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**Datasheet for the decision
of 25 January 2011**

Case Number: T 0241/09 - 3.2.08

Application Number: 96200618.5

Publication Number: 0731244

IPC: E05C 1/00

Language of the proceedings: EN

Title of invention:

Mobile accommodation and window for use therein

Patentee:

POLYPLASTIC B.V.

Opponent:

Seitz GmbH & Co. KG

Headword:

-

Relevant legal provisions:

EPC Art. 123(2), 56

Relevant legal provisions (EPC 1973):

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Keyword:

"Allowability of amendments - yes"
"Inventive step - yes"

Decisions cited:

-

Catchword:

-



Case Number: T 0241/09 - 3.2.08

D E C I S I O N
of the Technical Board of Appeal 3.2.08
of 25 January 2011

Appellant: POLYPLASTIC B.V.
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 14 January 2009
revoking European patent No. 0731244 pursuant
to Article 101(3)(b) EPC.

Composition of the Board:

Chairman: T. Kriner
Members: P. Acton
E. Dufrasne

Summary of Facts and Submissions

I. The appellant (patent proprietor) filed a notice of appeal, received at the EPO on 27 January 2009, against the opposition division's decision posted on 14 January 2009 revoking European patent No. 731 244. The appeal fee was paid simultaneously and the statement of grounds was filed on 25 May 2009.

II. Oral proceedings took place before the board of appeal on 25 January 2011.

The appellant requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the main request filed during the oral proceedings.

The respondent requested that the appeal be dismissed.

III. Independent claim 1 according to the main request reads:

"A camper, caravan or boat comprising a vertical wall which accommodates a movable panel which is provided with fittings to enable an opening and closing of said panel (2), a member of said fittings (1, 400) being connected to said panel, characterised in that said member comprises an adaptor part (14, 50) which is fixed to said panel (2) and has a main surface which is substantially parallel to said panel, and in that said member comprises a fittings part (11, 40) which is slidably received by said adaptor part in a lateral direction substantially parallel to said main surface and which is connected to said adaptor part at said main surface by means of quick coupling means (17, 19,

23, 43, 52) which enable a mutual cooperation between said adaptor part and said fittings part such that a connection can be manually effected between them."

IV. The following documents are relevant for the present decision:

D1: EP-B-0 517 561

D2: DE-A-1 265 608

D4: GB-A-2 169 953

V. The respondent's arguments can be summarised essentially as follows:

(a) Allowability of the amendments

The amended claim did not comply with the requirements of Article 123(2) EPC since the feature according to which the fittings part is "slidingly received" by the adaptor part extended beyond the content of the application as originally filed. This feature was not present as such in the originally filed application, which disclosed only the specific channel-flange combination but not the general concept of two elements slidingly received by one another. Therefore, since the claim now comprised the general concept of "slidingly received" without any specification of the way this feature was to be achieved, the amendment corresponded to an intermediate generalisation.

(b) Inventive step

D4 was considered to represent the closest prior art and disclosed a caravan or the like according to the

preamble of claim 1. Furthermore, it showed an adaptor part (8) which was fixed to a panel (w) and a fittings part (1) which was connected to the main surface of the adaptor part by quick coupling means (7a, 52) which enabled a manual connection between these parts.

The object to be achieved by the alleged invention was to provide panels with fittings which were less voluminous and could therefore be shipped more easily.

The skilled person faced with this problem would take the teaching of D2 into consideration, since this document addressed the same problem as the patent in suit (see column 1, lines 30 to 43). Although D2 dealt with the windshield of a car, it was closely linked to the technical area of vehicles such as campers, caravans and boats.

The fact that D2 disclosed the fixing of a rear mirror to a windshield while the alleged invention related to the hinges of a moving panel did not prevent the skilled person from combining the two documents. The kind of load imposed on the rear mirror when moved into position by the driver was in the same order of magnitude as the load on the fittings of a panel of a camper, caravan or boat. Moreover, D2 specifically addressed the topic of resistance to a load (see column 2, lines 38 to 43).

D2 disclosed a fittings part (24) which was slidably received by an adaptor (23), thereby rendering the construction of the window panel less thick and hence making transportation easier, thereby solving the problem posed. Therefore, the skilled person would

apply the teaching of D2 to the camper of D4 and arrive at the subject of claim 1 without the need for any inventive skill.

Alternatively, D1 could be considered to represent the closest prior art. This document disclosed in the first three lines of column 1 that the invention related to a pivoting window for a vehicle. By addressing a vehicle it inherently disclosed a camper or caravan, and by describing the invention when applied to a car it created an even stronger link to the window of D2. Therefore, the skilled person had an additional reason for combining the vehicle according to D1 with the fittings disclosed in D2, thereby arriving in an obvious way at the subject-matter of claim 1.

VI. The appellant's arguments can be summarised essentially as follows:

(a) Allowability of the amendments

The feature according to which the fittings part was "slidingly received" by the adaptor part was consistently and coherently present in the whole of the application as originally filed, particularly in the embodiments of Figures 2, 4, 5, 8 and 9. Since no other technical means existed for one part to "slidingly receive" another part than using some sort of channel-flange combination, using this more general term did not introduce an intermediate generalisation.

(b) Inventive step

D4 did indeed disclose a device comprising all the features of the preamble of claim 1. However, the skilled person would not have any reason to combine the teaching of D2 with the panel according to D4. In particular, the invention was related to a moving panel of a camper, caravan or boat while D2 dealt with the fixing of a rear mirror to a windshield, i.e. to a fixed panel. Therefore, the two documents belonged to different and not even neighbouring technical fields. Moreover, the load imposed on the fittings of a panel of a camper or caravan which was opened and closed several times a day was completely different from the load on the bracket of a rear mirror. The reference to vibrations in D2, column 2, lines 31 to 43 was not sufficient to indicate that the bracket would be robust enough to cope with the load imposed on a window panel.

Since the skilled person would not take D2 into consideration when trying to solve the problem posed, he would not apply its teaching to the camper or caravan according to D4 and would not arrive at the subject-matter of claim 1 in an obvious way.

D1 did relate generally to vehicles without specifically addressing campers, caravans or boats. However, since the use of a generic term (vehicle) did not take away the novelty of a specific object (camper, caravan, boat), D1 did not even disclose a device according to the preamble of claim 1. Since D1 was less close to the subject-matter of claim 1 than D4, it could not be considered to represent the closest prior art. Therefore, the skilled person would not have any

reason to apply the teaching of D2 to the window of D1 for solving the problem posed.

Reasons for the Decision

1. The appeal is admissible.
2. Allowability of the amendments

The application as filed does not contain the exact wording of the feature according to which the fittings part is "slidingly received" by the adaptor part. However, all embodiments disclose that the fittings part is mounted to the adaptor part by sliding in a lateral direction which is substantially parallel to the panel. This means that one part has to receive the other in a "sliding" way, i.e. that one part "slidingly receives" the other part.

The different embodiments disclose specific realisations of this interaction, namely either between a U-shaped axial passage directly interacting with the fittings part or between an axial slot and a mating flange. However, contrary to the respondent's arguments, leaving out the specific features of the embodiments from the claim does not lead to an intermediate generalisation. On the one hand, the omitted features are in no close functional or structural relationship with any of the further features of the embodiments. On the other, they are not necessary to carry out the invention, so omitting them does not introduce new information.

Therefore, the subject-matter of present claim 1 does not extend beyond the content of the application as filed.

3. Inventive step

3.1 D4 undisputedly discloses a caravan comprising a vertical wall which accommodates a movable panel (w) which is provided with fittings to enable an opening and closing of said panel, a member of said fittings being connected to said panel, as described in the preamble of claim 1. Moreover, it discloses that said member comprises an adaptor part (8) which is fixed to the panel and a fittings part (1) which is connected to the adaptor by means of quick coupling means (7a, 52) which enable a mutual cooperation between the adaptor part and the fittings part, such that a connection is manually effected between them.

Starting from the caravan according to D4, the object to be achieved by the present invention can be seen in providing mobile accommodation with a panel which can be easily mounted and which can be shipped in a space-saving way without risk of damaging the panels (see [0003], [0004]).

D2 does address the topic of space-saving transportation; however, this problem is solved for a windscreen which is provided with a bracket for a rear mirror. Therefore, the first question to be answered is whether or not the skilled person would take D2 into consideration when confronted with the object above.

For this purpose, it has to be considered that the windscreen according to D2 is not movable, and that the bracket for the rear mirror according to D2 is not suitable for opening and closing of a panel.

Furthermore, it has to be considered that the connection of fittings with a panel is subject to different requirements than the connection of a rear mirror to a windshield. Particularly, the fittings of a movable panel are subject to repeated dynamic loads every time the panel is opened and closed, which may happen several times a day. Moreover, due to its weight the panel is also subject to high loads while the vehicle is travelling. On the other hand, the bracket for the rear mirror is subject to only small forces when the vehicle is travelling. Contrary to the appellant's arguments, the fact that the connection between windscreen and rear mirror is such as to avoid vibrations (see column 2, lines 38 to 39) does not imply that this connection has to be particularly strong or designed to support high loads.

Hence, D2 does not belong to the same technical field as D4. While D4 relates to the technical field of opening and closing of movable panels of a camper, caravan or boat, D2 relates to that of fixing a rear mirror to the windshield of a car. Taking into consideration the differences cited above, it cannot even be said that these two technical fields are neighbouring ones. Therefore, the skilled person would not consider the teaching of D2 when trying to achieve the object underlying the patent in suit starting from D4.

3.2 According to the respondent's second line of argumentation, D1 represented the most relevant state of the art. It is true that, in its first sentence, D1 refers explicitly to the connection of a movable window to a vehicle. However, in the rest of this document, this connection is exclusively described as applied to a car; campers, caravans or boats are not mentioned. Since a generic disclosure does not anticipate a specific example falling within the terms of that disclosure, contrary to the respondent's arguments, the disclosure of vehicles as a general term in the beginning of D1 does not imply the disclosure of a camper or caravan. Therefore, D1 does not even disclose the preamble of claim 1 of the patent in suit and cannot be regarded as representing the most relevant state of the art.

Moreover, even if the skilled person started from D1, the arguments set out under point 3.2 above would apply accordingly. Hence, he would not combine D1 with D2.

3.3 Therefore, since the skilled person would not have applied the teaching of D2 to either D4 or D1, the subject-matter of claim 1 involves an inventive step in respect to the prior art in the proceedings.

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 5 of the main request filed during the oral proceedings;
- columns 1 to 7 of the description filed during the oral proceedings;
- Figures 1 to 11 of the patent as granted.

The Registrar:

The Chairman:

V. Commare

T. Kriner