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D E C I S I O N
of 12 June 2001

Case Number: T 0416/99 - 3.2.3

Application Number: 92311319.5

Publication Number: 0549209

IPC: E06B 9/262

Language of the proceedings: EN

Title of invention:
Pleated screens

Applicant:
METACO INC.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes) - after amendment"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0416/99 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 12 June 2001

Appellant:

METACO INC.
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Representative:

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Decision under appeal:

**Decision of the Examining Division of the
European Patent Office posted 20 November 1998
refusing European patent application
No. 92 311 319.5 pursuant to Article 97(1) EPC.**

Composition of the Board:

Chairman: C. T. Wilson
Members: J. du Pouget de Nadaillac
J. P. B. Seitz

Summary of Facts and Submissions

I. The appeal is directed against the decision dated 20 November 1998 of an Examining division of the European Patent office, which refused the patent application EP-A1-0 549 209 for lack of inventive step of the claimed subject-matter, having regard to the disclosure of document referenced D2 in the following list of prior art documents cited in the Search Report:

D1: US-A-4 762 159

D2: DE-A-3 248 083

D3: US-A-4 202 395

D4: US-A-4 733 710

D5: US-A-4 880 045

D6: US-A-4 813 468

II. The appellant, the applicant of the patent application, lodged the appeal on 29 January 1999 and paid the appeal fee on the same day. In the statement of grounds of appeal received on 30 March 1999, he contested the grounds of the above decision, in particular he objected that during the procedure before the first instance no documentary evidence had been provided as to the obviousness of a particular feature of the claimed subject-matter. He also filed new sets of claims as auxiliary requests.

Oral proceedings took place on 22 January 2001. During these proceedings, the board introduced a new document,

namely:

D7: Baubeschlag-Taschenbuch 1979, pages 304 and 305,
Mercator-Verlag,

showing that said feature of the claimed subject-matter was part of the common knowledge of the person skilled in the art before the priority date of the patent application. As a consequence, the appellant filed a new set of two claims as main and sole request, withdrawing all his previous auxiliary requests.

On 4 May 2001 he submitted new pages 2, 2a and 3 of the description.

III. Claim 1 according to the new request of the appellant reads as follows:

"A pleated screen device for mounting to a window or other opening in a house or office, for use as a curtain, a blind, a partition or a screen door, the pleated screen device comprising:
a frame;
at least one sliding bar (5) slidable in the opening and closing direction of said screen device;
at least one foldable and spreadable pleated screen member, at least one end of which is secured to said sliding bar, and the opposite end of which is supported on a face of a member of the frame;
and at least one tension member (15,16) stretched in said opening and closing direction of the device, the or each said tension member being arranged to support said pleated screen member by extending in the opening and closing direction thereof;
characterised in that said sliding bar includes a

plurality of direction changing means for tension members;
said at least one tension member passing around said direction changing means in said sliding bar, and crossing another such tension member in the sliding bar, and
a housing (9) for said pleated screen member is provided in said sliding bar or on the face of the frame member (3) on which an end of the pleated screen member is supported, the housing comprising two side walls extending on either side of the pleated screen member from the sliding bar or frame member on which it is provided towards the other of the sliding bar or the frame member such that the pleated screen member is housed in the housing when in the folded or closed condition and the housing is closed at its open end by the other of the sliding bar or frame member."

IV. The appellant substantially argued as follows:

Since the invention concerns a lightweight screen, document D1 represents the nearest prior art. The screen device disclosed in this prior art has at least no direction changing means and no housing for the screen member. The document D2, which is mentioned in the decision under appeal, indeed shows direction changing means for the tension members of the screen device, but the person skilled in the art dealing with lightweight screen devices would never have considered this prior art, since it discloses a quite heavy and large folding door for use in halls, industrial buildings etc... and therefore concerns another technical field with quite different problems. Thus, the first feature of the characterising part of Claim 1 is not obvious. Moreover, none of the cited documents

shows that before the present invention a housing arrangement as claimed was envisaged. Also in none of them has the claimed relationship between the side walls of the housing and the other of the sliding bar or frame member in the closing condition of the screen device been described, let alone suggested. Thus, it cannot be said that the claimed device was obviously derivable from the prior art.

- V. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of his main and sole request filed during the oral proceedings of 22 January 2001.

Reasons for the Decision

1. The appeal is admissible.
2. *Formal matter*

Since a new document had been introduced in the proceedings, the board has considered the need for sending the case back to the first instance. However, it was decided that in the present case this would not be justified, since in all proceedings the instances of the EPO have constantly contended that the provision of a screen housing in general was well known in the art, hence belonged to the general knowledge of the skilled person in this technical field. The new document D7 was only introduced to confirm this contention.

3. The features of the new claim 1 are disclosed in the patent application as originally filed. In particular, the last feature of this claim concerning the closing

of the housing by the sliding bar or frame member in the closed condition of the screen device can be deduced from Figures 2 and 8, as originally filed. The newly filed description has merely been adapted to the new claims and it was also amended so as to indicate the nearest background art as required by Rule 27(1) b) EPC. Thus, the requirement of Article 123(2) EPC is met.

3. None of the cited prior art documents discloses a screen device comprising all the features of Claim 1, so that the subject-matter of this claim is new.

4. The screen device described in D1 is the most relevant prior art, since it concerns a spreadable pleated lightweight screen member which can be opened and closed in an inclined position owing to the use of tension members, as is the case with the present invention. One end of the screen member is supported on a face of a fixed member of the screen device frame, whereas the other end is attached to a sliding bar. In the central portion of the screen member is located the tension member or cord in the form of a loop between the fixed frame member and the sliding bar, passing through openings of the pleats of the screen member. A spring in either the fixed frame member or the sliding bar provides the tension. This screen device has no frame as such, but it is indicated that the window or skylight frame can be used for this purpose.

5. The object of the present invention is to improve this known screen device, in particular to improve its appearance.

In the closed condition of the screen device, this

problem is solved by the whole feature given in the last paragraph of Claim 1, namely a housing for the screen member achieved by two extended side walls of either the sliding bar or the fixed frame member so that the other of these two elements can abut against these side walls and consequently close the housing, when the pleats of the screen member are completely folded.

6. As already said, screen housings as such are known. D7 shows an example, namely a recess in a wall building suitable to receive the shifted screen member. However, among the seven prior art documents which are cited, none of them describes or suggests the particular housing arrangement as given in Claim 1. D7 is in fact the only one which discloses a housing. None of the other documents deals with the problem of improving the appearance of the screen member, when closed. D3 and D6, in particular, show a similar construction to that in D1, namely a pleated screen member secured between a fixed frame member and a sliding bar. However, in the closed condition, the pleats of the screen member are still visible, folded between the opposite faces of the sliding bar and fixed frame member. There is also no suggestion of using one of the elements, on which the screen ends are secured, for closing a housing provided on the other.
7. Thus, for these reasons, the subject-matter of Claim 1 implies an inventive step in the sense of Article 56 EPC.

Claim 2, which is dependent on Claim 1, concerns the same device with additional features and consequently is also allowable.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division with the order to grant a patent on the basis of the following documents:

Claims: 1 and 2, as filed during the oral proceedings of 22 January 2001;

Description: Pages 1 and 4 to 12, as originally filed;
Pages 2, 2a and 3, as filed on 4 May 2001;

Drawings: Sheets 1/14 to 14/14, as originally filed.

The Registrar:

The Chairman:

A. Counillon

C. T. Wilson