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D E C I S I O N
of 22 September 1998

Case Number: T 0883/97 - 3.2.4

Application Number: 88305423.1

Publication Number: 0295869

IPC: A47F 7/14

Language of the proceedings: EN

Title of invention:
A display unit

Patentee:
Carroll Products and Designs limited

Opponent:
Glazer Plastics plc

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56, 69(1)

Keyword:
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:
T 0194/86, T 0002/83, T 0056/87

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0883/97 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 22 September 1998

Appellant:
(Opponent)

Glazer Plastics plc
Dudden Hill Lane
Neasden
London NW10 1BL (GB)

Representative:

Singleton, Jeffrey
Eric Potter Clarkson
Park View House
58 The Ropewalk
Nottingham NG1 5DD (GB)

Respondent:
(Proprietor of the patent)

Carroll Products and Designs Limited
Unit 151
Grange Drive
Baldoyle Industrial Estate
Baldoyle
Dublin 13 (IE)

Representative:

McCarthy, Denis Alexis
MacLachlan & Donaldson
47 Merrion Square
Dublin 2 (IE)

Decision under appeal:

Interlocutory decision of the Opposition Division
of the European Patent Office posted 19 June 1997
concerning maintenance of European patent
No. 0 295 869 in amended form.

Composition of the Board:

Chairman: C. A. J. Andries
Members: R. E. Gryc
M. Lewenton
M. G. Hatherly
J. P. B. Seitz

Summary of Facts and Submissions

I. Appellant 1 (opponent) and appellant 2 (proprietor of the patent) lodged appeals, received at the EPO respectively on 15 and 22 August 1997, against the interlocutory decision of the Opposition Division, dispatched on 19 June 1997, which maintained the patent No. 0 295 869 in an amended form.

The appeal fees were paid respectively on 15 and 20 August 1997 and the statements setting out the grounds of appeal were received respectively on 15 and 29 October 1997.

II. Opposition was filed against the patent as a whole and based on Article 100(a) EPC. The Opposition Division held that the grounds for opposition cited in Article 100(a) EPC did not prejudice the maintenance of the patent in an amended version, having regard mainly to the prior art disclosed or referred to by the following documents and prior uses evidence:

Documents:

D1: DE-A-1 611 751

D2: GB-A-2 034 579

D3: GB-A-2 091 539

D5: GB-A-1 482 997

D6: US-A-3 973 678, and

D7: US-A-2 532 600

Prior uses:

- Prior use I - (Tecform display units):

B1: Statement of George D. Miller, with exhibits GDM4,
GDM7 and GDM8

B2: Statement of Alan R. Weatherhead, with exhibits
ARW1 to ARW3

B3 and

B14: Statements of Diane J. Stephens, with exhibits
DJS1 and DJS2.

B4: Statement of Donald H. Donovan, with exhibits DHD1
and DHD2.

E2: affidavit of Paul Westaway with exhibit PW1.

E3: affidavit of John Collinge with exhibits JC1 and
JC2.

Prior use II - (Seethru "System Cascade"):

B6: statement of Michael J. Rignall, with exhibits
MJR1 to MJR3

Prior use III - (Apple Ltd - Model ZEM):

B9: Statement of Gordon E. Hutchinson, with exhibits
GEH1 to GEH3

Prior use of rod and socket arrangements:

B16: Affidavit of Sydney J. Harris and exhibits SJH1
(drawings W1 and W2) and SJH2A, SJH2B, SJH3 and
SJH4 (documents Showstock).

III. In his statement setting out the grounds of appeal, appellant 1 (opponent) contended in particular that struts in general for the purpose specified in Claim 1 and more specifically rod-and-sockets struts were already known before the earliest priority date from D3 to D7 and, in particular, from the prior used "Showstock system" referred to in B16 and the corresponding exhibits. He contended also that it would have been obvious for the skilled person to select from the same shop fitting display art the rod-and-socket support system of "Showstock" for use in a cascading display unit according to D7.

In a subsequent statement appellant 1 expressed the view that D7 does disclose a suspended tiered display, that the card holders of D7 are already inclined at an appropriate angle to give the proper display, that the angle of these known holders could be altered if desired and that it would be obvious to the skilled person to modify the display unit of D7 to arrive at Claim 1.

In his statement setting out the grounds of appeal, appellant 2 (patentee) emphasized that the display unit of D7 is not a suspended one but a rigid arrangement of supported J-shaped channels in a free standing unit. He stated also that, in D7, there is no requirement to alter the angle of the display and that even if the skilled person inserted the struts of prior uses II or III between the card holders of D7 and the mounting surface, the angles would not be altered since the card holders are fixed.

He contended further that the co-operation of the J-shaped channels and the struts yield an economic configuration which can be easily assembled and dismantled, that D1 did not suggest the idea of using

struts and that neither the legs of D3 nor the brace element of D6 and the panels of D7 can be considered as struts in the meaning of the invention.

IV. Oral proceedings took place on 22 September 1998.

Appellant 1 took the view that novelty of the subject-matter of Claim 1 was destroyed by the public use of three-tier card racks in the shop "Images of Cornwall" prior to the earliest priority date (prior use I). Basing his argumentation mainly on B3 and B14 and the exhibits referring thereto, he contended that these racks comprised J-shaped channels hooked onto each other and having struts provided at the back so as to maintain the display units at the desired angle relative to the mounting surface.

Appellant 2 drew attention to several contradictions which can be found in B1, B2 (exhibits ARW1 to ARW3) and documents E2 and E3 about the type (bonded or hooked) of the display units manufactured by Tecform Ltd, purchased at first hand by the firm "Alan Weatherhead Shop Designer" and then sold by the latter to various customers and, in particular, to the shop "Images of Cornwall" (prior use I). Appellant 2 took the view that a doubt subsists as regards the type of units used in said shop before the relevant priority date and that prior use I was thus not proven.

Appellant 1 also disputed novelty of the subject-matter of Claim 1 in view of D7. He contended in particular that the clearance represented on Figure 8 of D7 between the downwardly extending lip (8) of the front side (7) of the card holders and the lower angular flange (12) of the receiving channel provided at the back of the next card holder shows that the card holders are suspended one from the other as according to the invention. He was also of the opinion that a

strut is not necessarily embodied by a bar or a rod and that the two side ends (1) of the display rack according to D7 act as struts.

As regards inventive step, appellant 1 argued also as follows:

- Starting from the display unit subject of prior use I, the skilled person who wants to be able to vary the inclination of the display recognises immediately that the fixed struts of the known structure should be replaced by variable struts, such an adaptation involving no inventive step.
- If the skilled person starts from the "System Cascade" of Seethru or from the model "ZEM" of Apple Ltd (respectively prior uses II and III) and looks for making said structures more dismantable, no inventive step can be seen in replacing the bolts and screws which serve to assemble the J-shaped channels together by the hooks known from D1.
- If the starting point is the embodiment shown in Figures 1 and 2 of D1 which discloses implicitly a suspended arrangement which needs some means for stabilising the structure, no inventive step is involved by the provision of struts as stabilising means.
- Also, for the skilled person who starts from the embodiment shown on drawings W1 and W2, referred to in B16 and exhibit SJH1, it would be obvious to arrive at the invention.

At the end of the oral proceedings, appellant I (opponent) requested that the decision under appeal be set aside and the patent Nr 295.869 be revoked.

Appellant II (patentee) requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or as maintained by the opposition division (auxiliary request).

V. Claim 1 as granted reads as follows:

"1. A display unit for articles comprising a plurality of elongate channels (3, 10), suspended one from the other, each channel (3, 10) being of generally J-shaped cross-section for supporting the articles in the trough thereby formed and having a longer arm (16) and a shorter arm (12), first support means (3a) for engaging the uppermost J-shaped channel (3) with display support means (2, 22) provided on a mounting surface, and second support means (3a, 12) for supporting each lower J-shaped channel (3) on the next higher J-shaped channel (3), characterised in that the second support means includes at least one hook (3a) which is provided on the longer arm of each lower J-shaped channel and which is engageable with the shorter arm (12) of the next higher J-shaped channel whereby the uppermost J-shaped channel (3) is suspended from said mounting surface and the or each lower J-shaped channel (3) is suspended from the next higher J-shaped channel (3) so as to provide a suspended tiered display unit and further characterised in that at least one of said channels (3, 10) has struts (4, 5, 30, 32) provided on the longer arm thereof extending rearwardly for contact with the mounting surface so as to maintain the J-shaped channels at the desired angular relationship to the mounting surface, the arrangement being such that the unit can readily be assembled and dismantled."

Reasons for the Decision

1. *Admissibility of the appeal*

After examination the appeal has been found to be admissible.

2. *Interpretation of Claim 1 as granted*

In the light of the description and drawings (see Article 69(1) EPC) the Board has interpreted some parts of Claim 1 as follows:

- the term: "suspended", used in lines 30, 47, 49 and 51 of column 6 of the patent specification, has been interpreted in view of column 3, lines 49 to 55 and of Figures 1, 2, 4 and 7 as meaning: "hooked" so that each channel is hanging down from its highest part and has a "free" lowest bottom.

- the following passage of Claim 1 (see column 6, lines 52 to 57): "struts provided... so as to maintain the J-shaped channels at the desired angular relationship to the mounting surface,"

has been interpreted as meaning in particular: "struts provided...so as to allow the angle or tilt of the individual channel and thus of the display unit as a whole to be set" (see the description: from column 3, line 55 to column 4, line 9).

- the following last phrase of Claim 1 (see from line 58 of column 6 to line 1 of column 7): "the arrangement being such that the unit can readily be assembled and dismantled" has been understood

as signifying that all the components of the unit, i.e. not only the channels but also the struts, are readily mountable to and dismantlable from each other.

3. *The state of the art*

3.1 Documents:

All the patent documents D1 to D7 cited during the proceedings were published before the earliest priority date. The embodiments disclosed in these patents belong therefore to the state of the art to be taken into consideration.

3.2 Prior uses:

When dealing with an allegation that an object has been made available to the public by prior use and therefore can be considered to form part of the state of the art, not only the date on which the alleged prior use occurred but also what has been used and the circumstances relating to the use must be established and proven (see for example decision T 194/86 - not published).

3.2.1 Prior use I:

The object of prior use I has been identified by appellant 1 as display units manufactured by Tecform Plastics Ltd, purchased at first hand by the firm "Alan Weatherhead Shop Designer" and then sold by the latter to various customers before the earliest priority date of the patent (see Section 4.1 of appellant 1's statement attached to the notice of opposition).

Some items of evidence presented by both appellant 1 and appellant 2 (see respectively exhibits: GDM8 of B1; ARW2 and ARW3 of B2; PW1 of E2 and JC1 and JC2 of E3) seem to imply that all the Tecform units supplied to and sold by Alan Weatherhead were bonded three-tier display units whereas some other items of evidence filed by appellant 1 alone (see for example B1 to B4 and B14 with exhibits GDM4, DJS1, DJS2, DHD1 and DHD2) seem to imply that some of these units were of hook-over construction in which the adjacent elements were hooked onto each other. The relation between on the one hand the invoices GDM8, ARW2 and ARW3 showing that the firm "Alan Weatherhead Shop Designer" bought only bonded three-tier display units of the type AG016 (see GDM7) from Tecform Plastics Ltd and, on the other hand, the selling by the firm "Alan Weatherhead Shop Designer" of these display units to various customers is not clear to the Board since the bought bonded display units became hooked display units after having been sold.

On the basis of said aforementioned contradictory evidence put forward by the parties, the Board arrived at the conclusion that the set of facts alleged by appellant 1 is not more likely to be true than the set of facts alleged by appellant 2. Therefore, the Board considers that what was exactly used before the earliest priority date of the patent has not been sufficiently and convincingly proven and that prior use I can thus not be taken into consideration as "state of the art" in the appeal proceedings.

3.2.2 Prior uses II and III and prior uses of rod and socket arrangements.

The Board considers that prior uses II and III and the prior use of said rod and socket arrangements (see B16) have been proven and belonged to the state of the art

at the earliest priority date. Since this has not been disputed by appellant 2 during the proceedings, there is no need for further detailed substantiation.

4, *Main request of appellant II*

4.1 *Novelty of Claim 1*

- **against D1:** This document discloses a display unit having channel section members articulated to each other by means of hooks (see Figure 1). However, D1 does not describe said members as being suspended to each other and no struts are provided to support them against a vertical surface. In D1, the display unit is described as supported either horizontally on a table (see Figure 3) or vertically by a stepped supporting board (see page 2, paragraph 3).
- **against D2:** The J-shaped channels or pocket elements (2) of the display arrangement according to D2 are intended to be hooked on the parallel bars of a ladder-like structure, the resulting display unit being thus not composed of a series of channels suspended one from the other according to the invention. Moreover, the pocket elements of D2 are not provided with supporting struts.
- **against D3:** The card display compartments (168) of the display stand (10) disclosed in D3 are not composed of J-shaped channels suspended one from the other as according to the invention but are formed by the corrugations of a corrugated overlay panel (166), supported by sawtooth-like series of steps of side pieces (158), and by generally L-shaped retainers (170) secured to the steps of the deck (see for example Figure 12).

- **against D5:** Also the pockets for receiving and displaying cards or like items of the display stand according to D5 are not constituted by J-shaped channels suspended one from the other in the meaning of the invention but are composed of a plurality of L-shaped rack members, all interlocked together and supported on an angled or stepped side surface or support piece (see Figures 2, 2a and 3).

- **against D6:** This document discloses a bracket assembly for mounting on an upstanding support, the assembly being made either of a bent wire arm component (15) welded to a main support trunk (14) (see Figures 1 to 4) or of a plurality of single arm component (115) each welded to a main support trunk (114) (see Figures 6 to 10). The display unit of D6 comprises therefore neither J-shaped channels suspended one from the other, nor hooks and struts provided on the longer arm thereof.

- **against D7:** The J-shaped card holders of the display rack of D7 are not connected together simply by means of hooks as according to the invention but by the longitudinal insertion of the front side of each card holder with its downwardly extending lip between two flanges provided on the back side of the next lower card holder (see Figures 2 to 5 and 8).

On Figure 8 a clearance is effectively shown between the downwardly extending lip (8) of the front side (7) of the upper card holder and the lower angular flange (12) of the channel of the next lower holder receiving said front side. However, since such a clearance is not shown on the other representations of the assembling of the front sides (7) inside the corresponding receiving

channels (see D7: Figures 2 to 5) of the adjacent card holders and since the upper curved flange (11) of the receiving channel of the lower holder shown on Figure 8 is bent around the bulge at the upper edge of the front side (7) of the upper holder so as to be able to support said upper holder, it cannot be determined with certainty whether each card holder is supported from above (suspended on the next higher holder) or from below (bearing on the next lower holder).

Since moreover, it is explicitly stated in the description of D7 (see column 3, lines 2 to 9), that the card holders are connected to the supporting frame of the rack and that the bottom of some of the holders may be supported underneath by brackets, it cannot be asserted that each lower card holder of the display rack of D7 "is suspended from the next higher J-shaped channel so as to provide a suspended tiered display unit" as claimed in Claim 1.

Also, the Board cannot agree with the argument of appellant 1 according to which "side panels" can be considered as "struts" since a "strut" is by definition a bar intended to bear weight or pressure in the direction of its length whereas a side panel bears weight or pressure in every direction. Therefore, the card holder units of the display rack of D7 are not provided with "struts" in the meaning of the invention.

- **against prior uses II and III:** Also the channel section members of the display units according to prior uses II and III are not hooked and articulated together but are attached rigidly by nut and bolt fixings or rivets (see respectively B6 and B9). Moreover, the "struts" of these prior

used display units are glued to the back of the J-shaped channels and cannot thus neither be readily assembled and dismantled nor allow the angle of the individual channel section members to be set relative to the mounting surface.

Therefore, the subject-matter of Claim 1 as granted is new in view of the above-mentioned prior art.

4.2 The closest state of the art

Among all the display units known from the prior art documents D1 to D7 and prior uses II and III cited in the proceedings, the display unit shown on Figure 1 of D1 appears to be the only one composed of J-shaped channels hooked to each other so as to form an articulated arrangement similar to that according to the invention. Therefore, the Board considers that this embodiment of D1 represents the state of the art closest to the claimed invention.

The subject-matter of Claim 1 as granted differs from this known embodiment in that the J-shaped channels are suspended one from the other and provided with struts so as to be maintained at the desired angular relationship to the mounting surface whereas, in D1, it is described in page 2, third paragraph, that the display device can be arranged horizontally on a table (see Figure 3) or disposed vertically on a stepped board (see Figures 1 and 2).

4.3 Problem and solution

Starting from the embodiment depicted by Figure 1 of D1 and taking into account the above-mentioned differences between the closest state of the art and the subject-matter of Claim 1 as granted, the problem to be solved

as objectively determined appears to be to set the inclination of the individual section channel members when the display device is disposed vertically (see the patent description: from column 3, line 55 to column 4, line 5).

The Board is satisfied that the invention as claimed in Claim 1 as granted brings effectively a solution to this problem.

4.4 Inventive step (Article 56 EPC):

4.4.1 When examining inventive step, it should be assessed whether not only all the characteristics of the invention but also hints to combine these characteristics in the manner of the invention can be found in the state of the art (see Decision T 2/83, OJ EPO 1984, 265), keeping in mind that the technical disclosure in a prior art document should be considered in its entirety (see decision T 56/87, OJ EPO 1990, 188).

4.4.2 It should be first pointed out that, in the state of the art cited during the proceedings, the use of struts in combination with articulated tiers is not even suggested and no hint therefor has been found. Struts appear to be used merely in combination with rigidly secured tiers (see B6 and B9 and the exhibits referred to) whereas the use of stepped boards is taught in combination with either articulated tiers (see D1: page 2, third paragraph) or rigid tiers (see D3 and D5).

4.4.3 Moreover, the problem which the invention attempts to solve (see above section 6) has not been contemplated in connection with any of the known display racks, not even if it were to be accepted that the use of struts is disclosed in combination with rigid display units

(see for example D6 or prior uses II and III). Neither the idea, nor hints to provide display units with means allowing the modification of the inclination of the unit as a whole can be found in the state of the art, let alone means allowing the inclination of each individual channel section member to be set as according to the invention.

4.4.4 Starting from the display unit of D1, the skilled person faced with the aforementioned problem (see Section 6) would normally try to modify the inclination of the steps of the stepped boards recommended in D1 and would have a priori no reason first, to abandon said supports and to suspend the hooked J-shaped channels one from the other and, second, to replace the stepped boards supporting the rack from below by struts known from the prior uses II and III or from the Showstock system and extending rearwardly between the channel members and a mounting surface.

Therefore, the Board is of the opinion that it is not obvious to arrive at the invention when starting from the state of the art of D1.

4.4.5 Also, the Board considers that to transform the display rack of D7 so as to obtain a unit according to the teaching of Claim 1 does not follow plainly and logically from the teaching of D7 and the prior use of the Showstock system (see B16 and exhibits SHJ1 to SHJ4) for the following reasons:

D7 discloses a standing display rack of the fixed and rigid type comprising a supporting stepped structure and elongated card holders which are connected to each other by means of an horizontal slidable connection and to the supporting frame by means of screws (see D7: column 2, lines 17 to 52 and Figures 4 and 5).

According to the general teaching of D7, the detachable slidable connection between the holder units appears to be an essential feature making the same readily connectable together (see D7: column 4, lines 44 to 48 and Claims 1, 6 and 7).

Therefore, when starting from a rigid display rack according to D7, without hints, the skilled person would have a priori no reason to abandon the fixed conception of the known rack, its standing supporting structure and the essential slidable and readily dismantable connection between the holders and to replace the rigid cascading display supported from underneath by a suspended articulated display system comprising holders hooked one from the other. Since, moreover, the Showstock system is conceived mainly for displaying pieces of clothes (i.e. lingerie, shoes, accessories...) and has little to do with the display of greetings cards or similar articles as according to D7, the skilled person who wants to improve the display rack of D7 has also without any particular hint in this direction no reason to be guided by the Showstock system in order to replace solely a specific component of the rack of D7, i.e. the supporting frame, by a vertical support in combination with only some specific components of the Showstock system (i.e. rods and sockets) having a different function.

4.4.6 Appellant 1 has also contended that it was obvious for the skilled person to replace the bolts and screws of the display units according to prior use I (system Cascade Seethru) or prior use II (model ZEM of Apple) by the hooks disclosed in D1. The concept of the prior used racks (suspended and fixed or rigid) being different of the concept of the display unit according to D1 (standing and articulated), the Board considers that the skilled person has a priori no reason, without any hint in this direction, to mix the types in order

to render the prior used racks readily dismantlable with the risk that it would prejudice their stability and strength.

Moreover, even if the skilled person were to arrive at the idea of exchanging non-equivalent connecting means such as hooks for bolts and screws, the resulting arrangement would still not be able to be readily assembled and dismantled since the struts of the prior used display racks are glued to the back of the card holders and can thus not be changed to modify the inclination of the individual channel section members as according to the invention.

4.4.7 For the aforementioned reasons, the Board considers that to modify the display units known either from D1 to D7 or from the prior uses in order to get the display unit as claimed in Claim 1 as granted does not follow plainly and logically from the prior art and implies an inventive step within the meaning of Article 56 EPC.

4.5 Therefore the invention as described and claimed in the granted version meets the requirements of the EPC and can be maintained as such.

5. *Auxiliary request of appellant II*

The main request of appellant II being allowable, there is no need to consider the appellant II's auxiliary request.

Order

For these reasons it is decided that:

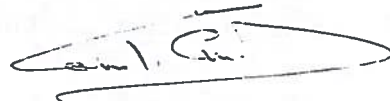
1. The decision under appeal is set aside.
2. The patent is maintained unamended.

The Registrar:



S. Fabiani

The Chairman:



C. Andries

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