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Bezeichnung der Erfindung: Locking handle device for casement
Title of invention: closure
Titre de l'invention :

Classification: E05B, 13/10

ENTSCHEIDUNG / DECISION

vom / of / du 22 July 1985

Anmelder/Patentinhaber: Regent Lock Co. Ltd.
Applicant/Proprietor of the patent:
Demandeur/Titulaire du brevet :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE

Art. 52(1), 56, 114(1)

"Inventive Step"

"Relevant facts in submissions out of time
considered by the Board"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number: T 56 / 84

DECISION
of the Technical Board of Appeal 3.2.1.
of 22 July 1985

Appellant:
(Proprietor of
the patent)

Regent Lock Co. Ltd.
Bath Road Industrial Estate
Chippenham, Wiltshire (GB)

Representative: Johnson, Terence Leslie et al,
Edwards Evans & Co.
Chancery House
53-64 Chancery Lane
London WC2A 1SD (GB)

Respondent:
(Opponent)

Wilh. Frank GmbH
Postfach 100158
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Representative: -

Decision under appeal:

Decision of the Opposition Division of the
European Patent Office dated 25 October
1983 (posted on 1 December 1983), revoking
European patent No. 0 002 381 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: G. Andersson

Member: M. Huttner

Member: P. Ford

SUMMARY OF FACTS AND SUBMISSIONS

- I. On European patent application No. 78 300 735.4 filed on 4 December 1978 and claiming priority from the prior application in Great Britain of 6 December 1977, the European Patent 0 002 381 was granted on 7 October 1981 with two patent claims.
- II. Against the grant of this patent, an opposition was filed on 25 November 1981 pursuant to Article 100(a) EPC and the patent was subsequently revoked by decision of the Opposition Division of 25 October 1983. The decision was based on Claim 1 reading as follows:

A lockable handle device for a casement closure, which is securable by engagement of a nib (19) of the handle device with a keeper of the frame in which the closure opens and closes, comprising an escutcheon plate (2) for mounting on the closure, and a handle (4) pivoted to the escutcheon plate by a pivot (3) extending at right angles to the escutcheon plate, characterised by a key-operated barrel lock (8) for locking the handle against pivotal motion when the nib (19) is engaged with the keeper and by the lock (8) being positioned in an enlarged part (7) of the handle (4) intermediate the pivot (3) and the grip part (5) of the handle (4).

The reason given for the revocation was that the subject matter of Claim 1 was obvious to a person skilled in the art due to the teachings of DE-U-7 527 696 in view of DE-U-1 624 667 and therefore did not involve an inventive step as required by Article 52(1) EPC.

- III. On 10 February 1984, by telex, the appellants (proprietors of the patent) filed a Notice of Appeal against this decision, which was duly confirmed in writing on

16 February 1984 and the appeal fee was duly paid. With the written statement received on 10 April 1984 and setting out the grounds for appeal, they argued that DE-U-7 527 696 discloses a closure locking device having a handle with a massive head part encompassing a key operated barrel and providing a mounting for a spindle for an espagnolette of a French window, while no provision is made for a nib and keeper arrangement. Moreover, they contended that the lock is not secure and can be easily broken due to the large leverage point for insertion of a tool capable of destroying the lock. Further, they emphasised that there are two different problems involved and each admits of its own solution. Therefore, the skilled person would not be induced to combine the teachings of DE-U-7 527 696 to those of DE-U-1 624 667.

They request that the decision of the Opposition Division be set aside and the patent maintained in the granted form.

- IV. A copy of the written statement received on 10 April 1984 was mailed on 16 April 1984 to the respondents (opponents) and a time limit of 4 months was set for filing a response.
- V. The respondents (opponents) challenge the submissions of the appellants in a response received on 2 November 1984, and corroborate their previously presented submissions by referring to Pamphlet No. 21/68, cover and pages 17, 58, 59 and 60 headed "Schlösser und Beschläge für den Stahl- und Metallbau" issued by the firm Carl Fuhr, Schloss- und Baubeschlägefabrik, 5628 Heiligenhaus (DE) in 1968 and "Baubeschlag-Taschenbuch 1968", Verlag Fachtechnik GmbH, Duisburg, cover and pages 159 and 255, (for brevity hereinafter designated as "Taschenbuch").

Although this deadline was not observed by the respondents, it appeared to the rapporteur upon reviewing the arguments presented therein that the newly introduced documents constitute more pertinent prior art than the one providing the basis from which the invention was previously presumed to set out, i.e. DE-U-1 624 667.

- VI. In these circumstances and in relying on the provisions made in Article 114(1) EPC, the Board issued a communication in conformity therewith, pointing out that an inventive step might be lacking in the light of these newly introduced documents.
- VII. In their response, the appellants asserted that the respondents' response should not be admitted, as being out of time, and, in addition, the introduction of new documents should not be countenanced. Furthermore, they repudiated the arguments that the combining of the teachings of the "Taschenbuch" and the DE-U-7 527 696 would lead the skilled person to the subject-matter of Claim 1 in a simple i.e. obvious manner.

REASONS FOR THE DECISION

1. The appeal complies with Articles 106-108 and Rules 1 and 64 EPC and is, therefore, admissible.
2. The Board, in conformity with the provisions of Article 114(1) EPC, examined the new facts submitted by the respondents, although they were filed out of time, because it was clear that the new art was more relevant than anything previously under consideration. Therefore, it was not only entitled to admit the new facts and evaluate them of its own motion but it was, in the circumstances, in the public interest, obliged to make proper use of them in the assessment of patentability.

3. After examination of the citations uncovered by the search report and those introduced by the respondents during the proceedings, the Board is satisfied that none of them discloses a lockable handle device for a casement closure including all the features stated in Claim 1. Since this has not been disputed by the respondents, there is no need for further detailed substantiation of this matter. Therefore, the subject-matter as set forth in Claim 1 is novel (Article 54 EPC).

4. The "Taschenbuch" newly introduced by the respondents, refers to builders' hardware on its cover and in the subtitle specifically to window hardware. Such hardware is disclosed in detail on page 255, headed "Oliveneinreiber" which in English means "handle for casement fastener". As can be gathered from the figure at the bottom of the page and the text associated therewith read in conjunction with the cover, there is clearly disclosed a lockable handle device exhibiting all the features that are stated in the preamble of Claim 1 but, most importantly, in addition a key operated barrel lock for locking the handle against pivotal motion when the nib is engaged with the keeper with which it is intended to cooperate. These facts have been stated in the respondents' submissions in response to the appellants' statement and they have not been refuted by the appellants. Therefore, the Board considers this piece of prior art to be closer to the subject matter of Claim 1 than the one previously providing the basis from which the invention was presumed to set out, i.e. DE-U-1 624 667. Since the turning axis of the lock and the handle in the prior art document now considered most pertinent are coincident, the device according to the invention differs from this prior art merely by the lock being positioned in an enlarged part of the handle intermediate the pivot and the grip part of the handle.

5. According to the appellants' submissions, the problem to be solved by patent in suit resides in providing a secure casement closure which is simple to manufacture and install.
6. The solution of the problem underlying the application is based on the idea of utilising a lock which cannot be prized away from locking engagement in the locking position, which is achieved by locating the lock intermediate the pivot and the grip part of the handle in an enlarged part thereof.
7. The question now to be considered is whether in these circumstances the subject matter according to Claim 1 still involves an inventive step. For the assessment of the matter, the following points emerge:
 - 7.1 While it holds true that the problem of the invention as formulated above has not been revealed by any one of the relevant prior art documents, the mere fact that this is so does not support non-obviousness, since, as stated in column 1 of the patent in suit, the problem of the invention stems from practical experience and hence no inventive merits can be seen in the perception of the problem.
 - 7.2 Therefore, it has to be considered whether the prior art documents would provide any indication to the skilled person for making the device disclosed in the lower parts of page 255 of the "Taschenbuch" not only more secure but also simpler to make and to fit to the casement closure.

The skilled person versed in the field of lockable handle devices and being called upon to eliminate the disadvantages of the prior art device referred to above, could

be expected to discern without difficulty that once a hole has been made in the casement window glass by an intruder, the security problems reside first in the unobstructed accessibility of the two fastening screws securing the plate to the closure, which upon removal readily allow the turning of the handle and the nib into a position disengaged from the keeper, and secondly, in the vulnerability of the lock due to its in-line arrangement with the pivotable shaft of the handle.

The perception of these two security problems inevitably leads to the question whether there is a suitable lockable handle device available in the relevant art to deal with them. Notwithstanding the fact that DE-U-7 527 676 discloses a lockable handle device for an espagnolette type window, it is immediately apparent to the skilled person that it also provides the solution to these problems. It discloses an enlarged part of the handle encompassing a key-operated barrel lock positioned intermediate of a pivot and the grip part of the handle, as set forth in the characterising portion of Claim 1.

- 7.3 The Board does not consider that the skilled person would encounter any difficulties in applying these teachings to the relevant device of the "Taschenbuch", despite the fact that the device disclosed in DE-7 572 696, in contradistinction to the former, is of the espagnolette type, because it remains well within the normal competence of the skilled person simply to modify the handle and to adapt the escutcheon plate accordingly for providing a complementary part to the lock. Such modification foreseeably leads to a unitary, compact, strong and yet simple handle device which cannot be readily vandalised, as the lock is effectively protected and cannot be prised from the handle or otherwise forced, and the fastening screws are not accessible. Therefore, the combining of the teachings of these two

prior art documents leads to the subject matter of Claim 1 in a simple manner which must be regarded as obvious to the skilled person.

7.4 The further arguments submitted by the appellants in support of inventiveness are not sufficiently persuasive to rebut the above conclusion of obviousness.

(a) The appellants assert that the head piece of the handle as shown in DE-U-7 527 696 provides a large leverage point for unauthorised insertion of a tool capable of pivoting in order to destroy the lock. This may be so, but, in the device as claimed, no provision for a reduced leverage is apparent since the possibly applicable leverage remains of the same order of magnitude. Hence, this disadvantage is not remedied by the invention.

(b) Moreover, the appellants further stress that the handle of this citation is a massive head piece to provide sufficient strength required to support the 85 espagnolette rods, a measure unnecessary or even detrimental in a nib-keeper arrangement of a casement closure.

This fact, however, cannot be considered to be a deterrent to making use of the teachings of DE-U-7 627 696, since the skilled person knows that nib-keeper arrangements should be designed so as not to allow too much force to be applied which could possibly lead to jamming, with consequent deleterious effects. Apart from this, the effective Claim 1 is not drawn so as to exclude a massive handle at the pivot area, as there are no limitations as to the size of the enlarged portion.

8. For all the foregoing reasons, the subject matter of Claim 1 lacks an inventive step as required by Article 56 EPC. Therefore, that claim cannot be upheld having regard to Article 52(1) EPC.
9. The Board sees no reason to favourably consider the two proposed amendments to Claim 1, lines 14 and 16 (see end of page 1 of Minutes of Oral Proceedings held on 25 October 1983), in view of the fact that they are not supported by the description. In addition, the term "relatively" is unclear. Consequently, the requirements of Article 84 EPC are not fulfilled. But even apart from these formal objections, the Board would see no inventive merit in confining the enlarged portion to an area solely intermediate the pivot and the grip part of the handle, because that would merely amount to a constructive modification to reduce the height of the handle in the area of the pivot, if that were desirable in order to reduce the mass of the handle. Such a measure would amount to nothing more than normal workshop practice for the skilled person.
10. Claim 2 cannot be maintained either, inasmuch as its validity depends on the validity of Claim 1, which has been denied.

But even if the subject matter of Claim 2 were incorporated in Claim 1, it would not be of any assistance in establishing the inventive contribution required. In fact, DE-U-7 527 696 discloses all the features of Claim 2 save the spring bias in the barrel lock.

However, the Board finds, as the Opposition Division has already found and the appellants have not denied, that the use of such a spring is well known in the art and would be an obvious consideration for the skilled person.

ORDER

For these reasons, it is decided:

The appeal against the decision of the Opposition Division is dismissed.

The Registrar

The Chairman

B A Norman

G Andersson