-A-3 605 961

NR4 US-A-3 891 070

NR5 GB-A-1 271 599

NR6 US-A-2 206 848

NR7 Italian "Brevetto per Modello Industriale" 35325

NR8 IT-A-557 535

NR9 US-A-4 344 646

NR10 US-A-1 811 718

NR11 US-A-2 510 643

NR12 GB-A-1 089 371

NR13 GB-A-2 064 483

NR14 US-A-1 827 542

NR15 US-A-4 094 392

IV. All parties were summoned to oral proceedings. The party as of right (opponent II) replied by letter of 21 January 2002 that he would not be attending the oral proceedings.

The oral proceedings took place on 29 April 2002 with the appellant and the respondent (patentee) but, in accordance with Rule 71(2) EPC, without the party as of right.

V. In the appeal proceedings the appellant objected to the patent under Articles 100(a), (b) and (c), and 84 EPC. In particular he argued that the claimed subject-matter was not inventive over various combinations of the teachings of the prior art.

The respondent countered the appellant's arguments.

The party as of right did not comment during the appeal proceedings.

VI. The appellant requested that the decision under appeal be set aside and the patent revoked.

The respondent requested that the appeal be dismissed and that the patent be maintained as granted (main request) or on the basis of one of the auxiliary requests 1 to 10 (auxiliary requests 1 to 7 as filed during the opposition proceedings, auxiliary requests 8 to 10 as filed on 5 April 2002, auxiliary requests 4a, 7a and 9a as filed during the oral proceedings).

The party as of right made no request in the appeal proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. *Article 100(c) EPC*

Starting on page 25 of the statement of grounds of appeal, the appellant objected to the patent in the granted version under Article 100(c) EPC.

The board informed the parties in section 2 of the annex to the summons to attend oral proceedings that while the appellant had crossed the box on the form "Notice of Opposition" for the ground for opposition under Article 100(c) EPC, he had never substantiated this ground prior to the notice of appeal. The board continued that therefore this ground was a new ground for opposition which would need the approval of the respondent in order to be introduced into the appeal proceedings, but that it was clear from pages 1 and 2 of the respondent's letter of 22 November 2001 that he did not give this approval.

In the oral proceedings the respondent confirmed this non-approval.

3. *Articles 100(b) and 83 EPC*

In the first paragraph on page 15 of the statement of grounds of appeal the appellant stated that he had "doubts about compliance of the opposed patent with the

requirements of Art. 83 EPC".

The board informed the parties in section 5 of the annex to the summons to attend oral proceedings that these doubts referred to a further ground of opposition not mentioned prior to the appeal and that the respondent would need to accept the introduction of this ground into the appeal proceedings.

In section 5 of the letter of 5 April 2002 the respondent stated that he did not approve the introduction of this ground.

In the oral proceedings the respondent confirmed this non-approval.

4. *Article 84 EPC*

Regarding the appellant's view in lines 12 to 15 of page 22 of the statement of grounds of appeal concerning claim 9 that "Violation of Art. 84 EPC is a new ground of appeal, not submitted in the opposition, whose consideration is subject to agreement of the Proprietor", the board drew attention in section 6 of the annex to the summons to attend oral proceedings to the exclusive list of grounds for opposition set out in Article 100 EPC.

In the oral proceedings the appellant did not pursue his objection.

5. *Comments on claim 1 of the main request i.e. as granted*

5.1 The claim explains in column 7 starting in line 50 that the periphery of each shell 12 and 13 of the luggage

case is formed with a projecting lip. These lips can be seen on Figure 1, projecting outwardly from the main part of the lid shell 12 and from the main part of the base shell 13 respectively).

The lips can also be seen on e.g. Figure 4 (numbered 29, 30, 32 and 33). However the reference numerals used in the claim are misleading because the projecting lips specified in the claim should not be seen as being merely the lips numbered 33 and 30 but as the general lip structures at the shell peripheries. Reference numerals do not have an effect on what a claim defines but are merely intended to make the claim easier to understand. Amendment of the reference numerals to make the claim easier to understand would be a matter under Article 84 EPC which is not a ground for opposition, see section 4 above.

5.2 The claim continues that there are two latches 24 and 25 located near the corners between the front wall 18 and the end walls 20 of the case, as shown on Figures 1 to 3.

5.3 Next the claim states that the lips have gaps in the regions of the two latches 24 and 25. Such a gap can be seen on Figures 1 and 2 for the latch 24 (and Figure 1 also shows a gap for the central latch 26 which although not a latch located near the corner is similar to the latch 24, see column 7, lines 18 to 23). The gap for the latch is also shown in Figure 6 where lips 33 and 30 make way for latch member 54. Figure 9 shows, in the plane behind the latch member 54, end faces of lips on the lid shell and the base shell (the end face for the base shell is the area on which are printed the reference numerals 59, 90 and 61). This shows that the

lips make way for the latch member 54.

