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D E C I S I O N
of 13 January 2006

Case Number: T 0446/05 - 3.2.04

Application Number: 99500032.0

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Language of the proceedings: EN

Title of invention:
Protective cushion for risky pinned-down elements

Applicant:
Serrano Carillo, Pedro

Opponent:
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Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (no)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0446/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 13 January 2006

Appellant: (Applicant)
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Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 26 May 2004 refusing European application No. 99500032.0 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
C. Heath

Summary of Facts and Submissions

I. By its decision dated 26 May 2004 the Examining Division rejected the patent application. On 14 January 2005 the Appellant (applicant) filed an appeal, a statement setting out the grounds of appeal, a request for *restitutio in integrum* according to Article 122 EPC and simultaneously paid the appeal fee and the fee for *restitutio in integrum*. By its decision dated 4 March 2005 the EPO allowed the request for *restitutio in integrum*.

II. In the decision under appeal, the Examining Division came to the conclusion that the subject-matter of claim 1 filed with letter of 18 December 2003 did not involve an inventive step when taking into account the disclosure of D2: FR-A-2 617 409 in combination with that of D1: US-A-4 837 060.

III. Oral proceedings before the Board took place on 13 January 2006.

The Appellant mainly argued as follows: D1 relates to cushioning material and a use as protective cushion for risky pinned down elements is not disclosed therein. Furthermore, D1 does not show plasticized canvas sheaths. D2 does not disclose plasticized canvas sheathes either and solely mentions a textile covering or a plastic covering. In D2 the cushions are first provided with a covering and subsequently interconnected. Thus, D2 teaches to use an individual wrap for each damping element. Therefore, a combination of D1 and D2 would not lead to the claimed invention.

The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 3 according to the main request, alternatively on the basis of claims 1 and 2 according to a first auxiliary request, or on the basis of claims 1 and 2 according to a second auxiliary request, or on the basis of a single claim 1 according to a third auxiliary request, all filed in the oral proceedings.

IV. Claim 1 of the main request reads as follows:

"1. Protective cushion for risky pinned-down elements such as columns, pillars and the like to avoid any damage caused by accidents, blows or impacts of individuals against these elements, made up with cylindrical damping elements, wherein the low weight cushion comprises an indeterminate number of plastic-foamed layers (1) made of polyethylene, between which layers (1) is arranged a regular distribution of cylindrical damping elements (2,3), characterized in that the assembly of plastic-foamed layers (1) and cylindrical damping elements (2, 3) being placed inside a plasticized canvas sheath (4;5) provided with zippers or other closing means; and in that the sheath has at their opposite ends lapels (6) provided with drilled eyelets and holes (7) allowing the passage of cords, or other conventional fastening means, to facilitate fastening and fitting of the cushion to the risky elements."

Claim 1 according to the first auxiliary request reads:

"1. Protective cushion for risky pinned-down elements such as columns, pillars and the like to avoid any damage caused by accidents, blows or impacts of individuals against these elements, comprising hollow or solid cylindrical damping elements, wherein the cushion comprises three or more of plastic-foamed layers (1) made of polyethylene, between which layers (1) is arranged a regular distribution of at least two levels of cylindrical damping elements (2,3), characterized in that the assembly of plastic-foamed layers (1) and cylindrical damping elements (2, 3) being placed inside a plasticized canvas sheath (4;5) provided with zippers or other fastening means; and in that the sheath is provided with lapels (6) having holes (7) allowing the passage of cords, or other conventional fastening means, to facilitate fastening and fitting of the cushion to the risky elements."

Claim 1 according to the second auxiliary request reads:

"1. Protective cushion for risky pinned-down elements such as columns, pillars and the like to avoid any damage caused by accidents, blows or impacts of individuals against these elements, comprising hollow or solid cylindrical damping elements, wherein the cushion comprises three or more of plastic-foamed layers (1) made of polyethylene, between which is arranged a regular distribution of cylindrical damping elements (2,3) respectively, characterized in that the assembly of plastic-foamed layers (1) and cylindrical damping elements (2, 3) being placed inside a plasticized canvas sheath (4;5) provided with zippers or other fastening means; and in that the sheath is

provided with lapels (6) having holes (7) allowing the passage of cords, or other conventional fastening means, to facilitate fastening and fitting of the cushion to the risky elements."

Claim 1 according to the third auxiliary request reads:

"1. Protective cushion for risky pinned-down elements such as columns, pillars and the like to avoid any damage caused by accidents, blows or impacts of individuals against these elements, comprising hollow or solid cylindrical damping elements, wherein the cushion comprises three or more of plastic-foamed layers (1) made of polyethylene, between which layers (1) is arranged a regular distribution of at least two levels of cylindrical damping elements (2,3), characterized in that the assembly of plastic-foamed layers (1) and cylindrical damping elements (2, 3) being placed inside a plasticized canvas sheath (4;5) provided with zippers or other fastening means; and in that the sheath is provided with lapels (6) having holes (7) allowing the passage of cords, or other conventional fastening means, to facilitate fastening and fitting of the cushion to the risky elements."

Reasons for the Decision

1. The appeal is admissible.

2. *Novelty*

Novelty has not been at stake during these proceedings and the Board is satisfied that novelty of claim 1 of

all requests is given with respect to the prior art cited in the search report.

3. *Inventive step*

3.1 Claim 1 of the main request

3.1.1 D1 is considered to be the closest prior art document.

The Appellant argued that D1 does not represent the closest prior art document because it is not a protective cushion for risky pinned-down elements. However, according to the case law of the Boards of Appeal, "for" has to be interpreted as meaning "suitable for". D1 refers to cushioning and protective packaging materials (column 1, lines 5 and 6) and uses tubular members secured to sheets (column 2, lines 26 to 28 and 56 to 59; Figure 5)) having an outside diameter of 1 in. to 8 in. (25.4 mm to 203.2 mm) (column 3, lines 4 to 6). Thus, the cushion according to D1 is suitable for cushioning risky pinned-down elements such as columns.

From D1 there is known an improved cushioning and protective material, which can be wound into rolls or cut and stacked as sheets (column 1, lines 55 to 59) and which is suitable for cushioning risky pinned-down elements. The cushion of D1 comprises two plastic-foamed layers made of polyethylene (Figure 5; column 3, lines 8 to 10), between which is arranged a regular distribution of cylindrical damping elements (4, 14) made of foamed polyethylene (column 3, lines 1 and 2). The cushion is of low weight (since made of foamed

polyethylene) and can be used to wrap objects (column 1, line 68).

3.1.2 The protective cushion according to claim 1 of the main request differs from that disclosed in D1 in that:

- the assembly (of plastic-foamed layers and cylindrical damping elements) is placed inside a plasticized canvas sheath provided with closing means,
- the sheath has at their opposite ends lapels provided with drilled eyelets and holes allowing the passage of cords, or other conventional fastening means, to facilitate fastening and fitting of the cushion to the risky elements.

3.1.3 Thus the problem to be solved may be seen in improving the cushion so as to render it wear resistant and weatherproof and to facilitate its fastening and fitting to the risky elements.

3.1.4 From D2 there are known protective cushions for risky pinned-down elements such as columns, pillars and the like to avoid any damage caused by accidents, blows or impacts of individuals against these elements (Figures 1 to 3), made up with cylindrical damping elements (17; Figure 7) or blocs in the shape of parallelepipeds (page 1, line 12; Figure 12); the cushion is placed inside plastic sheathes or canvas sheathes (page 1, line 14) provided with closing means (Figure 8); each sheath has at its opposite ends lapels (Figures 2, 8 and 10) provided with drilled eyelets and holes (10, 11) allowing the passage of cords, or other conventional fastening means, to facilitate fastening and fitting of the cushion to the risky elements.

Since D2 discloses the use of either canvas sheathes (which provide wear and tear protection) or plastic sheathes (which provide weather protection), the mere use of plasticized canvas sheathes in order to render the cushion wear resistant and weatherproof does not involve an inventive step.

Furthermore, in order to facilitate its fitting to the risky element, it is obvious for a skilled person to provide the cushion as disclosed in D1 with a protective canvas sheath provided with lapels and holes according to D2.

3.1.5 The Appellant argued that the teaching of D2 is to be seen in providing each individual damping element with a sheath before assembling them to a layer and that applying said teaching to D1, would imply that each cylindrical damping element of D1 be placed in a sheath before being secured to the layers.

This point of view cannot be shared by the Board. D2 refers *inter alia* to a way of securing cushioning material to a risky element by means of sheathes. To this effect, the cushioning material is placed into sheathes provided with lapels and holes allowing the passage of fastening means. This means that, in D2, the sheathes and the "layer" to which the sheathes may be secured are not part of the cushioning material. The cushion disclosed in D1 comprises cylindrical damping elements, which are positioned in-between and secured to two layers (Figure 5). In D1, the cylindrical damping elements and the layers form the cushion and cannot be separated from each other. Thus,

providing each individual cylindrical damping element of D1 with a sheath is not technically sensible. Once manufactured, the cushion of D1 is wound into rolls or cut into sheets (column 1, lines 55 to 57). Thus, D1 also discloses a cushion in form of a block (sheet).

Therefore, the cushion in the shape of a block disclosed in D1 is equivalent to the block of damping material shown in Figure 12 of D2. Consequently, when applying the teaching of D2 to the cushion (block) of D1, it is clear for a skilled person that it is the cushion in shape of a block of D1 as a whole that is to be placed inside the sheath. Any other interpretation of the teaching of D2 would be illogical and not make technical sense.

Consequently, the subject-matter of claim 1 of the main request does not involve an inventive step.

3.2 Claim 1 of the auxiliary requests:

3.2.1 The subject-matter of claims 1 according to the first, second and third auxiliary requests differ in substance from the subject-matter of claim 1 according to the main request in that the cushion comprises three or more plastic foamed layers and (implicitly or explicitly) at least two levels of damping elements.

3.2.2 The Appellant argued that none of D1 or D2 discloses or suggests providing the cushion with more than one level of cushioning material.

3.2.3 However, in D1, column 1, last line, it is indicated that the cushion is used to wrap fragile objects, i.e. to be wound around the objects. Thus a skilled reader would immediately realise that according to circumstances cushioning material can be wound more than one turn around the object, so that more than one layer of cushioning material may be used to achieve adequate protection.

Consequently, to provide a thicker cushion by adding a second layer of cylindrical damping elements comprised between plastic-foamed layers as claimed in claims 1 according to the auxiliary requests is obvious in the light of common general knowledge.

Therefore, the subject-matter of claim 1 of the auxiliary requests does not involve an inventive step.

4. Since the subject-matter of claims 1 according to all requests lacks an inventive step, whether or not the wording of these claims and of their dependent claims fulfils the other requirements of the EPC is of no relevance for the outcome of the present proceedings and thus, is not to be further investigated.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis M. Ceyte