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**Datasheet for the decision
of 20 July 2009**

Case Number: T 0373/08 - 3.2.04

Application Number: 01941002.6

Publication Number: 1211965

IPC: A47B 88/04

Language of the proceedings: EN

Title of invention:

Multi-purpose element for sliding metal racks located inside furniture

Patentee:

COMPAGNUCCI - S.P.A.

Opponent:

VIBO S.P.A.
INOXA S.R.L.

Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 56
EPC R. 115(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Inventive step (no)"

Decisions cited:

-

Catchword:

-

Case Number: T 0373/08 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 20 July 2009

Appellant:
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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted
19 February 2008 concerning maintenance of
European patent No. 1211965 in amended form.**

Composition of the Board:

Chairman: M. Ceyte
Members: A. de Vries
C. Heath

Summary of Facts and Submissions

- I. The Appellant (Opponent II) lodged an appeal, received 8 February 2008, against the interlocutory decision of the Opposition Division posted 19 February 2008 on the amended form in which the European Patent No. 1 211 965 can be maintained, and simultaneously paid the appeal fee. The statement setting out the grounds was received Monday 30 June 2008.
- II. Opposition was filed against the patent as a whole and based on Article 100(a) together with Articles 52(1) and 54 EPC 1973 for lack of novelty, and together with Article 52(1) and 56 EPC 1973 for lack of inventive step.

The Opposition Division held that the grounds for opposition mentioned in Article 100 EPC 1973 did not prejudice the maintenance of patent as amended having regard to the following documents among others:

D10: DE 89 04 370 U1

D21: Catalogue of Kesseböhmer GmbH identified on the page entitled "Lieferhinweise" as Nr. 22 valid from 7 May 1999, comprising pages 2-13, 2-14 submitted by the appellant, and page 2-32 submitted by the respondent.

During the appeal proceedings the Board considered the following further evidence submitted by the Respondent:
Annex A : cross-sectional drawings comparing guides said to be those of the patent with those said to be D21 guides (received 7 November 2005)

Annex C : enlarged view of a section of the photograph on page 2-32 (received 7 November 2005)

E: Enlargement of a section of the top photograph of page 2-13 with comments (filed at the oral proceedings before the opposition division).

III. The Appellant requests that the decision under appeal be set aside and the patent be revoked in its entirety.

The Respondent requests that the appeal be dismissed and the patent be maintained in the version held to be allowable by the opposition division in the decision under appeal.

Opponent I as party of right has made no submissions in the appeal.

IV. Oral proceedings were held on 20 July 2009 in the absence of duly summoned Opponent I. In accordance with Rule 115(2) EPC the oral proceedings were continued without that party.

V. The wording of claim 1 in the amended form held allowable in the decision under appeal is as follows :

"Multi-purpose element arranged with a sliding metal rack located inside furniture, and consisting of a box-type bar (1) with upturned-U cross section capable of exactly housing and hiding a telescopic guide (2) of known type, wherein said element is capable of being fixed to the two sides of the metal rack (4), becoming an integral part of it, acting as bearing structure of the body of the metal rack (4), and that a lateral side (1b) of the bar (1) has some holes (5) in which the

ends of an equivalent number of rod irons (6) are forced, becoming an integral part of the body of the metal rack (4)."

VI. The Appellant argued as follows :

D21, the closest prior art, shows a multipurpose element of the type claimed and consisting of a box type bar with upturned U cross-section. This serves to house and hide the guides, certainly from the point of view of the user standing in front and above the rack. The only difference is that of the holes in a lateral side, which represents an alternative connection of rack and bars. This alternative is one of a number of known ways of connecting a rack and bars.

In so far as D21 is not considered to disclose a U-shape cross-section, this further difference is a common feature in drawers fitted onto telescopic guides. D10, page 2, in particular teaches use of the U-shape to hide the guide from view. This document is certainly known to the skilled person in the present case, a specialist in the field of kitchen furniture with expert knowledge of both racks and drawers.

VII. The Respondent argued as follows :

The invention's main problem as originally formulated is to provide cover for the guides as well as a connection element between guides and rack. Its solution as defined in claim 1 is achieved not simply by the U-shaped cross-section but also by the requirement that the cross-section be capable of exactly housing and hiding the guide. In the embodiment

of figure 2 this functional requirement is for example realized by the extra long leg on the inner side of the U which so hides the guide from a user looking downward through the basket.

D21 also addresses the same problem. However, as clearly visible in the photographs of page 2-13 but further illustrated by Annex C drawn up to show the cross-section of the D21 bar, it does not offer the same cover as required by claim 1. Its cross-sectional shape is more akin to an L bent slightly at the top and placed on its side. Vis-à-vis D21 the invention's technical problem could be reformulated as providing a more complete cover while still enabling a suitable connection between guide and rack.

D10 is less pertinent. It relates to drawers, which do not require coverage from the inside, already provided by the sides and bottom of the drawer. Its element with U-shaped cross-section, which serves as bracket for drawer sides and bottom, is not simply transferable to a rack.

Similarly, pressing wire ends into holes might be known per se, its application in this context was new.

Reasons for the Decision

1. The appeal is admissible. Moreover it is allowable for the reasons indicated below.

2. Invention and Claim Interpretation

2.1 The invention is concerned with an element for metal racks or baskets that are slidably hung for example within kitchen cabinets. This element is intended as a cover for the telescopic guide rails to so hide them from view, while also supporting the rack or basket on the guides. Claim 1 in its amended version defines this element as consisting of a box-type bar with upturned U cross-section which is capable of exactly housing and hiding the guide. The final feature defines holes in a lateral side of the bar. Into these holes ends of "rod irons" - understood to be the wires of the rack - are forced, so that the bar becomes an integral part of the body of the metal rack.

Once assembled the element so serves to cover the guide and hide it from view while - by housing the guide on the one hand and the rack wire ends on the other - also forming a connection between rack and guide. This is the dual objective of the invention as originally formulated, see specification paragraph [0008].

2.2 A point of dispute concerns how the skilled reader is to interpret "upturned-U cross section", in particular what is meant by a U-shape. No definition of what exactly constitutes a letter "U" exists, and the shape in fact encompasses many variations which most readers will still recognize as a U, witness such terms such as U-bend, U-magnet or U-valley. It is possible the cross-section U-shape might refer to a "well-defined" U, the shape formed by bending a line back on itself resulting in two equally long, parallel legs. However, from consideration of the sole embodiment as illustrated in

figures 2 and 4 it becomes clear that this cannot have been intended. Neither of the (different) end faces 1a, 1b of the bar - corresponding to its cross-sections at the respective ends - have a shape as above. The legs are not of equal length and there is no "bent" section seamlessly connecting them. Clearly, the U-shape in claim 1 is to be understood in a wider sense.

The qualification in claim 1 that this cross-sectional shape be "capable of exactly housing and hiding" the guide also fails to identify a more specific shape, contrary to the Respondent's arguments. In the sole embodiment, see figures 2 and 3, the longer leg extends the entire breadth of the three element guide, but the other, shorter leg extends the breadth of *only* the upper of the elements (in figure 3 that part bearing hook 2a and tooth 2b). Thus, though the entire guide may be hidden from view on one side (at least when viewed from the side or from above), on the opposing side, part of the guide, namely its central element, will still be visible below the bar (from most side viewing positions), when rack and guide are drawn out from the cabinet. The guide is thus neither completely housed nor completely hidden from view; only a partial housing and hiding can be meant.

It follows from the above that the upturned U shape of the cross-section as defined in the claim is to be understood in a much broader sense, in relation to its double function. In the light of figures and description it seems to imply no more than any shape roughly recognizable as an inverted U - i.e. two legs extending downwardly from a connecting section -

dimensioned so as to fit over the top of a guide to so house it and obscure it from view.

3. Inventive Step

- 3.1 It is common ground that D21 discloses the closest prior art. Page 2-13, top two photographs, show a metallic internal pullout with integrated guide covers ("Ganzmetall-Innenauszug mit integrierter Führungsabdeckung", Article numbers 00 8646 to 00 8652) in the form of rack or basket ("Körbe") used in combination with matching telescope guides ("Vollauszugsführung") shown in the lower photograph. The middle photograph shows the pullout on its own, the upper photograph shows the pullout in use on the guides drawn out from a cabinet; in both cases the pullout is viewed from the upper left. The photograph on page 2-32, taken from above front, also shows a functioning, drawn out pullout.

The integrated covers clearly house the guides and to this end, see in particular the front of the guides in the photograph of page 2-32, and (though less clearly visible) the front of the upper right guide in the top photograph of page 2-13, are made of plate metal folded to form a bar with rectangular top face, an end face and lateral side faces. The outermost and longer of these is directed vertically downward (top two photo's on page 2-13), the inner, shorter of the two is angled obliquely downward (see top photo of page 2-13, upper right and Enlargement E; photo of page 2-32 and Annex C). The cross-section of the cover consequently has a general shape as that of part K shown in the Respondent's Annex A, lower drawing (the Board notes

that the dimensions and certain detail of the placement of wire ends appearing in this annex have no basis in D21; in any case these play no role). With its ends extending roughly downward from a central section this bent shape is still recognizable as an upturned U, albeit a somewhat stretched and unsymmetrical upturned U. As is clear from page 2-13, top photo, and page 2-32, this cross-sectional shape of the cover allows it to house (the upper part of) the guide but also to hide it from view from a wide range of viewing positions, if not from positions lower down certainly from the above front, the normal point of view of the user when drawing out the rack. That shape thus fits the wider interpretation set out in section 2.2 above.

As noted cover and rack form an integral unit. Corner stays thus protrude from the upper face, while transverse wires extend from the inner side face, in an area at or near its lower edge, see page 2-32 and Annex C in particular, but also top photo on page 2-13 and Enlargement E. However, the photos lack sufficient detail to establish the particular mode of connection of the transverse wire ends.

3.2 Claim 1 in the present version specifies holes in a side wall of the element for force fitting of rack wire ends. This represents the sole difference of the claimed cover element over that inferable from D21. Vis-à-vis D21 this feature provides a solution to the problem of how to realize the connection of rack wire ends to the inner side face of the cover.

3.3 Force fitting into holes - for example by press-fitting or riveting - is a commonly known metal to metal

connection technique. It will figure in the repertoire of fixing methods of the skilled person, an engineer designing kitchen furniture and fixtures made of a wide range of materials including metal. Where he is given the task of joining cover sides and rack wire ends in a unit as in D21, where both are of metal ("Ganzmetall"), he will draw upon this expertise and select such press-fitting or riveting as one of a number of obvious alternatives, and to that end provide holes in the cover side as a matter of obviousness. Using normal design skills he will dimension the sides, holes and wire end lengths such that the functions of guide and cover are not compromised. He so arrives at the subject-matter of claim 1 as upheld in the decision under appeal without the exercise of inventive skills.

- 3.4 The Board adds that even if it had found that the cross-sectional (upturned) U-shape constituted a difference over the prior art, it would have arrived at the same conclusion. The use of an upturned U-shape to house and cover telescope guides is commonplace in the design of kitchen furniture. Various examples of drawer units have been cited, in which side panels, or a part thereof, have a basically inverted U-shape cross-section to house and hide telescopic guides on which drawers run. Not least of these is D10, which expressly uses the hollow U-shape of a connecting element in the drawer side panel to hide the guides from view, see description page 2, second and third paragraphs ("U-förmige Hohlschiene...." "Durch die Unterbringung der Auszugsführungschiene im Hohlraum der Hohlschiene ist eine verdeckte Anordnung ... möglich").

The skilled person - the above kitchen furniture designer, who possesses detailed knowledge of various drawer and/or rack systems such as that of D10 - will draw on his knowledge of such guide concealing solutions and apply, as a matter of obviousness, a U-shape to better conceal the guides in a rack with integrated guide covers such as that of D21. That the skilled person might be challenged beyond his normal skills when adopting the U-shape in this context is not evident to the Board; all he needs to do is dimension the U-shape appropriately.

Finally, as an interaction between cross-sectional U-shape and that of the holes is not apparent, their combination amounts to no more than a straightforward juxtaposition of individually known, obvious measures. In conclusion therefore - even if for the sake of argument it is assumed that D21 does not show a cross-sectional U-shape recognizable as such - the subject-matter of claim 1 as held allowable in the decision under appeal still lacks inventive step.

4. In the light of the above the Board finds that, taking into account the amendments to claim 1, the patent and the invention to which it relates do not meet the requirements of the EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar

The Chairman

A. Wolinski

M. Ceyte