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**Datasheet for the decision
of 7 October 2024**

Case Number: T 1365/23 - 3.2.01

Application Number: 17793843.8

Publication Number: 3522755

IPC: A47B77/08, A47B47/04,
D06F39/12, A47B91/02

Language of the proceedings: EN

Title of invention:

PIECE OF FURNITURE IN WHICH A WASHING MACHINE CAN BE PLACED
AND METHOD FOR MANUFACTURE THEREOF

Applicant:

Washtower IP B.V.

Headword:

Relevant legal provisions:

EPC Art. 123(2), 56

Keyword:

Amendments - extension beyond the content of the application
as filed (no)

Inventive step - main request (yes) - non-obvious alternative

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1365/23 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 7 October 2024

Appellant: Washtower IP B.V.
(Applicant) Enschedesestraat 300
7552 CN Hengelo (NL)

Representative: 't Jong, Bastiaan Jacob
Inaday Patent B.V.
Hengelosestraat 141
7521 AA Enschede (NL)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 13 March 2023
refusing European patent application No.
17793843.8 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman S. Mangin
Members: A. Wagner
M. Millet

Summary of Facts and Submissions

- I. The appeal was filed by the applicant against the decision of the examining division to refuse the patent application in suit.
- II. In examination proceedings, the applicant requested with letter dated 18 January 2023 a decision according to the state of the file. Subsequently, the examining division refused the patent application with reference to their communications dated 11 January 2023, 4 October 2022 and 20 May 2022 (wrongly indicated as dated 20 February 2022).

The communication dated 20 May 2022 addresses a main request filed on 9 February 2021 which was found not to be allowable under Article 123(2) EPC.

The communications dated 4 October 2022 and 11 January 2023 both address the main request and auxiliary request 1 filed on 22 August 2022. The main request was still found not to be allowable under Article 123(2) EPC. The subject-matter of claim 1 of auxiliary request 1 was held not inventive over:

D1 (Ikea: "BESTA shelf unit - AA-199377-12- Inter IKEA Systems B.V. 2005")

with common general knowledge as e.g. shown in:

- **D5**: (Anonymous: "jbb stahl design - Waschen", 5 March 2016, XP055362459),

or

- **D7**: US 7,748,682 B2.

- III. After a telephone conversation with the rapporteur of the Board, the appellant filed with letter dated 1 August 2024 an amended description adapted to the

claims of the main request.

IV. The appellant (applicant) requested to set aside the decision under appeal and to grant a patent on the basis of the main request underlying the impugned decision with the description filed with letter dated 1 August 2024. As an auxiliary measure, it is requested to grant a patent on the basis of auxiliary request 1 underlying the impugned decision.

V. Claim 1 of the **main request** reads as follows (feature numbering adopted from the appellant's statement of grounds of appeal):

(a) Piece of furniture (1) in which a washing machine (2) can be placed, comprising:

(b) - two substantially vertical side walls (3),

(c) - a substantially horizontal bottom wall (4),

(d) - a substantially horizontal top wall (5), and

(e) - a substantially horizontal carrier (6) for the washing machine (2), placed between the bottom wall (4) and the top wall (5),

(f) wherein the side walls (3) are placed on top of the bottom wall (4) and wherein the carrier (6) is fixed at a distance above the bottom wall (4), thus forming a storage space between the bottom wall (4) and the carrier (6)

characterized in that

(g) one or more support means (12) for transmitting vertical forces are placed between the bottom wall (4) and the carrier (6);

(h) in that the support means (12) are plate-like and placed substantially parallel to the side walls (3) and/or the rear side; and

(i) in that a retaining member (24) is arranged at a front side of the carrier (6),
(j) wherein the retaining member (24) is formed by an L-shaped metal strip having an upright leg (17) extending in front of the carrier (6), and a horizontal leg (25) extending below the carrier (6), and
(k) wherein the horizontal leg (25) is fixedly connected to the carrier (6) by a number of connectors (26), e.g. screws.

In claim 1 of **auxiliary request 1**, features j and k are deleted.

Reasons for the Decision

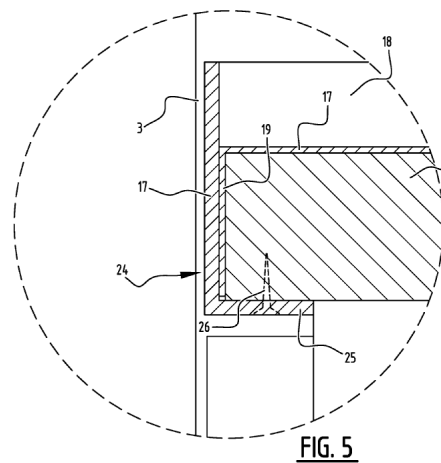
1. Added subject-matter

- 1.1 Claim 1 of the main request meets the requirements of Article 123(2) EPC.
- 1.2 Claim 1 combines the features of originally filed claims 1, 6, 7, 8 and 12. Additionally features j and k are added. These features find basis on page 6, lines 26 to 31, seen together with original claims 1, 11 and 12 of the originally filed application published as international application WO 2018/065631 A1.
- 1.3 This passage on page 6, lines 26 to 31, refers to figure 5 and recites as follows. The text in bold corresponds to features j and k (bold added by the Board):

"In Figure 5 an alternative arrangement of the piece of furniture 1 is shown, in which the carrier 6 is covered by a plate 16 which not only has a downward bent edge 19 at the rear, but also at the front. In this

embodiment the retaining member 24 is formed by an L-shaped metal strip having an upright leg 17 extending in front of the carrier 6 and the bent edge 19 of the cover plate 16, and a horizontal leg 25 extending below the carrier 6. This horizontal leg 25 is fixedly connected to the carrier 6 by a number of connectors 26, e.g. screws."

Figure 5 is reproduced below:



1.4 The examining division was of the opinion that in the recited passage, the specific retaining member 24 as defined in feature j had a clearly recognizable structural and functional relationship to the cover plate 16 with downward bent edge 19 at the rear and the front, wherein the upright leg 17 also extends in front of said bent edge 19 (communication dated 11 January 2023, point 2.2.1).

The claimed feature combination led to an undisclosed embodiment lying somewhere between the original claims and the specific embodiment of figure 5.

1.5 The Board, however, agrees with the appellant (applicant) that the originally filed application presents the cover plate and the retaining means as separate, independent features. The skilled person

understands from the original application that also embodiments according to figure 5 but without a cover plate are included in the original disclosure.

1.5.1 The retaining means and the cover plate are presented as separate features having different functions. The retaining member prevents the washing machine to fall off the carrier and to provide additional stiffness (page 3, lines 20 to 24). In this general part of the description, the retaining member is already presented as being arranged at the front side of the carrier and as being substantially L-shaped with an upright leg.

The cover plate has the function to protect the carrier against moisture (page 3, lines 11 to 15). There is thus no functional link between the two features.

1.5.2 Also a structural link is not derivable, in particular as the retaining member and the cover plate also can be provided separately. This becomes not only clear from page 3 but also from the original claims. The cover plate was claimed in original claim 11. The retaining means were claimed in original claim 12 in dependency of any of the foregoing claims, thus with or without the cover plate.

Consequently, the skilled person understands that figure 5 shows an embodiment with both features realised but that originally also embodiments only with cover plate or only with retaining member were included.

1.6 Dependent claims 3 to 13 correspond to originally filed claims 2 to 5, 9 to 11 and 13 to 17. Method claim 14 refers back to a furniture according to claim 1 and combines originally filed claims 18 and 19.

1.7 Hence, the main request does not add any subject-matter that extends beyond the content of the application as filed.

2. **Inventive step**

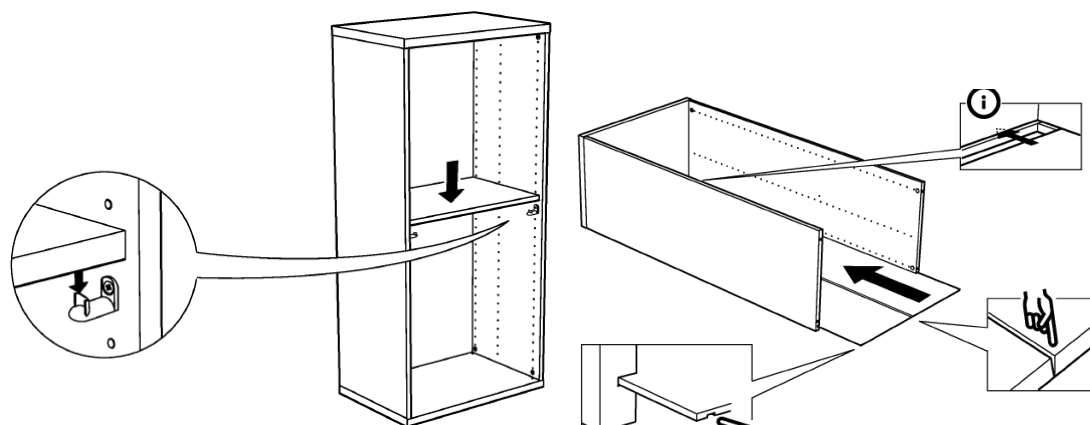
2.1 The main request meets the requirements of Article 56 EPC.

2.2 The findings of the examining division with regard to Article 56 EPC concerned claim 1 of auxiliary request 1. Therein only features a to i are included, but not features j and k. Claim 1 of auxiliary request 1 is thus broader than claim 1 of the main request.

2.3 With regard to auxiliary request 1, the examining division concluded - with D1 as closest prior art - that the only distinguishing feature was the retaining member arranged at a front side of the carrier (feature i).

2.4 The Board does not agree and sees additionally the features g and h (support means) - which were disputed by the appellant - not disclosed in D1.

2.4.1 D1 is an IKEA BESTA furniture, two of the figures being reproduced below.



2.4.2 The examining division considered the side walls and the rear wall as walls and at the same time as support means according to features g and h. Via the brackets, vertical forces were transmitted.

2.4.3 The Board is not convinced. As argued by the appellant, neither the side walls nor the rear wall of the BESTA furniture can be considered as plate-like support means as claimed.

Firstly, the side walls and the rear wall extend outside the carrier and are placed only between the top wall and the bottom wall, not between the carrier and the bottom wall.

Secondly, it is clear from feature h that the support means is a feature additional to the side walls by defining that the support means are placed in parallel to the side walls. The side walls of D1 can hardly be placed substantially parallel to themselves.

Thirdly, although it is recognised that claim 1 does not define a rear wall and therefore the plate-like rear wall of the BESTA furniture might be considered as being placed substantially parallel to the rear side, this rear wall, however, is not a support means suitable to transmit vertical forces from the carrier on which the washing machine is to be placed. As can be

seen from the figures of D1, the rear wall is not intended to be connected to the carrier at all, but serves to stabilise the furniture against lateral forces.

2.4.4 Claim 1 of auxiliary request 1 thus not only differs in the retaining member (feature i) but also in the support means (features g, h).

2.5 As a consequence, claim 1 of the main request differs from D1 in features g to k - in accordance with the features of the characterising portion. Features j and k, additionally included in claim 1 of the main request compared to claim 1 of auxiliary request 1, concern the retaining member - which is undisputedly not disclosed in D1.

2.6 The objective technical problem can be seen in providing a more stable furniture for a washing machine (see description of WO 2018/065631 A1, page 1, lines 13 to 15, and page 3, lines 23, 24).

2.7 The solution to this problem as provided in claim 1 is not rendered obvious by D1 combined with common general knowledge as e.g. known from D5 or D7.

2.7.1 Even if providing plate-like support-means (features g, h) as one possibility to solve the problem posed is obvious seen in combination with D5 (see figure on the left hand side reproduced under point 2.7.4 below), the specific retaining member as claimed has no precedent in the cited prior art.

2.7.2 In its decision, the examining division considered feature i (without the further restrictions of features j and k) as a straightforward possibility which the

skilled person would select without exercising inventive skills when solving the problem how to prevent falling of the washing machine (communication dated 11 January 2023, point 3.3 to 3.6).

2.7.3 However, the now claimed specific retaining member which is arranged at a front side of the carrier and formed as an L-shaped metal strip with an upright led extending in front of the carrier and a horizontal leg extending below the carrier which also provides additional stiffness can no longer be seen as a straightforward, obvious solution.

2.7.4 The examining division, as an example for known retaining means, referred to D5, page 1 (one of the figures is reproduced at the left hand side below), wherein a retractable sliding element mounted below the carrier was considered as a retaining member, or to D7, figures 2 and 3 (figure 3 being reproduced at the right hand side below), wherein the threaded pins 11 for mounting the washing machine on the housing 3 of a pedestal stand were seen as a retaining member.

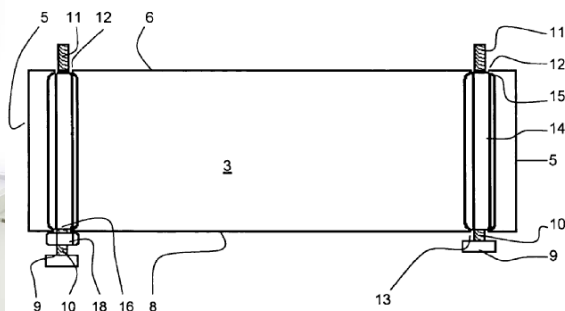


Fig. 3

2.7.5 However, the alleged retaining members are not even arranged at a front side of the carrier and are of a complete different nature than a L-shaped metal strip.

2.7.6 The skilled person would have numerous possibilities to provide additional stiffness to the furniture known from D1. The skilled person could have used screws or pins as shown e.g. in D7. The prior art does not prompt the skilled person to the specific retaining member claimed.

2.7.7 The subject-matter of claim 1 therefore involves an inventive step over the cited prior art.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to grant a European patent on the basis of the following documents:
 - Claims 1-14 (main request) filed with letter of 9 February 2021
 - Description pages 1 to 10 filed with letter of 1 August 2024.
 - figures as originally filed.

The Registrar:

The Chairwoman:



M. Schalow

S. Mangin

Decision electronically authenticated