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D E C I S I O N
of 7 February 1997

Case Number: T 0529/96 - 3.2.1

Application Number: 91305215.5

Publication Number: 0461838

IPC: F16M 11/28

Language of the proceedings: EN

Title of invention:
Adjustable tripod stand

Applicant:
May, Randall Lee

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 96(2), 111(1)

Keyword:
"Novelty (yes)"
"Remittal to the Examining Division for consideration of
inventive step not yet examined"

Decisions cited:
T 0684/92

Catchword:
-



Case Number: T 0529/96 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 7 February 1997

Appellant: May, Randall Lee
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Representative: Jones, William
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 21 November 1995
refusing European patent application
No. 91 305 215.5 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Gumbel
Members: M. Ceyte
G. Davies

Summary of Facts and Submissions

- I. European patent application No. 91 305 215.5 (publication No. 0 461 838) was refused by a decision of the Examining Division dated 21 November 1995.

As state of the art, the Examining Division referred in its communications to:

D1: US-A-4 215 839

D2: GB-A-2 219 197

which were mentioned in the European Search Report as being in the "x" category (particularly relevant).

It held in its decision that the subject-matter of claim 1 lacked novelty in respect of document D1.

- II. An appeal against that decision was filed on 24 January 1996 and the appeal fee was paid the next day. A statement of grounds of appeal was filed on 28 March 1996.

- III. In response to the Board's communication dated 21 October 1996, the appellant filed on 21 January 1997 replacement pages of the description and drawings, together with an amended set of claims.

He requested that the decision under appeal be set aside and a patent be granted on the basis of the following documents:

claims: 1 to 18 filed on 21 January 1997
description: pages 1 to 3 and 5 to 10 as originally filed
pages 4 and 11 filed on 21 January 1997

drawings: sheet 2/4 filed on 21 January 1997
sheets 1/4 and 3/4 as originally filed.

Alternatively, as the question of novelty had been dealt with in accordance with the Board's communication, the appellant requested that the case be remitted to the Examining Division for consideration of inventive step.

IV. Amended claim 1 is worded (after clerical amendments) as follows:

"1. An adjustable tripod stand (10) comprising:

an upright portion (11) for supporting an object at its upper end

a plurality of independently moveable collar members (15, 16, 17, 18) slidably mounted on said upright portion and longitudinally adjustable relative to one another and to said upright portion (11) for selective positioning thereon,

said collar members (15, 16, 17, 18) being moveable past each other on said upright portion (11),

releasable fastening means (23) on said collar members (15, 16, 17, 18) for securing the same to said upright portion (11) at selected positions, and

a plurality of independently moveable legs comprising a leg portion (20) and a leg brace member (30), wherein one end of a respective leg brace member (30) is pivotally connected to the associated leg portion (20) intermediate its ends and the other end is pivotally connected to a moveable collar member (17, 18)

said plurality of moveable leg portions being pivotally connected at their upper ends to different ones of said collar members and operable on independent movement of said collar members for selective independent longitudinal positioning and radial extension relative to said upright portion (11) and to one another for supporting said upright portion (11) whereby

said stand (10) may be erected in limited or confined areas, on multi-level surfaces and on level surfaces, and the positioning of said collar members (15, 16, 17, 18) allows the longitudinal axis of the stand (10) to be disposed in an off-vertical axis position for positioning the centre of gravity of the supported article relative to the centre of the supporting legs."

Reasons for the Decision

1. The appeal is admissible.
2. *Procedural matters*

Once one communication has been issued under Article 96(2) EPC and observations have been filed in reply which, according to the Examining Division, do not meet the objections raised, it is thereafter within the discretion of the Examining Division under Article 96(2) whether to issue a further communication or a decision refusing the application.

Contrary to the appellant's submissions, it was not necessary in the present case for the Examining Division to warn the applicant, eg by a telephone conversation, that the application would be refused,

since the ground for refusal, ie the lack of novelty had been raised in three communications which had been issued before the decision of rejection. Thus the Board considers that the Examining Division had exercised its discretion reasonably.

3. *Formal matters*

There are no formal objections under Article 123(2) EPC to the current version of claim 1, since it is adequately supported by the original disclosure, especially by claims 1 to 3 and 5 as originally filed.

Amended claim 1 is drafted in the one-part form which is in the present case preferable to a two-part form since it is not clear whether document D1, which appears to be the closest prior art, actually discloses collar members within the meaning of the application under appeal and whether the effects listed in the last paragraph of claim 1 are fully achieved by the known tripod stand disclosed therein.

The description has been brought into conformity with amended claim 1 in particular by deleting the embodiment of Figures 13 to 18 from the description and drawings.

4. *Novelty*

It has been well established that a claimed invention lacks novelty in respect of a prior art document, if all of its technical features are disclosed in combination in that document.

The subject-matter of claim 1 now on file is clearly novel in respect of document D1 since there is inter alia no disclosure of the claimed leg brace members having one end which is pivotally connected to a collar

member slidably mounted on the upright portion. In document D1, the leg brace members are pivotally attached to the upright portion; they are not slidably mounted on said upright portion.

The claimed adjustable tripod stand is also novel over document D2. This follows from the fact that the collar members disclosed therein are not, as claimed, "moveable relative past each other on said upright portion".

Novelty over the other documents of the Search Report was not disputed by the Examining Division and is acknowledged by the Board.

Accordingly the Board comes to the conclusion that the subject-matter of present claim 1 is novel over the cited prior art documents.

5. The Examining Division issued a decision upon lack of novelty and, consequently, did not have any reason to address the issue of inventive step. In such a case and having regard to the amendments made to claim 1, according to the established case law of the Boards of Appeal, the appeal is normally referred back on to the first instance for consideration of the undecided issue (see for example T 684/92 of 25 July 1995; see also Singer: The European Patent Convention, English edition by R. Lunzer, London, 1995, 111.03).

Accordingly and in the exercise of its discretion under Article 111(1) EPC the Board remits the case to the Examining Division for further decision on the issue of inventive step.

Order

For these reasons it is decided that:

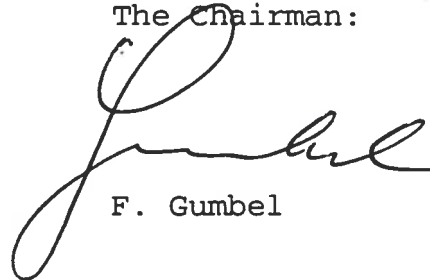
1. The Examining Division's decision is set aside.
2. The case is remitted to the Examining Division for further examination under Article 96 EPC.

. The Registrar:



S. Fabiani

The Chairman:



F. Gumbel