- 5.4 Starting in line 54 of column 7, the claim states that each gap in one of the shells has an edge moulding with a recess 93 therein.

Lines 22 to 24 of column 6 of the description state that "Behind the edge moulding of the lid a recess 93 is formed for receiving the hook portion 91 of the latch member 54." Thus, as shown in Figures 8 and 9, in the particular embodiment it is the lid shell 12 which has the recess 93.

The respondent explained in the oral proceedings concerning this term "edge moulding" that the claim was to be construed as a luggage case moulded of plastics material with the edge mouldings being integrally moulded with the remainder of the shell.

The claim explains starting in line 2 of column 8 that "the hooked latch member (54) is engageable over the moulding and into the recess (93) in the lips of the said first shell (12)" which is what is shown in Figure 8.

Referring to column 8, lines 5 and 6 of the claim, it is clear that the latch, being of the toggle action type, will draw the shells together as it is fastened and this is what is shown in Figure 8.

- 5.5 Lines 7 to 10 of column 8 of claim 1 state that "when the latch is so fastened the outer surface of the hooked latch member (54) fits within the gap in each lip (33, 30) and is substantially flush with the outer surfaces of the lips (33, 30)."

It is to be noted that the claim says "fits" and not merely "located" or "positioned". This means that, when seen in the direction running along the walls of the case the fastened latch member is not merely located or positioned somewhere along the gap (i.e. in the particular embodiment in the gap between the end faces referred to in section 5.3 above) but **fits** in the gap. This can be seen in Figures 1, 2, 6, and 10 (and by implication in Figure 5 showing the similar central latch 26, see column 7, lines 18 to 23).

That the fastened latch member is substantially flush with the outer surfaces of the lips can be seen in Figures 1, 3, 6 and 10 (and again by implication in Figure 5).

5.6 The board will now briefly comment on what it sees as the effects produced by these features, leaving aside for the moment whether these effects are also produced in the prior art by the same features or by other features.

The positioning of the latches near the corners between the front wall and the end walls of the case help to reduce gaping, see column 1, lines 27 to 31 of the patent as granted. The positioning of the latches makes them accessible, see column 1, lines 43 to 47.

Gaping is also reduced by each latch having a toggle action to draw the shells together as the latch is being fastened.

The peripheries of the shells are reinforced by their lips. The peripheries are weakened by the gaps in the lips for the latches but because the latches fit within

the gaps (i.e. fill the gaps) the peripheral strength is essentially restored.

The latches being substantially flush with the outer surface of the lips reduces the tendency for the latches to fully or partially open accidentally e.g. by catching other luggage or parts of a conveyor system.

6. *Novelty - claim 1 of the main request i.e. as granted*

The board finds that there is no prior art document on file that discloses all the features of claim 1 of the main request i.e. as granted and so finds its subject-matter to be novel within the meaning of Article 54 EPC.

Novelty has never been disputed in the appeal proceedings.

7. *Inventive step - claim 1 of the main request i.e. as granted*

- 7.1 The appellant argues (see line 21 of page 18 of the statement of grounds of appeal onwards) that the skilled person starting from the disclosure of R1a "would have contemplated the use of a gasket, as taught by D1 or R14 and selected a toggle latch mounted on the outside, still as taught by D1. He would have further protected the latches, by suitably housing them in gaps of the edge lips, still based on the teaching of D1 combined with the suggestion of R1a in the light of R14. In conclusion by the mere aggregation of features identified in R1a, D1 and R14 he would have arrived at a structure as the one recited in claim 1."

7.1.1 R1a discloses a case which appears at first sight to be similar to that shown in the drawings of the present patent. However on closer examination it will be seen that R1a itself contains very little information as to how the prior art case is constructed.

In particular, it is undisclosed how the periphery of each shell in R1a is formed since only the outside of the case is shown and, while two latches are shown near the corners between the front and end walls of the case, there is no information about these latches and with what they engage.

There is no suggestion that the latches and the shell peripheries are as set out in claim 1 e.g. that each latch is a toggle action latch engaging a recess in an edge moulding.

7.1.2 Just because e.g. the overall view of the case in Figure 1 looks like the "PERSPECTIVE VIEW FROM ABOVE" of R1a does not mean that the constructional details of the cases are the same. It is hindsight to interpret the drawings of R1a using the drawings of the present patent itself.

7.1.3 The appellant suggested combining R1a with R14 (see section 7.1 above).

Figure 2 of R14 discloses lips at the peripheries of the shells. However Figure 1 shows that R14 deals with a different kind of latch to that of the present patent, namely with apertured plates 6 mounted on one shell fitting into parts 7 on the other shell. The latches of R14 are thus not of the toggle action type and do not engage over a moulding and into lip

recesses. No details are disclosed of the shell edges in the region of the latches.

- 7.1.4 The appellant adds the teaching of D1 (equivalent to R6), concerning a luggage case comprising two shells 10 and 11 held together by four latches.

According to page 4, lines 21 to 27 and Figures 2 and 9 of D1, the bottom shell 10 has a horizontal peripheral flange 12 at its top edge and an upwardly extending vertical rib 13, while the top shell 11 (inverted in Figure 2) has laterally spaced, vertical peripheral ribs 15 extending downwardly from a horizontal peripheral flange 14. The channel between the ribs 15 of the top shell 11 receives the rib 13 of the bottom shell 10 when the case is closed.

It is the vertical ribs 13 and 15 of the case of D1 which correspond to the lips of the case defined in claim 1 of the present patent. However, unlike the present claimed case, in the case of D1 the lips do not have gaps in the regions of the two latches (see e.g. Figure 7 which, as shown by the section line 7-7 on Figure 5, is a section through the latch) and the latches are not substantially flush with the outer surfaces of the lips. It is because the latches protrude outside the ribs 13 and 15 that the horizontal peripheral flanges 12 and 14 are provided, interrupted in the region of the latches (see the paragraph bridging pages 5 and 6) to provide space for and to shield the latches. However it cannot be upheld that these flanges or ribs (12, 14 or 13, 15) are such that the outer surface of the latch member is substantially flush with outer surfaces of these flanges or ribs when the latch is fastened (see Figure 7 where elements 36

and 37 are outside the space limited by the flanges and/or ribs 12, 14 and/or 13, 15).

7.1.5 Thus the combined teachings of R1a, R14 and D1 cannot lead in an obvious way to the luggage case defined by claim 1 as granted, particularly since the relationship of latches to lips is not derivable from the disclosure of any one of these cited documents.

7.2 When arguing lack of inventive step in the middle of page 16 of the statement of grounds of appeal, the appellant also cites "the combination of the teaching of R1a, R14 and, **at most**, any one of the previously discussed documents D8, R13, R11 (and further NR1, NR3, NR4, NR9, NR12, NR14, NR15)".

7.2.1 R1a and R14 have been discussed. The rest have very little in common with the present luggage case and, even if all the features of the present claim 1 could be found in the combination of features of these documents, the board sees no logical chain of argument as to why the skilled person would be led to cherry pick from these teachings just those features he needs to arrive at a case satisfying the present claim 1 while leaving aside all the other features which would lead to a case which did not satisfy the claim. For the presently claimed case to be obvious it is necessary that the skilled person not merely **could** but **would** select precisely those parts of the teachings of the prior art in expectation of some improvement or advantage and **would** combine them in the same way as specified in claim 1 as granted.

7.2.2 The latches disclosed in D8, NR3, NR4, NR9, NR12, NR14 and NR15 are not toggle action latches and do not fit

into gaps in peripheral lips so as to be flush with the outer surfaces of the lips.

- 7.2.3 The latches of R13 are not of the toggle action type and the actuator 32 engages not over an edge moulding but with a T-shaped hasp 31 affixed to the inner surface of the flange of the front panel 14, 16 (see Figure 5 and column 3, lines 1 to 5).
- 7.2.4 R11 was also the starting point for a different attack on inventive step, put forward by the appellant during the oral proceedings. However, while the declaration of Mr Yunis Zekaria concerning the Delsey "Visa" range of suitcases is legible, the photocopies of the photographs of the suitcase are of extremely poor quality and certainly cannot be seen to have latches of the claimed type. It may be that the suitcase is of the same type as that of R14 but if so, as remarked in section 7.1.3 above, the latches of R14 are totally different to those of the claimed case.
- 7.2.5 Also the photocopies of the photographs of the suitcase in NR1 are of extremely poor quality and it certainly cannot be seen that this case has latches of the claimed type.
- 7.3 On page 1 of the letter of 26 March 2002, the appellant argues that "it is possible to show that Claim 1 lacks of inventive step because it results from the obvious combination of R1a and R1b when interpreted in the light of the common knowledge, without need to resort to additional prior art documents."

However in his subsequent argumentation on pages 5 to 8 of said letter he refers to more than 19 citations

(which are discussed elsewhere in this decision).

7.3.1 R1b discloses a latch with a hooked latch member but no information as to where it should be deployed and with what it would engage. Although this prior art latch looks like that depicted in the present patent, it is hindsight to argue that therefore the prior art latch would be used in the same way as that of the patent i.e. being flush with the outer surfaces of the lips when fastened.

Lack of information in a cited document cannot be of advantage to a party alleging lack of inventive step.

7.3.2 Although R1a and R1b were filed on the same day by the same applicant, they are two separate prior art disclosures for a person skilled in the art. In particular there is no proof that the latch which is the subject of R1b is the same as the latch used on the case shown in R1a.

7.3.3 The lack of disclosure in R1a has already been mentioned in sections 7.1.1 and 7.1.2 of this decision and this lack of disclosure cannot be made good by the disclosure of a latch in R1b.

7.4 For an argument of lack of inventive step against the case defined by claim 1 as granted to be successful it is necessary to convince the board that such a case would be arrived at by the skilled person in an obvious manner. It is insufficient to argue that the present patent aims to solve certain problems and then to argue that the prior art has already solved these problems.

7.4.1 Thus on pages 4, 5, 8 and 9 of the statement of grounds

of appeal, in connection with the gaping problem, in addition to some of the documents discussed above in this decision the the appellant cites documents D7, R12, NR8 and NR13.

Where these documents concern the positioning of latches near the front corners of a case they teach essentially nothing more than is known from R1a.

D7 discloses a basically different construction to the case defined by claim 1 as granted and the latches of D7 are not of the toggle action type.

The latches of R12 and NR13 do not fit into gaps in peripheral lips so as to be flush with the outer surfaces of the lips.

In NR8 the male and female components at the corners of the case seem to be for location and certainly are not toggle action latches. Moreover they stand proud of the outer periphery of the case.

7.4.2 On pages 7, 8, 12 and 13 of the statement of grounds of appeal, in connection with the easy latching and latch protection problem, in addition to some of the documents discussed above in this decision, the appellant cites documents R4, R5, R9, R10, D4, NR6 and NR7.

In R4 each shell is so moulded as to have a top surface provided with an indentation for accommodating one portion of the lock. In this way no parts of the lock project beyond the top surface. However the catch 29 of the latch engages a groove 33 in a profile strip 14 riveted to the wall 15b of the shell 12, and not as

specified in the present invention where the latch members are engageable over edge mouldings and into recesses in the shell lips.

In R5 and NR6 the fastened latches do not fit within gaps in peripheral lips but in fact stand proud of the walls of the respective cases.

Regarding R9, in particular Figure 3 shows that the latch protection problem is not attacked in the same way as in the present patent because the latches of R9 are provided in a frame integral with the case, not in gaps in peripheral lips.

Although the appellant maintains in lines 10 and 11 of page 14 of the statement of grounds of appeal that the latch of R10 appears to be housed in recesses of the case shell lips, there is no indication that the latch is of the toggle action type and moreover it is plainly shown in the front and side views that the latch extends well below the lips.

In D4, although latches are located between enlarged peripheral strips, these strips are not lips and the latches do not **fit** within the gaps between these strips.

The latches of NR7 and how they interact with the case shells appears to have nothing in common with those of the luggage case defined by claim 1 as granted.

7.4.3 On pages 11 and 12 of the statement of grounds of appeal, in connection with a waterproof sealing problem, in addition to some of the documents discussed above in this decision, the appellant cites documents,

R7, R8, NR2, NR10 and NR11 as disclosing compressible gaskets.

However since a gasket is not a feature specified in claim 1 as granted, this aspect can be disregarded as far as claim 1 as granted is concerned. The citations are not relevant for those features which are set out in claim 1 as granted for the following reasons.

In R7 and NR11 the fastened latches do not fit within gaps in peripheral lips but in fact stand proud of the walls of the respective cases.

R8 concerns a shock absorbing member and NR2 and NR10 concern joints. Thus these citations are not relevant e.g. for the latches of the present case.

- 7.4.4 The latches of NR5 are not of the toggle action type and do not operate in anything like a similar way to those of the presently claimed case.
- 7.4.5 R3 even though it shows a handle 26 in Figure 1 is not disclosed as being a luggage case but merely as a container. and since it is double-wall blow moulded (see column 2, lines 14 and 15) has not the same peripheral structure as the luggage case defined by claim 1 as granted. Its latches are moreover not of the toggle action type.
- 7.5 The board can therefore see no way that the prior art cited during the appeal proceedings, taken singly or in combination, could lead the skilled person in an obvious way to the subject-matter of claim 1 as granted i.e. of the main request.

8. The patent may therefore be maintained unamended (i.e. in the version as granted) and thus there is no need to look at the respondent's auxiliary requests.

9. *Substantial procedural violation*

On page 1 of the statement of grounds of appeal, the appellant alleged that a substantial procedural violation took place during the oral proceedings before the opposition division.

The board informed the parties in section 3 of the annex to the summons to attend oral proceedings that it could not find an adequate justification for this allegation.

In the oral proceedings the appellant did not pursue this objection.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries