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**Datasheet for the decision
of 27 January 2015**

Case Number: T 1828/12 - 3.2.03

Application Number: 05025406.9

Publication Number: 1626136

IPC: E04F15/04

Language of the proceedings: EN

Title of invention:

Flooring system comprising floor panels with a short edge locking system

Patent Proprietor:

Välinge Innovation AB

Opponent:

Fritz Egger GmbH & Co. OG

Headword:

Relevant legal provisions:

EPC Art. 76(1)

Keyword:

Decisions cited:

T 1136/02, T 1142/02, T 0106/05, T 0543/08

Catchword:



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Case Number: T 1828/12 - 3.2.03

**D E C I S I O N
of Technical Board of Appeal 3.2.03
of 27 January 2015**

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 June 2012 concerning maintenance of the
European Patent No. 1626136 in amended form.**

Composition of the Board:

Chairman G. Ashley
Members: Y. Jest
M. Blasi

Summary of Facts and Submissions

I. By its decision dated 22 June 2012, the opposition division decided that European patent No. 1 626 136 could be maintained in amended form on the basis of the single amended claim of auxiliary request 5 filed with letter dated 23 March 2012.

European patent No. 1 626 136 is based on a series of divisional applications emanating from the first application EP 94915725.9 (publication number EP 0 698 162), which was filed as international application PCT/SE94/00386 and published as WO 94/26999 (D0).

In its interlocutory decision, the opposition division considered that the amended documents of auxiliary request 5 fulfilled the requirements of Articles 76(1), 123(2), 123(3) and 84 EPC, and that the claimed subject-matter was novel and involved an inventive step.

II. Appeals were lodged against this decision by the proprietor of the patent and by the opponent.

The proprietor (appellant I) filed its appeal and paid the appeal fee on 13 August 2012. The statement of the grounds of appeal was received on 2 November 2012.

The opponent (appellant II) filed its appeal on 28 August 2012. The appeal fee was paid on 30 August 2012 and the statement of the grounds of appeal received on 31 October 2012.

III. During the oral proceedings held on 27 January 2015, the following requests were made:

Appellant I (proprietor) requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of the amended claim of a main request, filed as auxiliary request 3 with the grounds of appeal, or subsidiarily, of anyone of auxiliary requests 1 to 3, filed as auxiliary requests 4 to 6 with the grounds of appeal.

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

IV. The wording of the claim according to the main and first auxiliary requests is:

a) Main request

" A flooring system comprising a pair of floor panels (1, 2) with a locking system for mechanical and releasably locking together adjacent short edges of said panels (1, 2) when said adjacent panels are in a state of assembly where they are laying flat on a subfloor (12) with upper corner portions of said adjacent short edges being mutually spaced apart, said mechanical locking system comprising:

a first mechanical connection (24, 30), formed by said adjacent short edges, for locking said adjacent short edges to each other in a vertical direction (D1) at right angle angles to a principal plane of the panels, and
a second mechanical connection (6, 8, 14) for locking said adjacent short edges to each other in a horizontal direction (D2) parallel to the principal plane and at right angles to said short edges, including:

(i) a locking groove (14) formed in the underside of one panel termed groove panel (2) and extending parallel to and spaced from an short edge of said one panel of said adjacent panels (1, 2) and being open at the rear side of said one panel (2), and

(ii) a flexible and resilient locking strip (6) integrated with the other panel (1) termed strip panel (1) of said adjacent panels (1, 2), said strip (6) extending throughout substantially the entire length of the corresponding short edge and being provided with a locking element (8) projecting from the locking strip (6),
such that when the panels are joined together, the strip (6) projects on the rear side of the groove panel (2) with its locking element (8) received in the locking groove (14) of the groove panel (2), that the panels, when joined together, can occupy a relative position in said second direction (D2) where a play (Δ) exists between the locking groove (14) and a locking surface (10) on the locking element (8) that is facing the joined edges and is operative in said second mechanical connection, wherein said second mechanical connection (6, 8, 14) is so conceived as to operate as a snap lock in said horizontal direction (D2) during the assembly of said flooring system by displacing said adjacent short edges horizontally towards each other, while resiliently urging the flexible locking strip (6) downwards, until upper corner portions of said adjacent short edges have been brought into complete engagement with each other horizontally and the locking element (8) thereby snaps into the locking groove (14) for locking the short edges to each other, and

characterized in that

said first (24, 30) and second (6, 8, 14) mechanical connections are so conceived as to allow said adjacent panels (1, 2), being mechanically connected to each other by said first and second mechanical connections, to be turned in relation to each other about said upper corner portions of their locked-together short edges in an angular direction so as to move the locking element (8) out of the locking groove (14) in order to unlock the snap lock."

b) First auxiliary request

The claim is based on the claim according to the main request and comprises a further feature added at the end of the text-block (ii) as highlighted by bold characters:

- (ii) "a flexible and resilient locking strip (6) integrated with the other panel (1) termed strip panel (1) of said adjacent panels (1, 2), said strip (6) extending throughout substantially the entire length of the corresponding short edge and being provided with a locking element (8) projecting from the locking strip (6),
such that when the panels are joined together, the strip (6) projects on the rear side of the groove panel (2) with its locking element (8) received in the locking groove (14) of the groove panel (2), that the panels, when joined together, can occupy a relative position in said second direction (D2) where a play (Δ) exists between the locking groove (14) and a locking surface (10) on the locking element (8) that is facing the joined edges and is operative in said second mechanical connection,
that the first and the second mechanical connection both allow mutual displacement of the panels (1, 2) in the direction of the joined edges (3, 4) , and"

V. The arguments presented by appellant I (proprietor) can be summarised as follows:

Contrary to the findings of the opposition division, there was no requirement pursuant Article 76(1) EPC

for incorporating the features defining the joints at the other (long) edges into the claim 1 of the patent as amended.

The invention disclosed in earlier application D0 was directed to the connection of two adjacent edges of a pair of panels either by angling-in (long sides) or by snapping-in (short sides). The combination of these two aspects of the invention, i.e. the structure of the joints at all four sides of the panels, was only referred to in the detailed description of the preferred embodiment of D0.

The titles used for the claimed system, namely a "flooring system comprising a pair of floor panels" for the claim of the requests and "a system for providing a joint along adjacent edges of two panels" in D0, merely differed by their wording but had substantially the same meaning. In both cases only the joint along two sides of a pair of panels, formed by snapping-in the adjacent (short) edges, was claimed. The features relating to the angling-down connection of one of said panels with a third panel along their adjacent other (long) sides were not inextricably linked to the subject-matter as disclosed and claimed in D0.

Contrary to the arguments presented by appellant II, the omission of features defining the bevels at the joint edges and the inclined surface of the locking strip did not contravene Article 76(1) EPC either. The alternative methods for joining two edges by snap-in movement (Figures 3a to 3c) as defined at page 16, line 23 to page 17, line 12, were similar and consistent with the requirement in the claim for a locking system operating when the panels were "laying flat on a subfloor". In Figure 3a the panel 2, though positioned onto the strip 6, was to be considered as laying flat on subfloor 12, since the claim was not

limited to panels in contact with or laying directly onto the subfloor. Therefore the inclined surface 36 of the strip 6 was not mandatory for the invention disclosed in D0.

Likewise the upper and lower bevels 70,72 of the joint edges (page 16, lines 5 to 12 of D0) were merely optional features of a preferred embodiment.

Furthermore the function of the play in the second mechanical connection (the horizontal locking of the panels), as defined in claim 1 of D0, was not to allow a mutual displacement along the joined edges of the connected panels, since these panels were connected by a snap-in movement which did not require any play. In D0 the play was defined to be essential at the long edges because the panels once engaged had to be moved in order to snap in the short edges of adjacent panels. Therefore not only the claim of the first auxiliary request, which incorporated said functional feature of allowing a mutual displacement, but also that of the main request met the requirements of Article 76(1) EPC.

VI. Appellant II submitted essentially the following arguments:

The subject-matter defined by the claim of the main and first auxiliary requests was not disclosed in the earlier application D0, thereby contravening the requirements of Article 76(1) EPC.

As decided by the opposition division, the claim without the features defining the connection at the other (i.e. long) side edges of the panels infringed the requirements of Article 76(1) EPC.

This objection was based on the change in definition of the claimed subject-matter. The claim of the requests on file was no longer directed to a system for joining two edges of a pair of panels as claimed in D0, but to a flooring system, which implied, in accordance with the general disclosure of D0, that the features defining the connection of the flooring panels on all four sides had to be contained in the claim.

Furthermore the function defined in the penultimate feature of claim 1 of D0, namely "that the first and second mechanical connection both allow mutual displacement of the panels in the direction of the joint edges", was closely linked to the feature defining play, as presented in D0.

The omission of these features thus lead to a system which was not disclosed in the earlier application D0, contrary to Article 76(1) EPC.

Contrary to the findings of the opposition division, the omission in the claim of features concerning the provision of bevels at the joint edges and of an inclined surface at one end of the locking strip contravened Article 76(1) EPC.

Only the first of the alternative methods for the snap-in connection (see page 16, line 23 to page 17, line 4 of D0) was consistent with the claimed requirement of a locking system operating when the panels were "laying flat on a subfloor". The inclined end portion of the locking strip was thus necessary for guiding two panels laying on the subfloor horizontally towards each other. Likewise the upper and lower bevels 70,72 of the joint edges (page 16 lines 5 to 12 of D0) were also essential characteristics of the joint structure when engaging two adjacent edges by a horizontal snap-in movement of the panels.

The patentability pursuant Article 100(a) EPC of the claimed subject-matter was not disputed.

VII. At the end of the oral proceedings the board announced its decision.

Reasons for the Decision

1. Article 76(1) EPC

1.1 Preliminary remark

In G 1/06 (OJ EPO 2008, 307) the Enlarged Board ruled that Article 76(1) EPC also applied to divisionals from divisionals and that a divisional application complied with Article 76(1) EPC if anything disclosed therein was directly and unambiguously derivable from what was disclosed in each of the preceding applications as filed (Headnote of G 1/06).

The application on which the disputed patent is based was divided from a preceding divisional application of a sequence of divisional applications.

The grounds in the contested decision and the objections raised by appellant II under Article 76(1) EPC concern the disclosure or lack of it of subject-matter claimed by the disputed patent to be present in the (originating) root application D0.

1.2 In light of these considerations, the issue to be examined and decided upon is whether the system as claimed was clearly and unambiguously disclosed in the root application D0, and more specifically whether the omission of four features in the claim unduly broadened the invention as disclosed in D0.

The four allegedly omitted features are listed as follows:

(a) "long sides"

The panels are rectangular and are intended to be joined to a similar panel along each of their four edges. Adjacent long edges form first and second mechanical connections; the first mechanical connection locks adjacent long edges to each other in a vertical direction at right angle angles to a principal plane of the panels, while the second mechanical connection locks adjacent long edges to each other in a horizontal direction parallel to the principal plane and at right angles to said long edges.

The second mechanical connection includes:

- a locking groove formed in the underside of one panel and extending parallel to and spaced from a long edge of said one panel of said adjacent panels and being open at the rear side of said one panel, and
- a flexible and resilient locking strip integrated with the other panel of said adjacent panels, said strip extending throughout substantially the entire length of the corresponding long edge and being provided with a locking element projecting from the locking strip.

The panels, when joined together along their long edges, can occupy a relative position in said second direction where a play exists between the locking groove and a locking surface on the locking element that is facing the joined edges and is operative in said second mechanical connection.

The first and the second mechanical connection both allow mutual displacement of the panels in the direction of the joined edges, and the second mechanical connection is so conceived as to allow the locking element to leave the locking groove if the groove panel is turned about its joint edge angularly away from the strip.

(b) "inclined portion"

An inclined portion (36) of the locking element (8) serves as a guide surface, which guides the joint edge (4) of the groove panel (2) up onto the upper side (22) of the strip (6).

(c) "bevels"

The joint edge (3) of the strip panel (1) has a lower bevel (70), which cooperates during laying with the corresponding upper bevel (72) of the joint edge (4) of the groove panel (2), such that the panels are forced to move vertically towards each other when their joint edges are moved up to each other and the panels are pressed together horizontally.

(d) "mutual displacement"

The first and the second mechanical connection both allow mutual displacement of the panels (1, 2) in the direction of the joined edges (3, 4).

The absence of the above features in the claim will now be considered.

1.3 Feature "long sides"

The board considers that the change of title of the claimed invention, namely from a "system for providing a joint along adjacent joint edges of two building panels" in D0 to a "flooring system comprising a pair of floor panels with a locking system along their short side edges" in the claim of the main and auxiliary requests, does not support the argument that all the features of the panels constituting a flooring as disclosed in the description of D0 need to be introduced into the claim.

Claim 1 of D0 defines the connection of two edges of a pair of adjacent panels without any further distinction. However, the description of the flooring system in D0 concerns the joining process for all four edges of rectangular flooring panels. This detailed disclosure is seen as embracing the various aspects of the invention as originally disclosed and claimed in D0. Similarly, the claim of the disputed patent is directed to a flooring system comprising a pair of floor panels, and does not define a complete flooring as assumed by appellant II.

The board is therefore of the opinion that a claim defining a specific connection system at short edges of two panels, without mentioning the "long edge" features, is unambiguously covered by the disclosure of the earlier application D0.

Therefore the omission of said "long sides"-features from the claim on file does not constitute an extension beyond the scope of the original disclosure of the root application D0.

The board does not agree with the statements and conclusion of the opposition division, that the snap joint at the short edges, as defined in the claim, had been disclosed in D0 only in combination with said "long sides"-features.

The system defined in claim 1 of D0 concerns only the snap connection at the short side edges of two panels. A claim of a subsequent divisional application directed in substance to the same aspect as defined in claim 1 of D0, albeit with a slightly altered title, is nevertheless supported by the original disclosure of the root application and does not infringe Article 76(1) EPC.

1.4 Features "inclined portion" and "bevels"

The board shares the conclusions of the opposition division in item 9.4 of its decision.

The bevels 70,72 at the joining edges or the inclined portion 36 provided at the tip end of the flexible strip merely concern further developments or preferred embodiments of the claimed subject-matter.

They are not mandatory for the snap connection along the short sides.

It may be worth noting that, according to the board's view, the claimed feature requiring a locking system to be operated when the panels are "laying flat on a subfloor", is not to be construed in a strict manner. It is clear for the skilled reader that both of the alternative methods for joining two edges by snap engagement, as defined at page 16, line 23 to page 17, line 12, were deemed to meet this requirement.

In other words, the panel 2 positioned onto the strip 6 as suggested in the alternative snap connecting method (figure 3a) is considered to be lying flat on subfloor 12. This understanding is in line with the definition given by the claim, since the latter does not require the panels to lay directly onto, e.g. in contact with the subfloor, prior to horizontal engagement.

1.5 Feature "mutual displacement"

1.5.1 The claim of the main request comprises a feature introducing the notion of play, but lacks the feature defining the "mutual displacement", which is a function of the play, and which was part of claim 1 of D0.

1.5.2 In the root application D0, the feature introducing the play in the second mechanical connection is consistently presented as an essential feature, in order to allow disassembly of the panels by upward angling. Reference is particularly made to the following passages of D0:

– page 7, lines 30 to 32:

"it is the second mechanical connection as such that permits the locking element to leave the locking groove if the groove panel is turned about its joint edge angularly away from the strip";

– page 9, lines 3 to 15:

two joined panels can be disassembled by upward angling, "even if the aforementioned play between the locking groove and the locking surface is not greater than 0.2 mm".

The person skilled in the art reading D0 is thus taught that play is needed for the purpose of unlocking the snap connection, although no further definition of the play itself is given.

1.5.3 Case law

None of the decisions of the boards of appeal to which the appellants referred addresses the question of whether the provision of play in the second mechanical joint for a pair of (short side) edges of two adjacent panels engaged by a horizontal snap-in movement was disclosed as an essential requirement in order to allow disengagement of said snap-connected edges by an angling up movement of one the panels.

However the board, albeit in different compositions, indicated in several previous cases how to understand/interpret the play feature in terms of the scope of the disclosure of D0 (see T 1136/02, paragraph bridging pages 14 and 15; T 1142/02, last eleven lines; T 543/08, lines 7 to 10 of page 10; T 106/05, first paragraph of page 23).

According to the consistent approach of the board, the play feature disclosed in D0 is defined almost exclusively by reference to its function, in the sense that the play should be sufficient for allowing mutual displacement of two connected panels along their joined edges and for unlocking the snap connection and disassembling the engaged panels by an angling up movement. The play in claim 1 of D0 is defined in the very same way, that is by its function.

It may be agreed with appellant I that the panels engaged by snap connection at their short side edges are not supposed to be moved mutually along these edges; such movement takes place along the long side edges, leaving the short sides to engage by a snap action.

The feature relating to the function of mutual displacement nevertheless serves for defining the physical extent of play required for turning one panel in relation to the other in order to disengage the snapped short edges. The last three features of claim 1 of D0 are to be read in combination, i.e. as interrelated, in the sense that the play, which is said to be operative in the second mechanical connection, is such that it should allow a mutual displacement. Hence the play as defined above in terms of functional features is presented in D0 as essential for unlocking the snap connection by angling up one of the engaged pair of panels.

1.5.4 The expression "so conceived as" in the last feature of the claim: "second mechanical connection... **so conceived as** to allow said adjacent panels ... to be turned ... in order to unlock the snap lock", also present in claim 1 of D0, does not refer to any specific characteristics of the joining structures at the short edges. The board considers therefore that this feature does not introduce a further requirement which should be fulfilled by the mechanical connections. The expression "so conceived as" is to be construed as introducing the result achievable by the previous features of the claim, and especially by the play features defined just before in the text.

1.6 Main request

For these reasons the omission of the "mutual displacement" feature in the claim of the main request does not meet the requirements of Article 76(1) EPC.

1.7 First auxiliary request

The claim of the first auxiliary request is based on the claim of the main request but completed by the said "mutual displacement" feature.

The claim of the first auxiliary request therefore meets the requirements of Article 76(1) EPC.

2. Patentability

In the opposition proceedings the opponent (appellant II) acknowledged that the claimed subject-matter of the fifth auxiliary request was novel and involved an inventive step as compared to the available cited state of the art.

During the oral proceedings before the board appellant II (opponent) reiterated said acknowledgement.

The opposition division found that the difference over the closest prior art as described in paragraph [0018] of the patent, mainly the existence of a play in the mechanical connection at the short side edges characterised by a snap locking and by an angling away for unlocking the snap connection (page 20, item 10.6), was not obviously derivable for the skilled person (page 21, item 10.10).

In the absence of any objection of a lack of novelty or inventive step and taking account of the findings of the opposition division, the board is satisfied with the undisputed merits of the claimed invention as regards the requirements of Article 100(a) EPC.

3. Since the patent as amended on the basis of the documents of the first auxiliary request meets the requirements of the EPC, an examination of the second and third auxiliary requests is not required.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent on the basis of the claim of new auxiliary request 1 (i.e. of auxiliary request 4 filed together with the statement of grounds of appeal dated 2 November 2012) and the description and drawings as received during the oral proceedings before the board.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated