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Datasheet for the decision of 18 June 2008

Case Number: T 0476/06 - 3.2.03

Application Number: 00101271.5

Publication Number: 1024331

IPC: F24F 1/00, F24F 13/22

Language of the proceedings: EN

Title of invention:
Flush-mount enclosure, particularly for making provisions for air-conditioning systems

Patentee:
Tecnosystemi S.P.A.

Opponent:
Pignolo, Nicola

Headword:
-

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-

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Case Number: T 0476/06 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 18 June 2008

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 1 February 2006 rejecting the opposition filed against European patent No. 1024331 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: U. Krause
Members: C. Donnelly
K. Garnett

Summary of Facts and Submissions

I. The appeal lies from the decision of the opposition division, posted on 1 February 2006, to reject the opposition against European Patent No. EP-B-1024331.

The Opponent (hereinafter "the appellant") filed a notice of appeal on 30 March 2006 and paid the fee the same day. A statement of the grounds of appeal was filed on 2 June 2006.

The appellant requested that the impugned decision be set aside and the patent revoked in its entirety on the grounds that the subject-matter of claim 1 as granted lacks an inventive step. An auxiliary request for oral proceedings to be held was made should the main request not be allowed.

II. Claim 1 as granted reads:

"A flush-mount enclosure, particularly for making provisions for air-conditioning systems, comprising a box-like containment body (2) for refrigeration tubing (5) and a power supply cable, a condensation collector (13) which is associable at a lower surface (10) of said box-like body (2) so that it can be removed and turned through 180^{o} , said collector (13) being funnel-shaped and provided with at least one outlet (14) arranged at a lateral end thereof, a surface (15) of said funnel-shaped collector (13) being inclined towards said at least one outlet (14)."

III. The appellant cited the following documents as state of the art with the grounds of appeal:

D2: Brochure concerning "Climabox" from the firm Niccons, undated (original Model in Appeal file);
D3: Declaration by Nicola Pignolo dated 1 June 2006;
D4: Letter dated 07/10/1998 from Niccons to Ms Christina of Technosystemi S.r.l. (in Italian)
D5: JP 9203548 (with English (machine) translation and further improved translation filed with letter of 14 July 2006)
D6: US-A-5511386
D14: JP 09-217944 (with computer translation) late filed during the opposition proceedings not filed separately with grounds of appeal;
D15: Collection of documents late filed during the opposition proceedings with letter of 24 June 2005, comprising:
-declaration by Guido Pasqualini dated 11 November 2003;
- copy of invoice No. 971 dated 29 May 1998 from Tecnosystemi;
- 2 other invoice copies
- 9 pages of "documento di trasporto" documentation, dated 05,08,13,19,25,26 and 27 May 1998
- photocopy of a catalogue page 14, illustrating a product with a collecting condensing tray "Cod. 11100090" and "Cod. 11100091"
- "Listino Prezzi" with article codes and description from Tecnosystemi, 4 pages (but pages 1 and 2 identical to pages 3 and 4) all in Italian, dated "gennaio 1998";

IV. With letter of 15 December 2006 the patentee (hereinafter "the respondent") made a main request for the appeal to be dismissed and filed auxiliary requests 1 to 5 together with the following documents:

A1: Extracts from the minutes of the oral proceedings and decision in the opposition proceedings against EP-B-961909;
A2: English translation of document D5.

V. On 13 February 2008 the Board issued a communication pursuant to Article 15(1) RPBA annexed to the summons to oral proceedings in which a provisional opinion on the relevant questions was given. In particular the Board indicated that it was minded to admit documents D5 and D6 into the proceedings and to accept the prior use according to D15 since during earlier appeal proceedings, resulting in decision T 957/03, the prior use of "Climabox" apparatus with the code 11100091 corresponding to D15 had been accepted by both of the present parties. However, the Board remarked that it did not appear that the condensation tank of this prior use could be removed and turned through 180 degrees. The communication also laid out the Board's preliminary analysis of D5, D6 and D14, coming to the conclusion that for the assessment of inventive step D14 appeared to be the most relevant prior art.

VI. With letter of 15 May 2008 the appellant filed a further document US-A-5 787 721 (D7).

With letter of 16 May 2008 the respondent filed auxiliary requests 1 to 4 to replace the auxiliary requests 1 to 5 of 15 December 2006.

