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**D E C I S I O N**  
of 26 September 2000

**Case Number:** T 0080/98 - 3.2.4

**Application Number:** 92112591.0

**Publication Number:** 0513854

**IPC:** A45C 5/02

**Language of the proceedings:** EN

**Title of invention:**

Luggage case

**Patentee:**

SAMSONITE CORPORATION

**Opponent:**

Horizon Deutschland GmbH i.K.

J. Zimmermann Nachf. Inh. Karl Kronenberger GmbH & Co. KG

Valigeria Roncato S.p.A.

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

"Inventive step - yes"

**Decisions cited:**

T 0130/89

**Catchword:**

-



Case Number: T 0080/98 - 3.2.4

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

**Appellant:** Valigeria Roncato S.p.A.  
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**Former party as of right:** Horizon Deutschland GmbH i.K.  
(former opponent II) vertreten durch Konkursverwalter:  
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**Decision under appeal:** Interlocutory decision of the Opposition Division of the European Patent Office posted 16 December 1997 concerning maintenance of European patent No. 0 513 854 in amended form.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** M. G. Hatherly  
R. E. Teschemacher

## Summary of Facts and Submissions

I. The opposition division's interlocutory decision that the amended European patent No. 0 513 854 met the requirements of the EPC was posted on 16 December 1997.

On 12 January 1998 the appellant (opponent IV) filed an appeal with a statement of grounds and paid the appeal fee. On 16 January 1998 the appellant filed a corrected statement of grounds.

An appeal was also filed by opponent III who however withdrew his opposition by letter of 20 September 2000.

On 21 September 1999 opponent II was struck off the register of companies held by the District Court of Springe in Germany and so ceased to be a party as of right in the appeal proceedings.

II. The opposition division decided that the version of the patent according to the auxiliary request No. 1 presented to the opposition division at the oral proceedings of 6 November 1997 met the requirements of the EPC. This version is the basis of the main request in the appeal proceedings and claim 1 thereof reads:

"A luggage case (11) comprising two shells (12, 13) moulded from plastics material, each shell having a peripheral side wall (15, 17), the side walls forming the front (18), back (19) and end walls (20) of the case, the two shells (12, 13) being hinged together at the back walls (19) and having only three latches (24, 25, 26) for releasably fastening the edges of the shells together when the case (11) is closed, two latches (24, 25) being located at the front of the end

walls (20) or at the corners between the front and end walls (20) of the case (11) and the third latch being mounted halfway along the front wall, wherein an elastomeric strip (35) is provided along the edge of one of the shells (12), the elastomeric strip extending around the periphery of the shell edge and wherein, when the case is closed, the elastomeric strip (35) is clamped between the rims of the two shells (12, 13) to form a seal, the latches (24, 25, 26) engaging across and to the outside of the sealing strip (35) when the latches (24, 25, 26) are fastened."

III. The appellant cited the following documents in the appeal proceedings:

D2: Japanese Design Patent No. 699 891

D3: US-A-3 967 708

D6: GB-A-1 544 080

D9: FR-A-1 368 150

D11: Declaration of Mr Yunis Zekaria dated 13 December 1991 on the Delsey "Visa" range of suitcases

D12: GB-A-2 031 853

D13: US-A-2 415 220

D14: DE-A-2 253 024

D15: FR-A-2 455 552

D16: United Kingdom Registered Design No. 1 021 940

D39: A single sheet showing a suitcase called "Echolac" by Kodama Chemical Industry Co. Ltd and bearing the number "1985"

D40: DE-U-8 327 697.1

D41: Webster's Third New International Dictionary - definitions of the word "latch"

IV. The appellant and the respondent (proprietor) attended oral proceedings on 26 September 2000.

In the appeal proceedings the appellant argued that what was claimed was merely an aggregation of features since the provision of an elastomeric strip was not related to the position and number of the latches. All the features were known per se and their combination was obvious to the skilled person and brought no relevant additional advantage.

The respondent countered the appellant's arguments.

V. The appellant requested that the decision under appeal be set aside and the patent revoked.

The respondent requested that the appeal be dismissed (i.e. that the patent be maintained amended as decided by the opposition division).

Alternatively he requested that the decision under appeal be set aside and the patent be maintained on the basis of one of the sets of claims submitted with the letter dated 25 August 2000 (indicated as auxiliary requests 2 to 9).

