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**Datasheet for the decision
of 10 December 2020**

Case Number: T 1493/18 - 3.2.01

Application Number: 10708147.3

Publication Number: 2421406

IPC: A47B95/00

Language of the proceedings: EN

Title of invention:

RELEASE PREVENTING SYSTEM FOR WALL CUPBOARDS

Patent Proprietor:

Leonardo S.r.L.

Opponent:

Hettich-Heinze GmbH & Co.KG

Headword:

Relevant legal provisions:

EPC Art. 54

RPBA Art. 12(2), 12(4)

Keyword:

Novelty - main request (no)

Late-filed auxiliary request 1 - request withdrawn before the
opposition division

Late-filed auxiliary request 2 - request could have been filed
in first instance proceedings (yes)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 1493/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 10 December 2020

Appellant: Leonardo S.r.L.
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Respondent: Hettich-Heinze GmbH & Co.KG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 April 2018 concerning maintenance of the
European Patent No. 2421406 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The appeal of the proprietor lies against the interlocutory decision of the Opposition Division maintaining the European patent 2421406 in amended form according to the auxiliary request filed during the oral proceedings before it.
- II. In its decision the Opposition Division considered that the subject-matter of claim 1 of the main request lacked novelty in view of DE 9201572 U (D1).
- III. Oral proceedings before the Board were held on 10 December 2020.
- IV. The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request underlying the contested decision, or, in the alternative, that the patent be maintained according to the auxiliary request filed on 29 September 2017 and resubmitted with the statement of grounds of appeal as the first auxiliary request, or according to the second auxiliary request filed with the statement of grounds of appeal.

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

- V. Claim 1 of the main request reads as follows:

"A release-preventing system for wall cupboard, wherein a cupboard (40, 70, 105, 110, 150) is hooked to a support (47, 76, 97, 115, 155) fixed to the wall (48, 77, 98, 114, 154) by means of a hook (41, 73, 91, 125,

162) of a cupboard holding (40, 90, 124, 163) wherein between said hook (41, 73, 91, 125, 162) and said support (47, 76, 97, 115, 155) are included unlacing means (51, 79, 101, 121, 160, 10 167) of reciprocal tie, characterized in that said unlacing means consist of a grain (51) screwed on said hook (41) and suitable to interfere with said support (47)."

Claim 1 of the first auxiliary request reads as follows (differences with respect to claim 1 of the main request highlighted by the Board):

"A release-preventing system for wall cupboard, wherein a cupboard (40, 70, 105, 110, 150) is hooked to a support (47, 76, 97, 115, 155) fixed to the wall (48, 77, 98, 114, 154) by means of a hook (41, 73, 91, 125, 162) of a cupboard holding (40, 90, 124, 163) wherein between said hook (41, 73, 91, 125, 162) and said support (47, 76, 97, 115, 155) are included unlacing means (51, 79, 101, 121, 160, 167) of reciprocal tie, characterized in that said unlacing means consist of a grain (51) which is a headless screw screwed on said hook (41) and suitable and adapted to directly interfere with said support (47)."

Claim 1 of the second auxiliary request reads as follows (differences with respect to claim 1 of the main request highlighted by the Board):

"A release-preventing system for wall cupboard, wherein a cupboard (40, 70, 105, 110, 150) is hooked to a support (47, 76, 97, 115, 155) fixed to the wall (48, 77, 98, 114, 154) by means of a hook (41, 73, 91, 125, 162) of a cupboard holding (40, 90, 124, 163) wherein between said hook (41, 73, 91, 125, 162) and said support (47, 76, 97, 115, 155) are included unlacing

means (51, 79, 101, 121, 160, 167) of reciprocal tie, characterized in that said unlacing means consist of a grain (51) which is a headless screw screwed on said hook (41) and suitable and adapted to directly interfere with said support (47), wherein said grain (51) is screwed inside a threaded seat (56) obtained on a flange (57) protruding downwards from the hook (41), the flange (57) being opposed to a tooth (45) of the hook (41) and being placed at a suitable height below the same, so that when said grain (51) is in a backward position, the piece of furniture (58) is hooked to the wall (48), then the grain (51) is screwed in an advanced position, so that the tip (53) is blocked on the support (47) interfering with the same."

Reasons for the Decision

1. Main request
- 1.1 Novelty - Article 54 EPC
- 1.1.1 Interpretation of claim 1

"Grain"

The appellant considered that the term "grain" of claim 1 had to be interpreted as a grub screw. Clearly "grain" did not have a specific technical meaning in the field of fastening or securing means. Therefore, the skilled person when reading claim 1 would refer to the description of the patent specification in order to clarify its meaning. The term was defined in paragraph 17 of the patent specification together with the

embodiment of figures 1 to 8. This paragraph reads as follows:

" [0017] *Characteristically, according to the invention, a release-preventing system co-operates with the tooth 45 of the hook 41, and with the bar 47, which, in the embodiment shown in figures 1-8, consists of a grain 51 comprising a threaded section 52, a tip 53, and a shaped head 54 for a manoeuvring tool, for example a screwdriver 55."*

Even though the grain was defined as including a shaped head, the head corresponded to that of the embodiment shown in figures 1 to 8 which as depicted in the figures corresponded to the end portion of a grub screw.

The Board does not agree entirely with the appellant and follows the view of the Opposition Division in its decision and that of the respondent. The view of the appellant is shared inasmuch as the term "grain" does not have any specific technical meaning in the field of screwable parts. Consequently, the skilled person when reading claim 1 - which is a combination of granted claims 1 and 2 - will look into the patent specification to understand what exactly from a technical point of view is meant under the term "grain". The grain as noted by the appellant is defined in paragraph 17 of the patent and it comprises a threaded section, a tip and a shaped head for manoeuvring a tool. If the rationale of the appellant were to be applied according to which paragraph 17 has to be read strictly in combination with the element 51 depicted in the figures 1 to 8 then the shaped head

would not only be limited generally to that of a grub screw but to the specific star head of the grub screw shown therein. The skilled person, however, when reading paragraph 17 understands that a grain comprises a tip, a threaded section and a shaped head but that it has not to be limited to the one shown in figures 1 to 8 in order to perform its technical function. Clearly, the shape of the head is such that it is suitable for any manoeuvring tool (be it a star, flat or hexagonal screwdriver) to be screwed or unscrewed irrespective of other features of the head. As pointed out by the respondent, the shape of the head as being that of a grub screw does not further have any technical function in the embodiment of figures 1 to 8 since, as shown in figure 8, the head portion of the screw still protrudes from the hook. The head portion has therefore only the latter function mentioned, namely to enable engagement with a tool to be screwed or unscrewed. Consequently, the grain according to claim 1 amounts merely to any kind of screw and is not limited to a grub screw.

"consist of" and "suitable to interfere"

The Board follows as regards "consist of" the view of the appellant and of the Opposition Division in its decision. Claim 1 of the main request is limited to a release-preventing system comprising unlacing means of reciprocal tie which consist of a grain (a screw) which is screwed on a threaded hole of the hook and suitable to interfere with the support. The unlacing means thus comprise only the screw and the threaded hole of the hook.

However, the view of the appellant that the suitability of the unlacing means (i.e. the screw plus threaded hole of the hook) to interfere with said support implies that the screw directly interferes with the

support is not shared. The unlacing means are merely explained in the claim to be suitable to interfere with a support but not excluded to interact for instance through another part as long as the screw and threaded hole provide unlacing means of reciprocal tie.

- 1.1.2 The appellant alleged that the subject-matter of claim 1 was new over the release-preventing system disclosed in figures 1, 2 and 3a of D1. In particular, it considered that D1 did not disclose a grain and a direct interaction without any other part between the unlacing means, i.e. the grain, and the support.
- 1.1.3 However and as explained above, the appellant construes the subject-matter of claim 1 more limiting than it is in fact. Any screw falls under the term "grain" of claim 1 and the subject-matter of claim 1 is not limited to a direct interaction of the unlacing means with the support. Since D1 discloses a screw 24, a grain according to claim 1 is disclosed in D1. According to figures 1, 2 and 3a of D1 the screw 24 is screwed on the threaded hole 21 of the hook 18 (see page 5, second paragraph of D1). Further, the screw 24 and the hole 21 exclusively constitute unlacing means of reciprocal tie since they fix the retaining element 25 and consequently tie it reciprocally in an unlacing manner (by unscrewing the screw 24). The unlacing means (screw 21 and hole 24) interfere through the protrusion 27 of the retaining element 25 with the support 30 providing a release preventing system for a wall cupboard as claimed.
- 1.1.4 It follows that the alleged differences of the subject-matter of claim 1 are indeed disclosed in D1. The subject-matter of claim 1 of the main request is consequently not new.

2. First and second auxiliary requests - admissibility

2.1 The first auxiliary request corresponds to the auxiliary request of 29 September 2017 filed during the opposition proceedings. This request was explicitly replaced by the auxiliary request underlying the contested decision during the oral proceedings before the Opposition Division and therefore implicitly withdrawn (see minutes of the oral proceedings page 3, paragraph four).

According to Articles 24 and 25 RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) the provisions of Article 12(4) RPBA 2007 (Rules of Procedure of the Boards of Appeal OJ EPO 2007, 536) shall apply to the current appeal.

Under Article 12(4) RPBA 2007 the Board has the power to hold inadmissible requests which could have been presented or were not admitted in the first instance proceedings. According to established case law of the Boards of Appeal this applies all the more to requests that were filed and subsequently withdrawn during the proceedings before the Opposition Division, since such a course of events clearly shows that these requests could have been presented and decided in those proceedings (see Case Law of the Boards of Appeal of the EPO, 9th Edition, V.A.4.11.3 f). Reintroducing the request in the appeal proceedings that was replaced during the opposition proceedings runs counter the purpose of an appeal which is to review what was decided by the first instance department (see Article 12(2) RPBA 2020).

The appellant argued that although the first auxiliary request had been withdrawn during the Oral Proceedings before the Opposition Division, it was in fact implicitly decided upon by the Opposition Division as evidenced by the minutes of the oral proceedings when dealing with the novelty of the subject-matter of claim 1 of the main request so that any ruling by the Appeal Board was not a first ruling.

The Board does not agree. Firstly, the Board cannot see why the issues raised by the respondent during the opposition proceedings regarding the first auxiliary request were duly discussed during the oral proceedings since the request was replaced before it being addressed. These issues being the contested feature "headless screw" present in claim 1 and the amendments carried out to claims 3 and 4 (see letter of 27 December 2017 from the opponent, page 5 et seq.). Secondly, the discussion and opinion expressed by the Opposition Division on a request which is subsequently withdrawn in the course of the oral proceedings does not form part of the decision of the Opposition Division.

Under these circumstances the Board exercised its discretionary power not to admit the first auxiliary request into the appeal proceedings.

2.2 Since claim 1 of the second auxiliary request still contains the contested feature "headless screw" of claim 1 of the first auxiliary request and since independent claim 3 is identical to claim 3 of the first auxiliary request, the Board for the same reasons as for the first auxiliary request exercised its discretionary power pursuant to Article 12(4) RPBA 2007 not to admit the second auxiliary request. Due to the

withdrawal of the auxiliary request of 29 September 2017 the appellant prevented the Opposition Division from giving a reasoned decision on the above mentioned issues thereby compelling the Board to either give a first ruling on them or to remit the case to the department of first instance. This is not the primary object of the appeal proceedings.

3. Consequently, the appeal is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Magliano

G. Pricolo

Decision electronically authenticated