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D E C I S I O N
of 21 October 1998

Case Number: T 0339/96 - 3.5.2

Application Number: 88200975.6

Publication Number: 0293035

IPC: H02B 1/26

Language of the proceedings: EN

Title of invention:

A housing made of plastics, and in particular a distribution box for electrical wiring

Patentee:

B.V. Kunststoffenindustrie Attema

Opponent:

Holec Systemen en Componenten B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 123(3), 56, 69

Keyword:

"Protection extended - yes (main request)"

"Inventive step - no (auxiliary request)"

Decisions cited:

T 0176/84

Catchword:

-



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Boards of Appeal

Chambres de recours

Case Number: T 0339/96 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 21 October 1998

Appellant:
(Proprietor of the patent) B.V. Kunststoffenindustrie Attema
Schelluïnsestraat 68
4203 NN Gorinchem (NL)

Representative:
Mommaerts, Johan Hendrik, Dipl.-Phys.
van Exter Polak & Charlouis B.V.
P.O. Box 3241
2280 GE Rijswijk (NL)

Respondent:
(Opponent) Holec Systemen en Componenten B.V.
Tuindorpstr. 61
Hengelo (NL)

Representative:
Dohmen, Johannes Maria Gerardus
Nederlandsch Octrooibureau
Scheveningseweg 82
P.O. Box 29720
2502 LS Den Haag (NL)

Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 5 February
1996 concerning maintenance of European patent
No. 0 293 035 in amended form.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: R. G. O'Connell
A. C. G. Lindqvist

Summary of Facts and Submissions

- I. This is an appeal by the proprietor as sole appellant from the decision of the opposition division to refuse the proprietor's main request and to maintain European patent No. 0 293 035 in amended form in accordance with the proprietor's auxiliary request.
- II. The reason given in the decision under appeal for rejecting the proprietor's main request was that the subject-matter of claim 1 of the main request did not involve an inventive step having regard to the following prior art documents:
- D1: DE-C-3 223 095
- D6: DE-U-80 20 040.
- III. In a communication accompanying the summons to oral proceedings, the board pointed out that the claims of all four of the proprietor's requests filed on appeal appeared to contain amendments which were prohibited by Article 123(2 and 3) EPC. The board also indicated that it was not inclined to accept the appellant's contention that D1 should not be treated as close prior art because of its international patent classification.
- IV. The appellant filed a series of sets of amended claims prior to and during the oral proceedings culminating in the following version:

Main request

"1. A wiring distribution box made of plastics, comprising a hood part (1) and a bottom part (4), further comprising means (10...20) for supporting and fixing switching and wiring parts on said bottom part

(4), and at least two snap-latch means for releasably interconnecting said hood and bottom parts (1, 4), said latch means each comprising a resilient latch hook (5) on one part (1, 4) at the inner side of an adjacent lateral wall (2) of said box, and a fixed lug (6) on the other part (4, 1), and being arranged in such a manner, that, on placing the hood part (1) on the bottom part (4), said hooks (5) will snap behind the corresponding lugs (6), an aperture (8) being provided in said hood part (1) and near each hook (5) adapted for inserting a tool (9) for deflecting the hook (5) in question, so as to allow the hood part to be removed from the bottom part (4), a second resilient hook (7) being integrally formed on the other part (4, 1) in such a position near each fixed lug (6) that, on deflecting the latch hooks (5), the latter will be retained in their deflected position by the second hook (7) in question until the hood part (1) has been removed sufficiently for bringing the hooks (5) outside the reach of the fixed lugs (6), said lugs (6) and hooks (5, 7) being integrally formed on the part in question, and in that each latch hook (5) defines, together with the adjacent lateral wall (2), the respective aperture (8)."

Claims 2 to 6 are dependent on claim 1.

Auxiliary request

The claims of the auxiliary request differ from that of the main request solely in the fact that in claim 1 of the auxiliary request the words "an aperture (8) being provided in said hood part (1)" are replaced by the words "an aperture (8) being provided in a wall of said hood part (1)"

Patent as granted

Since objections under Article 123(3) EPC arise in this appeal the wording of claim 1 as granted is given for convenient reference:

"1. Housing or box made of plastics, comprising a hood and a bottom part, which can be releasably interconnected, characterised by at least two snap latches for interconnecting said hood and bottom parts (1,4), said latches each comprising a resilient latch hook (5) on one part and a fixed lug (6) on the other part, which, when placing the hood part (1) on the bottom part (4) will engage each other, as well as second resilient hooks (7) on the other part and near the fixed lug (6), which, when deflecting the first resilient hook (5), will retain the first resilient hook (5) from locking engagement with the fixed lug (6), and will release the latter only after removing the hood part, an aperture (8) being present in the the (sic) adjacent wall of the hood or bottom part (1,4), through which a tool such as a screw driver (9) can be inserted in order to deflect the first hook (5) from the locking position, said lug (6) and which hooks (5,7) being integrally formed on the part in question."

V. The appellant requested that:

the decision under appeal be set aside and that the patent be maintained in amended form on the basis of:

- claims 1 to 6 (main request) and amended description filed in the oral proceedings on 21 October 1998, drawings as granted, or claims 1 to 6 (auxiliary request), filed in the oral proceedings on 21 October 1998, otherwise as main request.

VI. The arguments of the appellant may be summarised as follows:

Extended protection

For the purposes of Article 123(3) EPC the extent of protection of claim 1 of the patent as granted should be interpreted to include those variants which the person skilled in the art would clearly recognise as envisaged by the teaching of the description of the patent. In this connection the appellant referred in particular to the passage at column 4, lines 19 to 21 of the patent specification which made it clear that hood and bottom were interchangeable as far as the location of hooks and lugs was concerned. An excessively strict literal interpretation of the claim at this stage would effectively preclude a fair protection for the patentee in those jurisdictions which did not construe claims to cover functional equivalents.

Inventive step

D1 came from a technical field which was remote from the field of wiring distribution boxes. It was an accidental anticipation which could be taken into account for considering novelty but not for assessing inventive step. This was evidenced by the difference between the international patent classification marks appearing on D1 and the classification of the opposed patent; cf decision T 176/84, OJ EPO 1986, 50, (reasons 5.3.3). This difference was reflected in the fact that D1 was not included in the classes mentioned in the European search report for the present application. A person skilled in the art of wiring

distribution boxes, seeking to solve the problem of restricted releasability, and who conducted a search of relevant prior art in the appropriate field, as indicated by the classification of the opposed patent, would not have found D1.

Neither was D6 a plausible starting point for the claimed invention. It was not a wiring distribution box of the kind specified in the introduction to the patent specification but was rather a housing for a switch or wall outlet (Schalter oder Steckdose für Aufputzmontage). For this reason the claim had been drafted in one-part form.

- VII. The respondent, in accordance with his declared intention, did not attend the oral proceedings. He indicated his continuing interest in the outcome of the appeal and asked to be kept informed of developments. By way of argument he referred to the written and oral submissions he had made as opponent in the first-instance proceedings, emphasising that D1 and D6 should be considered as prior art in the assessment of inventive step.

Reasons for the Decision

1. The appeal is admissible.
2. *Permissibility of the amendments (main request)*
 - 2.1 Article 123(3) EPC

Claim 1 of the patent as granted specifies that a feature of the housing or box claimed is : "an aperture (8) being present in the the (sic) adjacent wall of the hood or bottom part (1, 4)". In contrast claim 1 of the main request specifies: "a resilient latch hook (5) on one part (1, 4) at the inner side of an adjacent lateral wall (2) of said box ... an aperture (8) being provided in said hood part (1) and near each hook (5) adapted for inserting a tool (9) for deflecting the hook (5) in question, so as to allow the hood part to be removed from the bottom part (4) ... each latch hook (5) defines, together with the adjacent lateral wall (2), the respective aperture (8)."

In the judgement of the board, claim 1 of the granted patent, on the widest interpretation that it could fairly be given, using the description and drawings in the manner provided for in Article 69 EPC and the protocol thereto, requires that **at least a portion** of the aperture be **in** the adjacent wall, whereas the amended claim protects *inter alia* a wiring distribution box in which the aperture is shifted beyond the wall/hood boundary so that it no longer has any portion **in** the adjacent wall, the latter merely defining one boundary of the aperture. The passage in the

description at column 4, lines 19 to 21 of the granted patent which the appellant relies on for a wider interpretation of the claim as originally granted is too general to allow any conclusion about the location of the aperture.

Since the amendment extends the protection conferred it is prohibited during opposition proceedings by Article 123(3) EPC and a request based on claims thus amended cannot be allowed.

3. *Permissibility of the amendments (auxiliary request)*

Article 123 EPC

In accordance with claim 1 of the auxiliary request an aperture is provided "in a wall of said hood part" so that the objection of extended protection in relation to the location of the aperture does not arise. The amendments to the claims are otherwise permissible under Article 123(2) and Article 123(3) EPC since they neither add subject-matter nor extend the protection conferred.

4. *Inventive step (auxiliary request)*

4.1 Closest prior art

The appellant implicitly admits that D1 is the closest prior art in relation to claim 1 of the patent as granted, which claimed a "Housing or box made of plastics...", but argues that the restriction to "wiring distribution box" in claim 1 of the auxiliary request in effect reformulates the problem of the patent as one specific to the narrow technical field of wiring distribution boxes of the kind described in the introductory part of the description as originally

filed, ie for connecting the power meter of an electric mains connection of a building with the electrical wiring of said building. The original description (sentence bridging columns 1 and 2 of the published application) stated that it was an object of the invention to provide a plastics box or housing which was particularly suitable for use as a distribution box (of the kind described in the introduction), but noted that the (inventive) box was not restricted to the latter application. It is, of course, established jurisprudence of the Boards of Appeal of the EPO that such a reformulation of the problem solved by the invention is permissible to take account of prior art which becomes known to the applicant after filing the patent application, when the reformulated problem represents a less ambitious goal which was also foreseen - at least implicitly - in the original disclosure (Case Law of the Boards of Appeal of the EPO 1978-1995, Munich 1996, section 1-D 4.2).

The appellant's argument that, following this reformulation of the problem and related restriction of the claim, D1 should be regarded as an accidental anticipation pertaining to a remote technical field and therefore relevant only in considering novelty and not inventive step, is, however, another matter and has to be judged on the facts. The board recognises that a broad claim will sometimes draw prior art citations in search or in opposition which come from technical fields which are unrelated to the subjective problem addressed by the application and which consequently drop out of consideration once the claim has been appropriately restricted to bring the objective technical problem into line with the subjective problem. The situation here is, however, a different one. Here the subjective problem was originally formulated in broad terms, pointing out explicitly the application to "all kinds of boxes" (published

application column 1, line 54 to column 2, line 3 and column 2, lines 34 to 35) so that the appellant's argument is that although the inventor originally apparently envisaged applications for his invention outside the narrow field of wiring distribution boxes he would not have consulted prior art documents such as D1 relating to such wider applications. Although an applicant may delete a statement in the application as originally filed to the effect that the invention has application in fields superordinate to the narrow field of the preferred embodiments, such deletion simply makes the description consistent with the scope of protection of the amended claims and has *per se* no effect on the assessment of the technical links between the fields concerned. Indeed, absent evidence to the contrary, the board is entitled to give at least some weight to the applicant's original statements as evidence that the fields in question are not so remote from each other as is now contended.

The teaching of D1, in its broadest terms, as expressed in claim 1 of that document, relates to a latch mechanism *per se* (referred to hereinafter as a latched latch) which is undisputedly the same latch mechanism as that which forms a major feature of claim 1 of the present application as filed, of the patent as granted and of the present auxiliary request. In its exemplifying embodiments, D1 even discloses an application of this latched latch to a plastics housing comprising top and bottom portions, the housing being located at a site to which laypersons have access and containing equipment requiring repair or maintenance from time to time. The problem solved by the latched latch of D1 is to make the top portion restrictedly removable, ie not too easily removable by unauthorised personnel but readily removable by a service technician using a lever tool. The technical field in which the

teaching of D1 is centred is, in the judgement of the board, the design and manufacture of small to medium scale separable plastics housings destined to contain equipment, typically electrical equipment, located at a fixed site in a domestic or office environment and requiring occasional opening by visiting technicians for installation, repair or maintenance. Although this field is not identical with the narrower field of the design and manufacture of wiring distribution boxes of the kind specified in the introductory part of the opposed patent, it is closely superordinate. A plastics moulding manufacturer competent to make housings of the kind illustrated in D1 would also be competent to make wiring distribution boxes and for both the wider and the narrower field the relevant skilled person is a mechanical design engineer specialising in plastics moulding technology who would be familiar with the basic requirements of wiring distribution boxes, such as wall-mounting and provision of adequate interior space. Comparison of the passage in D1 at column 2, lines 9 to 46 with the passages at column 2, lines 23 to 37 of the opposed patent in the granted version and at page 2, lines 5 to 29 of the amended description according to the present auxiliary request shows that the problem of restricted releasability solved by the teaching of D1 is the same as the subjective problem addressed by the present application as filed, by the granted patent, and by the present auxiliary request with the sole difference that in the latter the reformulated problem is restricted to the context of wiring distribution boxes (in which the bottom is not accessible in use). In the view of the board, the statement at column 2, lines 34 to 35 of the patent in the granted version that "Such a latching is suitable for all kinds of boxes." correctly reflected the technical relationship between the field of wiring distribution boxes and the wider field of plastics equipment boxes which the teaching of D1 represents.

Deletion of this statement in the context of the narrow application-specific reformulated problem does not make it less true. Further, the structural restrictions implied by the use as a wiring distribution box, such as space requirements and suitability for wall mounting while providing access to the latch release means are so minimal that the subject-matter of claim 1 of the auxiliary request remains conceptually and technically very close to the said generic field.

The appellant's contention that D1 came from a remote technical field was based mainly on the difference between the international patent classification marks appearing on D1 and those of the opposed patent respectively and in this connection the appellant relied on decision T 176/84, OJ EPO 1986, 50 (reasons 5.3.3). The board is not persuaded by this argument. The ratio of the decision cited was that whereas the person skilled in the art of pencil sharpeners might be expected to refer to prior art in the superordinate generic field of containers, they could not be expected to refer to prior art in the field of savings boxes which was a separate subordinate field of that generic field. The respective international patent classification marks were referred to as additional support for that argument but were not, as this board reads the decision, determinative of the question, which, as was emphasised, was to be decided on the particular technical facts in each case. For the reasons given above, this board regards the field of D1 as closely superordinate to the field of claim 1 of the auxiliary request so that the ratio of T 176/84, insofar as it is applicable, supports the board's view of the matter rather than the position taken by the appellant.

4.2 Objective technical problem

D1 discloses a box made of plastics, comprising a hood part 2 and a bottom part 1 and at least two snap-latch means for releasably interconnecting said hood and bottom parts 1, 2, said latch means each comprising a resilient latch hook 7 on one part 2 and a fixed lug 10 on the other part 1, and being arranged in such a manner, that, on placing the hood part 2 on the bottom part 1, said hooks 7 will snap behind the corresponding lugs 10, an aperture 19 being provided in a wall of said bottom part 1 and near each hook 7 adapted for inserting a tool 23 for deflecting the hook 7 in question, so as to allow the hood part to be removed from the bottom part 1, a second resilient hook 12 being integrally formed on the other part 1 in such a position near each fixed lug 10 that, on deflecting the latch hooks 7, the latter will be retained in their deflected positions by the second hook 12 in question until the hood part 2 has been removed sufficiently for bringing the hooks 7 outside the reach of the fixed lugs 12, said lugs 10 and hooks 7, 12 being integrally formed on the part in question, and that each latch hook (5) defines, together with the bottom part 1 the respective aperture (8)].

The subject-matter of claim 1 differs from the box known explicitly from D1 in the following respects:

- (i) It is specified as a wiring distribution box
- (ii) It comprises means (10...20) for supporting and fixing switching and wiring parts on said bottom part (4)

- (iii) The latching means is located at the inner side of an adjacent lateral wall (2) of said box
- (iv) An aperture 19 is provided in a wall of said hood part (rather than in the bottom part)
- (v) Said aperture is defined partly by the adjacent lateral wall (rather than by the bottom part).

