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Datasheet for the decision of 18 February 2014

Case Number: T 1206/11 - 3.2.07

Application Number: 03785484.1

Publication Number: 1732822

IPC: B65D71/00

Language of the proceedings: EN

Title of invention:
CONTAINER, NAMELY FOR PARTS OF A SWIMMING-POOL ROOF

Applicant:
Albion Group, S.R.O.

Headword:

Relevant legal provisions:
EPC Art. 56

Keyword:
Inventive step - (no)

Decisions cited:

Catchword:

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Case Number: T 1206/11 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 18 February 2014

Appellant: (Applicant)	Albion Group, S.R.O. Mecislavova 11/414, 140 00 Praha 4 (CZ)
Representative:	Kratochvil, Vaclav Patent and Trademark Office P.O. Box 26 295 01 Mnichovo Hradiste (CZ)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 28 December 2010 refusing European patent application No. 03785484.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman: H. Meinders
Members: G. Patton
I. Beckedorf

Summary of Facts and Submissions

I. The applicant lodged an appeal against the decision of the examining division to refuse the European patent application No. 03 785 484.1.

With its statement of grounds of appeal the appellant requested that the decision be set aside and a patent be granted on the basis of the claims underlying the impugned decision and filed with the letter dated 8 June 2010.

II. The following documents of the examination proceedings are relevant for the present decision:

D1: DE-A1-198 09 032
D2: DE-A1-36 20 285

III. The examining division held that the subject-matter of claim 1 was lacking an inventive step on the basis of D1 alone, using D2 as evidence for swimming-pool roof parts comprising flat separate parts.

IV. Independent claim 1 reads as follows:

"Transportation container, for swimming-pool roofs, characterised by that, at least two boxes (1), made from a recyclable and/or recycled material fitted with internal accessories, shaped for specific roof parts and being formed by inserts, partitions and bridges, and the boxes (1) being fitted with armoring to avoid any damage to the content and are connected to form a compact unit."

V. Although **not** requested, oral proceedings were arranged. The summons for oral proceedings with an accompanying

communication providing the preliminary opinion of the Board were sent to the applicant representative on 20 November 2013 by registered letter with advice of delivery. Since they were returned by post as undeliverable, they were sent again on 16 December 2013 to another address of the applicant representative known to the EPO and to the applicant itself. The oral proceedings originally set for 4 February 2014 were reset for 12 March 2014. The summons were sent a third time on 24 January 2014, again to the first known address of the applicant's representative.

In the said communication accompanying the summons, the Board presented its preliminary and non-binding opinion that the subject-matter of claim 1 was regarded as lacking inventive step in view of D1 and the common general knowledge of the skilled person, using D2 as evidence for swimming-pool roof parts comprising flat separate parts, stating as follows:

5. Novelty and inventive step (Articles 54(1) and 56 EPC)

5.1 Novelty was not objected to in the impugned decision as none of the cited prior art discloses the features of claim 1 in combination.

5.2 D1 discloses a transportation container comprising boxes ("Transportkasten" 1), i.e. at least two boxes, each comprising internal accessories formed by inserts ("Zapfen" 12) and armouring ("Stecker" 13; "Halter" 17, 18, 19) to avoid any damage to the content. The boxes are connected to form a compact unit using a tape ("Band" 11) (column 4, line 3 to column 5, line 25; figures 1, 2, 4, 6 to 9).

*As argued by the appellant, the disclosed transportation container aims preferably at transporting furniture, in particular flat parts ("Platte" 16). It is, however, not restricted to that use since D1 explicitly mentions "**in particular** furniture parts, **their accessories and the like**" ("insbesondere Teile von Möbeln sowie deren Zubehör, u. dgl."; column 1, lines 1-3; column2, lines 1-3). Furthermore, as explained in the description of the present application, the swimming-pool roofs are transported in dismounted conditions in order to get the benefit of the invention (page 2, lines 32-33). Consequently, dismounted parts of swimming roofs can be inserted between inserts (12) and wedged by armouring (13, 17, 18, 19). The transportation container of D1 is therefore unambiguously suitable for transporting swimming-pool roofs, especially if the roof is dismounted.*

D2 further discloses that swimming-pool roofs ("Schwimmbad mit lichtdurchlässigem Dach"; "Schwimmhalle") comprise flat parts, i.e. not curved, such as roof cover ("Dachabdeckung" 2) and accessories ("Jalousien" 1; "Lamellen" 5"; Sparren" 3; "Rohrstutzen" 8; "Lagerestellen" 4), which can unambiguously be transported in a dismounted state in the container of D1 (column 2, lines 4-13; column 7, lines 13-49; figures 1-3).

The subject-matter of claim 1 differs therefore from the transportation container of D1 only in that the boxes are made from a recyclable and/or recycled material.

The technical effect of the distinguishing feature is to have an environmentally friendly container (page 3, lines 15-17 of the application as originally filed).

The problem to be solved is then to render the transportation container of D1 environmentally friendly.

The problem and the solution were, however, known and usually applied by the skilled person in the technical field of transportation containers at the priority date of the present application, as illustrated by D1 itself (column 1, lines 6-15). Consequently, the distinguishing feature cannot justify an inventive step (Article 56 EPC) (point 7 of the impugned decision).

The lack of inventive step of the above mentioned distinguishing feature was neither discussed nor contested by the appellant.

5.3 The appellant considers that D1 discloses a transportation container for board only, i.e. restricted to transporting flat parts, so that it is not suitable for transporting swimming-pool roofs, which parts are curved and long.

The appellant further considers that D1 discloses two opened boxes fitted on one another, which is contrary to the present invention of having "different packaging for different parts of the roof".

Finally, the appellant argues that the present invention comprises specific internal accessories which are shaped for specific roof parts, i.e. not pins (12) like in D1.

5.4 The board cannot share the appellant's view for the reasons given below.

As already mentioned under point 5.2 above, D2 shows that swimming-pool roofs can be made up of flat parts, i.e. need not be curved. With respect to the length of the parts, it is emphasized that claim 1 does not specify that the roof is transported in one piece. On the contrary, as explained in the description of the present application, page 2, lines 32-33, the swimming-pool roofs are transported dismounted, so that the parts of the structure to be put in the container can be short, depending on how they are fitted and mounted together, at least not as long as the length or the width of a usual swimming-pool.

It is further emphasized that "curved" objects can also unambiguously be transported by the container of D1. Indeed, this depends upon the level of curvature of the transported parts which is in any case not specified in claim 1.

Contrary to the appellant's view, stacking two opened boxes on one another for making one closed box as in D1 is not excluded from the wording of present claim 1.

Finally, no specific internal accessories which are shaped for specific roof parts are defined and included in claim 1. Pins (12) like in D1 are clearly not excluded from claim 1.

VI. With letter dated 26 January 2014 the appellant stated that:

"*Further to your letter dated 24.01.2014, please be informed that the applicant has* ***no interest to continue***

processing with this Application. Therefore we are planning not to attend the oral proceeding. According to above mentioned facts ***we request for cancellation this oral proceeding.***"(emphasis added by the Board)

This letter did not contain any further arguments concerning the objections raised in the above mentioned Board's preliminary opinion dated 20 November 2013.

VII. Therefore, in view of the appellant's explicit request, the Board then cancelled the oral proceedings. The present decision could therefore be arrived at in written proceedings

Reasons for the Decision

1. The statement of the appellant in its letter dated 26 January 2014 that it requests cancellation of the oral proceedings (see point VI above) is understood by the Board to mean that the appellant relies solely on its written submissions. This is all the more true since it had not requested oral proceedings in the first place. These were indeed arranged by the Board to give the appellant the opportunity to also present its case orally.

2. In the communication accompanying the summons for oral proceedings the Board, taking account of the appellant's submissions, confirmed the examining division's objections under Article 56 EPC against claim 1, explaining why in the Board's opinion its subject-matter lacks inventive step in view of D1 and the common general knowledge of the skilled person, using D2 as evidence (see point V above).

3. The appellant did not reply in substance to these objections (see point VI above). Since there has been no attempt by the appellant to refute or overcome the objections raised in the above communication, the Board, after having re-evaluated the appeal, sees no reason to depart from its preliminary opinion expressed therein.

4. Taking account of the preceding observations, the Board concludes - for the reasons already set out in the communication dated 20 November 2013 and sent again on 16 December 2013 (see point V above) - that the subject-matter of claim 1 lacks inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Nachtigall H. Meinders

Decision electronically authenticated