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D E C I S I O N
of 15 November 2005

Case Number: T 0865/05 - 3.2.04

Application Number: 99904445.6

Publication Number: 1005283

IPC: A47G 25/14

Language of the proceedings: EN

Title of invention:
Secure pinch-grip hanger

Applicant:
A & E Products Group LP

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56, 84, 123(2)

Keyword:
"Added subject-matter - yes (main request)"
"Inventive step - no (auxiliary requests)"
"Reimbursement of appeal fee - no"

Decisions cited:
-

Catchword:
-



Case Number: T 0865/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 15 November 2005

Appellant:

A & E Products Group LP
Gateway Plaza
1 Harmon Meadow Boulevard
4th Floor
Secaucus
New Jersey 07094 (US)

Representative:

Schüll, Gottfried Hubert
COHAUSZ & FLORACK
Patent- und Rechtsanwälte
Bleichstrasse 14
D-40211 Düsseldorf (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 25 February 2005
refusing European patent application
No. 99904445.6 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: M. Poock
C. Heath

Summary of Facts and Submissions

I. This appeal is directed against the decision of the examining division dated 25 February 2005 in which European patent application No. 99 904 445 was refused.

The appellant (applicant) lodged the appeal on 29 April 2005 and paid the prescribed appeal fee simultaneously. The statement of grounds of appeal was received on 19 May 2005.

II. The examining division held that the subject-matter of claim 1 is not patentable having regard to the documents:

D1: US-A-3 946 915;

D2: US-A-5 400 932.

III. Oral proceedings before the board were held on 15 November 2005.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request which corresponds to the second auxiliary request filed on 11 November 2005 with claims 1 to 14, or the auxiliary requests 1 and 2 as filed in the oral proceedings with claims 1 to 14, and that the appeal fee be reimbursed.

IV. Claim 1 of the main request reads as follows:

- "1. A hanger (10) comprising:
- (A) an attachment portion (14) for securing said hanger (10) to a support; and

(B) at least one pinch-grip (20) for receiving an article for hanging, said pinch-grip (20) including:

(i) a pair of components (22,24) secured to each other, each of said components (22,24) including an end (30) for receiving the article therebetween

(ii) means for biasing (42) said ends (30) together and for permitting separation of said ends to a fully extended open position by movement of at least one of said components;

characterized in that one of said components (22,24) including at least a pair of laterally spaced, not connected projections (50a) extending on lateral sides of one component towards the other of said components (22,24) to inhibit some accidental movement of the pinch-grip (20) towards the fully extended open position while permitting intentional movement of the pinch-grip (20) towards the fully extended open position."

The pre-characterising portion of claim 1 according to the auxiliary requests 1 and 2 is identical to the main request.

The characterising portion of claim 1 according to auxiliary request 1 reads as follows:

"one of said components (22,24) including only a pair of laterally spaced projections only (50a) extending on lateral sides of one component towards the other of said components (22,24) to

inhibit some accidental movement of the pinch-grip (20) towards the fully extended open position while permitting intentional movement of the pinch-grip (20) towards the fully extended open position."

The characterising portion of claim 1 according to the auxiliary request 2 reads as follows:

"one of said components (22,24) including only a pair of laterally spaced projections only (50a) extending on lateral sides of one component towards the other of said components (22,24) configured and dimensioned to define a head (54) to inhibit some accidental movement of the pinch-grip (20) towards the fully extended open position while permitting intentional movement of the pinch-grip (20) towards the fully extended open position."

V. The appellant argued that the amendment in the characterising portion of claim 1 according to the main request is supported by figures 1 to 6 and the description.

With respect to the auxiliary requests 1 and 2, the appellant defined the problem of the invention as being to provide a hanger comprising a pinch-grip which effectively avoids accidental movement of the pinch-grip towards a fully extended open position while providing at the same time free access to move the pinch-grip intentionally. He argued that this problem is not addressed in D1, that the application of the teaching of D1 to the hanger of D2 would result in a

hanger having only one projection and not a pair of laterally spaced, separate projections, and that there was no indication in D2 that the interconnecting top portion 23 of the hood 20 shown in figure 1 which is in fact a necessary part for the solution of the problem stated above could be omitted. Therefore, the person skilled in the art would not consider D1. But even if he did, he would not arrive at the subject-matter of claim 1 because such solution would only include the side wing 22 of D2 but not the side wing 21 and the interconnecting top portion 23.

The appellant finally argued that the appeal fee should be reimbursed because the examining division has not held the informal hearing with the applicant as requested on a subsidiary basis.

Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 and Rule 64 EPC. Therefore, it is admissible.
2. *Main request - added subject-matter - clarity*

Original claim 1 was amended to include "at least a pair of laterally spaced, not connected projections (50a) extending on lateral sides of one component towards the other of said components". However, as shown in figure 6 of the application as originally filed, the projections 50a are provided on a common base 32 (see also page 7, lines 6 to 8). Thus, the projections 50a are connected via the base 32.

The board therefore concludes that the amendment in claim 1 contradicts figure 6 and extends beyond the content of the application as filed contrary to the requirements of Articles 84 and 123(2) EPC.

Consequently, the main request is not allowable.

3. *Auxiliary requests 1 and 2 - inventive step*

3.1 Closest state of the art, problem and solution

Document D2 discloses pinch-grips with a pair of laterally spaced projections 21, 22, whereas the pinch-grips known from D1 are protected only by one projection 18. Moreover, D2 was filed later than D1 and only a few years prior to the application in suit. Therefore, D2 is considered to represent the closest state of the art.

D2 discloses a hanger having all features of the pre-characterising portion of claim 1 of the first and second auxiliary requests. The hood member 20 provides a protection against accidental movement of the pinch-grip towards a fully extended open position. However, the interconnecting top portion 23 makes it difficult to access to the moveable pinch-grip for opening with the thumb and forefinger.

The board concurs with the appellant (see letter of 13 October 2005, top of page 3) that the underlying technical problem may be seen in the provision of a pinch-grip hanger which effectively avoids accidental movement of the pinch-grip towards a fully extended

open position while providing at the same time free access to move the pinch-grip intentionally.

The solution is achieved in the known hanger with the features of the characterising portion of claim 1, according to which only two separate projections are provided on the lateral sides of one component.

3.2 Obviousness of the solution

D1 discloses a hanger 10 with two pinch grips on either side, each pinch grip being provided with a fixed and a moveable component 22, 31.

Accidental movement of the pinch-grip towards a fully extended open position is avoided by projection 18 which extends from the fixed component 22 towards the moveable component 31 (see for example column 1, lines 52 to 61 and lines 21 to 30). This also ensures that the pinch-grips can be easily opened by squeezing the components between the thumb and forefinger (see column 1, lines 28 to 30).

The board therefore has no doubts that the person skilled in the art would consider D1 if he is trying to find a solution to the problem stated above. The figures of D1 teach that free access to the pinch-grip has to be provided from the top so that it can be easily opened when squeezed between the thumb and forefinger. Therefore, he will remove the interconnecting top portion 23 of the hood 20 in the hanger of D2. The result of this is a hanger as defined in claim 1.

The board therefore concludes that the subject-matter of claim 1 according to the auxiliary requests is obvious for the person skilled in the art in view of documents D2 and D1 (Article 56 EPC).

Consequently, auxiliary requests 1 and 2 are not allowable.

4. *Arguments of the appellant*

For the foregoing reasons, the board does not share the appellant's view that document D1 did not solve the problem stated above.

Further, the board does not share the appellant's view that the application of the teaching of D1 to the hanger of D2 would result in a hanger having only one projection and not a pair of laterally spaced, separate projections. Since the first portion of the problem stated above to effectively avoid accidental movement of the pinch-grip towards a fully extended open position is already solved by the hanger known from D2, the person skilled in the art would concentrate on the second part of the problem and learn from D1 that free access to the pinch-grip from the top is necessary so that it can be easily opened by the thumb and forefinger. This would teach him to remove the interconnecting top portion 23 of the hood 20 in the hanger of D2.

Finally, the board does not share the appellant's view that the subject-matter of claim 1 was inventive because document D2 does not contain any indication that the interconnecting top portion 23 could be

omitted. Since the omission of this portion does not affect the functionality of the D2 pinch-grip, it only matters that this indication is derivable from D1 and that the resultant hanger solves the stated problem.

Therefore, the board had no reason to alter the findings in point 3.

5. *Reimbursement of the appeal fee*

The reimbursement of an appeal fee may be ordered in the event of an interlocutory revision or where the Board of Appeal deems an appeal to be allowable (Rule 67 EPC).

Since neither of these requirements is met, the appeal fee cannot be reimbursed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte