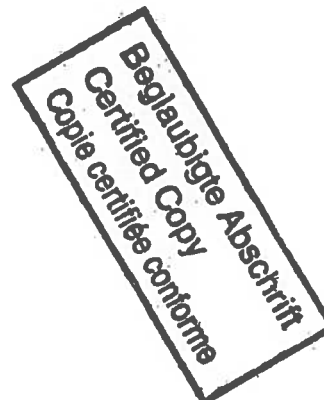


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**DECISION**  
of 20 January 1997

**Case Number:** T 0135/96 - 3.2.1

**Application Number:** 90200391.2

**Publication Number:** 0421495

**IPC:** B68G 9/00

**Language of the proceedings:** EN

**Title of invention:**

Method and apparatus for assembling innerspring constructions for mattresses, cushions and the like

**Patentee:**

B'LINEA

**Opponent:**

Cauval Industries/La Compagnie Continentale Simmons

**Headword:**

-

**Relevant legal provisions:**

- EPC Art. 113(1)
- EPC Rule 67, 68(2)
- RPBA Art. 10

**Keyword:**

-

**Decisions cited:**

T 0084/83, T 0094/84, T 0522/90, J 0007/82

**Catchword:**

"Non-consideration of documents and arguments presented in support of lack of inventive step, in a decision rejecting the opposition"

"Violation of the right to be heard"

"Inadequate reasoning"

"Remittal of the case to the first instance without comment as to its merits"

"Reimbursement of the appeal fee"



Case Number: T 0135/96 - 3.2.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.1  
of 20 January 1997

**Appellants:**  
(Opponents)

Cauval Industries/La Compagnie  
Continentale Simmons  
38, Avenue Hoche/Le Mandinet II, 20 Rue du  
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**Representative:**

Thinat, Michel  
Cabinet Weinstein  
20 Avenue de Friedland  
F-75008 Paris (FR)

**Respondent:**  
(Proprietor of the patent)

B'LINEA  
Huysmanslaan 107  
B-1660 Beersel-Lot (BE)

**Representative:**

Callewaert, Jean  
Bureau Callewaert p.v.b.a.  
Brusselsesteenweg 108  
B-3090 Overijse (BE)

**Decision under appeal:**

Decision of the Opposition Division of the  
European Patent Office posted 14 December 1995  
rejecting the opposition filed against European  
patent No. 0 421 495 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** F. Gumbel  
**Members:** M. Ceyte  
J.-C. Saisset

## Summary of Facts and Submissions

- I. The respondent is proprietor of European patent No. 0 421 495.
- II. The patent was opposed by the appellants on the ground of lack of inventive step. The following state of the art was *inter alia* cited in the notice of opposition:

D1 EP-A-0 154 076  
D2 EP-A-0 155 158  
D3 JP-A-62-129 960  
D4 US-A-3 930 929  
D5 US-A-3 367 823

In the opposition letter it was submitted that the subject-matter of independent claims 1 or 7 did not involve an inventive step having regard to the state of the art according to the following combinations of documents, respectively:

- (i) D1, D4 and D5,  
(ii) D2, D3 and D4, and  
(iii) D3, D4 and D5

- III. The opposition division rejected the opposition in a decision dated 14 December 1995.

In this decision under appeal it was held that the subject-matter of independent claims 1 and 7 was inventive having regard to the combination of documents (i) (D1, D4 and D5).

- IV. On 9 February 1996, the appellants (opponents) lodged an appeal against this decision and paid the appeal fee on the same day.

The statement of grounds of appeal was filed on 15 April 1996.

V. The appellants requested that the decision under appeal be set aside and

- (1) the case be referred back to the opposition division for consideration of the opposition to be resumed, with attention being paid to the two citations D2 and D3 and the two lines of argumentation based respectively on the combinations of documents (ii) and (iii) above which were overlooked in the decision under appeal (first request).
- (2) In the event that the case is not remitted to the opposition division, the patent in suit be revoked in its entirety on the ground of lack of inventive step (second request).

As to their first request, the appellants held that they were deprived of a complete examination of the documents and arguments presented in support of the ground of lack of inventive step. There had been thus a procedural irregularity justifying the remittal of the case to the opposition division.

VI. The respondent requested that the appeal be dismissed and the European patent be maintained as granted.

It contended that there was no disclosure or suggestion in the cited documents D1 to D5 of the characterising features of independent claims 1 and 7, so that the reasoning of the opposition division as to the combination of documents (i) applies automatically *mutatis mutandis* to the other combinations of documents (ii) and (iii). It was therefore not necessary for the opposition division to consider the

lines of argument based on these two combinations, and there was no necessity for remitting the case to the first instance.

### Reasons for the Decision

1. The appeal is admissible.
2. It is established jurisprudence of the Boards of Appeal (see J 07/82, OJ 1982, 391 and T 0094/84, OJ 1986, 337) that the right to be heard in accordance with Article 113(1) also guarantees the right to have the relevant grounds fully taken into account in the written decision, that is in the case of a decision rejecting the opposition, the ground(s) for opposition as well as facts, evidence (*inter alia* prior art documents), and arguments presented in support of these grounds for opposition.

A failure to do so was considered a substantial violation of the right to be heard (Article 113(1) EPC).

3. In the decision under appeal the opposition division confined its considerations to the documents D1, D4 and D5 and the line of arguments based on the combination of these documents. It came to the conclusion that the claimed subject-matter involved an inventive step.

This decision had completely ignored the documents D2 and D3 as well as the two other lines of arguments based on the combinations of documents D2, D3 and D4 respectively D3, D4 and D5 which were brought forward by the appellants in support of lack of inventive step.

Hence, in the Board's judgment the failure to consider these documents and arguments relevant to the ground (of lack) of inventive step on which the decision under appeal is based, constitutes a violation of the right to be heard and thus a substantial procedural violation as well as a fundamental deficiency in the first instance proceedings.

Moreover, the decision under appeal also is not in conformity with Rule 68(2) EPC, since it does not give any reason why the subject-matter of the independent claims were considered to involve an inventive step also in respect of the two additional lines of argumentation developed by the opponents (see T 0522/90, point 9.1 and T 0084/83, point 5).

4. Article 10 RPBA (Rules of Procedure of the Boards of Appeal) provides that a Board shall remit the case to the first instance, if a fundamental deficiency is apparent in the first instance proceedings, unless special reasons present themselves for doing otherwise.

Since remittal of the case to the opposition division has been requested by the appellants and since the Board sees no special reason to do otherwise, the case is to be remitted to the opposition division in application of Article 10 RPBA in order to consider the combinations of documents D2, D3 and D4 and respectively D3, D4 and D5 on the issue of inventive step.

5. As the decision under Appeal had been taken contrary to Article 113(1) and Rule 68(2), it is clearly equitable to order reimbursement of the appeal fee, pursuant to Rule 67 EPC.

6. The respondent's auxiliary request for oral proceedings before the Board of appeal was only made in the event that the Board did not share his view as to the patentability of the invention. Since the case is remitted to the first instance for further prosecution without decision as to its merits there is no basis for such request.

**Order**

**For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.
3. Reimbursement of the appeal fee is ordered.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel

