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Datasheet for the decision of 11 September 2014

Case Number: T 0608/13 - 3.2.08

Application Number: 07425609.0

Publication Number: 2045436

IPC: E06B9/58

Language of the proceedings: EN

Title of invention:
Multifunctional guiding profile for mobile screens and fastening system comprising such profile

Patent Proprietor:
Pronema S.r.l.

Opponent:
Zanzar Sistem s.p.a.

Headword:

Relevant legal provisions:
EPC Art. 56, 100(a), 114(2)

Keyword:
Inventive step - (yes)

Decisions cited:
G 0007/93

Catchword:

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Case Number: T 0608/13 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 11 September 2014

Appellant: (Opponent)	Zanzar Sistem s.p.a. C.so Europa z.i. 74023 Grottaglie (TA) (IT)
Representative:	Maccagnan, Matteo Studio Torta S.p.A. Via Viotti, 9 10121 Torino (IT)
Respondent: (Patent Proprietor)	Pronema S.r.l. Via Circonvallazione 11 28060 Comignago (NO) (IT)
Representative:	Garavelli, Paolo A.BRE.MAR. S.R.L. Via Servais 27 10146 Torino (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 21 January 2013 rejecting the opposition filed against European patent No. 2045436 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	T. Kriner
Members:	M. Foulger
	D. T. Keeling

Summary of Facts and Submissions

I. By its decision dispatched on 21 January 2013 the opposition decision rejected the opposition against European patent no. 2045436.

The opposition division held that the grounds for opposition under Article 100(a) EPC did not prejudice the maintenance of the patent.

II. The appellant (opponent) lodged an appeal against the decision of the opposition division. The appeal was received on 8 March 2013, and the appeal fee was paid on the same day. The statement setting out the grounds of appeal was filed on 3 May 2013.

III. Oral proceedings before the Board of Appeal were held on 11 September 2014. The appellant with the fax of 22 May 2014 and the respondent (patent proprietor) with the fax of 4 June 2014 had both informed the Board that they would not be attending the oral proceedings. In accordance with Rule 115(2) EPC, the oral proceedings were held in their absence.

IV. In the written proceedings, the appellant requested that the contested decision be set aside and the patent be revoked.

In the written proceedings, the respondent requested that the appeal be dismissed.

V. Independent claim 1 of the patent as granted reads:
"Fastening system for mobile screens (15),
the system comprises
- at least one multifunction guiding profile (1) composed of a first "U"-shaped profile (1a) having at

least one outwards opening coupled in parallel along at least one baffle (3d) with a second "U"-shaped profile (1b) having at least one outwards opening, an end portion of such second profile (1b) being coupled with a third "U"-shaped profile (1c) having at least one outwards opening and that is orthogonal to said first and said second profile (1a, 1b); characterised in that the system comprises:
- at least one casing profile (20) adapted to contain therein said multifunction guiding profile (1) by means of restraining, said casing profile (20) being composed of a fourth "U"-shaped profile (20a) having at least one outwards opening coupled with a fifth "U"-shaped profile (20b) having at least one outwards opening and that is orthogonal to said fourth profile (20a) and said restraining occurring by elastic distortion of said fourth "U"-shaped profile (20a)."

VI. The following documents were used to support the appellant's arguments in the statement setting out the grounds of appeal:

E3: DE-U-20 2005 000 476
E9: DE-A-198 13 246
E10: DE-A-100 50 176
E11: DE-U-201 14 054
E12: ES-U-1064720
E13: DE-U-203 07 995
E14: EP-A-0 580 538
E15: DE-U-741 15 96
E16: FR-A-2 911 905 (family member of document E12)

Of these E10-E15 were submitted after the expiry of the opposition period and were not admitted into the proceedings by the opposition division.

VII. The appellant argued essentially that E3 was the closest prior art and disclosed a fastening system according to the preamble of claim 1. The objective technical problem was to allow a quick assembly/ disassembly of the multifunction guiding profile without having to use a tool, guaranteeing the necessary sealing and an easy disassembly. To solve this problem the skilled person would look to one of documents E9-E15 in order to solve the above problem because these documents teach the use of a two-part mounting system where one U shaped part is inserted into another U shaped part. The person skilled in the art, in applying the teaching of one of E9-E15 to the fastening system of E3, would arrive at the subject-matter of claim 1 without the exercise of inventive activity. Alternatively, applying the teaching of E3 to the profile known from E9 would also lead the person skilled in the art to the subject-matter of claim 1.

