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**Datasheet for the decision
of 3 January 2022**

Case Number: T 3111/19 - 3.2.01

Application Number: 16180094.1

Publication Number: 3120733

IPC: A47C9/00

Language of the proceedings: EN

Title of invention:

EXERCISE CHAIR

Applicant:

Kinetic Furniture of Vermont Inc.

Headword:

Relevant legal provisions:

EPC Art. 123(2), 54, 56

Keyword:

Amendments - added subject-matter (no)

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



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Case Number: T 3111/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 3 January 2022

Appellant: Kinetic Furniture of Vermont Inc.
(Applicant) 789 Orchard Shore Road
Colchester, VT 05446-7442 (US)

Representative: Schiffer, Axel Martin
Rundfunkplatz 2
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 4 July 2019
refusing European patent application No.
16180094.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
O. Loizou

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the patent application in suit (hereinafter "the application").
- II. The examining division decided that the main request, the first auxiliary request and the second auxiliary request filed on 24 May 2019 contained subject-matter which extended beyond the content of the application as originally filed contrary to the requirements of Article 123(2) EPC.
- III. With the statement of grounds of appeal, the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the main request or auxiliary requests 1-3 filed therewith.
- IV. Following telephone calls with the rapporteur of the Board, the applicant filed with letter dated 8 October 2021 amended claims 1-6 of a new main request with amended pages 1-2 of the description and with letter dated 7 May 2021 amended pages 3-16 of the description.
- V. The appellant finally requested that the decision under appeal be set aside and that a patent be granted on the basis of the following:

Description:

Pages 1-2 filed with letter of 8 October 2021 and pages 3-16 filed with letter 7 May 2021.

Claims:

1-6 filed with letter of 8 October 2021, and

Drawings: Sheets 1/19-19/19 as originally filed.

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

A rocking assembly including a rocking mechanism, a base plate (112), and a seat (116), wherein the rocking mechanism is coupled to the seat (116); and a fastener (600) coupling the base plate (112) to the rocking assembly, wherein at least a portion of the fastener is made from elastomeric materials (610) so as to assist in the motion of the rocking assembly, and further including a second fastener (600), wherein the second fastener couples the rocking mechanism to the seat (116), wherein at least a portion of the second fastener is made from elastomeric materials, characterized in that the rocking mechanism is a single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) with one of the sides having a curved surface (1310) and the other of the sides having an opposing curved surface (1312), wherein curved surface (1310) has pulled-down opposing ends and a single, curved continuous peripheral edge and wherein opposing curved surface (1312) has pulled-up opposing ends and a single, curved continuous peripheral edge, wherein the pulled-down opposing ends of the curved surface (1310) are transverse to the pulled-up opposing ends of the opposing curved surface (1312), and wherein curved surface (1310) is coupled to opposing curved surface (1312) along their respective curved peripheral edges such that the rocking mechanism has a single, curved continuous peripheral edge, wherein curved surface (1310) has an apex and a first contact line (CL1), wherein opposing curved surface (1312) has an apex and a second contact line (CL2), and wherein the first contact line (CL1) and the second contact line (CL2) are orthogonal and do not intersect,

that the base plate (112) is fastened to the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) at the apex of the opposing curved surface (1312) by means of the fastener (600) such that the base plate contacts the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) along second contact line (CL2), wherein the base plate (112) can rock, wobble and/or swivel about the second contact line (CL2), and

that the seat (116) is fastened to the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) at the apex of the curved surface (1310) such that the seat (116) contacts the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) along first contact line (CL1) by means of the second fastener (600), wherein the seat (116) can rock, wobble and/or swivel about the first contact line (CL1).

VII. In the present decision, reference is made to the following documents cited in the European search report:

D1: DE 201 10 832 U1 (WANDER GABRIELE [DE]) 8 November 2001 (2001-11-08)

D2: DE 297 04 664 U1 (BAJIC JURE DIPL ING [DE]) 15 May 1997 (1997-05-15)

D3: DE 20 2009 004382 U1 (STAUDER ULRICH [DE]) 9 July 2009 (2009-07-09)

D4: DE 296 07 150 U1 (WANDER GABRIELE [DE]) 14 August 1996 (1996-08-14).

Reasons for the Decision

Main request

1. Added subject-matter - Article 123(2) EPC

The subject-matter of the main request does not extend beyond the content of the application as filed.

- 1.1 Basis for the subject-matter of claim 1 can be found in originally filed claims 1 and 2, figures 13-16B and paragraphs [0036]-[0039] of the application as filed.

Claim 1 is reproduced below in italic with its basis in the application as originally filed:

- 1.1.1 *"A rocking assembly including a rocking mechanism, a base plate (112), and a seat (116), wherein the rocking mechanism is coupled to the seat (116); and a fastener (600) coupling the base plate (112) to the rocking assembly, wherein at least a portion of the fastener is made from elastomeric materials (610) so as to assist in the motion of the rocking assembly, and further including a second fastener (600), wherein the second fastener couples the rocking mechanism to the seat (116), wherein at least a portion of the second fastener is made from elastomeric materials,"*

Basis for the components of the rocking assembly and the structure can be found on figures 16A and 16B. As for the fastener made of elastomeric material, basis can be found in original claims 1 and 2.

- 1.1.2 *"characterized in that the rocking mechanism is a single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) with one of the sides having a curved surface (1310) and the other of the sides having an opposing curved surface (1312), wherein curved surface (1310) has pulled-down opposing ends and a single, curved continuous peripheral edge and wherein opposing curved surface (1312) has pulled-up opposing ends and a single, curved continuous*

peripheral edge, wherein the pulled-down opposing ends of the curved surface (1310) are transverse to the pulled-up opposing ends of the opposing curved surface (1312), and wherein curved surface (1310) is coupled to opposing curved surface (1312) along their respective curved peripheral edges such that the rocking mechanism has a single, curved continuous peripheral edge, wherein curved surface (1310) has an apex and a first contact line (CL1), wherein opposing curved surface (1312) has an apex and a second contact line (CL2), and wherein the first contact line (CL1) and the second contact line (CL2) are orthogonal and do not intersect,"

Basis for the shape of the rocking mechanism can be found in figures 13-15 and paragraph [0036] of the application as originally filed.

- 1.1.3 *"that the base plate (112) is fastened to the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) at the apex of the opposing curved surface (1312) by means of the fastener (600) such that the base plate contacts the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) along second contact line (CL2), wherein the base plate (112) can rock, wobble and/or swivel about the second contact line (CL2), and that the seat (116) is fastened to the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) at the apex of the curved surface (1310) such that the seat (116) contacts the single, two-sided eccentric bicylinder-shaped rocking mechanism (1300) along first contact line (CL1) by means of the second fastener (600), wherein the seat (116) can rock, wobble and/or swivel about the first contact line (CL1)".*

Basis for the fastening of the two-sided eccentric bicylinder-shaped rocking mechanism to the base plate 112 and the seat 116 can be found in paragraphs [0037] and [0038] and figures 16A and 16B. The movement of the seat along the first contact line and the second contact line is also described in paragraphs [0037] and [0038] of the application as originally filed.

- 1.1.4 Furthermore, claim 1 is directed to a rocking assembly and not to an exercise chair comprising a rocking assembly. This generalisation finds basis in paragraph [0036] and figures 13-15, 16A and 16B referring to a rocking mechanism in general without limiting the invention to an exercise chair.
- 1.1.5 Finally, the initial general definition of the movement of the rocking assembly, *"the rocking mechanism sized and configured to allow a user to rotate at least a portion of the rocking assembly literally, longitudinally, and transversally"*, defined in claim 1 as originally filed has been deleted and replaced by the specific movement of the rocking assembly according to the embodiment defined in claim 1.

Indeed in the embodiment defined in claim 1, represented on figures 13-16B and described in paragraphs [0036]-[0039] of the application as filed, the movement of the rocking assembly is limited to rock, wobble and/or swivel along the first contact line and the second contact line. These specific movements of the rocking assembly are now defined in the last section of claim 1.

- 1.2 The examining division held that the amendments made to the subject-matter of claim 1 of the main request filed on 24 May 2019 and in particular the introduction of a

"single curved peripheral edge" led to an intermediate generalisation as the following features:

- (i)- the contact lines (CL1 and CL2) are orthogonal and not intersecting, and;
 - (ii)- the peripheral edge is continuous and sinusoidal were not introduced in claim 1 although inextricably linked to the "single curved peripheral edge".
- (Reference is made to page 7 of the appealed decision).

The introduction of the following features in claim 1 of the main request filed on 8 October 2021:

- *"the rocking mechanism has a single, curved continuous peripheral edge, wherein curved surface (1310) has an apex and a first contact line (CL1); wherein opposing curved surface (1312) has an apex and a second contact line (CL2), and wherein the first contact line (CL1) and the second contact line (CL2) are orthogonal and do not intersect",*

renders the objection relating to feature (i) raised by the examining division moot. Indeed, the contact lines (CL1 and CL2) are defined in claim 1 of the main request as orthogonal and not intersecting, which overcomes the intermediate generalisation objection raised by the examining division.

As to feature (ii), the Board judges that it is not appropriate to add in claim 1 that the single curved continuous peripheral edge is sinusoidal, as a sinusoid corresponds to a very specific mathematical equation, which is not disclosed in the application as filed.

1.3 Dependent claims 2-6:

- Claim 2 corresponds to claim 3 as originally filed and finds basis in paragraph [0012] of the description.
- Claim 3 corresponds to claim 11 as originally filed and finds basis in paragraphs [0048], [0049] and

paragraphs [0022] and [0023] describing the couplings 612 on each end of the fasteners 600 enabling the rocking assembly to be detachable from the base assembly.

- Claim 4 corresponds to claim 12 as originally filed and is disclosed in paragraphs [0015], [0026] and [0048].

- Claim 5 corresponds to claim 13 as originally filed and paragraphs [0015] and [0026]. While the height adjustment mechanism including a plurality of rail members is disclosed in the description in relation with the embodiment of figures 9 and 10, the combination of features according to claim 5 does not present the skilled person with new technical information. In view of the initial set of claims and the description (paragraphs [0048] in combination with paragraphs [0015] and [0026]) the skilled person understands that the plurality of rails may be used for the embodiment defined in claim 1 and shown on figures 16A and 16B.

- Claim 6 relating to an exercise chair comprising the rocking assembly of claims 1-5 finds basis in original claim 1 and paragraph [0048].

1.4 Adaptation of the description

The amendments made to the description for adaptation to the amended claims do not give rise to objections under Article 123(2) EPC.

2. Novelty - Article 54 EPC

The subject-matter of claim 1 is novel over D1-D4.

The subject-matter of claim 1 differs from the disclosure of D1 in that the rocking mechanism

comprises a two-sided eccentric bicylinder-shaped rocking mechanism with a single, curved, continuous, peripheral edge.

In D1, figure 1, sections of cylinder 5 and 7 are placed on top of each other, which does not lead to the geometrical shape of the rocking mechanism of claim 1.

D2, D3 and D4, disclose rocking mechanism that are fundamentally different from the bicylinder-shaped rocking mechanism of the invention to which both the base plate and the seats are fastened. D2, D3 and D4 do not disclose a rocking mechanism comprising a two-sided eccentric bicylinder-shaped rocking mechanism with a single, curved, continuous, peripheral edge.

3. Inventive Step - Article 56 EPC

The subject-matter of claim 1 involves an inventive step in view of D1 either alone or in combination with documents D2 to D4.

D1 can be considered as the closest prior art as D1 discloses a chair with a rocking mechanism, made of two sections of cylinder 5 and 7, having a shape relatively close to the one defined in claim 1.

The subject-matter of claim 1 differs from that of D1 in that the rocking mechanism comprises geometrical shape having a single, curved, continuous, peripheral edge.

According to paragraph [0039] of the application, the shape of the rocking mechanism of the present invention enables movements about the first contact line and the second contact line and thereby allowing the user to rock the seat with a side-to-side rocking motion, a

front-to-back rocking motion and a combination of both movements.

Similar movements are possible with the rocking mechanism of D1.

Therefore, the problem to be solved by the skilled person may be considered as to provide an alternative rocking mechanism.

In view of D1 alone the skilled person is not motivated to change the shape of the rocking mechanism of D1, as D1 does not contain any hint or indication of a rocking mechanism consisting of only an eccentric bicylinder having a single, continuous, curved peripheral edge.

A combination of document D1 with one or more of the other documents D2 to D4 would also not lead to the rocking mechanism of D1 since none of these documents describes the features missing in D1, i.e. the rocking mechanism consisting of an eccentric bicylinder-shaped component having a single, continuous curved peripheral edge.

Order

For these reasons it is decided that:

- The decision under appeal is set aside.

- The case is remitted to the examining division with the order to grant a patent in the following version:

Description:

Pages 1-2 filed with letter of 8 October 2021, and pages 3-16 filed with letter 7 May 2021.

Claims:

1-6 filed with the letter of 8 October 2021.

Drawings:

Sheets 1/19-19/19 as originally filed.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated