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D E C I S I O N
of 26 May 2000

Case Number: T 0041/98 - 3.2.4

Application Number: 92201636.5

Publication Number: 0520539

IPC: A47B 88/04

Language of the proceedings: EN

Title of invention:
Drawer guides and production method therefor

Patentee:
F 40 S.p.A.

Opponent:
FORMENTI & GIOVENZANA S.p.A.

Headword:
Drawer guides/F 40

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
"Public prior use (not proved)"
"Inventive step (yes)"

Decisions cited:
-

Catchword:

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0041/98 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 26 May 2000

Appellant: (Opponent)
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Representative:
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Respondent: (Proprietor of the patent)
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 14 November 1997 rejecting the opposition filed against European patent No. 0 520 539 pursuant to Article 102(2) EPC.**

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
J. P. B. Seitz

Summary of Facts and Submissions

I. An opposition based upon Article 100(a) EPC was filed against the European patent No. 520 539. By the decision of the opposition division dispatched on 14 November 1997 the opposition was rejected.

Claims 1 and 4 of the patent as granted read as follows:

"1. Method for the manufacture of a pair of guides to be fixed laterally near the lower edges of the two shoulders of a drawer for its sliding on corresponding sliding elements fixed in a furniture item and comprising the phases of:

- pressing from a strip of sheet metal an element shaped generally like the letter U with the upper ends of the U bent outward to provide support and guide tracks for said sliding elements, and
- cutting the U in the centre to separate two specular elements forming the guide pair, said method being characterized in that the separating cutting of the guides of the pair is done along a path traversing at several points the line of symmetry of the U to form on each guide a plurality of tabs by cutting from the other guide of the pair and bendable upward substantially along said symmetry line to provide clipping of the guide to the lower edge of the shoulder by clamping it between the tabs and the corresponding vertical arm of the U."

"4. Pair of drawer guides each guide comprising a rail for sliding against the side wall and extending in

a portion designed to be bent in the shape of the letter C to embrace the lower edge of a shoulder of the drawer and characterized in that the inner end of the C is in the form of spaced tabs and each guide having a flat development in the form of a substantially rectangular figure from which project said tabs made by cutting along a fret line from a single piece of material inscribing the development of the two guides of the guide pair."

II. In the appealed decision, the opposition division considered the claimed subject-matter as patentable with respect to the prior art known from documents IT-A-203 626 (D1) and DE-A-1 559 884 (D2).

In the course of the opposition proceedings, the appellant had submitted the following evidence relating to an alleged public prior use and had argued that this public prior use prejudiced the maintenance of the patent:

D3: Copy of letter to Manuel Duarte dated April 18, 1990;
D4: Copy of acknowledgement letter by Manuel Duarte dated February 13, 1997;
D5: Copy of letter to Colell S.A. dated April 18, 1990;
D6: Copy of acknowledgement letter by Colell S.A. dated February 14, 1997;
D7: Copy of letter to Quincaillerie A-Ventures Inc. dated April 18, 1990;
D8: Copy of acknowledgement letter by Quincaillerie A-Ventures Inc. dated March 6, 1997;
D9: Copy of letter to A. Hamdi Akkad dated April 18,

1990;

D10: Copy of acknowledgement letter by A. Hamdi Akkad dated February 14, 1997;

D11: Copy of letter to Sarman Yapi Ticareti dated April 18, 1990;

D12: Copy of acknowledgement letter by Sarman Mobilya dated February 14, 1997;

D13: Copy of letter to Difha S.r.l. dated April 18, 1990;

D14: Copy of acknowledgement letter by Difha S.r.l. dated March 5, 1997;

D15: Copy of acknowledgement letter by M.D. Ferramenta s.a.s. dated February 19, 1996;

D16: Certified copy of declaration by Mr. Antonio Panzeri dated August 8, 1997 (with Att. 1: D8);

D17: Translation into English of document D16;

D18: Copies of "Donati Furniture Fittings" catalogue: cover pages and page D8/M1/M2;

D19: Translation into English of declaration by Mr. Antonio Panzeri dated February 27, 1997.

In the appealed decision, the opposition division did not consider this evidence as unambiguously proving the alleged public prior use.

III. On 14 January 1998 the appellant (opponent) lodged an appeal against this decision and simultaneously paid the appeal fee. A statement setting out the grounds of appeal was received on 20 March 1998.

IV. With the statement setting out the grounds of appeal the appellant submitted the following new evidence relating to the alleged public prior use referred to in the above section II:

D21: Copy of order letter by Donati s.n.c. to MCS;
D21a: Translation into English of document D21;
D21b: Certified declaration signed by Mr. Panzeri with drawings referred to in document D21;
D21c: Translation into English of document D21b;
D22: Copy of delivery note issued by MCS, dated 21/3/90;
D22a: Translation into English of document D22;
D23: Copy of invoice issued by MCS, dated 31/3/90;
D23a: Translation into English of document D23;
D24: Copy of technical expert's report by Mr. Giambrocono;
D24a: Partial translation into English of document D24;
D25: Copy of declaration by Mr. Longoni;
D25a: Translation into English of document D25;
D26: Certified declaration signed by Mr. Panzeri, dated February 27, 1997;
D27: Translation into English of document D26.

V. Oral proceedings were held on 26 May 2000.

VI. The appellant requested that the impugned decision be set aside and that the patent be revoked.

The respondent (proprietor) requested that the appeal be dismissed.

VII. The appellant argued that the subject-matter of Claims 1 and 4 lacked novelty with regard to the evidence relating to the alleged public prior use (see the above sections II and IV) and did not involve an inventive step with respect to documents D1 and D2.

The respondent argued that the evidence submitted by

the appellant did not prove the alleged public prior use and that the claimed subject-matter was new and inventive with respect to documents D1 and D2.

Reasons for the Decision

1. The appeal is admissible.

2. *The claimed subject-matter*

2.1 Claim 1, which is directed to a method of manufacturing a pair of guides to be fixed laterally near the lower edges of the two shoulders of a drawer, refers to an element shaped generally like the letter "U". It has to be understood that this element is longitudinally cut in order to form a pair of guides.

2.2 According to Claim 4, which is directed to a pair of drawer guides, **each** guide comprises a rail extending in a portion designed to be bent in the shape of the letter "C" to embrace the lower edge of a shoulder and has a flat development in the form of a substantially rectangular figure. Having regard to the description and the drawings of the patent, it has to be understood that the C-shaped portion of each guide comprises a central portion forming "a flat development in the form of a substantially rectangular figure" (i.e. the shoulder portion indicated in the drawings by the reference number 14), an outer end (outer relative to the drawer), i.e. the part indicated in the drawings by the reference number 13, and an inner end in the form of spaced tabs (i.e. the parts indicated in the drawings by the reference number 19) which project from said flat development.

The feature in Claim 4 according to which the tabs are "made by cutting along a fret line from a single piece of material inscribing the development of the two guides of the guide pair" relates to the method of manufacturing the pair of guides. This feature defines two guides which are suitable for being manufactured by cutting a single piece along a fret line. In other words, this feature defines two guides, each guide having recesses positioned in correspondence with the tabs of the other guide, the shape of each recess being substantially complementary to the shape of the corresponding tab. This feature, read in conjunction with the feature in the pre-characterising portion of Claim 4, indicates that the tabs project transversely with respect to the longitudinal direction of the guide, i.e. that the tabs are able to be bent upwardly substantially about the symmetry line of the single piece of metal from which the pair of guide is manufactured.

3. *The alleged public prior use*

3.1 Analysis of the evidence

3.1.1 Documents D3 to D15

(i) Documents D3, D5, D7, D9, D11 and D13 are letters sent from the firm Donati Snc to various clients (Manuel Duarte e Paiva (Portugal), Colell S.A. (Spain), Quincaillerie A. Ventures INC. (Canada), A. Hamdi Akkad (Syria), Sarman Yapi Ticareti (Turkey), Difha Srl (Argentina)), all these letters being dated 18 April 1990. In these letters it is stated that samples of a drawer guide made by Donati were delivered to

these clients, this drawer guide being referred to with the reference "D8". Documents D4, D6, D8, D10, D12 and D14 are declarations made by the respective clients acknowledging that some samples of a drawer guide made by Donati Snc (i.e. the guide "D8") were received, all these declarations being dated February or March 1997.

It has to be noted that - although these documents refer to a drawer guide which can be assembled to the drawer by means of clamps instead of screws - their content does not permit identification without ambiguity of the technical features of the guide. In other words, these documents do not give any precise technical information about what could have been sent by Donati Snc to its clients.

(ii) Document D15 is a declaration of the firm M.D. Ferramenta Sas dated 19 February 1996 according to which samples of a drawer guide made by Donati Snc were received by this firm at the end of 1990. Even this declaration - although it refers to guides provided with clamps which can be identified by the reference "D8" in the actual catalogue of Donati - does not permit the features of the guides which could have been received by M.D. Ferramenta Sas to be identified without any doubt.

(iii) In the written phase of the proceedings the respondent asserted that it was unbelievable that guide samples together with a pneumatic device to clamp the guides had been sent to clients in foreign countries without any kind of

customs documentation and argued that the appellant had failed to file documents proving the shipment of the guides.

Moreover the respondent stated that the guides "D8" were shown during exhibitions only after 1994, so that these guides, although it was asserted that they were developed in 1990, apparently were not shown to the public in 1990.

Furthermore, during the oral proceedings the respondent expressed doubts as to the authenticity of these documents.

Moreover, the attention of the appellant was drawn to the circumstance that documents D10 (Syria, 1997) and D12 (Turkey, 1997) appear to have been typed with the same typing machine as documents D3, D5, D7, D9, D11 and D13 (Italy, 1990). In this respect, the appellant could not give any clarification.

3.1.2 The catalogues of Donati Snc

Document D16 (D17) is a declaration of Mr Panzeri, employee of Donati Snc, which refers to guides identified by the reference "D8". A single page of a catalogue of Donati Snc (Att. 1) having the heading "Self closing bottom fixing drawer slide with clamps - D8" is attached to this declaration. This page presents *inter alia* a photo of a guide, a table indicating the position of the clamps and referring to a schematic drawing which can be considered as representing a side view of the guide and a drawing representing a cross section of the assembly guides-drawer.

Document D18 comprises a page of a further catalogue of Donati Snc, this page having the heading "Drawer slides bottom fixing self closing for authomatic quick assembling - D8" (*sic*). This page comprises a photo corresponding to the photo in the catalogue page attached to document D16 and two pictures representing two machines for assembling drawer slides "D8" (This page is also attached to and referred to in document D25).

No information concerning the publication date of these catalogues can be derived from the documents submitted by the appellant. The respondent asserted that these catalogues were published in 1995 and the appellant confirmed that they were published after the priority date of the patent in suit. Therefore, these documents do not belong to the state of the art.

In any case, it has to be noted that the photos in these catalogues do not permit unambiguous identification of the technical features of the guide. In particular, it cannot be derived immediately and unequivocally from these photos that the clamps (i.e. the tabs referred to in Claims 1 and 4) are made by cutting along a fret line from a single piece of material inscribing the development of two guides of a guide pair.

3.1.3 Documents D16 (D17), D19 and D26 (D26a)

(i) Documents D16 and D19 are declarations of Mr Panzeri concerning drawer guides identified with the reference "D8". Document D26 is a further declaration of Mr Panzeri confirming the declarations D16 and D19. According to these

declarations D16 and D19 the firm Donati Snc started the production of guides of the type D8 in March 1990. In this respect, it has to be noted that even if guides of this type were produced in 1990, then this would not prove in any way that these guides were made available to the public in 1990.

(ii) In documents D16 and D19 Mr Panzeri also declares that he knew that guides of the types "D8" were delivered to clients of Donati Snc prior to 1991.

3.1.4 Document D25 (D25a) is a declaration of Mr Longoni, employee of Donati Snc, which refers to the page of the catalogue of Donati Snc (document D18). In his declaration Mr Longoni asserts that guides of this type had been manufactured by Donati Snc since June 1990 and sold in that year. However, this declaration is not supported by evidence concerning the sale.

