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D E C I S I O N
of 14 January 2005

Case Number: T 0950/04 - 3.2.4

Application Number: 98962546.2

Publication Number: 1091670

IPC: A47F 1/06

Language of the proceedings: EN

Title of invention:
Dispensing device

Applicant:
ATL Associates Limited

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 52(1), 54

Keyword:
"Novelty - no"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0950/04 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 14 January 2005

Appellant: ATL Associates Limited
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Great Central Street
Leicester LE1 4ND (GB)

Representative: Stagg, Diana Christine
Marks & Clerk
144 New Walk
Leicester LE1 7JA (GB)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 24 February 2004 refusing European application No. 98962546.2 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: M. Ceyte
Members: M. Hatherly
H. Preglau

Summary of Facts and Submissions

I. The examining division's decision refusing the European patent application No. 98 962 546.2 (International publication No. WO-A-99/32018) was posted on 24 February 2004.

On 23 April 2004 the appellant (applicant) filed an appeal and paid the appeal fee. The appellant filed the statement of grounds on 25 June 2004.

II. Claim 1 of the main request reads

"A storage and dispensing device for similar, discrete articles of predetermined shape and weight, comprising an upright tubular housing (4) having an access opening in an upper region thereof, a support platform (1,2) movable within the housing between upper and lower stop positions and spring means (7) biasing the platform (1,2) toward said upper stop position, wherein the rate or constant of said spring means (7) is so calculated in relation to the anticipated load on the platform (1,2) that when said articles are stacked within the housing (4) in a superimposed relationship an uppermost article, or an uppermost layer of the articles, will be supported by the platform (1,2) at a predetermined height in an upper region of the housing where it will be accessible at or beyond said opening and such that when said uppermost article, or uppermost layer of articles, is removed the platform (1,2) will be raised by the spring means (7) until the next-beneath article, or next-beneath layer of articles, occupies generally the same vertical position as was formerly occupied by the article or layer thereof removed, characterised in that the platform (1,2) is held in position with the

uppermost article or articles at the predetermined height by load on the platform and the spring means alone and in that the periphery of the platform (1,2) makes with the interior of the housing (4) a seal which is not air-tight but which restricts the flow of air past the housing periphery as the platform (1,2) moves within the housing, thereby dampening oscillations of the spring means (7)."

III. Claim 1 of the auxiliary request differs from claim 1 of the main request merely in that the wording

- "and in that the periphery of the platform (1,2) makes with the interior of the housing (4) a seal which is not air-tight but which restricts the flow of air past the housing periphery as the platform (1,2) moves within the housing, thereby dampening oscillations of the spring means (7)"

is moved to the pre-characterising portion.

IV. The following documents played a role in the appeal proceedings:

D1: US-A-3 861 563

D2: GB-A-2 227 010

D3: US-A-3 565 500

D4: US-A-3 664 546

V. The appellant submitted a new version of the patent application with the statement of grounds and stated that the invention was clearly distinguished from the

disclosure of D1 by making it clear that the platform was maintained in the upper stop position by means of the spring alone.

In the communication accompanying the summons to oral proceedings, the board objected to claims 1 and 2 filed with the statement of grounds of appeal.

The appellant's letter of 14 December 2004 enclosed new claims 1 to 8 for the main request and new claims 1 to 8 for the auxiliary request. The appellant argued that the claimed feature of the non-airtight seal between the platform and the housing dampening the spring oscillations was not known from D1 and that, despite the references in D1 to the prior art, it would not be obvious to omit the wedge at the top of the device of D1.

In a telephone conversation with the representative for the appellant on 11 January 2005 the rapporteur of the board stated that D2 (on the search report), D3 and/or D4 might be discussed in the oral proceedings.

VI. Oral proceedings were held on 14 January 2005 in the presence of the appellant.

During the oral proceedings, the appellant demonstrated a device forming the subject of the claims for storing and dispensing articles. The appellant argued that neither D1 nor D2 suggested that platform oscillation was a problem and neither hinted at how this problem would be solved.

VII. The appellant's requests are to set the examining division's decision aside and to grant a patent with the following documents:

claims 1 to 8, filed with the letter of 14 December 2004 (main request), or

claims 1 to 8, filed with the letter of 14 December 2004 (auxiliary request).

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments*

The board's objections under Articles 83, 84 and 123(2) EPC to the claims filed with the statement of grounds of appeal no longer apply to the claims of the present main and auxiliary requests.

3. *Claim 1 of the main request*

3.1 Figure 10 of D1 shows a stack of plates being urged upwardly by a spring 28 with the uppermost plate 106 engaging and so being tilted by a stop (wedge 104). Thus the uppermost plate 106 and the supporting plate (number 34 on Figure 2) are held in position by the weight of the plates, the upthrust of the spring 28 and the wedge 104.

3.2 Accordingly the first feature of the characterising portion of claim 1 of the main request that "the

platform (1,2) is held in position with the uppermost article or articles at the predetermined height by load on the platform and the spring means alone" is not known from D1.

3.3 Thus the subject-matter of claim 1 of the main request is not known from D1.

3.4 However, while claim 1 of the main request is divided using D1, the most relevant device to that claimed is that known from D2.

3.5 D2 discloses a storage container 1 for storing and dispensing a sliced loaf of bread (see page 1, paragraph 1). The slices of bread are of course similar, discrete articles of predetermined shape and weight. The storage container comprises an upright tubular housing 2 (see Figure 1 and the last paragraph of page 4) having an access opening in an upper region thereof. There is a platform 4 which supports the bread (see the start of the second paragraph of page 7).

3.6 The platform 4 of D2 is movable within the housing between an upper stop position and a lower stop position. The upper stop position is reached when the recesses 20 on the rear wall 16 of the platform 4 engage the stops 19 on the rear wall of the housing, see the last paragraph of page 6. Similarly, the top stop position in the device of the present application is reached when the platform 1 is so high that the safety chain 6 is taught, see Figure 1. In both the device of D1 and that of the present application, the lower stop position will be reached when the spring is fully compressed.

3.7 D2 states, starting seven lines from the bottom of page 7, that "The spring stiffness is selected such that the uppermost slices of bread in a stack of slices on the platform 4 are always located adjacent the open, upper end of the housing 2, regardless of the actual number of slices in the stack."

Thus the rate or constant of said spring 5 has been so calculated in relation to the anticipated load on the platform 4 that, when the slices of bread are stacked within the housing 2 in a superimposed relationship, the uppermost slice will be supported by the platform 4 at a predetermined height in an upper region of the housing 2 where it will be accessible at or beyond said opening and such that when said uppermost slice is removed the platform 4 will be raised by the spring 5 until the next-beneath slice occupies generally the same vertical position as was formerly occupied by the slice removed.

3.8 Thus all the features of the pre-characterising portion of claim 1 of the main request are known from D2.

3.9 It follows from the above section 3.7 that the platform 4 has a number of vertical positions depending on how many slices are placed thereon. Except at the upper and lower stop positions, the platform 4 is held in position with the uppermost slice of bread at the predetermined height by load on the platform and the spring 5 alone.

Thus the first feature of the characterising portion of the claim 1 of the main request is known from D2.

3.10 The second and last feature of claim 1 of the main request is that "the periphery of the platform (1,2) makes with the interior of the housing (4) a seal which is not air-tight but which restricts the flow of air past the housing periphery as the platform (1,2) moves within the housing, thereby dampening oscillations of the spring means (7)."

3.11 This, incidentally, is the feature that the examining division stated in the first paragraph of page 3 of its decision was known from D1, a view provisionally shared by the board in section 4.2 of the communication accompanying the summons to oral proceedings.

3.12 Returning to D2, the paragraph bridging pages 4 and 5 states that the housing has a solid base 6 and is injection moulded as a single component. The second paragraph of page 5 states that "The rear wall 8 and the side walls 9 of the housing are each provided with an inwardly directed, rectangular sectioned, vertically extending guide 10, which serves to guide the vertical movement of the platform 4 within the housing ...". The guideways 18 in the platform 4 are formed by slots in the side and rear walls 17, 18 while the guides 10 are provided on the side and rear walls 9, 8 of the housing 2, see Figure 2 and the second paragraph of page 6.

It will be appreciated that the gap between platform and housing must be small enough to be bridged by the guides 10. The gap is shown in Figure 1 as being less than the thickness of each side wall 13 of the platform 4 and less than the thickness of each side wall 9 of the housing 2. Indeed Figure 1 shows the platform 4

substantially filling the cross-section of the housing 2. While the Figures of D2 are just that, namely Figures and so are schematic, the board can come to no other conclusion than that the platform 4, in order to be guided by the guides 10 on the housing 2, must be close to said housing and therefore must leave only a small gap therebetween.

Neither the size of the gap nor the effect of the gap is discussed in D2. Nevertheless when the teaching of D2 is carried out by constructing the device of D2, it will be found that the flow of air past the platform is restricted by having to pass through the gap and that oscillations of the spring are thereby dampened.

Thus the board finds that the second feature of the characterising portion of claim 1 of the main request is known from D2.

3.13 Accordingly the board finds that the subject-matter of claim 1 of the main request is not novel over the explicit and implicit disclosure of D2, see Articles 52(1) and 54 EPC.

4. *Claim 1 of the auxiliary request*

4.1 Claim 1 of the auxiliary request differs from claim 1 of the main request solely in that the feature of the non-airtight seal between the platform and the housing dampening the spring oscillations is moved to the pre-characterising portion.

4.2 Claim 1 of the auxiliary request therefore is formulated on the basis that this feature is known. However the scope of the two claims is identical.

4.3 Thus the finding of lack of novelty of the subject-matter of claim 1 of the main request applies equally to that of claim 1 of the auxiliary request.

5. Following the conclusions in sections 3.13 and 4.3 above, a patent cannot be granted with the wording of either of the present requests. Accordingly the appeal cannot be allowed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte