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Datasheet for the decision of 29 April 2020

Case Number: T 1539/17 - 3.2.03

Application Number: 11752750.7

Publication Number: 2544566

IPC: A47B96/06, A47B57/42, A47G29/02, A47B57/16, A47F5/08

Language of the proceedings: EN

Title of invention:
A RACK SYSTEM AND BRACKET

Applicant:
Solid Racks Group Pty Limited

Headword:

Relevant legal provisions:
EPC Art. 123(2), 111(1)
RPBA 2020 Art. 11

Keyword:
Amendments - extension beyond the content of the application as filed (no)
Appeal decision - remittal to the department of first instance (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1539/17 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 29 April 2020

Appellant: (Applicant)	Solid Racks Group Pty Limited Unit 901, 1 Raglan Street Manly, NSW 2095 (AU)
Representative:	Petit, Maxime Ipsilon Le Centralis 63, avenue du Général Leclerc 92340 Bourg-la-Reine (FR)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 22 December 2016 refusing European patent application No. 11752750.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	C. Donnelly
Members:	B. Miller
	E. Kossonakou

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division to refuse European patent application No. 11752750.7 (hereinafter: the application). The decision is based on the finding of the examining division that the amendments to the application did not meet the requirements of Article 123(2) EPC.

II. The applicant (hereinafter: the appellant) appealed this decision. With the statement of grounds of appeal the appellant filed a main request and twelve auxiliary requests replacing the previous set of claims. It requested that the decision under appeal be set aside and that the case be remitted to the examining division for further prosecution.

III. With the summons to oral proceedings, the Board sent a communication pursuant to Articles 15(1) and 17(2) of the Rules of Procedure of the Boards of Appeal 2007 (RPBA 2007) indicating to the appellant its preliminary opinion of the case.

IV. With a letter dated 25 February 2020 the appellant confirmed its requests for the decision to be set aside and for the case to be remitted to the examining division for further prosecution on the basis of the main request or any one of auxiliary requests 6 to 8, all four requests submitted with the same letter.

V. With a further communication dated 19 March 2020 the Board commented on the main request submitted with the letter of 25 February 2020.

VI. By letter of 31 March 2020 the appellant submitted a new main request. Independent claim 1 of the main request reads as follows:

"A support system comprising a support member (119.771) and support means (104.700), said support member including a body, at least one arm or hook extending away from said body that can be inserted through an aperture in a support means,
said support means (104.700) being a panel with a front face (104.708) and a rear face (104.706) and multiple apertures (104.704) extending through said panel between said front face and said rear face;
said rear face including a recess (104.702) adjacent to each of said apertures, each recess having a base surface which in side view is located between said front face and said rear face, and,
said at least one arm or hook including an end portion which is adapted to be received into said recess."

Dependent claims 2 to 18 concern preferred embodiments of the support system according to claim 1.

VII. The appellant's arguments, as far as relevant for this decision, may be summarised as follows.

The subject-matter of claim 1 of the main request is based on claims 1, 13 and 17 as originally filed and therefore fulfils the requirement of Article 123(2) EPC.

Reasons for the Decision

1. Article 123(2) EPC - Main Request

Claim 1 is based on the disclosure of claims 1, 13 and 17 as originally filed as follows (*basis indicated in brackets*):

A support system comprising a support member and support means
(*claim 13*)
said support member including a body, at least one arm or hook extending away from said body that can be inserted through an aperture in a support means,
(*claim 1*)
said support means being a panel with a front face and a rear face and
(*claim 13*)
multiple apertures
(*claim 17*)
extending through said panel between said front face and said rear face;
(*claim 13*)
said rear face including recesses (104.702) adjacent to each of said apertures, each recess having a base surface which in side view is located between said front face and said rear face,
(*claim 13*)
and, said at least one arm or hook including an end portion which is adapted to be received into one of said recesses on said rear surface of said support means.
(*claim 1*)

The amended wording of claim 1 is further supported by the whole specification as filed which is directed at panels provided with multiple apertures suitable for a support member to be inserted therethrough and wherein a recess is adjacent to each of said apertures (see in particular figures 104 to 109, 124, 125, 132, 134).

Accordingly, the further addition of reference signs into the wording of claim 1 on the basis of the figures as filed does not generate a teaching which goes beyond the application as filed.

The dependent claims have been amended as follows:

Claims 2 to 12, 14 to 16 and 18 to 19 as filed have been renumbered and their dependency has been adapted accordingly.
The two embodiments according to claim 19 as filed have been separated in two dependent claims.
The wording of claims 7, 15, 18 and 19 as filed has been adapted according to claim 1 with regard to the multiple apertures.

None of these amendments generates a teaching which goes beyond that of the application as filed.

Hence, the Board concludes that the amended claims according to the main request fulfil the requirement of Article 123(2) EPC.

2. Remittal to the examining division

Under Article 11 RPBA 2020 the Board may remit the case to the department whose decision was appealed, if there are special reasons for doing so.

The examining division has not yet considered, let alone decided upon, the patentability requirements concerning novelty and inventive step.The appellant has also expressly requested remittal. Under these circumstances, the Board considers that a special reason exists for remittal of the case.

Therefore, in accordance with Article 111(1) EPC the case is remitted to the examining division for further prosecution.

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 for further prosecution.

The Registrar: The Chairman:

C. Spira C. Donnelly

Decision electronically authenticated