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D E C I S I O N
of 24 July 2000

Case Number: T 1093/98 - 3.2.4

Application Number: 91919618.8

Publication Number: 0555319

IPC: A63G 1/26

Language of the proceedings: EN

Title of invention:

Fairground device

Patentees:

Knijpstra Konstruktie B.V.

Opponents:

Stardust Limited & Co. Ltd.

Headword:

-

Relevant legal provisions:

EPC Art. 111(1), 52(1), 54

Keyword:

"Claim 1 of the main request - novel - yes"

"Remittal of first instance"

Decisions cited:

-

Catchword:

-



Case Number: T 1093/98 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 24 July 2000

Appellants: Knijpstra Konstruktie B.V.
(Proprietor of the patent) Bornego 39
8449 EC Terband (NL)

Representative: Smulders, Theodorus A.H.J., Ir.
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Respondents: Stardust Limited & Co. Ltd.
(Opponents) 4th Floor, 50 Hans Crescent
Knightsbridge
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Representative: Klitzsch, Gottfried
Patentanwälte
Grünecker, Kinkeldey,
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 7 September 1998
revoking European patent No. 0 555 319 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: M. G. Hatherly
C. Holtz

Summary of Facts and Submissions

- I. European patent No. 0 555 319 was revoked by the opposition division's decision dispatched on 7 September 1998.

On 3 November 1998 the proprietor filed an appeal and paid the appeal fee, filing the statement of grounds on 13 January 1999.

- II. The sole reason given in the decision for the revocation was that the subject-matter of the granted claim 1 lacked novelty with respect to

D1: FR-A-2 188 454

- III. In the statement of grounds of appeal the appellants (proprietor) insisted that the subject-matter of the granted claim 1 was novel over D1 and criticised the opposition division for not commenting on the other independent claim 2 of the granted patent.

The respondents (opponents) replied by letter of 4 August 1999 with reasons for the subject-matter of claim 1 not being novel, of claim 2 not being inventive and of the dependent claims 3 to 27 being either not novel or not inventive.

In its first communication of 13 September 1999 the board provisionally found that the subject-matter of claim 1 was not novel and that in this situation neither the opposition division nor the board needed to go further to examine the granted independent claim 2. The board added that it intended to remit the case to the first instance for further prosecution if a new

claim 1 with novel subject-matter over D1 were filed.

By letter of 24 January 2000 the appellants filed two new sets of claims. However they stated that they could not agree to part of the board's first communication.

By telefax of 13 April 2000 the board asked the appellants if they agreed to remittal of the case without oral proceedings, which they did in their letter of 20 April 2000. The opponents were informed of the board's intention to remit but have not commented thereon. At no stage have they requested oral proceedings.

IV. Claim 1 of the main request (entitled Proposal I) filed with the letter of 20 April 2000 reads:

"A fairground device (1) comprising a base disc (4) driven for rotation about a central axis (3) and a number of seat supports (9;41;60) mounted in spaced relation relative to the central axis (3) for rotation about a second axis (10), each of the seat supports carrying a number of seats (11;17;45;46;62) mounted eccentrically relative to the corresponding second axis (10), wherein the seats (11) are mounted on the seat supports for rotation about at least one, third axis (14) extending substantially transversely to the second axis (10), said fairground device further including a number of intermediate discs (6) mounted in spaced relation relative to the central axis (3) for rotation about a fourth axis (7), each intermediate disc (6) carrying a number of the seat supports (9;41;60) spaced from the fourth axis (7) and rotatable relative to the intermediate discs (6)."

V. The appellants request that the decision under appeal be set aside and that the case be remitted to the first instance for further prosecution on the basis of either:

- Claims 1 to 3 of Proposal I filed with the letter of 20 April 2000 and claims 4 to 26 of Proposal I filed with the letter of 24 January 2000 (main request), or
- Claims 1 to 26 of Proposal II filed with the letter of 24 January 2000 (auxiliary request).

The appellants request oral proceedings before the board only if the case is not remitted.

The respondents request dismissal of the appeal.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments made to arrive at claim 1 of the main request (entitled Proposal I)*

This claim contains all the features of claim 1 as granted and most of the features of claim 3 as granted.

The part of claim 3 as granted that has been omitted is that of "said seat supports being rotatable eccentrically of the second axis (10)".

Looking at Figure 1 of the patent specification, the seat 11 is rotatable about the third transverse axis 14

provided on the seat support 9 which rotates about the second axis 10. Claim 3 as granted states "said seat supports being rotatable eccentrically of the second axis (10)" which (wrongly) implies that there is an extra axis, parallel to the second axis 10, so that the vertical arm of the L-shaped seat support 9 rotates relative to the horizontal arm of this seat support 9. Therefore it is correct to omit this part of the granted claim 3 from claim 1 of the main request.

The board therefore sees no objection under Article 123 EPC to the amended claim 1 of the main request.

3. *Novelty over D1 - claim 1 of the main request*

3.1 In the wording of claim 1 of the main request, D1 discloses a fairground device comprising a base disc (1) driven for rotation about a central axis (2) and a number of seat supports (8) mounted in spaced relationship relative to the central axis (2) for rotation about a second axis (7), each of the seat supports carrying a number of seats (9) mounted eccentrically relative to the corresponding second axis (7), where the seats (9) are mounted on the seat supports for rotation about at least one, third axis (13) extending substantially transversely to the second axis (7) (see Figures 1, 2 and 4, and page 1, line 30 to page 3, line 13 of D1).

3.2 Claim 1 of the main request is further restricted however by "said fairground device further including a number of intermediate discs (6) mounted in spaced relation relative to the central axis (3) for rotation about a fourth axis (7), each intermediate disc (6) carrying a number of the seat supports (9;41;60) spaced

from the fourth axis (7) and rotatable relative to the intermediate discs (6)."

- 3.3 Thus in the claimed device the seats are rotatable about **four** axes and the seat supports are carried by intermediate discs whereas in the device of D1 the seats are rotatable only about **three** axes and, as can be seen from Figure 2 of D1, the seat supports 8 are carried by the shaft forming the second axis 7.
- 3.4 Thus the subject-matter of claim 1 of the main request is novel over the disclosure of D1 (Articles 52(1) and 54 EPC).
4. The only reason given in the decision for revoking the patent was the lack of novelty of claim 1 as granted with respect to D1. However the respondents have given other reasons why the patent should not be maintained. In order not to deprive the parties of one instance of jurisdiction, the board decides to exercise its power under Article 111(1) EPC to remit the case to the opposition division to continue the examination of the opposition on the basis of the claims of the main request and the auxiliary request.
5. Excluding the novelty over the disclosure of D1 of the subject-matter of claim 1 of the main request which has been decided by the Board, the opposition division will need to examine this claim 1 (and if necessary that of the auxiliary request) having regard not only to D1 but also to the other cited prior art. Before the patent could be maintained the opposition division would need to examine the independent claim 2 objected to by the respondents. Now that the clear novelty objection against claim 1 as granted has been overcome, the

opposition division may well wish to deal with both independent claims simultaneously but this will be left for the opposition division to decide.

It will be left to the opposition division to decide whether the claim is to be divided into two parts and, if so, which prior art document is to be used (see the last paragraph of the appellants' letter of 24 January 2000). The opposition division can also consider what amendments are necessary to the description and drawings.

The opposition division's attention is drawn to the appellants' request made in the letter of 20 April 2000 for oral proceedings before the opposition division.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution based on the claims as set out in section V above.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries