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**Datasheet for the decision
of 19 June 2009**

Case Number: T 1173/07 - 3.2.07

Application Number: 00830348.9

Publication Number: 1155965

IPC: B65D 19/00

Language of the proceedings: EN

Title of invention:
Pallet with a plastic platform

Patentee:
Daviplast - Serviços de Consultoria, Sociedade Unipessoal LDA.

Opponent:
PROTECHNA S.A.

Headword:

-

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):

-

Keyword:
"Inventive step (yes)"

Decisions cited:

-

Catchword:

-



Case Number: T 1173/07 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 19 June 2009

Appellant:
(Opponent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 14 June 2007
rejecting the opposition filed against European
patent No. 1155965 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: H.-P. Felgenhauer

Members: H. Hahn
E. Dufrasne

Summary of Facts and Submissions

I. This appeal is against the decision of the opposition division rejecting the opposition against European patent No. 1 155 965.

II. The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.

The respondent (proprietor) requested that the decision under appeal be set aside and the patent be maintained on the basis of claims 1 to 13 filed as main request during the oral proceedings before the Board.

III. Claim 1 reads as follows:

"1. A pallet comprising a quadrangular plastic platform (12), formed by a unitary hollow body having two major walls which are disposed opposite one another, at least one of said two major walls having protuberances (16) which extend towards the interior of the hollow body so far as to contact the opposite major wall, characterized in that said protuberances comprise:

- first ribs extending, from a central region of the platform, parallel to the sides of the platform and
- second ribs extending, from a central region of the platform, along the diagonal of the platform, each rib being welded, throughout its length, with the opposite major wall and
- said pallet comprises coplanar bearing surfaces defined by a plurality of peripheral outwardly-projecting portions (18, 19) and a central-outwardly projecting portion (17), said ribs extending from the central outwardly-projecting portion (17) to a

respective outwardly-projecting portion (18, 19) of said plurality of peripheral outwardly-projecting portions,

- each of the outwardly-projecting portions (17, 18, 19) defines an area (20) of the respective main wall which is in contact with the opposite main wall,
- of the outwardly-projecting portions, one (17) is arranged centrally, and others (18, 19) are arranged peripherally and have their respective contact areas (20) connected to the contact area (20) of the central projecting portion (18) by means of respective ribs (16)".

IV. The following prior art document considered in the decision under appeal has been relied upon by the parties

D1: DE-A-1 704 282.

V. According to the impugned decision the subject-matter of claim 1 as granted is novel and involves an inventive step in view of documents D1 and D2 (DE-C-25 06 257).

VI. The facts, evidence and arguments essentially relied upon by the appellant in the written and the oral proceedings in appeal can, as far as they are relevant to the present decision, be summarised as follows:

- (a) The pallet according to document D1 discloses indentations corresponding to the outwardly-projecting portions defined by the features added to claim 1. Each of these indentations defines an

area which is in contact with a corresponding area of the opposite main wall.

- (b) The pallet according to document D1 furthermore discloses ribs extending from the upper wall which are connected to sidewall portions of the indentations as can be derived from figures 3 and 4 of D1.
- (c) Consequently the features added to claim 1 are obvious, which in particular holds true considering that, from the definition on how the ribs are connected to the contact areas of the outwardly-projecting portions, it is not apparent whether the connection of the ribs and the outwardly-projecting portions leads to an improvement concerning the stiffness of the pallet.

VII. The facts, evidence and arguments essentially relied upon by the respondent in the written and the oral proceedings can, as far as they are relevant to the present decision, be summarised as follows:

- (a) The indentations provided in the pallet according to document D1 do not correspond to the outwardly-projecting portions defined by the features added to claim 1, since it is the purpose of the outwardly-projecting portions to provide defined areas on which the pallet can rest on a supporting surface. At and by means of these areas loads carried by the pallet are transferred to a surface supporting the pallet.

(b) The features added to claim 1 concern the structure of the outwardly-projecting portions, each comprising a contact area, and the cooperation of the ribs and the outwardly-projecting portions such that the contact area of the centrally arranged outwardly-projecting portion is connected to the contact areas of the peripherally arranged outwardly-projecting portions by means of respective ribs. This connection is sufficiently clear defined and leads to the effect, that the stiffness of the pallet is increased improving the transfer of loads from the interior of the pallet to the outwardly-projecting portions.

(c) The ribs shown for the pallet according to document D1 are connected to sidewall portions of the indentations. This cooperation of the ribs and the indentations thus cannot contribute to the connection of the contact area of the central outwardly-projecting portion to the contact areas of the outwardly-projecting portions via the ribs in the manner defined in claim 1.

VIII. In the annex to the summons to oral proceedings dated 23 March 2009 the Board gave its preliminary opinion with respect to the subject-matter of claim 1 according to the then main request (claim 1 as granted).

IX. Oral proceedings were held 19 June 2009.

Reasons for the decision

1. *Procedural aspect*

During the discussion of inventive step with respect to claim 1 of the main request, which has been filed as claim 1 according to the second auxiliary request with letter dated 19 May 2009, upon referral of the appellant to document D2 the Board commented that this document, referred to in the impugned decision but not in the appeal proceedings, does not belong to the facts or evidence submitted in the appeal proceedings. No argument was brought forward with respect to the admittance of this document; consequently document D2 has not been further considered.

2. *Amendments of claim 1*

Claim 1 is a combination of claims 1, 7, 8 and 11 as granted. Since in combining these claims no features have been omitted, no objection can be raised on the basis of Article 123(2) EPC. Furthermore claim 1 is limited as compared to claim 1 as granted. Thus likewise the requirement of Article 123(3) has been complied with. Furthermore no objections with respect to claim 1 or any other claim of the set of claims 1 - 13 filed as main request at the oral proceedings before the Board have been raised.

3. *Subject-matter of claim 1*

Claim 1 is directed to a pallet comprising a quadrangular plastic platform, formed by a unitary

hollow body having two major walls which are disposed opposite one another.

At least one of said two major walls has protuberances which extend towards the interior of the hollow body so far as to contact the opposite major wall.

Said protuberances comprise, corresponding to the features of claim 1 as granted:

- (a) first ribs extending, from a central region of the platform, parallel to the sides of the platform and
- (b) second ribs extending, from a central region of the platform, along the diagonal of the platform,
- (c) each rib being welded, throughout its length, with the opposite major wall.

According to the features added to claim 1 as granted the pallet furthermore comprises

- (d) coplanar bearing surfaces
- (e) defined by a plurality of peripheral outwardly-projecting portions and a central outwardly-projecting portion,
- (f) the ribs extend from the central outwardly-projecting portion to a respective outwardly-projecting portion of said plurality of peripheral outwardly-projecting portions,

- (g) each of the outwardly-projecting portions defines an area of the respective main wall which is in contact with the opposite main wall and
- (h) the outwardly-projecting portions have their respective contact areas connected to the contact area of the central projecting portion by means of respective ribs.

Features d) - h) thus define that central and peripheral outwardly-projecting portions are provided on the pallet, each projecting portion having a contact area in which the respective main wall is in contact with the opposite main wall, and that the contact area of the central projecting portion is connected to the contact areas of the peripheral connecting portions by means of the respective ribs.

4. *Inventive step*

- 4.1 Inventive step of the subject-matter of claim 1 has been discussed at the oral proceedings solely with respect to features d) - h), which have been added to claim 1 as granted (cf. sections 2 and 3 above).

It is uncontested that D1, which discloses a pallet comprising a quadrangular plastic platform, formed by a unitary hollow body having two major walls which are disposed opposite one another (cf. page 10, paragraph 1; figure 1), constitutes the closest prior art with respect to the subject-matter of claim 1.

At least one of said two major walls has protuberances which extend towards the interior of the hollow body so

far as to contact the opposite major wall (cf. page 10, paragraph 2 and the paragraph bridging pages 10, 11; figures 1 - 4).

The known pallet furthermore comprises first ribs extending, from a central region of the platform, parallel to the sides of the platform and second ribs extending, from a central region of the platform, along the diagonal of the platform (cf. page 11, paragraph 2; the paragraph bridging pages 11, 12 figure 1: ribs 24, 26).

4.1.1 It is common ground that the subject-matter of claim 1 is distinguished from the pallet according to D1 i.a. by features c) - h).

4.2 *Effect of distinguishing features c) - h)*

4.2.1 According to the respondent the provision of outwardly-projecting portions according to feature e) leads to the provision of defined areas at which loads imposed on the pallet are transferred to a surface by which the pallet is supported.

These projecting portions are of rigid design in that according to feature g) each outwardly-projecting portion defines an area of the respective main wall which is in contact with the opposite main wall.

The pallet is further stiffened in that according to feature h) the contact area of the central outwardly-projecting portion is connected with the contact areas of the outwardly-projecting portions by means of ribs.

4.2.2 The Board considers the argument of the respondent as valid according to which the connection of the contact area of the central outwardly-projecting portion with the contact areas of the peripheral outwardly-projecting portions has the effect, that the transfer of loads from the pallet to a supporting surface, on which the pallet rests via its outwardly-projecting portions, is improved. It thus considers the unsupported counter argument of the appellant, according to which it is not apparent whether the structure according to features c) - h) has any effect, as a mere allegation which cannot be considered in the examination of inventive step.

4.3 *Problem to be solved*

Based on the effect features c) - h) have within the combination of features of claim 1 (cf. section 4.2 above) the problem to be solved with respect to the pallet according to D1 can be seen in improving the stiffness of the pallet or likewise in improving its load transferring capacity.

This problem is solved by the subject-matter of claim 1 comprising features c) - h).

4.4 *Obviousness*

The solution according to the subject-matter of claim 1 involves an inventive step (Article 56 EPC) since document D1 does not give an indication leading to the provision of outwardly-projecting portions comprising contact areas as defined by features e) and g) and the provision of ribs connecting the contact area of the

central outwardly-connecting portions with the contact areas of the peripheral outwardly-projecting portions as defined by feature h).

The above holds true considering the argument of the appellant according to which D1 already discloses the connection of ribs with indentations provided on the pallet as can be derived from figures 3 and 4. Concerning this argument firstly it has to be noted that the indentations of the pallet do not have the purpose and effect of the outwardly-projecting portions of the pallet according to claim 1, since these indentations do not lead to the provision of defined areas on which the pallet can rest on a supporting surface. The indentations thus do not have a prominent role with respect to the transfer of loads from the pallet to its supporting surface.

Secondly although, as pointed out correctly by the appellant, the indentations according to D1 comprise contact areas corresponding to the ones defined by feature g) and the indentations are connected by means of ribs, it is evident from figures 3 and 4 that the ribs do connect the indentations via portions of their respective side walls and not via their contact areas as defined by feature h).

It is thus apparent that due to these functional and structural differences modification of the pallet according to D1, in order to improve its stiffness or load transferring capacity, in the direction of the structure of the pallet according to the subject-matter of claim 1 reaches beyond regular design practice and consequently requires inventive skill.

Thus the subject-matter of claim 1 involves an inventive step (Article 56 EPC) in view of D1; since no further prior art needs to be considered the appeal has to be rejected.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of:
 - claims 1 to 13 filed during the oral proceedings;
 - description columns 1 and 2 filed during the oral proceedings and
 - columns 3 and 4 of the patent as granted;
 - figures 1 to 6 of the patent as granted.

The Registrar:

The Chairman:

G. Nachtigall

H.-P. Felgenhauer