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**Datasheet for the decision
of 17 February 2009**

Case Number: T 1092/07 - 3.2.07

Application Number: 03738797.4

Publication Number: 1513751

IPC: B65G 65/00

Language of the proceedings: EN

Title of invention:

A method of transporting unit loads

Applicant:

Inter IKEA Systems B.V.

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 56, 113(1), 116

RPBA Art. 12(3)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Inventive step: no"

Decisions cited:

-

Catchword:

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Case Number: T 1092/07 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 17 February 2009

Appellant: Inter IKEA Systems B.V.
1, Olof Palmestraat
NL-2616 LN Delft (NL)

Representative: Karlsson, Leif Gunnar Börje
Ström & Gullikson AB
P.O. Box 4188
S-203 13 Malmö (SE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 16 January 2007
refusing European application No. 03738797.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
I. Beckedorf

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the Examining Division refusing European patent application 03 738 797.4.
- II. In its decision, the Examining Division held that the subject-matter of independent claim 1 filed with the letter dated 15 March 2006 lacks inventive step in view of the combination of the teaching of D1 (WO 02/38471 A) and the general technical knowledge.
- III. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 forming the basis of the impugned decision.
- IV. This claim 1 reads as follows:

"A method of transporting unit loads (1) on a transportation area having a certain length and width, the area for example being the bottom of a standardized container or a loading compartment of a railway goods wagon, where each unit load is placed on two or more loading ledges (5), each ledge comprising an L-shaped profile having projections (7) for supporting the unit load at a certain distance over its support and being positioned at a lower edge of the unit load, characterized by adjusting together the respective lengths and widths of the unit loads (1) so as to correspond to the transportation area".
- V. The appellant stated in its letter with the grounds of appeal dated 16 May 2007 the following:

The conventional, standardized wood pallet constitutes the normal carrier in the transport system. The standardized length and width of such pallets constitute an obstacle for improving the system (and the pallets have other severe drawbacks).

The negative features of wooden pallets lead to the development of loading ledges, which are covered by D1. These ledges are mentioned as prior art in the preamble of the refused claim 1.

For the reasons set forth in the patent application and in responses of April 20, 2005, and March 15, 2006, the Examining Division's finding of inadequate inventive step is incorrect.

It is hindsight to state that it is a straightforward possibility to adjust together the respective lengths and widths of the loads so as to correspond to the transportation area.

Reasons for the decision

1. *Procedural matter*

The present decision is based upon the written submissions of the appellant in the current appeal proceedings and with due consideration of the entire content of the file.

Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal (Article 12(3) RPBA).

The appellant has not requested oral proceedings and the Board does not regard the appointment of oral proceedings to be necessary.

The statement of grounds of appeal was filed with fax of 16 May 2007; no further submissions have been received. If the Board concurs with the reasoning of the decision, taking due account of the grounds of appeal, the right to be heard (Article 113(1) EPC) will have been observed.

2. *Grounds of appeal*

- 2.1 The appellant referred in its grounds of appeal to its submissions dated 20 April 2005 and 15 March 2006, as the reasons being valid on appeal.

It is well established case law of the Boards of Appeal (see Case Law of the Boards of Appeal of the European Patent Office, 5th edition, 2006, VII.D.7.5.1) that merely referring to one's own first instance submissions cannot normally replace the required account of the legal and factual reasons for the appeal and that mere references to earlier submissions, even when taken together with the contested decision, do not as a rule clearly indicate which grounds of the decision are regarded as mistaken, and why. The Board cannot then consider the merits of the appeal without making investigations of its own.

In view of the circumstances of the present case (the appellant, on appeal, has added to the above mentioned non-specified reference to its previous submissions

solely the argument that it was hindsight to state that the feature distinguishing the subject-matter of claim 1 was obvious over D1, see point V above), the Board considers it more expedient to investigate whether the decision under appeal and the examination proceedings leading up to it have taken due account of the appellant's arguments. If that is the case and the Board agrees with the reasoning in the decision under appeal, only the final "hindsight" argument needs to be discussed.

2.2 In its first communication the Examining Division objected to the then valid claim 1, which essentially had the same wording as claim 1 subject of the present appeal, that starting from D1 and having unit loads as presented in fig. 4 of D1 and wanting to transport them e.g. in a standardized container, the step of adjusting the lengths and widths of the loads together to correspond to the transportation area, was merely one of several straightforward possibilities from which the skilled person would select, depending on the circumstances, without the exercise of inventive skill.

It explained that the unit loads of D1, figure 4, were placed on two or more loading ledges, each ledge comprising an L-shaped profile having projections for supporting the unit load at a certain distance over its support and being positioned at a lower edge of the unit load, as claimed.

In its reply of 20 April 2005 the appellant argued that the claimed method used only the loading ledges as disclosed in D1, and that in the claimed method the lengths and widths of the unit loads to be transported

were adjusted to together correspond to the length and width of the transportation area. The closest prior art would rather be the normal system of pallets, of which the length and width could not be adapted to the transportation area (this argument was repeated on appeal). Even with knowledge of the loading ledges of D1 the skilled person would compose the load by collecting together items of the same size, e.g. cardboard boxes and make a load of them by putting them on the ledges of D1. In this manner the length and width of the load was determined by the cardboard box size, but not adapted to the transportation area dimensions.

- 2.3 This was, in the opinion of the Board, correctly countered by the Examining Division in its communication of 6 December 2005, in that D1 was considered to relate to the transport of unit loads on loading ledges and thus was closer prior art for discussing the method of claim 1 than the conventional transport of a load on a unitary size pallet. The objective problem was to be regarded as how to obtain an optimal filling rate of these unit loads on the transportation area.

In its reply of 15 March 2006 the appellant adapted the wording of claim 1 so that the preamble reflected D1 (as also admitted on appeal) in the sense that the unit loads were placed on loading ledges of a configuration as disclosed in D1, with as characterizing feature remaining: "by adjusting together the respective lengths and widths of the unit loads so as to correspond to the transportation area", i.e. in essence as originally claimed.

It agreed to the problem as defined by the Examining Division, adding to it the necessity to avoid damage that can occur if the unit loads can be allowed to move with respect to each other.

It finally stated that the solution as provided by the invention was neither known nor obvious from the prior art.

2.4 In the decision under appeal this was, in the opinion of the Board, correctly countered by the Examining Division establishing that the method as claimed was not amended in substance and that it considered its objections as already made to be still valid. Starting from D1 it repeated its conclusion that the objective problem to be solved was how to obtain an optimal filling rate of the unit loads known from D1 on the transportation area. It stated that in principle there were two straightforward solutions to this problem:

- anchoring each load on the transportation area (which takes account of the appellant's argument), and
- adjusting together the respective lengths and widths of the unit loads so as to correspond to the transportation area (i.e. repeating its previous position).

It considered the second solution as the most straightforward solution, the other presenting difficulties in practice, requiring more means. The skilled person would thus select the adjustment, as it was in the interest of any transporting firm to transport as much as possible on a given transportation

area. The subject-matter of claim 1 thus did not involve inventive step.

2.5 The Board can find no fault in the above reasoning as to its substance, nor in the manner in which it has been presented to the appellant in the examination proceedings. As all arguments contained in the appellant's submissions - as referred to in the grounds of appeal - have been addressed, either in the communications or in the decision, by reasoning endorsed by the Board, the appellant's right to be heard has been respected (Article 113(1) EPC).

2.6 As sole argument remaining for discussion in the present appeal proceedings the appellant contends that it was hindsight to state that it is a straightforward possibility to adjust together the respective lengths and widths of the loads so as to correspond to the transportation area.

The Board is, however, of a different opinion. To the problems as acknowledged and supplemented by the appellant there are the two solutions as presented by the Examining Division in the decision under appeal. The anchoring of each unit load is the more laborious one, involving not only more means, but at the same time requiring more of the transportation area to prevent the loads from moving with respect to each other, thus reducing the available transportation space. The remaining solution, having the additional advantage of employing the space of the transportation area as best as possible, is then the obvious choice, as correctly stated in the impugned decision.

2.7 Accordingly, the Board considers that the subject-matter of claim 1 does not involve an inventive step (Article 56 EPC), in agreement with the decision under appeal.

2.8 As this decision is thus based on grounds and evidence to which the appellant has had the opportunity to present its comments, the requirements of Article 113(1) EPC are fulfilled and this decision could be arrived at in written proceedings, without the need for oral proceedings (Article 116 EPC) and without any further communication of the Board, in application of Article 12(3) RPBA.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders