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Datasheet for the decision of 12 December 2017

Case Number: T 0918/15 - 3.2.03

Application Number: 06769725.0

Publication Number: 2016574

IPC: G09F15/00

Language of the proceedings: EN

Title of invention:
FRAME PRODUCED AS ONE-PIECE BODY

Patent Proprietor:
M. T Reklam ve Pazarlama Sanayi Ticaret Limited SI

Opponent:
Jansen Display Deutschland GmbH

Headword:

Relevant legal provisions:
EPC Art. 100(b), 100(a), 56
RPBA Art. 13(1)

Keyword:
Late-filed request - admitted (yes)
Sufficiency of disclosure - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

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Case Number: T 0918/15 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 12 December 2017

Appellant: (Opponent)	Jansen Display Deutschland GmbH Siegburger Strasse 126 50679 Köln (DE)
Representative:	Bungartz, Klaus Peter Bungartz Christophersen Partnerschaft mbB Patentanwälte Im Mediapark 6A 50670 Köln (DE)
Respondent: (Patent Proprietor)	M. T Reklam ve Pazarlama Sanayi Ticaret Limited SI Organize Deri Sanayi Bolgesi Ya. 11, Tuzla 34957 Istanbul (TR)
Representative:	Kreuzkamp, Markus Ludenberger Strasse 1a 40629 Düsseldorf (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 23 February 2015 rejecting the opposition filed against European patent No. 2016574 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Ashley
Members:	V. Bouyssy
	M.-B. Tardo-Dino

Summary of Facts and Submissions

I. European patent No 2 016 574 (in the following: "the patent") concerns a method for producing a frame for displaying an advertisement poster.

II. The patent as a whole was opposed on the grounds of unallowable amendment before grant (Article 100(c) EPC), insufficient disclosure (Article 100(b) EPC) and lack of inventive step (Article 100(a) EPC).

III. The opposition division decided to reject the opposition.

IV. This decision was appealed by the opponent (in the following, "appellant").

V. With the summons to oral proceedings, the Board sent a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) indicating its preliminary opinion of the case.

VI. Oral proceedings before the Board were held on 12 December 2017.

VII. Final requests

The appellant requested that the decision under appeal be set aside and the patent be revoked.

The patent proprietor (in the following, "respondent") requested that the decision under appeal be set aside and the patent be maintained on the basis of auxiliary request 2 filed with letter dated 10 August 2017.

VIII. Claims of the respondent's sole request

Independent method claim 1 as amended reads as follows (compared with claim 1 as granted, added passages are indicated in bold, deleted passages in strike-through; the feature numbering is introduced by the Board for ease of reference):

1.1) Production method of aluminium frames for the display of advertisement posters, comprising the steps of
1.2) cutting springs (3) as strips,
1.3) extruding and cutting upper aluminium profiles (2)
1.4) mounting aluminium profiles (2) by means of the springs (3),
1.5) cutting a PVC protection (5)
1.6) positioning the PVC protection (5)
~~characterized in that said method comprises furthermore the steps of~~
1.7) subjecting the aluminium profiles (2) to a boring process,
1.8) forming a frame body (1) as a one piece body by means of the plastic injection method,
1.8a) **wherein upper aluminium profile stoppers (1.5) have been formed on the outer circumference of the one piece body (1),**
1.8b) **wherein the stoppers (1.5) are designed to limit the rotation of the upper aluminium profile in its open position,**
1.9) mounting the upper aluminium profiles (2) on said one piece body (1) along with the springs (3); and
1.10) locating the PVC protection (5) on said one piece body (1),
1.11) **wherein spring housings (1.6) are formed on the**

one piece body (1) for mounting the springs to the spring housings (1.6) and on the one piece body (1).

Dependent claims 2 to 4 defined preferred embodiments of the method of claim 1.

IX. Cited evidence

In the statement setting out the grounds of appeal, the appellant relied among others on the following prior art documents which were filed in the opposition proceedings and are cited in the decision under appeal:

E1: WO 97/14131 A1
E12: EP 1 467 339 A2

X. The arguments of the parties, insofar as relevant for the present decision, can be summarised as follows:

(a) Article 100(b) EPC

The appellant argued that the skilled person would be unable to put into practice feature (1.7) of claim 1, which defines the step of "subjecting the aluminium profiles to a boring process", because neither the aim of this step nor the specific location of the profile bores was clear from the patent, let alone from claim 1.

The respondent contended that the skilled person would have no practical difficulty to bore a hole in each aluminium profile, as required in feature (1.7).

(b) Article 100(a) EPC - Inventive step

Appellant's case:

When starting from the production method disclosed in E12 as closest prior art, the claimed subject-matter is rendered obvious by the teaching of E1.

E12 discloses the step of fixing the profiles on the frame body with the use of springs as fixing means. Each spring 9 is mounted into a respective housing 11 formed on the frame body (see figure 3 and column 6, lines 5 to 9 in E12). Even though the springs 9 shown in figures 1 to 3 are arc-shaped spring wires, it is at least implicitly disclosed in paragraph 29 of E12 that they could be replaced by strip-shaped springs. As shown in figure 2 of E12, stop surfaces are formed on the outer circumference of the frame body to limit the rotation of the profiles 4 in their open position. The method defined in claim 1 thus differs from that disclosed in E1 only in that the profiles are made of aluminium, that a PVC protection is provided and that the profiles are subjected to a boring process. These distinguishing features do not mutually interact and they are obvious modifications for the skilled person.

Should the Board decide that E12 fails to disclose strip-shaped springs, this feature would also be an obvious modification in light of E1, which discloses to use strip-shaped leaf springs 23 to fix movable upper profiles 9 onto the fixed profiles 8 of a supporting frame. When combining the teachings of E12 and E1, the skilled person would inevitably mount each strip-shaped spring in a respective spring housing 11 as disclosed in E12. If need be, he would modify the geometry of the

housing 11 to guarantee that the strip-shaped spring is securely mounted into it.

Respondent's case:

E12 fails to disclose the features of claim 1 that the profiles are made of aluminium, that a PVC protection is provided, that the profiles are subjected to a boring process and that the springs are strip-shaped and mounted in spring housings formed on the frame body. In particular, the shallow and wide groove 11a shown in figures 2 and 3 of E12 is neither intended nor adapted to receive and hold a single strip-shaped spring, as implicitly required by feature (1.11) of claim 1.

The distinguishing features induce a significant reduction of manufacturing costs and assembly times. Thus, starting from E12, the objective problem to be solved is how to permit production at higher speed and lower costs.

E1 contains no information which would point towards the claimed solution of this problem. In particular, since E1 teaches to mount a plurality of leaf springs in one and the same slot of the frame body (see figure 2), it would lead the skilled person away from feature (1.11) of claim 1, which implicitly requires that the springs are mounted in separate spring housings.

Reasons for the Decision

1. Admission of the respondent's request

1.1 The respondent filed the current request after oral proceedings had been arranged, allegedly in reaction to

the Board's communication under Article 15(1) RPBA in preparation of the oral proceedings.

1.2 The Board exercised its discretion to admit this request into the proceedings for the following reasons (Article 13(1) RPBA):

1.3 In the communication under Article 15(1) RPBA, the Board had raised new issue with regard to Articles 123(2) and 56 EPC against the auxiliary request filed with the statement of grounds of appeal (see points 9.2 and 9.3).

1.4 The amendments to claim 1 *prima facie* overcame this objection and furthermore did not give rise to any new or complex issues that could not be dealt with without adjournment of the oral proceedings.

2. Amendments - Articles 123 and 84 EPC

2.1 Claim 1 as amended differs from claim 1 as granted by the added limitations:

1.8a) that "upper aluminium profile stoppers (1.5) have been formed on the outer circumference of the one piece body (1)",

1.8b) that "the stoppers (1.5) are designed to limit the rotation of the upper aluminium profile in its open position",

1.11) that "spring housings (1.6) are formed on the one piece body (1) for mounting the springs to the spring housings (1.6) and on the one piece body (1)".

2.2 These amendments are supported by the information in the application documents as originally filed. Support for features (1.8a) and (1.8b) can be found on page 10,

lines 9 to 11 and in figures 5 (detail Z) and 7 (section A) of the application as published. Feature (1.11) is based on the teaching on page 9, lines 25 and 26, on page 10, line 4 and in figure 4 (detail Z) of the application as published.

2.3 In conclusion, the amendments to claim 1 meet the requirements of Article 123(2) and (3) EPC.

2.4 The parties agree that the amendments to claim 1 do not introduce non-compliance with Article 84 EPC. The Board shares this view.

3. Article 100(b) EPC

3.1 The Board is not persuaded by the appellant's arguments that the patent does not disclose the invention as defined in claim 1 in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

3.2 In particular, the appellant has not established that a skilled reader of the patent, using common general knowledge, would be unable to put feature (1.7) into practice, i.e. the step of "subjecting the aluminium profiles to a boring process".

3.3 The language of feature (1.7) imparts a clear, albeit broad, teaching to a skilled reader. The Board shares the view of the respondent that the skilled person would have no practical difficulty in boring a hole in each aluminium profile, for whatever purpose. It is apparent from the disclosure of the claimed invention in the patent that the profile bores do not need to be in a specific place for the invention to work.

4. Article 100(a) EPC - Inventive step

4.1 The parties agree that the method for producing a frame for displaying an advertisement poster as disclosed in E12 forms a realistic starting point for the assessment of inventive step. The Board shares this view.

4.2 It is agreed that E12 fails to disclose the following features of method claim 1:

- that the profiles are made of aluminium (see features (1.1), (1.3), (1.4), (1.7) and (1.9) of claim 1);
- that a PVC protection is provided, which is located on the frame body (features (1.5), (1.6) and (1.10)); and
- that the profiles are subjected to a boring process (feature (1.7)).

4.3 However, the parties dispute whether E12 discloses the following features of claim 1:

- that the springs are strip-shaped (feature (1.2));
- that stoppers are formed on the outer circumference of the one-piece body to limit the rotation of the profiles in their open position (features (1.8a) and (1.8b)); and
- that spring housings are formed on the one-piece body for mounting the springs (feature (1.11)).

4.4 Strip-shaped springs

It cannot be derived clearly from E12 that the springs are strip-shaped, even though it is mentioned in paragraph 29 of E12, with reference to figure 15, that the springs 9 can be made of flat material (see column 10, lines 12 to 15, "Die Federn 9 können auch in anderer Form ausgebildet sein, z.B. aus Flachmaterial

bestehende Biegefedern; ein Beispiel einer solchen Feder 9 ist in Fig.15 dargestellt"). In fact, the leaf spring 9 illustrated in figure 15 of E12 is not strip-shaped.

4.5 Stoppers

As shown in figure 2 of E12, stop surfaces are formed on the outer circumference of the frame body to limit the rotation of the profiles 4 in their open position. These stop surfaces anticipate the stoppers defined in features (1.8a) and (1.8b) of claim 1. Contrary to the respondent's opinion, the language of these features in the claim is broad and does not require that the stoppers are short nose-shaped stoppers as shown in figure 5 (detail Z) and figure 7 (section A) of the patent.

4.6 Spring housings

Feature (f) must be read in the context of claim 1, in particular in combination with feature (1.2) which implies that the springs are strip-shaped. The parties agree that, on a normal reading, feature (f) defines spring housings in the form of recesses or slots formed on the frame body, each being adapted to receive and hold a single strip-shaped spring. This interpretation is in conformity with the teaching in the description of the patent (see figures 3, 3a and 4).

In E12, recesses 11 are formed in the frame body to receive the springs 9 in a hinge-like manner (see figures 2 and 3 and column 6, lines 5 to 13). Each recess comprises two blind holes 11b and a central pan-shaped groove 11a. The holes 11b are adapted to receive and hold the end pins 9a of a arc-shaped spring 9

(figure 3), alternatively the end pins 9a of a flat spring 9 (figure 15 and column 10, lines 15 to 18). Contrary to the appellant's opinion, however, the pan-shaped groove 11a is neither intended nor suitable for receiving and holding a strip-shaped spring.

4.7 The production method as defined in claim 1 thus differs from that disclosed in E12 by the features:

(a) that the profiles are made of aluminium;

(b) that a PVC protection is provided, which is located on the frame body;

(c) that the profiles are subjected to a boring process;

(d) that the springs are strip-shaped; and

(e) that spring housings are formed on the one-piece body for mounting the springs.

4.8 As argued by the appellant, these distinguishing features do not interact to achieve a synergistic effect and thus they can be treated independently when assessing inventive step.

4.9 Each of distinguishing features (a) and (b) is a well known design option, see e.g. the aluminium profiles 9, and the plastic protective sheet 4 in D1, which the skilled person would employ, if required, on the basis of his general knowledge.

4.10 Regarding distinguishing feature (c), the patent is silent concerning its possible effect and it is generally known in the art to provide profiles with bore holes for many different reasons, e.g. for aesthetic purposes, for the drainage of moisture or for the later fixing of screws. Thus, feature (c) also is an obvious modification.

4.11 Distinguishing features (d) and (e) have the effect of easing mounting of the springs while reducing costs in producing the springs. Thus, starting from E12, the problem objectively solved by these two features is how to improve the manufacturing process. The claimed solution to this problem is not part of common general knowledge of the skilled person and is neither disclosed nor suggested in the cited prior art.

4.12 In particular, the Board is not persuaded by the appellant's argument that distinguishing features (d) and (e) would inevitably result from the teaching of E1. Even though it discloses strip-shaped leaf springs 23 which enable a movable upper profile 9 to be snapped down onto a fixed profile 8 of a supporting frame, E1 requires that a plurality of the springs 23 be mounted in one and the same slot in the edge 13 of the fixed profile 8 (figure 2 and page 8, lines 11 to 14). Thus, E1 teaches away from distinguishing feature (d) which requires that each spring housing is adapted to receive and hold a single strip-shaped spring (see point 4.6 above).

4.13 In conclusion, when starting from E12, the subject-matter of claim 1 involves an inventive step in the sense of Article 56 EPC.

5. For the reasons set out above, the grounds for opposition raised by the appellant do not prejudice the maintenance of the patent as amended.

6. The description is in conformity with the amended claims. This was not disputed by the appellant.

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 as amended in the following version:
   - claim 1 filed as auxiliary request 2 with letter dated 10 August 2017, and dependent claims 2 to 4 of the patent as granted;
   - description, pages 2 to 6 of the patent specification;
   - figures 1 to 14 of the patent specification.

The Registrar: The Chairman:

C. Spira G. Ashley

Decision electronically authenticated