VII. Oral proceedings were held on 18 June 2008. At the beginning of the proceedings the Chairman reiterated the Board's position concerning the alleged prior use defined in D2 to D4 and D15 which apparently related to

the same apparatus of the prior use PU2 detailed in earlier decision T 957/03. From this decision it can be seen that the then patentee and the present appellant, Nicola Pignolo, confirmed that the "Climabox" apparatus with the code 11100091 was manufactured as a single piece up to July 1998. This is inconsistent with the statements made in D3 alleging that the condensation tank was manufactured separately from January 1998. Thus, although a prior use may have occurred according to the documents in D15 as accepted by the parties in the proceedings leading to the earlier decision T 957/03, the apparatus in question cannot be seen to have a detachable condensation tank.

VIII. The main arguments of the parties can be summarised as follows:

a) Main request Inventive step

Appellant

The Board's comments made at the beginning of the oral proceedings are not disputed, thus, the nearest prior art is seen to be document D14. The embodiments shown in either figure 3 or figure 9 of this document display all the features of claim 1 with the exception of that whereby the condensation collector is associable with the lower surface such that it can be removed and turned through 180°.

As detailed at paragraph [0009] of the contested patent this feature solves the problem of providing condensate drainage regardless of which side the condensation

outlet is placed i.e. flexibility of installation is increased.

The skilled person faced with this problem would look at documents D5, D6, and D7, any one of which provides the claimed solution in an obvious manner.

D5 describes an indoor extractor-fan unit fitted with a funnel-shaped drain pan 13 fixed in a detachable manner to the bottom of the fan-housing 10 such that it can be removed and rotated through 180^{o} in order to increase flexibility in the installation procedures.

D6 deals with the same problem of condensate drainage from split air-conditioners and in particular with the problem of connecting units with pre-pitched drain pans to in-situ piping.

This document describes an air-conditioner with a condensation collector (16,26,28,30,32,34) which is associable at a lower surface of said box-like body so that it can be removed and turned through 180^{o}, said collector (16) has a U-shape cross-section (see column 3, lines 23 to 24 "channel having an open top") and is provided with at least one outlet (18,20) arranged at a lateral end thereof, a surface (26) of said collector (16) being inclined towards said at least one outlet (18,20 - see figure 4), thus the functional requirements for being deemed a funnel-shaped are fulfilled.

The skilled person faced with the above technical problem would learn from D6 that the flexibility of installation of the device according to D14 could be increased by adopting the drain pan arrangement

disclosed in D6 such that it was removable and rotatable though 180^0.

This feature is also disclosed in D7 which describes an easily removable drain-pan and funnel arrangement for an air-conditioner. In particular, D7 states at column 4, lines 4 to 9, that "to better locate the drain pan 40, an optional positioning knob or knobs 80 may be provided on the shelf 42 to fit within a positioning aperture or apertures 82 of the drain pan 40 so as to locate the drain pan 40 with respect to the shelf". In other words, there may be a right hand knob 80 and a left hand knob adapted to select the position of the pan by turning it through 180^o with respect to the position of the other components, in this case the shelf and its drain line.

Thus, D7 also leads the skilled person straight to the solution of claim 1 as granted.

In conclusion, the subject-matter of claim 1 lacks an inventive step with respect to a combination of D14 with one of D5, D6 or D7.

Respondent

It is agreed that the device according to the subject-matter of claim 1 as granted differs from the apparatus known from D14 in that the condensation collector is associable with a lower surface of the box-like body so that it can be removed and turned through 180^o.

This feature offers a solution to the problem of increasing the flexibility of the known flush-mount

enclosure since it allows installation regardless of which side the condensate drain pipe is placed.

When deciding whether the skilled person would modify any of the embodiments of the device according to D14, the teaching of the whole document must be taken into account and not just isolated passages. D14 addresses the type of flush-mount enclosure which is installed as the cavity-wall is being built as opposed to that of the contested patent which is intended to be retrofitted to existing walls. In the overall system presented in D14, the problem of needing flexibility to cope with fixed positions of condensate drains never arises since the wall, the drains and the enclosure are all designed and installed as an integral unit. Consequently, the skilled person would have no incentive to modify the condensate drain-pan so that it can be removed and rotated through 180^{o}. The enclosures disclosed in D14 are primarily intended to facilitate installation of the air-conditioning units by providing more space for the fitter who has to carry out this task.

Further, in any case, none of the documents D5,D6 or D7 cited by the appellant would lead the skilled person to incorporate this feature into the known device.

D5 describes an indoor extractor-fan unit fitted with a funnel-shaped drain pan attached to the bottom of the fan-housing. The drain-pan appears to be made separate from the main body of the fan unit. However, there is no indication in D5 that the drain-pan is associable with a lower surface of the box-like body so that it can be removed and turned through 180^{o}. The figure cited by the appellant which shows the drain pan to be approximately

symmetrical is not sufficient for this purpose in the absence of any indication in the description pointing to the possibility of removing the pan and rotating it to assist in installation procedures.

It is admitted that the drain pan according to D6 fulfils the requirements for being funnel-shaped since it ensures complete drainage of the condensate to a single outlet. However, instead of removing and rotating the drain-pan D6 proposes to tilt it one way or the other such that condensate flows to one or other of the outlets provided at each end. Thus, the solution proposed in D6 actually teaches away from the invention.

D7 is the least relevant of the documents cited. As stated by the appellant and according to column 4, line 1 "the drain pan 40 is not positively attached to anything", thus, it is difficult to see how the arrangement of this device could lead the skilled person to the arrangement of claim 1 which requires the condensation collector to be "associable at a lower surface of the box-like body".

Reasons for the Decision

1. *Main request -inventive step*

The only issue to be decided by the Board is that of inventive step.

The Board agrees with the parties that D14 is the most relevant state of the art since it deals with exactly the same type of apparatus as the contested patent.

D14, in particular figure 9, describes:

a flush-mount enclosure (42) for making provisions for air-conditioning systems, comprising a box-like containment body (45) for refrigeration tubing (30) and a power supply cable, a condensation collector (46) at a lower surface of said box-like body (45), said collector (46) being funnel-shaped and provided with at least one outlet (47) arranged at a lateral end thereof, a surface (46c) of said funnel-shaped collector (46) being inclined towards said at least one outlet (47).

The device according to claim 1 as granted differs therefrom in that the condensation collector is associable with a lower surface of the box-like body so that it can be removed and turned through 180°.

Since the outlet is positioned at a lateral end of condensation collector, when this is removed and turned through 180° the drain outlet position is moved from one end to the other of the box-like body. As a consequence, this distinguishing feature has the technical effect that the outlet of the condensation collector can be optimally positioned with respect to the piping in the wall to facilitate connection and installation.

The objective technical problem is therefore one of how to facilitate the fitting of the flush-mount enclosure with respect to the piping in the wall.

This problem is mentioned in D6 (see column 1, lines 26 to 34) and is therefore known per se. However, D6 proposes another solution to that of the contested

patent and suggests instead that the condensate-tray channel be capable of being pitched one way or the other during installation such that flow of accumulated condensate occurs towards the end where the drain in the wall is placed. Thus, D6 teaches away from the invention as claimed.

As regards D7, the Board accepts the view of the respondent that this document in combination with D14 would not lead the skilled person to the subject-matter of claim 1 in an obvious manner, since, as remarked on by both parties, "the drain pan 40 is not positively attached to anything" (see column 4, line 1). The Board cannot find any teaching in D7 which would lead the skilled person to abandon the idea of an independent drain-pan that, in accordance with the stated objective of D7, renders it easily removable, in favour of one which is associable with the box-like body of an enclosure for the air-conditioner and, hence, less easily removable. Further, contrary to the appellant's assertion, D7 contains no indication as to rotating the drain pan through 180^{o} in order to facilitate connection to a drainage point. The passage cited by the respondent means rather that positioning knob or knobs 80 are optional and may be, but not necessarily, provided on the shelf 42 to fit within a positioning aperture or apertures 82 of the drain pan 40 so as to locate the drain pan 40 with respect to the shelf. Within the context of the invention outlined in D7, the presence of such locating knobs may be deemed undesirable in that they would make the pan less easily removable. Thus, the inventor has elected to make them an optional extra.

D5 describes an indoor extractor-fan unit fitted with a funnel-shaped drain pan attached to the bottom of the fan-housing. However, this document is essentially concerned with preventing blockage of the condensate outlet drain by providing a barrier structure around the inlet to the drain to hold back sludge washed down from the fan-housing. Other issues, such as installation flexibility and site assembly problems are not mentioned.

The Board concurs with the appellant that the drain-pan is made separate from the main body of the fan unit and is, in all likelihood, easily removable to allow the accumulated sludge around the barrier to be cleaned in a standard manner. However, there is no indication in D5 that the drain-pan is associable with a lower surface of the box-like body so that it can be removed and turned through 180^{o}, which is the essence of the invention claimed in the contested patent, since it is this feature which allows a single component to accommodate the various plumbing configurations which may be encountered during installation in a simple manner.

In the absence of any indication in the description pointing to the possibility of removing the pan and rotating it to effect a shift in the position of the drain outlet, the schematic drawing of the condensate pan showing it to be approximately symmetrical is not sufficient to lead the skilled person to this feature in an obvious manner. Such a conclusion could only be reached with the benefit of hindsight.

In conclusion, the subject-matter of claim 1 as granted is considered to involve an inventive step and, hence, to meet the requirements of Article 56 EPC.

Since the respondent's main request has been accepted there is no need to discuss the auxiliary requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

Registrar: Chairman:

A. Counillon U. Krause