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Aktenzeichen: T 105/82  
Case Number: T 105/82  
N° du recours :

**ENTSCHEIDUNG / DECISION**

vom / of / du 22 February 1983

Anmelder: MARLEY TILE A.G.  
Applicant:  
Demandeur :

Stichwort:  
Headword: Art. 52(1), 56  
Référence :

EPÜ / EPC / CBE

"Inventive step"

Leitsatz / Headnote / Sommaire

Europäisches  
Patentamt

Beschwerdekammern

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



Case Number: T 105 / 82

**DECISION**  
of the Technical Board of Appeal 3.2.1  
of 22 February 1983

**Appellant:** MARLEY TILE A.G.  
9 Poststraße  
Zug (Schweiz)

**Representative:** Butler, Michael John  
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**Decision under appeal:** Decision of Examining Division 118 of the European Patent  
Office dated 13 May 1982 refusing European patent  
application No 79301802.9 pursuant to Article 97(1)  
EPC

**Composition of the Board:**

Chairman: G. Andersson  
Member: C. Maus  
Member: P. Ford

## Summary of Facts and Submissions

- I. European patent application No. 79 301 802.7, filed on 31 August 1979, published under No. 0 008 935 and claiming the priority of a previous application of 6 September 1978, was refused by the decision of the Examining Division 118 dated 13 May 1982.

The decision was based on Claims 1 to 3 received on 29 November 1981.

- II. In its decision, the Examining Division held that the subject-matter of <sup>to</sup> Claim 1 did not involve an inventive step having regard/US patent specification No. 3 963 268 and German "Offenlegungsschrift" No. 2 548 581.
- III. On 28 June 1982, the appellants lodged an appeal against this decision, paying the fee for appeal and submitting the statement setting out the grounds of appeal simultaneously.

The appellants asserted inter alia that the decision under appeal had been delivered prematurely without the appellants being given sufficient opportunity to present their case and without sufficient consideration being given to its technical merits. It was alleged that established practice and the Guidelines for Examination had not been followed and that it was for the Examining Division and not the Board of Appeal to consider the technical merits of the application at the present stage.

The appellants requested oral proceedings, should the findings of the Board be unfavourable to them.

IV. Oral proceedings were appointed for the 22 February 1983. To make preparations for the proceedings, the rapporteur indicated in a communication objections against the allowability of a single claim, which would comprise also the features mentioned in present Claims 2 and/or 3.

V. In the oral proceedings the appellants requested the decision under appeal be set aside and that a patent be granted on the basis of:

Claims 1 to 3 filed 29 November 1981;  
alternatively Claim 1 filed 16 September 1982;  
alternatively a main claim incorporating the features of existing Claims 2 and/or 3;  
New description filed 29 November 1981;  
Original drawings Figs. 1 to 4.

They also requested reimbursement of the appeal fee and, furthermore, that if the Board were inclined to dismiss the appeal the appellants should have the opportunity to present evidence in support of their case.

Claims 1 to 3 filed 29 November 1981 read as follows:

"1. A moulded thermoplastics socket for a pipe comprising a first, cylindrical member (1) and a second, ring-like member (3) which makes a snap fit with said first member by means of slots (6) formed completely through one of said members engaged with projections (5) formed on the other of said members, the first and second members defining between them a seal-receiving groove having walls perpendicular to the axis of the

members, characterised in that the slots (6) extend through the first member (1) in a direction perpendicular to the axis of the members, and the projections (5) are formed on the second member (3) which is received within the first member (1).

2. A socket as claimed in claim 1 characterised in that the slots (6) in the cylindrical member (1) have walls (8) which are so angled with respect to a diameter (9) of the member as to permit the member to be made in a two part mould having the said diameter (9) as its split line and the two parts being separable in a direction perpendicular to said diameter.

3. A socket as claimed in claim 1 or 2, characterised in that portions (14) are provided in the cylindrical member (1) at locations corresponding to the slots (6) to facilitate alignment of the projections (5) with the slots (6)."

Alternative Claim 1 filed 16 September 1982 has the following wording:

"1. A moulded thermoplastics socket for a pipe comprising a cylindrical member (1) provided with a seal-receiving groove having walls perpendicular to the axis of the member (1) characterised in that in a manner known per se the groove is defined between the cylindrical member (1) and a ring-like member (3) which makes a snap fit with said cylindrical member, and in that the snap fit is provided by projections (5) formed on the ring-like member (3) which engage in slots (6) which extend completely through the cylindrical member (1) in a direction perpendicular to the axis thereof, the ring-like member (3) being received within the cylindrical member (1)".

The appellants presented a copy of British patent specification No. 1 578 743.

They were of the opinion that the subject-matter of each claim is not obvious, having regard to the cited state of the art.

#### Reasons for the decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. The appellants' objections to the procedure adopted by the Examining Division have been carefully considered by the Board but must be rejected as they are not substantiated in law or in fact. Article 113(1) EPC provides that decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.

Before the decision presently under appeal was given, the appellants filed arguments directed to the two cited documents relied on in the decision and referred to the practical advantages of the features included in their new claims 2 and 3, without, however, asserting that those features per se were in any way inventive.

In these circumstances, the Examining Division was under no legal obligation to give the appellants any further opportunity to present arguments or comment. It was fully entitled to decide the case on the material

before it and it did so. The Board is satisfied that there was no departure from established practice or the Guidelines for Examination in the present case. It is also satisfied that the procedural matters raised by the appellants could not have been properly considered by the Board as a preliminary matter, without taking into account the technical merits of the application, having regard to all the circumstances of the case.

3. Having examined the publications mentioned in the search report, the Board agrees with the statement of the Examining Division that the subject-matter of Claim 1, filed 29 November 1981, is new having regard to the cited state of the art.
4. The examination as to whether or not the socket according to Claim 1 is obvious in relation to that prior art produces the following result:

4.1 A moulded thermoplastic socket for a pipe which presents all features specified in the preamble of Claim 1, is disclosed in US patent specification No. 3 963 268. In this known socket, the seal-receiving groove having walls perpendicular to the axis of the two members is formed by bending the cylindrical member at right angles outward and by using the ring-link member. The appellants concede that since the groove is formed by the assembly of the two members after moulding, the use of collapsible cores to mould the socket or a machining step to produce the groove subsequent to the moulding step, can be avoided (cf. page 2, lines 5 to 8 of the present description).

Nevertheless, the appellants urge that the idea of avoiding using collapsible cores or machining which underlies the subject-matter of Claim 1 according to page 1 paragraph 1 of the original and the present description are not mentioned in the said US patent specification. Although this is true, any reference thereto is unnecessary, because having regard to the configuration of the groove the skilled person would immediately understand, without such a reference, that the known socket can be moulded without the use of collapsible cores or machining subsequent to the moulding step and could, therefore, have already solved the problems specified in the cited paragraph of the description.

4.2 In the socket disclosed in US patent specification No. 3 963 268, the ring-like member is connected with the front end of the cylindrical member by means of a snap fit. The slots of the snap fit are in the ring-like member and the projections are formed at the front end of the cylindrical member. According to the statement of the appellants (cf. page 2 paragraph 2 of the present description) this arrangement had the disadvantage that the ring-like member protrudes beyond the cylindrical member. As against this known socket, the problem underlying the application can, consequently, only consist in overcoming this disadvantage.

4.3 The skilled person who may address himself to solving this problem would immediately understand that it is caused by the arrangement of the slots in the ring-like member and of the projections at the front end of the cylindrical member.

Therefore, he would investigate whether or not snap fits between a cylindrical member and a ring-like member are known which would on the one hand show, in principle, the configuration of the groove according to US patent specification No. 3 963 268, but would not on the other hand have the disadvantage of the arrangement known from that patent specification. Should the skilled person fail to find a suitable solution in the field of moulded thermoplastics sockets for a pipe, it could be expected that he would extend his search to closely related fields of joints with sleeves or sockets. This is particularly so since the problem results not from the material of which the socket is made but from the arrangement of the slots and the projections of the snap fit. In this search he would inevitably hit upon German "Offenlegungsschrift" No. 2 548 581. It concerns a plug connection, which is provided for pipes of every type and is classified in the same sub-class and main group of the IPC as the application and in a close sub-group (F16L 21/08). Contrary to the opinion of the appellant, this publication must, therefore, be considered part of the knowledge of the competent skilled person.

4.4 From German "Offenlegungsschrift" No. 2 548 581 the person skilled in the art can gather the idea of arranging the slots in the cylindrical member in a direction perpendicular to its axis and to the projections in the ring-like member, and letting the cylindrical member receive the ring-like member within itself. Otherwise, these two elements are interconnected with the intention of providing a

seal receiving groove, which has in principle the configuration of the groove of the socket according to US patent specification No. 3 963 268. It is true that the projections of the connection disclosed in the German "Offenlegungsschrift" are formed by being stamped out. However, for a skilled person who makes use of this arrangement of the slots and projections in a moulded thermoplastics socket for a pipe, there is no good reason to modify the projections of the connection described in US patent specification No. 3 963 268, because they are also suitable for the purpose when arranged perpendicular to the axis of the two members.

- 4.5 The moulded thermoplastics socket for a pipe according to Claim 1 thus does not involve an inventive step as required by Article 56 EPC. Claim 1 is, therefore, not allowable, having regard to Article 52 EPC.
5. Alternative Claim 1 does not differ in its material content from the above discussed Claim 1. Hence, it cannot be allowed on the same grounds as given for Claim 1 according to the first request. It is not necessary, therefore, to pursue the objection that the present text of this claim does not comply with Rule 29(1) EPC.
6. Finally, the appellants requested the grant of a patent on the basis of a main claim incorporating the features mentioned in dependent Claims 2 and/or 3.

In the communication of the rapporteur it was objected that these features were familiar to a person skilled in the art. It did not exceed ordinary skill to use these

features separately or in combination in the snap fit of the socket. The appellants have not refuted this conclusion.

Consequently, a claim which comprises the features mentioned in present Claims 2 and/or 3 is also unallowable.

7. It is not necessary to consider British patent specification No. 1 578 743 presented by the appellants in the oral proceedings because the moulded thermoplastics socket according to US patent specification No. 3 963 268 is closer to the subject-matter of Claim 1 than the socket disclosed in the said British patent specification.
8. The present decision could be issued without taking evidence because it is clear that there was no question which could be clarified only by means of taking evidence.
9. According to Rule 67 EPC it is a prior condition for the reimbursement of the appeal fee that the Board deems the appeal to be allowable. The present case does not comply with this requirement. No reimbursement of fee can, therefore, be ordered.

For these reasons,

it is decided that:

1. The appeal is dismissed.
2. No reimbursement of the appeal fee is ordered.

The Registrar:  
signed J. Ruckerl

The Chairman:  
signed G. Andersson