BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [ ] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 8 May 2013

Case Number: T 0459/12 - 3.2.01

Application Number: 07747502.8

Publication Number: 1937511

IPC: B60P 7/13, B65D 90/00

Language of the proceedings: EN

Title of invention:
Locking device

Patent Proprietor:
Container Quick Lock Luxembourg S.A.

Opponent:
R.E.A. Patente GmbH & Co. KG

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Allowability of amendments (no)"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0459/12 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 8 May 2013

Appellant: (Patent Proprietor)
Container Quick Lock Luxembourg S.A.
117, route d'Arlon
8009 Strassen
Luxembourg (LU)

Representative:
Hatzmann, Martin
V.O.
Johan de Wittlaan 7
NL-2517 JR Den Haag (NL)

Respondent: (Opponent)
R.E.A. Patente GmbH & Co. KG
Feldscheide 2
D-24814 Sehestedt (DE)

Representative:
Stüven, Ralf
Pohl & Partner
Patentanwälte
Kirchenhang 32 b
D-21073 Hamburg (DE)

Decision under appeal:
Interlocutory decision of the Opposition Division of the European Patent Office posted 22 December 2011 concerning maintenance of the European patent No. 1937511 in amended form.

Composition of the Board:

Chairman: G. Pricolo
Members: W. Marx
D. T. Keeling

Summary of Facts and Submissions

I. On 29 February 2012 the appellant (patent proprietor) lodged an appeal against the interlocutory decision of the opposition division posted 22 December 2011 maintaining the European patent No. 1 937 511 in amended form. The appeal fee was paid on the same date. The statement setting out the grounds of appeal was received on 2 May 2012.

The opponent likewise lodged an appeal on 1 March 2012 but withdrew its appeal with letter dated 27 April 2012, received by fax on 30 April 2012.

In its decision the opposition division held, in particular, that the subject-matter of claim 1 as granted (main request) was not novel over the cited prior art and that claim 1 as amended in accordance with the auxiliary request 1 met the requirements of the EPC.

II. With letter dated 3 July 2012, the appellant requested accelerated proceedings because it envisaged starting an infringement procedure. The opponent had no objections as stated in its letter dated 19 October 2012.

III. In a communication posted 30 October 2012 under Rule 100(2) EPC, the board set out a preliminary assessment of the case in respect of the main and auxiliary requests filed with the grounds of appeal.

IV. In view of the preliminary findings of the board, the appellant presented with letter of 9 January 2013 a new

request including claims 1 to 14 as upheld in opposition and additionally a second independent claim 15.

V. In its summons to oral proceedings pursuant Rule 115(1) EPC with letter dated 14 February 2013, the board announced that it had to be discussed in the first place whether the amendment with respect to claim 15 amounts to an intermediate generalisation.

VI. The appellant replied by letter dated 3 April 2013, dealing with the question of intermediate generalisation.

VII. With fax received on 6 May 2013, the opponent announced that it would not attend the oral proceedings. During appeal proceedings, the opponent has not submitted any arguments in reply to the appellant's submissions or the board's communications, nor filed any request after having withdrawn its appeal.

VIII. In the oral proceedings, held on 8 May 2013, the appellant requested, after having withdrawn the request filed with letter dated 9 January 2013, that the decision under appeal be set aside and the patent be maintained in amended form in accordance with the request filed during the oral proceedings, comprising independent claim 1 as upheld by the opposition division and a new independent claim 15.

IX. Claim 15 according to the appellant's sole request reads as follows (compared with claim 1 as granted, **added features** are indicated in **bold**, deleted features are indicated in strike-through; the board has added

numbering **[A]** to **[D]** in brackets with respect to the added features):

"A locking device (1) for locking an ISO-standardized corner fitting (2) of a freight container, comprising:
- locking means (3) which are adjustable between an opened position in which the locking means (3) can freely pass an opening (4) of the corner fitting (2), and a closed position in which the locking means (3) hook behind the opening of a wall (5) surrounding the opening (4) of the corner fitting (2);
- operating means (7) which, upon placement of a container on the locking device (1), are adjustable through cooperation with a wall (5) of the corner fitting (2) from an unloaded initial position to an end position loaded by the weight of the container, and
- an adjusting mechanism (9) which couples the locking means (3) and the operating means (7) in a manner such that the initial position of the operating means (7) corresponds to the opened position of the locking means (3) and that the end position of the operating means (7) corresponds to the closed position of the locking means (3), and that, upon placement of a corner fitting (2) of a container on the locking device (1), the weight load of the container energizes the locking means (3) towards the closed position,
~~characterized in that~~ **wherein** further, securing means (11) are provided for securing the locking means (3) in the closed position,
which securing means (11) comprise a pin (28) which is adjustable between a securing position in which the pin (28) blocks movement of the adjusting mechanism (9), and a releasing position in which the pin (28) releases movement of the adjustment mechanism (9) [A],

which pin (28) is under the action of a spring (29) [B] characterized in that
the securing means (11) automatically lock the locking device (11) as soon as the locking means (3) are in the closed position [C],
and being manually adjustable to release the locking device (11) so that the movement of the locking means (3) is free [D]."

X. The appellant argued, in so far as relevant to this decision, as follows:

Claim 15 was based on claim 1 as granted and directed to the feature that the securing means included a spring-loaded pin that automatically locked the locking device as soon as the locking means were in the closed position. Basis for this amendment was found on page 7, lines 22 to 27 of the application as filed (para. [0032] ff. of the patent specification), taken from the context of an exemplary embodiment in which the spring-loaded pin acted on an adjustment mechanism formed by a scissor mechanism; however, according to page 10, lines 6 to 10 (para. [0043] and [0044] of the patent specification), the teachings could be applied to other types of mechanisms like e.g. a twist lock mechanism including a rotating T-shaped bolt. Since there was no particular structural or functional relationship of the spring-loaded locking pin limiting it to a scissor mechanism, claiming the spring-loaded pin for automatic locking of adjustment mechanisms in general was allowable.

With regard to the three embodiments disclosed in the application as originally filed, all of these

embodiments had securing means comprising a pin as defined by claim 15. Indeed, the securing means according to the first and second embodiment interacted with legs of a scissor mechanism (see para. [0032] and [0034] of the contested patent), whereas the securing means according to the third embodiment interacted with the operating projections being part of the operating means 7 in such a way that the locking device was securely locked (see para. [0036] ff. and especially para. [0039]), i.e. not directly acting on the legs of the scissor mechanism.

It was unambiguously derivable for the skilled person that providing securing means comprising a pin according to feature **[A]** was not dependent on the pin interacting with a scissor mechanism and its legs. It was obvious that any securing mechanism comprising a pin built to block or release movement of the adjustment mechanism was useful for providing a reliable securing and locking of the locking device. This was supported by para. [0044] of the patent specification, informing the skilled person that the teachings of the disclosed locking device could also be applied to e.g. a twist lock-type mechanism comprising a spring-loaded T-shaped bolt (representing a fourth embodiment). Moreover, according to para. [0009] and [0010], securing means in general were provided, designed separately from the locking means and the operating means.

Therefore, as the "securing means comprising a pin" were specified with regard to all embodiments, interacting with different parts of these embodiments and always solving the problem of securing the locking

device in the locked position, the definition of claim 15 did not result in an inadmissible intermediate generalisation.

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments (Article 123(2) EPC)*

Claim 15 according to the appellant's sole request is based on claim 1 as granted and has been basically amended by adding features **[A]** to **[D]**.

As already indicated in the board's preliminary assessment in its summons to oral proceedings, the application as filed discloses (see page 7, lines 19 to 20) "a securing position shown in Fig. 2, in which the pin 28 blocks movement of the legs 13, 14 of the scissor mechanism", i.e. with regard to the first and second embodiment the application as filed discloses that the pin interacts with the legs of a scissor mechanism, as acknowledged by the appellant. By reciting "a securing position in which the pin (28) blocks movement of the adjusting mechanism (9)" feature **[A]** of claim 1 does not refer to the interaction of the pin with the legs of the scissor mechanism as disclosed in the application as filed, but generally refers to the interaction of the pin with the adjusting mechanism.