VIII. The respondent argued that the invention of claim 1 was not obvious from any of the prior art documents cited by the appellant, even when taken in combination.

Reasons for the Decision

1. The appeal is admissible.

Introduction of E10-E16 into the proceedings.

2. Using its discretion under Article 114(2) EPC, the opposition division did not admit the documents E10-E15 into the proceedings on the grounds that they were late filed, i.e. after expiry of the opposition period, and not prima facie relevant.

According to decision G7/93, see reasons 2.6, a Board

of Appeal should only overrule the way in which a first instance department has exercised its discretion if it comes to the conclusion either that the first instance department in its decision has not exercised its discretion in accordance with the right principles, or that it has exercised its discretion in an unreasonable way, and thus exceeded the proper limits of its discretion.

The appellant has presented no evidence that indicates that the opposition division did not exercise its discretion in a proper and correct manner. Moreover the Board notes that the decision not to admit the documents into the procedure was reasoned (see decision §20.2.2.1 and §20.2.2.2).

The Board must therefore conclude that the opposition division exercised its discretion in accordance with the correct principles and in a reasonable way. Consequently in accordance with Article 12(4) of the Rules of Procedure of the Boards of Appeal (RPBA), documents E10-E15 are not admitted into the proceedings. E16 is a patent family member, in French, of E12 which is in Spanish. E16 was published after the filing date of the contested patent and was consequently not state of the art according to Article 54(2) EPC. Thus E16 could only serve to clarify the disclosure of E12. The Board did not therefore admit E16 into the proceedings (Article 12(4) RPBA).

Inventive step

3. E3 is regarded as being the closest prior art and it is not disputed that it discloses the following features:
a fastening system for mobile screens,
wherein the system comprises

- at least one multifunction guiding profile (1) composed of a first "U"-shaped profile (2) having at least one outwards opening coupled in parallel along at least one baffle (5) with a second "U"-shaped profile (3) having at least one outwards opening, an end portion of such second profile (3) being coupled with a third "U"-shaped profile having at least one outwards opening and that is orthogonal to said first and said second profile (see Fig. 1).

4. The subject-matter of claim 1 therefore differs from the fastening system of E3 in that:
the system comprises:
at least one casing profile adapted to contain therein the multifunction guiding profile by means of restraining, said casing profile being composed of a fourth "U"-shaped profile having at least one outwards opening coupled with a fifth "U"-shaped profile having at least one outwards opening and that is orthogonal to said fourth profile and said restraining occurring by elastic distortion of said fourth "U"-shaped profile.

5. The problem to be solved (see patent §0005) may be regarded as being to provide a multifunction guiding profile for mobile screens that is able to be laid more easily and quickly than that proposed by the prior art. This essentially corresponds to the problem proposed by the appellant.

6. The claimed solution is not made obvious by the cited prior art because E9 discloses a fastening system for windows whereby a U shaped profile (21) is clipped into a U shaped casing (112) which is part of a larger multifunction guiding profile (11). This guiding profile (11) appears to correspond more to the multifunction guiding profile (1) of E3 rather than the

casing of the patent. The skilled person would not therefore attempt to insert the profile of E9 into the multifunction guiding profile (1) of E3 because this would amount to putting a guiding profile into a similar, larger profile.

Moreover, even if the skilled person were to combine the teachings of E3 and E9, the elastic distortion would not occur in the "fourth "U" shaped profile" as claimed but rather in the multifunction guiding profile. In fig. 3 of E9 it may be seen that the profile 21 is held in the "casing" profile 11 by means of a clip connection. The restraining of the multifunction guiding profile does not therefore involve any elastic distortion of the casing profile as claimed. Consequently, the combination of the teachings of the documents E3 and E9 does not lead to the subject-matter of claim 1.

For the same reasons the combination of the teaching of E9 with E3 does not lead to the subject-matter of claim 1.

7. The skilled person would not therefore arrive at the subject-matter of claim 1 without the exercise of inventive activity. Consequently, the cited grounds of opposition do not prejudice the maintenance of the patent as granted.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

V. Commare T. Kriner

Decision electronically authenticated