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**Datasheet for the decision
of 15 March 2022**

Case Number: T 3061/19 - 3.2.07

Application Number: 12716127.1

Publication Number: 2686751

IPC: F16M11/10, F16M11/40, F16M13/00

Language of the proceedings: EN

Title of invention:
EXTENDING SOCKET FOR PORTABLE MEDIA PLAYER

Patent Proprietor:
PopSockets LLC

Former Opponent:
Out of the blue KG

Headword:

Relevant legal provisions:
EPC Art. 56, 113, 116
RPBA 2020 Art. 12(8)

Keyword:
Inventive step - main request (yes) - common general knowledge

Decisions cited:

Catchword:



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Case Number: T 3061/19 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 15 March 2022

Appellant: PopSockets LLC
(Patent Proprietor) 3033 Sterling Circle
Boulder CO 80301 (US)

Representative: Hoffmann Eitle
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
13 September 2019 concerning maintenance of the
European Patent No. 2686751 in amended form.

Composition of the Board:

Chairwoman A. Beckman
Members: V. Bevilacqua
C. Brandt

Summary of Facts and Submissions

- I. The appeal of the patent proprietor arises from the interlocutory decision of the opposition division to maintain European patent No. 2 686 751 in amended form on the basis of the then auxiliary request 1.
- II. The only **opposition** filed against the patent in suit was directed against the patent as a whole and based on Article 100(a) EPC (lack of novelty and lack of inventive step) as well as on Articles 100(b) and 100(c) EPC and was **withdrawn** with letter dated 30 May 2018.

With a communication dated 5 November 2018 the patent proprietor was informed that opposition proceedings were continued by the opposition division of its own motion.

According to the appealed decision the main request filed with letter dated 8 May 2019 was not allowable because the subject-matter of independent claim 1 thereof was not inventive starting from the teaching of a video published on the internet (referred to as E8c) and taking the common general knowledge of the skilled person into account.

The subject-matter of claims 3 and 9, dependent on claim 1, was also found to lack inventive step over the combination of E8c and the common general knowledge of a skilled person.

- III. The patent proprietor (appellant) requested
- that the decision under appeal be set aside

and
that the patent be maintained in amended form
according the main request as filed on 8 May 2019,
or, in the alternative,

that the patent be maintained in amended form on
the basis of one of the sets of claims filed as
auxiliary requests 1 to 7 with letter dated
8 May 2019 or as auxiliary request 8 with the
statement setting out the grounds of appeal.

The patent proprietor only requested oral proceedings
in the event that the main request be not allowed.

IV. In the present decision reference will be made to the
above mentioned video (E8c) which was submitted as a CD
with the notice of opposition as well as to the
following documents mentioned in the appealed decision:

E4: US 61/453,375
E7: DE 20 2011 105 790 U1
E10: RU 2 059 399 C1 with English translation E10a
E11: US 2002/0069582 A1.

V. Independent claim 1 of the main request reads as
follows:

"A portable media player case (100, 101) for housing a
portable media player (200), comprising:
a case body (4) for housing the portable media player;
and an extendable socket (24) attached to the case
body, the socket including:
an accordion (2) forming a conical shape and capable of
extending outward from the case body and retracting
back toward the case body,

and a foot disposed at the distal end of the accordion, wherein the accordion comprises walls (8, 10, 11, 12) interspersed with flexural hinges (9), the walls being rigid relative to the hinges, and is constructed and arranged (29) such that the walls remain generally parallel to the axis of the accordion when the accordion is collapsed."

As claims 3 and 9 of the main request are dependent on claim 1 it is not necessary, in the light of the grounds of the present decision, to repeat them here.

VI. The appellant's arguments contesting the decision of the opposition division are dealt with in detail in the reasons for the present decision.

Reasons for the Decision

1. Procedural aspects

The present decision is taken in written proceedings without holding oral proceedings in accordance with Article 12(8) RPBA 2020. The party's rights under Articles 113 and 116 EPC are observed.

The principle of the right to be heard pursuant to Article 113(1) EPC is observed since that provision only affords the opportunity to be heard.

The appellant's request for oral proceedings pursuant to Article 116(1) EPC is auxiliary to its main request that the decision under appeal be set aside and that the patent be maintained in amended form according the main request as filed on 8 May 2019.

Thus, since the appellant's main request is followed by the Board, the auxiliary request for oral proceedings does not become active.

2. Inventive Step - Article 56 EPC (main request)

2.1.1 The opposition division concluded that claim 1 of the main request did not validly claim the priority of document E4 because the alternative of claim 1 relating to a single extendable socket was not disclosed in E4 (see decision under appeal, point 20.5.7).

The priority claimed for additional features in claims 3 and 9 was also considered as being invalid (see decision under appeal, point 20.9).

Based on the above, the opposition division found that E8c, published on the internet, was prior art according to Article 54(2) EPC for the subject-matter of claims 1, 3 and 9.

The opposition division then found that the subject-matter of claims 1, 3 and 9 of the main request did not fulfil the requirements of Article 56 EPC in view of the teaching of E8c in combination with the common general knowledge.

2.1.2 In the reasons for the appealed decision (point 21.3.1), the opposition division identified as the difference between the subject-matter of claim 1 and the portable media player case disclosed in E8c the feature that the collapsing structure was an accordion, comprising walls interspersed with flexural hinges, the walls being rigid relative to the hinges.

2.1.3 The reasons for considering that this distinguishing feature was an obvious solution to the problem of implementing the collapsing structure shown in the video were that

"A radially folding bellow was well known, see e.g. figs. 1b, 1c of E7, figs. 1, 2, 6, 7 of E10, or fig. 8, 9 of E11. Note in particular that these documents cover a rather broad time span of publication and relate to a broad span of application context."

(see decision under appeal, point 21.1.3)

and that

"When the structure is implemented by a bellow, parts of the wall of the structure may be regarded as relatively rigid walls, while other parts, interspersing the wall parts may be regarded as flexural hinges"

(see decision under appeal, point 21.3.2).

The conclusions of the opposition division on lack of inventive step for dependent claims 3 and 9 were based on the assessment of lack of inventive step of claim 1, as set out in points 21.4 and 21.5 of the appealed decision.

2.2 The Board disagrees.

2.2.1 Even by assuming, *pro arguendo*, that

- the priority analysis of the opposition division, as well as

- the analysis of the content of the disclosure of E8c and that

- the identification of the feature distinguishing the subject-matter of claim 1,

were correctly done, the Board concurs with the appellant that the conclusions on lack of inventive step of claims 1, 3 and 9 of the main request are based on hindsight.

- 2.2.2 The subject-matter of claim 1 differs from the case shown in E8c at least in that the structure which is capable of extending outward from a case body and retracting back to the case body is an accordion, wherein the accordion comprises walls interspersed with flexural hinges, the walls being rigid relative to the hinges.

This distinguishing feature is shared also by dependent claims 3 and 9.

- 2.2.3 The effect linked thereto is, according to the description of the patent in suit (paragraph [0031]), that the structure has a reduced profile in the collapsed state.

The skilled person starting from E8c was thus faced with the objective technical problem of modifying the collapsible structure shown in the video E8c in order to reduce its profile in the collapsed state.

- 2.2.4 The opposition division, looking at E7, E10 and E11 noted that *"these documents cover a rather broad time span of publication and relate to a broad span of application context"* and concluded that radially folding bellows pertain to the common general knowledge of a skilled person, and concluded that therefore the distinguishing feature was obvious.

- 2.2.5 This assessment was not correct because to determine whether the distinguishing feature would have been

obvious to the skilled person, the opposition division should have applied the "could-would approach" (see Case Law of the Boards of Appeal, 9th edition, 2019 I.D.5).

The appealed decision is based on hindsight, because the opposition division failed to explain why the skilled person, in the expectation of a profile reduction, would have arrived at the claimed invention just knowing that accordions structures having folding bellows are generally known and are used in a wide variety of applications outside of the technical field of the patent in suit.

The Board therefore concurs with the appellant that starting from E8c, and taking the common general knowledge into account, it is not apparent which teaching contained in E8c or in the common general knowledge would have prompted the skilled person to modify the portable media player case of E8c so as to implement the distinguishing feature therein.

- 2.2.6 The Board also concurs with the appellant that the skilled person would not have expected to find in documents E7, E10 and E11 a teaching that could be applied to a portable media player case such as the one shown in E8c.

This is because all these documents relate to technical fields which are remote from the technical field of the invention and of E8c.

E7 concerns a pumping device on a dispenser for cosmetic products (paragraph [0001]), E10 (see claim 1) liquid vessels and E11 floral containers.

Therefore, without the benefit of hindsight, the skilled person starting from E8c would also not be motivated by any of documents E7, E10 or E11 to apply the distinguishing feature to a portable media player case in order to achieve a reduced profile in the collapsed state.

2.2.7 The above considerations are sufficient for concluding that the subject-matter of claim 1 of the main request, and of claims 3 and 9 dependent therefrom, is inventive over the combination of E8c with the common general knowledge of the skilled person, or with any of documents E7, E10 and E11.

2.2.8 No further objections have been presented by the opposition division in the reasons for the decision under appeal which would prejudice the maintenance of the patent in suit in amended form according the main request as filed on 8 May 2019.

The Board sees no reason to raise any further objections.

As a consequence, the appellant has demonstrated in a convincing manner the incorrectness of the decision under appeal in respect of the main request, so that the patent may be maintained in accordance with the main request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form with the claims according the main request as filed on 8 May 2019, the figures of the patent specification and a description to be adapted thereto.

The Registrar:

The Chairwoman:



G. Nachtigall

A. Beckman

Decision electronically authenticated