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D E C I S I O N
of 7 August 2003

Case Number: T 1215/02 - 3.2.7

Application Number: 97945334.7

Publication Number: 0935571

IPC: B65D 88/12

Language of the proceedings: EN

Title of invention:
Freight container, system, and method for shipping freight

Applicant:
Federal Express Corporation

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step, main and auxiliary requests (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 1215/02 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 7 August 2003

Appellant: Federal Express Corporation
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Memphis, TN 38132 (US)

Representative: Sundien, Thomas
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 5 July 2002 refusing European application No. 97945334.7 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: A. Burkhart
Members: P. A. O'Reilly
C. Holtz

Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the Examining Division to refuse the European application No. 97 945 334.7.

II. The application was refused by the Examining Division for lack of inventive step of the subject-matter of claims 1i, 31i, 41i and 47i.

III. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 72 according to the main request of which claims 1i, 31i, 40i and 47i were filed on 11 February 2000 and the remaining claims are as originally filed. Alternatively, a patent should be granted according to the first auxiliary request filed with the appeal grounds according to which the claims 1i, 31i, 40i and 47i should be amended to include the limitation of claim 9i.

IV. The independent claims of the patent as granted/main request reads as follows:

"1i. A freight container (10) for holding and transporting freight in a plurality of land vehicles or aircrafts, the freight container (10) including a base (10b), a roof (10r), a pair of opposed side walls (10s), and a pair of opposed end walls (10e), one of said end walls (10e) including an opening (10o) for the loading and removal of freight, the freight container characterized in that said container (10) and said opening (10o) are sufficiently large to permit the loading and removal of freight to and from the

container (10) by a conventional fork lift truck, such that the conventional fork lift truck can move in and out of the container, and the container (10) has a length of approximately 13 feet, thereby allowing the container to be efficiently arranged on the plurality of different sized conventional land vehicles and aircraft."

"31i.A system for shipping freight from the premises of a customer to the premises of the consignee by means of transportation including one or more land vehicles, the system including:

an inventory of freight containers (10) for holding the freight to be shipped, each of said containers including a base (10b), a roof (10r), a pair of opposed side walls (10s), and a pair of opposed end walls (10e), and an opening (10o) formed in one of said end walls (10e), each container characterized in that said opening (10o) is sufficiently large to permit a conventional fork lift truck to load and unload freight into and out of the container (10), such that the conventional fork lift truck can move into and out of the container, and each said container (10) has a length of approximately 13 feet, thereby allowing the container to be efficiently arranged on a plurality of different sized conventional land vehicles; and

a plurality of conventionally sized land vehicles (12) for removably supporting said freight container (10) and transporting the at least one containers (10) to and from the customer’s premises."

"40i.A system for shipping freight from the premises of a customer to the ultimate recipient by means of transportation including one or more land vehicles and one or more aircraft, the system including:

an inventory of identical freight containers (10) for holding the freight to be shipped, each of said containers (10) including a base (10b), a roof (10r), a pair of opposed end walls (10e), and a pair of opposed side walls (10s), one of the walls having an opening (10o) for the loading and removal of freight, each container characterized in that each said opening (10o) are sufficiently large to permit a conventional fork lift truck to load and unload freight into and out of said container (10), such that the conventional fork lift truck can move in and out of the container, and each said container (10) has a length of approximately 13 feet, thereby allowing the container to be efficiently arranged on the plurality of different sized, conventional land vehicles and aircraft; and

a plurality of conventionally sized land vehicles and aircraft for removably supporting said freight containers (10) and transporting said containers (10)."

"47i.A method of shipping freight directly from a customer’s premises to the premises of the consignee comprising the steps of:

a. transporting to a customer’s premises at least one freight container (10) including a base (10b), a roof (10r), a pair of opposed side walls (10s), and a pair of opposed end walls (10e), one of said end walls (10e) including an opening (10o) for the loading and removal of freight, the freight container characterized in that said container (10) and said opening (10o) are sufficiently large to permit the

loading and unloading of freight to and from the container (10) by a conventional fork lift truck, such that the conventional fork lift truck can move in and out of the container, and said container (10) has a length of approximately 13 feet, thereby allowing the container to be efficiently arranged on the plurality of different sized conventional land vehicles and aircraft;

b. at the customer's premises loading freight into at least one said freight container (10) and securing the freight in the freight container (10);

c. using at least one conventionally sized aircraft and at least two conventionally sized land vehicles to transport at least one said freight container (10) and its loaded freight, in a secured state, from the customer's premises and to the premises of the consignee of the freight."

Claim 9i which, according to the first auxiliary request, should be included in the claims 1i, 31i, 40i and 47i reads as follows:

"9i. The freight container of claim 1 wherein the interior surface of the base of the container is sized to accept 6 standard industrial cargo pallets of 40 by 48 inches"

V. The appellant argued essentially as follows:

(i) The subject-matter of the independent claims of the main request involves an inventive step because the invention must be considered as a selection invention. The value of approximately 13 feet is a narrow sub-range, is far away from known

values, is purposively selected to meet a stated object, and overcomes a known prejudice. The value overcomes the stated problem of providing the widest compatibility of the container with conventional trucks and aircraft, while promoting efficiency and economy. This problem has not been identified before. There is a prejudice against changing from the standard 10-foot and 20-foot containers.

(ii) The extra feature of claim 9i keeps the basic advantages of the invention whilst allowing standard pallets to be loaded into the container by customers. Limitations are placed upon the outside and the minimum inside dimensions of the container.

VI. In a communication accompanying an invitation to oral proceedings the Board set out their provisional opinion that the main and auxiliary requests could not be granted. The respondent subsequently withdrew his request for oral proceedings and made no further submission.

Reasons for the Decision

1. Inventive step

1.1 Closest prior art

The closest prior art is represented by known standard containers which exist in standard sizes, e.g. 10 or 20 feet.

1.2 Problem to be solved

The objective problem to be solved by the distinguishing feature of claim 1 is to provide a container which has a size and shape which can hold standard-sized loads of freight and has a size and shape which is compatible with a wide variety of standard-sized trucks and aircraft (cf. page 2, lines 21 to 23 of the description).

1.3 Solution to the problem

The solution to the problem is that the container has a length of approximately 13 feet.

1.4 The solution to the problem is obvious for the following reasons:

Known containers exist in standard sizes, e.g. 10 or 20 feet. It is however clear to the skilled person that other sizes may be provided although they may have the disadvantage that they do not match the standard sizes. Depending upon the circumstances and the size of the load to be carried the skilled person would consider smaller sizes such as approximately 13 feet.

In the view of the appellant the invention is to be seen in a selection invention, i.e. selecting approximately 13 feet for the length of the container. However, in accordance with the case law of the Boards of Appeal a selection invention must be purposive, i.e. it should solve a problem. In addition, the selection must solve the problem in an unexpected manner

(analogous to chemical inventions, see Case Law of the Boards of Appeal, 4th edition 2001, point 4.2.1). The appellant has not proven that the stated problem is actually solved, nor has any proof been supplied that any unexpected effect has been achieved. The appellant has merely stated without evidence that this selection solves the problem of optimisation. The Board notes that, for instance, in the case of road transport on a standard 48-foot truck when provided with the maximum three 13-foot containers (39 feet) nine feet of space remains unused, see page 11, lines 5 to 7 of the description. The Board also notes that for instance in the embodiment of Figure 7G the fitting of the container in an MD-11 aircraft requires a chamfer to be cut in the top of the container. The Board therefore concludes that the height of the container also plays a role in the fitting of containers into aircraft and that many differing lengths may be accommodated therein dependent upon the height of the container and extent of the chamfer.

In order to show that the feature of a 13 foot length fulfils the criteria for a selection invention the appellant would have needed to supply proof that this value solves the problem, whereas other, possibly neighbouring, values do not solve the problem. Moreover, the solution would need to be surprising and not just the solution which the skilled person, wishing to provide a container suitable for land and air transport, would provide as a suitable compromise. In the present case no such proof has been supplied.

The appellant considered that there was a prejudice against the proposed solution. The appellant however has provided no proof that there was a technical prejudice against the proposed container length. The field of containers for truck and air transport tends to lead to standardisation of sizes for easy transport and storage. This also means that there may be economic prejudices against introducing a new size. This does not however mean that there is a technical prejudice, the overcoming of which could support an inventive step.

1.5 Therefore, the subject-matter of claim 1i, of the main request does not involve an inventive step in the sense of Article 56 EPC.

1.6 The same applies to the subject-matter of claims 31i, 41i and 47i which concern systems and methods including the use of the freight container according to claim 1i and conventionally sized land vehicles and/or aircraft.

2. *Auxiliary request*

Inventive step

2.1 This request should add the features of claim 9i to the independent claims 1i, 31i, 41i and 47i of the main request. Claim 9i states that six standard pallet should be loadable. The standard pallet is 40 inches x 48 inches (see claim 28). The Board notes that three such pallets placed lengthwise requires 144 inches (3 x 48 inches) which is 12 feet, which would leave 1 foot unused, whereas four pallets even placed crosswise require 160 inches (4 x 40 inches) which is 13 feet 4

inches, i.e. four pallets are too long. This means that only three standard pallets may be loaded along the length of the container and they would be loaded with a waste of space. Once three pallets are fitted lengthwise the requirement for fitting six pallets merely defines the minimum internal width of the container in standard pallet sizes, i.e. at least 80 inches (2 x 40 inches). Thus, the feature of the claim 9i amounts to nothing more than defining the internal width of the container as at least 80 inches. No special effect as been shown to achieved by this feature.

2.2 The Board concludes therefore that the provision of the features of claim 9i in any of the independent claims of the main request does not involve an inventive step in the sense of Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Spigarelli A. Burkhart