The appellant argued, based on four embodiments described in the application as filed, that providing

securing means comprising a pin according to feature **[A]** was not dependent on the pin interacting with a scissor mechanism and its legs, i.e. there was no particular structural or functional relationship between the pin and the scissor mechanism, but that any securing mechanism comprising a pin built to block or release movement of the adjustment mechanism was suitable for providing a reliable securing and locking of the locking device.

However, as the appellant correctly stated, the securing means according to the third embodiment (as described in para. [0035] ff. in connection with figures 5 to 8) interacts with the operating projections being part of the operating means 7. According to the wording of claim 15, a locking device is specified which comprises essentially four different components (i.e. locking means, operating means, adjusting mechanism, securing means) which have to be distinguished from each other. In particular, the adjusting mechanism is specified to couple the locking means and the operating means. As the pin of the securing means according to the third embodiment does not interact with the adjusting mechanism as claimed in feature **[A]** but with the operating means, the third embodiment does not provide support for the generalisation as defined with feature **[A]**.

A similar reasoning applies with regard to para. [0009] and [0010] of the contested patent (corresponding to page 2, line 20, to page 3, line 10, of the application as filed), according to which the securing means can either cooperate directly with the locking means for blocking movement thereof or via cooperation with the

operating means, i.e. no indication is given for securing means cooperating with the adjusting mechanism. The passage in para. [0010] stating that "securing means are designed separately from the locking means and the operating means" does not mean that "securing means in general" are provided as argued by the appellant.

As regards possible variants of the invention (see para. [0044] of the contested patent, relating to a fourth embodiment as argued by the appellant), securing means are not described at all and therefore cannot provide a basis for deriving the component of the locking device which cooperates with the pin of the securing means.

Therefore, the third and fourth embodiments do not provide any basis for specifying according to feature **[A]** of claim 15 that the pin of the securing means releases or blocks movement of the adjusting mechanism. On the contrary, the third embodiment and para. [0009] and [0010] of the patent specification even point in a different direction as elaborated above.

With respect to the first and second embodiment, as correctly stated by the appellant, it is disclosed that the spring loaded pin acts on the legs of the scissor mechanism. Furthermore, it is accepted that the adjusting mechanism comprises the scissor mechanism (see para. [0026] of the patent specification). However, the board takes the view that replacing the "legs of the scissor mechanism" by "adjusting mechanism" amounts to an intermediate generalisation, in particular because the adjusting mechanism is

composed of several parts. As stated e.g. in para. [0034] of the patent specification with respect to the second embodiment, "the housing 31 has the function of inside box 16 of the adjusting mechanism 9 of Figs. 1 and 2", i.e. the adjusting mechanism also comprises the housing. From this it follows that by specifying in claim 15 a securing means blocking or releasing movement of the adjusting mechanism in general, not limited to blocking or releasing movement of the legs of the scissor mechanism, further embodiments are included which are not disclosed in the application as filed.

Moreover, as noted by the board during oral proceedings, feature **[B]** reading "which pin (28) is under the action of a spring (29)" stems from page 7, lines 22 to 23, of the application as filed where it reads "pin 28 is **towards the securing position** under the action of a spring 29". By omitting the passage which defines the direction of spring action ("towards the securing position"), feature **[B]** is also generalised so that it encompasses embodiments which are not originally disclosed, in particular an embodiment where the pin is under action of a spring in a direction opposite to the securing position.

Consequently, without further consideration of the amendments provided by adding features **[C]** and **[D]**, the board concludes that the amendments made to claim 15 according to feature **[A]**, that the pin blocks or releases movement of the adjusting mechanism, and according to feature **[B]**, that the pin is under the action of a spring, result in an intermediate generalisation. Claim 15 therefore includes subject-

matter extending beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

3. Since the sole request is not admissible, the appeal must be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner G. Pricolo