3.1.5 Documents D21 (D21a), D21b (D21c), D22 (D22a) and D23 (D23a)

These documents prove that Donati Snc ordered two cutting blades which were suitable for cutting a piece of material along a fret line by the firm MCS di Meroni Dario and sold as well as delivered from this firm to Donati Snc in March 1990. Thus, these documents can support the assertions of Mr Panzeri and Mr Longoni according to which guides of the type "D8" were manufactured already in 1990 by Donati Snc. However, these documents cannot prove that guides as shown in the catalogues of Donati Snc referred to in the above section 3.1.2 were made available to the public before

the priority date of the patent in suit.

3.1.6 Document D24 (D24a)

Document D24 is a copy of the technical report by the expert appointed by the Court of Como in a judicial proceedings between the respondent and the firm "Donati Acessori per Mobili Snc" (*sic*), the firm Donati Snc being the defendant party suited by the respondent, as proprietor of the Italian patent No. 1248585, this Italian patent corresponding to the Italian application No. IT91MI91788, whose priority is claimed in the patent in suit. In this judicial proceedings the expert was asked to answer to the question of whether the guides produced by the defendant party infringed the Italian patent.

In this report, the expert, after having compared drawer guides made by Donati and described during a descriptive seizure ("descrizione giudiziaria") with the guide according to the Italian patent, expresses the opinion that the guides made by Donati as described during the descriptive seizure infringe the Italian patent.

It can be derived from this report that, in the judicial proceedings before the court of Como, Donati alleged that guides identified with the reference "D8" as illustrated in a catalogue had been manufactured also before the filing date of the Italian patent. In this respect, the expert after having compared the guide illustrated in the catalogue of Donati with the guide as described during the descriptive seizure expressed the opinion that there was no significant difference between these guides.

3.2 Evaluation of the evidence

3.2.1 The question of whether the evidence submitted by the appellant proves the alleged public prior use is an issue of fact which has to be examined and decided on the basis of strict and critical criteria (see "*Case Law of the Boards of Appeal of the European Patent Office*", 3rd edition 1998, VI.J.5(b), pages 332 and 333). In other words the public prior use alleged by the appellant has to be proved beyond any reasonable doubt.

3.2.2 Having regard to the observations in the above section 3.1, the most relevant evidence with respect to the alleged public prior use comprises the statements of Mr Panzeri and Mr Longoni made in their declarations with respect to the delivering or selling of guides (see above sections 3.1.3(ii) and 3.1.4).

In this respect, it has to be noted that the statements of Mr Panzeri refer in a very general manner to deliveries of guides to clients of Donati Snc without being supported by any further evidence concerning these deliveries. This also applies for the statement of Mr Longoni which refers to "several hundred" guides sold in 1990.

Moreover, the declarations of Mr Panzeri are not explicitly linked to documents D3 to D15 which refer to some deliveries of guides without clearly identifying the features of the guides. The statement of Mr Longoni is less relevant than those of Mr Panzeri in this respect, in so far as it does not refer to deliveries of guides but to sales of guides, so that it cannot be linked (not even implicitly) to documents D3 to D15.

In any case, the technical features of the guides "D8" which, according to the declarations of Mr Panzeri and Mr Longoni, would have been available to the public before the priority date of the patent in suit, are not unequivocally clear to the board, particularly since these declarations rely on documents published after the priority date. Moreover, it is not clear to the board whether (or not) technical developments were made between the alleged shipment of the guides "D8" to the clients before the priority date of the patent and the appearance on the market of guides "D8" after this priority date.

3.2.3 As to the objections concerning documents D3 to D15 as referred to in the above section 3.1.1(iii), it has to be considered that the appellant did not substantially react to these objections. The appellant asserted that the documents submitted in support of the alleged public prior use were made available to the public and thus to himself only because of the judicial proceedings between the respondent and the company Donati Snc (see above section 3.1.6), implying thereby that he was not in the possession of further evidence supporting these allegations. However, this does not means that all the evidence in support of this alleged public prior use lay outside the competence of the appellant because it has to be assumed that the firm Donati Snc (as a competitor of the respondent) and the appellant have a common interest against the patent in suit, so that it appears possible that the appellant would have been able to supply further evidence. In any case, the appellant did not prove that he was unable to supply further evidence.

3.2.4 Document D24 represents the opinion of an expert in

proceedings concerning the alleged infringement of the Italian patent corresponding to the patent in suit, this infringement proceedings not being concerned with the validity of the Italian patent. Therefore, this opinion is not relevant for the present case. Moreover, the report does not deal with the issue of whether the evidence submitted by the defendant party (Donati Snc) proves that the guides illustrated in the catalogue of the firm Donati Snc were manufactured before the filing date of the Italian patent. Therefore, this document is not relevant for the availability to the public of the drawer guides "D8" before the priority date of the patent in suit.

3.2.5 The catalogues referred in the above sections 3.1.2 are not relevant because they do not belong to the prior art. The evidence referred to in the above sections 3.1.3(i) and 3.1.5 is not relevant because - as explained in these sections - it does not prove that the Donati-guides have been made available to the public before the priority date of the patent in suit.

3.2.6 Therefore, the board is not satisfied that the evidence submitted by the appellant proves beyond any reasonable doubt the availability to the public of the alleged public prior use.

4. *Prior art*

4.1 Document IT-A-203 626 (D1) concerns a drawer guide comprising a rail 3a extending in a shoulder portion designed to be bent so as to embrace the lower edge of a shoulder of the drawer, this portion comprising an outer end 3, a central part 5 and spaced tabs 6.

This document refers to a drawer guide without explicitly describing a method for manufacturing a pair of drawer guides. However, it is clear from this document that, in order to provide the tabs 6 in each drawer guide, notches 7 are cut in the shoulder portion of the guide parallel to the longitudinal direction of the guide whereafter the tabs formed in this way are bend upward. Moreover, it is credible that the guide referred to in document D1 is manufactured by cutting a strip of metal along the symmetry axis of an U-shaped element so as to form two specular elements.

4.2 Document D2 describes how to cut a metal sheet along a fret line for obtaining hinge arms having projecting portions which have to be wound so as to form the cavities receiving the hinge pin.

5. *Novelty*

The claimed subject-matter is novel with respect to the prior art. In fact novelty was not disputed with respect to documents D1 and D2.

6. *Inventive step*

6.1 Document D1 is considered by the board and the parties as being the closest prior art (see the above section 4.1).

The subject-matter of Claim 1 differs from this prior art by the features specified in the characterised portion of the claim and the subject-matter of Claim 4 differs therefrom essentially in that the flat development from which project the tabs is "made by cutting along a fret line from a single piece of

material inscribing the development of the two guides of the guide pair".

Having regard to the method of cutting the tabs 6, the central part 5 of the shoulder portion of guide shown in document D1 must have a width extending beyond the thickness of the drawer shoulder, so that there is a considerable increase in the material necessary for producing the guides. Furthermore, the tabs provide poor resistance against sliding out of the guides with respect to the drawer shoulder in the longitudinal direction of the guide because they are bent along a line which is transverse to the longitudinal direction of the guide.

6.2 Thus, the problem to be solved is to obviate these drawbacks of the prior art.

The distinguishing features not only result in a reduction of the material necessary for the production of the guides but also ensure that the guides be firmly fixed to the drawer with a greater resistance against sliding.

Therefore, the board is satisfied that the claimed subject-matter solves the problems indicated above.

6.3 Document D2 relates to the manufacturing of a hinge, i.e. to a specific technical field which is remote from the specific field to which the claimed invention relates. Moreover, document D2 does not contain any indication to the problem to be solved particularly in so far as this problem concerns the fixing of the tabs to the drawer. Therefore, the skilled person would not consider this document when he is concerned with the

solution of his problem.

6.4 On the one hand, the cited prior art does not give a hint to a skilled person to improve the manufacturing of a pair of drawer guides, as well as to a modified pair of drawer guides; on the other hand, the board sees no reason why a skilled person, due to his common general knowledge, would come in an obvious way to a manufacturing method and to a pair of drawer guides as presently claimed.

Therefore the board finds that the subject-matter of the independent Claims 1 and 4 is not obvious to a person skilled in the art and that the subject-matter of these claims involves an inventive step as required by Article 56 EPC.

7. Therefore, the patent as granted can be maintained.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

G. Magouliotis C. Andries