The effects achieved by the differences enumerated above imply that, relative to D1, the objective technical problem solved by the claimed box is to modify the D1 box so as to make it suitable for use as a wiring distribution box. In the judgement of the board no contribution to inventive step is involved in formulating this problem since a designer or manufacturer skilled in the art to which D1 relates would routinely consider potential cognate applications such as wiring distribution boxes. It is generally recognised that innovation stems from technology push as well as demand pull. In the judgement of the board it is therefore neither unrealistic nor artificial to give weight in an appropriate case to the technology push aspect of innovation in applying the problem and solution approach; cf R. Teschemacher "Die Bewertung der erfinderischen Tätigkeit in 20 Jahren europäischer Praxis. Die Lösung eines Problems?", epi Information 3/1997, page 25, at footnote 18.

4.3 Obviousness of the claimed solution

Feature (i) above restricts the subject-matter of the claim only to the extent that it requires that the structural features of the box should make it suitable for use as a wiring distribution box. This is a self-evident aspect of any solution to the problem which is itself, as explained above, obviously derivable from the prior art.

By the same token no inventive weight is attributable to difference (ii); it is an equally self-evident aspect of any solution. It is an automatic consequence of envisaging the application and indeed, in the judgement of the board, implicitly disclosed in D1 for the person skilled in the art since virtually any application that can be envisaged, including the most plausible interpretation of the nature of the housing depicted in D1, namely a fixed telephone, would include this feature. It should be noted that the wording of this feature encompasses a simple screw hole.

It is important to note that the above remarks do not mean that the problem has been unfairly formulated so as to include elements of the solution; the problem is to achieve the effect or result, the solution is the structure which achieves that effect. As will be clear from the above, the board uses the term 'self-evident' here to refer to those necessary structural elements of a solution which occur immediately to the person skilled in the art, as soon as the problem is formulated. They define the structural boundary conditions within which the skilled person will seek a solution.

In the judgement of the board, the person skilled in the art addressing the problem referred to above would appreciate that, since a wiring distribution box is normally mounted on a wall (of a building), the aperture(s) for insertion of the lever tool cannot be sensibly located on the face which will be in contact with the wall, ie the face opposite the cover, leaving the two possibilities of the cover itself or a lateral wall face. In either case the natural location for the latch members would be near to their (respective) aperture(s). Again, in the judgement of the board, the skilled person would hardly fail to consider in these circumstances the design advantages of locating the

latching means at the inner side of a lateral wall with associated aperture(s) provided in that wall: the central area of the box is free to accommodate wiring terminations, circuit breakers, etc, the means for opening the wall-mounted box is not quite as apparent to unauthorised personnel, and moulding of the parts is facilitated. Such design choices are well within the routine considerations of the skilled person. It follows, of course, that when the D1 design is modified by moving the latching means and associated aperture to the lateral wall that the said aperture is then defined by the latch hook together with the adjacent lateral wall.

Thus, in the judgement of the board, starting from the plastics box of D1, the person skilled in the art would be led to formulate the obvious problem of modifying the box to make it suitable for use as a wiring distribution box while retaining the advantage of restricted releasability provided by the latched latch mechanism and would also be led, on the basis of considerations obvious to the skilled person, to solve this problem by modifying the box in the manner specified in claim 1 thus arriving at the claimed wiring distribution box.

Hence, having regard to the prior art, the subject-matter of claim 1 of the auxiliary request does not involve an inventive step within the meaning of Article 56 EPC.

5. *Conclusion*

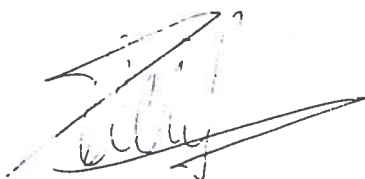
Since the patent as amended in accordance with the claims of either the main or the auxiliary request fails to meet the requirements of the EPC there is no allowable request before the board.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

A handwritten signature in dark ink, appearing to be 'M. Kiehl', written over a horizontal line.

M. Kiehl

The Chairman:

A handwritten signature in dark ink, appearing to be 'W. J. L. Wheeler', written in a cursive style.

W. J. L. Wheeler.