## Reasons for the Decision

1. The appeal is admissible.
2. *Amendments - main request*
  - 2.1 The present claim 1 adds to claim 1 as granted
    - that the shells are "moulded from plastics material" which can be found in column 2, lines 37 and 38 of the description as granted (page 3, lines 24 and 25 of the originally filed description),
    - that there are "only three" latches for releasably fastening the edges of the shells together, this being clear from the preferred embodiment in the granted patent which has only the three specified latches, see e.g. Figures 1 to 3 and 12; column 2, lines 55 to 57 of the patent as granted (page 4, lines 1 and 2 of the originally filed description) ("**Three** latches 24, 25 and 26 are provided ...") and column 3, lines 16 to 18 (page 4, lines 18 to 20 of the originally filed description) ("**Two** of the latches 24 and 25 ... The **other** latch 26 ...")
    - "the third latch being mounted halfway along the front wall" which can be seen on Figures 1 and 3 and in column 3, lines 17 to 19 (page 4, lines 19 and 20 of the originally filed description) ("The other latch 26 is mounted halfway along the front wall of the case.")

Thus the added features are not objectionable under Article 123(2) EPC and, since they restrict the scope

of the claim, there is no objection under Article 123(3) EPC either.

2.2 The present dependent claims 2 to 9 essentially correspond to the dependent claims as granted. The present page 2 of the description differs from the granted version merely in adaptation to the present claim 1 and an amendment to the acknowledgement of the prior art. The remainder of the description and the drawings are as granted.

2.3 Thus there are no objections under Article 123 EPC to the patent documents of the main request.

3. *Interpretation of claim 1 of the main request*

During the oral proceedings the respondent agreed with the board that in claim 1 of the main request

- "each shell having a peripheral side wall (15, 17), the side walls forming the front (18), back (19) and end walls (20) of the case" means that each shell has its own side wall that extended all around the periphery of the case,
- the edge referred to in the words "an elastomeric strip (35) is provided along the edge of one of the shells (12)" is the edge of the peripheral side wall,
- "the elastomeric strip extending around the periphery of the shell edge" means that the elastomeric strip extended around the whole periphery of the shell,



- "the elastomeric strip (35) is clamped between the rims of the two shells (12, 13) to form a seal" means that the elastomeric strip is compressed and that claim 3 of the main request (that states that "the elastomeric strip (35) is compressed between the shells") adds nothing to claim 1 and so is superfluous.

4. *Novelty - claim 1 of the main request*

It is clear that D2 was published after the filing date of the present patent while it is not clear when (or even whether) D39 was published.

In the oral proceedings the appellant withdrew the novelty attack based on D2 and D39 and stated that he had no other novelty objection.

The board agrees that there is no prior art document on file that discloses all the features of claim 1 of the main request and so finds its subject-matter to be novel within the meaning of Article 54 EPC.

5. *Closest prior art, problem and solution - claim 1 of the main request*

- 5.1 The board agrees with the respondent that the prior art luggage case closest to the present invention is the Delsey Visa suitcase referred to in D11, a case which comprises two plastics moulded shells, each having a peripheral side wall, the side walls forming the front, back and end walls of the case. The two shells are hinged together at the back walls and have means for releasably fastening the edges of the shells together when the case is closed. An elastomeric strip is

provided along the edge of one of the shells to extend around the periphery of the shell edge and, when the case is closed, is clamped between the rims of the two shells to form a seal.

The means for releasably fastening the shells together are two lockable fasteners, one each side of the handle on the front wall. Apparently they hold the shells together even before locking (otherwise one would have to use the key shown in the picture entitled "Serrures de sécurité ..." in each lock each time the case is opened and each time it is closed).

- 5.2 The weight of the case according to D11 can be minimised by making the plastics moulded shells thin but this will result in the case having a low rigidity which will manifest itself in "a tendency for the case to gape along the end edges when the case is overfilled or when a heavy load is placed in the centre of the lid of the case, for example when someone sits on the case. This is undesirable not only because small items of luggage may fall out of the case but also because it is impossible to provide an effective seal between the shells to keep out dirt and water", see column 1, lines 13 to 21 of the description of the patent as granted (page 1, second paragraph of the originally filed description).

This problem of gaping and the resulting poor sealing was already clearly disclosed in the original application (see e.g. page 1, lines 10, 15, 18 and 23; page 2, lines 3 to 5; page 5, lines 8 and 29; page 9, line 29; and page 10, line 4) and the board is convinced that it really did occur and so needed to be solved.

5.3 Part of the solution to this gaping and sealing problem adopted in claim 1 as granted is to provide only three latches (thus keeping the weight low) for releasably fastening the edges of the shells together when the case is closed, two of these latches being located at the front of the end walls (i.e. end edges) or at the corners between the front and end walls of the case and the third latch being mounted halfway along the front wall. The first two latches overcome the gaping problem at the end walls while the third latch prevents gaping at the front wall. All three latches are easily accessible from the front of the case and are therefore convenient to use, unlike latches halfway along the end walls of the case - see column 1, lines 24 to 27 of the patent as granted (page 1, third paragraph of the originally filed description).

Prevention of gaping ensures that, when the case is closed and the elastomeric strip is clamped between the rims of the two shells, effective clamping is achieved all along the elastomeric strip. Moreover the elastomeric strip extends around the periphery of the shell edge i.e. it is not interrupted in the region of the latches which when fastened engage across and to the outside of the strip. Thus a continuous and effective seal is achieved all around the case.

5.4 Accordingly the board finds that the truly existing problem posed by the prior art case of D11 is solved by the combination of the features of claim 1 of the main request.

5.5 The appellant argued that the provision of an elastomeric strip was not related to the position and number of latches and that the strip and the latches

were merely an aggregation of features. The board, on the other hand, considers that, for the strip to seal effectively, it needs to be compressed properly along its periphery and that it is the correct positioning of the latches which achieves this. Thus the gaping and the poor sealing are interrelated.

6. *Inventive step - claim 1 of the main request*

6.1 If the skilled person was concerned that, because of its thin moulded shells, the prior art case referred to in D11 suffered from gaping and poor sealing then he could simply rigidify the shells by making them thicker and/or providing them with ribs.

6.2 If he wished to avoid these solutions then he would look at other prior art cases, such as the case of D6.

While this is a fibre board case, the skilled person would immediately realise that its multiplicity of fasteners might be of use in the D11 case. The gaping problem of the D11 case is due to its lack of rigidity and D6 explains in lines 34 to 39 of page 2 that "the provision of the fastening devices which apply a predetermined amount of compression between the abutting edges of the shells at spaced apart points along those edges further **increases the rigidity** of the case when closed." It would be clear to the skilled person that the increase in rigidity of the D6 case is due in part to the positioning of these fastening means and that it might be advantageous to make use of this positioning to solve the problem arising from the D11 case.

Lines 52 to 55 of page 1, lines 1 to 4 of page 2 and

Figure 1 of D6 disclose "lockable fastening means 7 ... on each side of the handle to enable the shells to be locked together when the case is closed" and that "In the illustrated case three fastening devices 14 are provided, one on the front of the case (as viewed) and two (only one shown) on the sides of the case." Lines 40 to 42 of page 2 add that "Of course, more than three fastening members 14 may be provided depending upon *inter alia* the size of the case."

If the skilled person decided to change the position and/or number of the fasteners on the D11 case using the teaching of D6 then he might either adopt the D6 arrangement entirely i.e. two fastening means 7 on the front, one fastening device 14 centrally on the front and two fastening devices 14 centrally on the sides. Alternatively when modifying the D11 case he might follow the instruction in lines 40 to 42 of page 2 of D6 to use, in addition to the two fastening means 7, more than three fastening devices 14 shown in Figure 1 of D6 e.g. two fastening devices on each side.

Whichever of the above ways the skilled person chose to modify the D11 case, the result would have at least five fasteners 7 and 14.

The particular embodiment shown in Figure 1 of D6 has **five** latches. While claim 1 of D6 does not specify the number of latches but specifies the presence of **lockable** fastening means as well as **further** fastening means, and while claim 11 specifies that "each fastening device comprises a hook member and an over-centre toggle member", nowhere in D6 is it disclosed that there are only **three** latches and that two of these are located at the front of the end walls or at the

corners between the front and end walls. The two lockable fastening means 7 in D6 cannot be disregarded since their flaps obviously have to be shut when the case is closed and, even if not locked, do help to hold the shells together. Furthermore their presence on the case of D6 is essential as indicated in claim 1 (page 2, line 50 and page 1, lines 52 to 55).

Thus D6 would not teach the skilled person to provide **only** three latches and would not teach him to move the side latches from half-way along the end wall as shown in Figure 1 of D6 to be "located at the front of the end walls (20) or at the corners between the front and end walls (20)" as required by claim 1 of the main request.

Accordingly the skilled person making use of the teachings of D11 and D6 would not arrive at the subject-matter of claim 1 of the main request in an obvious way.

- 6.3 The appellant argued that the invention was merely the optimum positioning of latches for a case having three latches and that if the skilled person wished to provide a case with three latches then he would space them around the case periphery so as to achieve even compression. This would be achieved by a first latch half-way along the front wall and the other two each half-way between the first latch and the hinge on the back wall.

The board disagrees because the appellant's argument presupposes that the case has the same stiffness around its periphery whereas plainly the corners are stiffer than the walls. This would lead the skilled person to

place the other two latches half-way between the corners (as shown on Figure 1 of D6).

6.4 The other prior art documents referred to by the appellant now need to be considered, starting with D3.

6.4.1 While Figure 7 of D3 shows and lines 36 and 37 of column 2 state that the second case section 12 is fabricated from two preformed parts 21 and 22, it is explained in lines 48 and 49 of column 4 that "optionally, the parts 21 and 22 may be manufactured as one item." However, whether in one part or two, this second case section 12 does not have a wall that corresponds to the back wall in the terminology of the opposed patent. This is apparent from Figure 7; from the list in column 2, lines 38 and 39 of what it **does** have, namely "a back panel 23, two end panels 24 and 25 and a top panel 26" (thereby implying the absence of a bottom panel); and from lines 48 to 52 of column 2, namely "a continuous flange 28 ... lacking that portion extending along the bottom panel edge."

Thus the requirement in claim 1 of the main request of each shell having a back wall (see the above section 3) is not satisfied by the shell 12 of D3 (the **back** panel 23 of this shell of course corresponds to the **bottom** wall 16 of the present patent not to its back wall 19).

6.4.2 This unusual construction of D3 seems to have been dictated by the case being for "relatively long apparel, e.g. suits, dresses and coats, ... avoiding tight folding of such long apparel", see column 1, lines 20 to 23.

Plainly, if someone knew of the present invention, then

he would be struck by the similarity of one alternative of the claimed positions for the two further latches "at the front of the end walls" and the positions shown on Figures 1, 5 and 6 of D3 of the latch mechanisms 30 on the end panels 24 and 25.

However the board cannot see that the skilled person (at the filing date of the present patent and therefore ignorant of the present invention) starting from either the Delsey Visa suitcase referred to in D11 or from the case known from D6 would pay much attention to D3 because the case of D3 is of such an unusual construction, completely different to that of D11 or D6.

If, on the other hand, the skilled person were to start from the case of D3 and modify it, then he would still retain the main features of D3's unusual construction. It would not be obvious for him to change the basic type of the D3 case into the type defined by the opening words of claim 1 of the main request.

6.4.3 Lines 40 to 48 of column 3 of D3 state that "a locking apparatus 44, such as a combination lock, for example, is incorporated into the top panel substantially midway between the end panels ... When the case is closed, a clasp or hook 46 ... coacts with the locking apparatus in a known manner to provide selective locking of the case sections together." The locking apparatus 44 is shown in Figures 1, 3, 5 and 6.

Starting from the Figure 5 position, the user pushes the first case section 11 down onto the second case section 12 so that the case sections are held together by the side latch mechanisms 30 and the clasp 46 takes



up the position shown in Figure 3. However D3 does not disclose whether merely closing the case sections will cause the clasp 40 to be held (i.e. self-latching) or whether it is necessary to turn the combination wheels to hold the clasp 40.

According to column 1, lines 43 to 45 of D3 "A locking-latch apparatus is provided on the top panel adjacent the handle, e.g., combination or key lock" which at first sight implies the self-latching possibility. However no explanation is given of the term "locking-latch apparatus" and claim 6 of D3 lists the latching means on the end panels separately from the means on the top panel for locking the case sections together. The board considers it probable that locking is necessary for holding the clasp since there does not appear to be a release button on Figures 1, 5 and 6 that would be necessary to release the clasp if it were self-latching.

Claim 1 of the main request specifies that what is mounted halfway along the front wall is a latch. The appellant cited D41 and relied on its definition of a latch as being "the catch which holds a door or gate when closed even if not bolted". However, from the board's reasoning in the last sentence of the last paragraph, it does not seem that the fastener on the top panel of D3 is a latch. The appellant argued it would be obvious to "renounce the anti-theft function of this lock" but in this case one would be left with no fastening at all.

6.4.4 There is no disclosure in D3 of a sealing strip and, in view of the unusual construction of the D3 case, it is not clear where one could be provided. If it were in

the U-shaped channel bounded by flange 27 in Figure 4 then the latch 31, 43 would interfere with it since the hasp 31 attached to the first case section 11 would need to go past the sealing strip in order to engage the pawl 40 on the second case section. Then the latch would not be "engaging across and to the outside of the sealing strip" in the words of claim 1 of the main request. Moreover a sealing strip in this position would not extend around the periphery of the shell edge and thus also in this respect would not satisfy claim 1 of the main request.

6.4.5 In view of the above comments it is clear that, even if it were obvious to combine the teachings of D11 and D3, it would not be obvious to arrive at a case as defined by claim 1 of the main request. There is no reason to suppose, if the skilled person were trying to combine the teaching of D3 with the teaching of either D6 or D11, that he would cherry-pick just those features necessary to arrive at the claimed case. Thus D3, alone or in combination with other teachings, would not lead the skilled person to the present invention.

6.5 In D9 a lid 2 is held on a body 1 by fasteners 16 to 23 thereby compressing an elastomeric strip 4 (see Figures 1 to 4; page 2, left hand column, lines 21 to 30). The fasteners are distributed around the periphery of the container, see page 2, right hand column, lines 3 to 5. It is not disclosed and there is no hint that merely three fasteners are used and that these are (only) at the positions specified in claim 1 of the main request. Thus D9 would not lead the skilled person to the claimed invention.

6.6 D40 discloses a case with an elastomeric sealing strip

19 in a groove 18 at the edge of an upper shell 1 (see Figure 2 and page 5). However the locks 6 and 7 are one each side of the handle on the front wall and so this document is no more relevant than D11.

6.7 The appellant cited D12 to D16 merely against dependent claims. As far as claim 1 of the main request is concerned, these documents are no more relevant than the other documents considered above.

6.8 The appellant referred to the headnote of T 130/89 (OJ EPO 1991, 514) which states that "the use of a known material on the basis of its known properties and in a known manner to obtain a known effect in a new combination is not normally inventive." However while latches and their properties are known, the manner of their use (i.e. the positioning of merely three latches as specified in claim 1 of the main request) is not known from any cited prior art document.

6.9 Thus the board cannot see that the prior art documents on file, on their own or in combination, could lead the skilled person in an obvious manner to arrive at the luggage case specified in claim 1 of the main request.

7. Section 4.1 of the (corrected) statement of grounds of appeal states that "all prior art documents cited in the prosecution and in the Oppositions filed by all Opponents are included by reference in this appeal". In accordance with the case law, this simple reference, without stating why the appellant's opinion on these documents differs from that of the opposition division, will not be dealt with by the board.

Moreover in his letter of 28 August 2000 the appellant

submitted by reference the arguments set forth in the appeal T 83/98. However in the oral proceedings on the present appeal T 80/98 the appellant was able to explain in detail the relevant arguments from the appeal T 83/98. For any remaining arguments attention is drawn to the decision on appeal T 83/98.

8. The subject-matter of independent claim 1 of the main request is thus patentable as required by Article 52 EPC. Its dependent claims 2 to 9 are also patentable.
9. No claim in this version has the same scope as any claim (independent or dependent) in the version of European patent No. 0 221 215 which is to be maintained according to the decision T 83/98. For example the feature in claim 1 of European patent No. 0 221 215 of the latches being of the type that pulls the shells together as they are fastened is not specified in any of the present claims in European patent No. 0 513 854. Thus there is no double patenting.
10. The patent may therefore be maintained amended in the version according to the main request and thus there is no need to look at what are designated the auxiliary requests 2 to 9.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries