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**Datasheet for the decision
of 17 November 2020**

Case Number: T 1381/16 - 3.2.08

Application Number: 12179284.0

Publication Number: 2532812

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E05B35/10, E05B37/10

Language of the proceedings: EN

Title of invention:

Method of improving airline luggage inspection

Applicant:

Tropp, David

Headword:

Relevant legal provisions:

EPC Art. 56

Keyword:

Decisions cited:

Catchword:



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Case Number: T 1381/16 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 17 November 2020

Appellant: Tropp, David
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 15 January 2016
refusing European patent application No.
12179284.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman P. Acton
Members: C. Vetter
C. Schmidt

Summary of Facts and Submissions

- I. The patent application in suit (hereinafter "the application") is a divisional application of the parent application EP 04 809 332.2. The applicant (appellant) filed the appeal against the examining division's decision to refuse the application.
- II. The examining division found that the subject-matter as claimed in claims 1-3 was not directly and unambiguously derivable from the application as originally filed, contrary to the provisions of Article 123(2) EPC.
- III. The appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of the Main Request or, in the alternative, on the basis of the Auxiliary Request, both filed on 26 October 2020.
- IV. Claim 1 of the Main Request reads as follows:
- "A plurality of special locks having a multiplicity of sub-types such as different sizes, different manufacturing designs or styles, etc. for improving airline luggage inspection by making such inspection secure yet non-intrusive, each lock comprising: a first lock portion in the form of any kind of locking mechanism useful for and easily accessible by the passenger and a master key lock portion, the master key lock portion being for receiving a master key that can open the master key lock portion of all sub-types of special locks,
the special lock being designed to be applied to an individual piece of airline luggage, the special lock

also having indicia thereon conveying to luggage purchasers and to the luggage screening authority that the special lock is a lock that the luggage screening authority has agreed not to break."

Claim 4 of the Main Request reads as follows:

"Making available to airline travelers the plurality of special locks of any one of claims 1 to 3, providing the luggage screening authority, directly or indirectly, with the access to the master key, said access being exclusive except for a manufacturer of said master key and/or a provider of the special lock to airline travelers and/or a provider of the master key to the luggage screening authority."

Claim 5 of the Main Request reads as follows:

"Use of a plurality of special locks of any one of claims 1 to 3 for improving airline luggage inspection by making such inspection secure yet non-intrusive."

V. The appellant's arguments can be summarised as follows:

From the application as filed, the skilled person can directly and unambiguously recognise "a plurality of special locks". Figures 1 and 4 show a special lock of a first type while Figures 2 and 3 show two other types of special locks. Moreover, the application as filed states several times that special locks are made available to airline travellers. Furthermore, the skilled person directly and unambiguously understands from page 8, lines 12 to 17 of the application as filed that the special locks are a core aspect of the invention.

Reasons for the Decision

1. In the present decision, reference is made to the following documents:

D4a <http://travelsentry.org/solutions.htm> (16-08-2003)
D4b <http://travelsentry.org/gov.htm> (01-10-2003)
D4c <http://travelsentry.org/faq.htm> (15-08-2003)
D5 <http://travelsentry.org/pr24mar03.htm> (17-08-2003)
D6a The New York Times website article "A Baggage Lock for You And the Federal Screeners" (11-11-2003)
D7 US 2 926 514 A (G.P. JUNKUNC [US]) (01-03-1960)

2. Added Subject-Matter (Articles 123(2) and 76(1) EPC)

- 2.1 The content of the application as originally filed is identical to that of the parent application EP 04 809 332.2 as originally filed. Therefore, the requirements of Article 76(1) EPC are fulfilled.

- 2.2 The application discloses a special lock in the context of a method for improving airline luggage inspection. The skilled person directly and unambiguously derives the following from the text as originally filed:

[1.2] A plurality of special locks having a multiplicity of sub-types such as different sizes, different manufacturing designs or styles, etc. (it is clear from paragraph [0016] that the disclosure encompasses a *plurality* of special locks having a *multiplicity* of sub-types; see also claim 4, paragraphs [0012] and [0015])

[1.1] for improving airline luggage inspection by making such inspection secure yet non-intrusive (claim 4, title, paragraph [0001]), each lock comprising:

[1.2.1] a first lock portion in the form of any kind of locking mechanism useful for and easily accessible by the passenger (see in particular paragraph [0029]; see also claim 4 in combination with paragraphs [0012] and [0015]) and

[1.2.2] a master key lock portion, the master key lock portion being for receiving a master key that can open the master key lock portion of all sub-types of special locks (claim 4 in combination with paragraphs [0012] and [0015]),

[1.2.3] the special lock being designed to be applied to an individual piece of airline luggage (claim 4 in combination with paragraphs [0012] and [0015]),

[1.2.4] the special lock also having indicia thereon conveying to luggage purchasers and to the luggage screening authority that the special lock is a lock that the luggage screening authority has agreed not to break (claim 4 in combination with paragraphs [0012] and [0015]).

2.3 The special lock itself, i.e. the "apparatus", is also expressly addressed in paragraph [0021] of the application and in the drawings, which depict exemplary embodiments of special locks. Hence, the application provides not only information on how to handle the special lock, but also detailed information on the lock itself and its components.

2.4 To assess the allowability of amendments under Article 123(2) EPC, the so-called "gold standard" is to be applied. An amendment can only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the disclosure as originally filed.

2.5 The gold standard applies equally to amendments to the description, claims and drawings. Hence, for an amendment to a claim there is no additional requirement under Article 123(2) EPC for the original disclosure to identify the subject-matter of the amended claim as a "part of the invention". Likewise, the fact that the application as originally filed does not contain a claim in the same category as the amended claim is not an obstacle under Article 123(2) EPC.

2.6 Regarding the feature of "providing the luggage screening authority with the access to the master key", this method feature is not inextricably linked to the claimed product. The corresponding product feature is the master key lock portion for receiving a master key that can open the master key lock portion of all sub-types of special locks. Since this feature is part of claim 1, the Board cannot identify any inadmissible intermediate generalisation.

2.7 Consequently, the application complies with the provisions of Articles 123(2) and 76(1) EPC.

3. Inventive Step (Article 56 EPC)

3.1 The disclosure of document D6a is considered the prior art closest to the subject-matter of claim 1. D6a discloses

[1.2] a plurality of special locks having a multiplicity of sub-types such as different sizes, different manufacturing designs or styles, etc. (D6a, paragraphs 2 and 6: "various designs")

[1.1] for improving airline luggage inspection by making such inspection secure yet non-intrusive, each lock comprising (D6a, paragraphs 2, 3, 15 and 18):

[1.2.1] a first lock portion in the form of any kind of locking mechanism useful for and easily accessible by the passenger (D6a, paragraphs 1 and 12),

[1.2.3] the special lock being designed to be applied to an individual piece of airline luggage (D6a, paragraphs 1 and 12),

[1.2.4] the special lock also having indicia thereon conveying to luggage purchasers and to the luggage screening authority that the special lock is a lock that the luggage screening authority has agreed not to break (D6a, paragraph 7: "logo").

- 3.2 D6a does not directly and unambiguously disclose that each lock comprises **[1.2.2]** a *master key lock portion*, the master key lock portion being for receiving a master key that can open the master key lock portion of all sub-types of special locks.

D6a is silent on a "second" lock portion in each lock which could be regarded as the master key lock portion. There is no implicit disclosure either since there is no detail on the functioning of the unlocking by means of the "secure codes and special tools" provided to the screening authority. It is therefore quite possible in D6a that these codes and tools are suitable for opening the *first* lock portion.

Moreover, the concept of a (single) master key that can open *all* sub-types of special locks cannot be derived from D6a either. In fact, in D6a it is equally possible that each sub-type requires a different opening means.

- 3.3 There is no apparent technical effect resulting from the mere presence of a master key lock portion in addition to the first lock portion. However, the fact that the master key lock portion is suitable for

receiving a master key that can open the master key lock portion of *all* sub-types of special locks leads to the technical effect that the luggage inspection process can be simplified due to a reduced number of master keys. In the context of a given (though not explicitly stated) number of sub-types of special locks as disclosed in D6a, the fact that a single master key fits more than one sub-type inevitably reduces the total number of master keys.

- 3.4 The objective technical problem could thus be considered to be providing a product which allows for a simplification of the luggage inspection process.
- 3.5 The claimed solution to this problem is not rendered obvious by the available prior art. None of documents D4a, D4b, D4c, D5 and D7 teaches or suggests an additional master key lock portion that is suitable for receiving a master key that can open the master key lock portion of all sub-types of special locks.
- 3.6 The subject-matter of claim 1, therefore, involves an inventive step (Article 56 EPC).
- 3.7 Claims 4 and 5 are both directed to a use of the novel and inventive special lock of claim 1 and, therefore, also comply with the provisions of Article 56 EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent on the basis of the following text:

Claims 1-5	as filed as the Main Request on 26 October 2020,
Description pages 1-9	as filed as the Main Request on 26 October 2020,
Figures 1-4	as originally filed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated