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Aktenzeichen / Case Number / N^o du recours : T 132/89 - 3.2.2

Anmeldenummer / Filing No / N^o de la demande : 84 900 127.6

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Bezeichnung der Erfindung: Device for joining together building boards, such as
Title of invention: floorboards
Titre de l'invention :

Klassifikation / Classification / Classement : E04F 15/02, E04F 15/14

ENTSCHEIDUNG / DECISION

vom / of / du 14 November 1990

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Carlsson, Jan
Björklund, Christer
Junckers Industrier A/S

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 54, 56

Schlagwort / Keyword / Mot clé :
"Novelty (yes) - ex post interpretation not
admissible"
"Inventive step (yes)"

Leitsatz / Headnote / Sommaire



Case Number : T 132/89 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 14 November 1990

Appellant : Carlsson, Jan
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Respondent : Junckers Industrier A/S
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Decision under appeal : Decision of the Opposition Division of the European
Patent Office dated 28 December 1988 revoking
European patent No. 126 764 pursuant to
Article 102(1) EPC.

Composition of the Board :

Chairman : G. Szabo
Members : K. Stamm
L. Mancini

Summary of Facts and Submissions

- I. European patent No. 126 764 was granted on 4 March 1987 with two claims in response to the European application No. 84 900 127.6, filed on 2 December 1983.
- II. A Notice of Opposition was filed against the European patent on 28 October 1987 requesting the revocation of the patent in view of the following documents (inter alia):
- A: SE-B-372 051;
- B: "Junckers Prefinished Solid Hardwood Floorings";
Technical information; 4. Industries Etc.
Junckers Industrier A/S 3.000.8.81;
- D: "Warum ist das Junckers Bügelsystem für alle Verleger so interessant";
Junckers Industrier A/S 2.000.9.8.
- III. In its decision of 28 December 1988 the Opposition Division revoked the patent on the grounds that the subject matter of Claim 1 was not new with regard to document B or D and that the subject matter of Claim 1 together with Claim 2 would lack an inventive step having regard to documents A with B and D.
- IV. Claim 1 of the patent as granted reads as follows:
- "1. A combination of building boards, such as floor boards, and a device (3) for jointing them together, the floor boards having a groove (2) in the rear side of each board (1) to be jointed, the groove running over the entire length of the board parallel to its jointing edge

surface, and the device being a substantially flat band with upstanding ends (5) each engaging the groove of one board, characterized in that the device (3) is a spring prestressed so that, upon said engagement, the boards are tightly clamped together edge surface to edge surface."

A Notice of Appeal was filed on 23 February 1989 by the Appellant (Proprietor of the patent) against this revocation. The appeal fee was paid on 7 March 1989 and the Statement of Grounds was filed on 3 May 1989 by telex, confirmed by a letter on 6 May 1989.

The Appellant is of the opinion that the decision of the Opposition Division is based on hindsight. In his view, documents B and D do not present a spring prestressed so that, upon engagement, the boards are tightly clamped together .. but only a clip without such specifications. He also contests that the statement in the decision (page 3, paragraph 5) "The board is attached to the previously installed adjacent boards with pressure .. " is really based on document D.

- VI. The Respondent (Opponent) states that in fact the clips shown in documents B and D consist of cold-rolled tempered spring strip-steel. In his view, "the clip of proper length is held flat by the internal resilient force in the wood striving to push the boards apart, this force being dependent on the moisture content of the wood, how tightly the tongue fits into the groove etc. This force is counteracted by the spring force of the clip striving to return to its original curved shape." According to the Respondent, the dimensions and specifications of the spring clip will be adapted by the skilled art worker to the type of floorboards used and to the humidity range where the floor is to be installed etc. He points out likewise that the spring clip can be inserted with

greater or lesser ease, depending on how dried out the floorboards are when installed.

- VII. The Appellant requests that the revocation be set aside and that the patent be maintained in its granted form.

The Respondent requests dismissal of the Appeal.

Reasons for the Decision

1. The Appeal is admissible.
2. Technical interpretation of Claim 1

The following technical implications of the claim are to be respected: According to its characterising portion, the definition of Claim 1 requires a particular device for floor boards. Its function is to clamp the floor boards tightly together edge surface to edge surface. The word "clamp" is related to a force exerted by the device, evidently regarded as a permanent force belonging to the construction. The device is described as a spring prestressed so that the boards are clamped together. The word "prestressed" has thus evidently the principal meaning known from other technical fields ("Prestressed Concrete", "High-Strength Bolts" ...). It means the application of a defined force in a defined way under defined conditions. It is normal for prestressed structures that loss of the prestressing forces has to be kept strictly under control in the given technical situation. Other problems implied by the prestressing technique relate to the introduction of these forces - which must guarantee a reliable transfer of the stresses without causing damages.

The final aim of prestressing is normally to introduce artificial forces as parts of the construction in order to compensate for unfavourable effects under the working state of the structure.

The claimed subject-matter thus defines by technical implication a prestressed flooring, a construction which is qualitatively distinguished from the formerly known techniques in floorings.

3. Novelty

3.1 Document D shows on the front page bent clips presenting an angle between the two halves of each clip. The technical function of this bending is not mentioned in the document. The comment on figure 10 reads "Wenn Sie die zweite Diele anlegen, fügt sich der freie Schenkel des vorherigen Bügels von selbst in die unterseitige Nut der neuen Diele ein" (emphazised words may be translated by: "automatically engages the groove .."). Any resilience of the clip appears not worth mentioning, thus of no particular importance, if any. Document B mentions that the floor boards are laid and assembled with clips (page 11). Figure 14 shows curved clips. No information is attributed to the importance or function of such a slight curvature; this is also true in the case of document D.

3.2 In the cited prior art documents the following terms are used: "boards are assembled", "are laid", "clip", "automatically engages". In the mentioned interpretation of these documents made by the Respondent and included in the contested decision, these terms are, however, replaced by terms having the meaning known from the contested patent: terms such as "boards are attached with pressure", "prestressed spring clip" when commenting on the prior art. Such further implications have been taken out of the

context of the contested invention beforehand and are then erroneously, ex post, assumed as being present in the prior art. This is evidently a reasoning based on fallacy.

In cases where the anticipatory object, on the one hand, and the claimed subject-matter, on the other, must be defined by way of interpretations of the given documents, the above mentioned projection is avoided if such interpretations are, as such, independent from each other. The existence of an anticipated matter must be recognized on the basis of the technical facts implied by its own context alone.

- 3.3 It is a clear technical fact in the case that the clips in the cited state of the art when inserted to join the boards will exert a certain force due to the resilience of the former. They will mainly prevent the boards to shift away from each other, replacing, therefore, the formerly used nails. The function of these clips appears to be restricted to being a means for easy joining of the floor boards and for keeping them together, primarily during assembly.

However, there is no information in the documents to be found explicitly or implicitly that the floor boards shall remain clamped under the action of prestressing forces in the sense of the contested claim.

Documents B and C do not, therefore, disclose the feature of a prestressed spring under the circumstances of Claim 1.

Document A is less relevant.

4. Problem and solution

4.1 Documents B and D disclose in comparison with each other the same technique and come, among the cited documents, closest to the invention. It is suggested there to assemble flooring boards by means of clips. The clips being U-shaped have a web with a small angle and two short flanges adapted to engage grooves in the underside of the boards. This technique avoids nailing and provides for enabling easy laying of the boards. The question may arise, therefore, in what respects further improvement may appear possible. The problem to be solved - containing no hints to the invention - may be defined to achieve further structural perfection of the shown system.

4.2 Taking account of paragraph 2 above, it becomes evident that the problem is solved by the introduction of the prestressing technique using an appropriately designed prestressed spring.

5. Inventive step

5.1 Documents B and D show how to use clips for assembling boards without mentioning or implying reliably a prestressed flooring construction (cf. paragraph 2 above). As the Respondent argues (above under paragraph VI), the humidity range where the floor is to be installed and the moisture of the wood itself have to be respected in the design of the clips. Therefore, it might have rather appeared interesting to investigate the possibilities of different shapes, dimensions and materials of the clips and the dimensions of the grooves. The possibility of applying structural horizontal forces between adjoining boards cannot, however, be deduced with any probability from the teaching of these documents. The chosen wording "laid, assembled, automatically engaging" makes it clear that nothing else had been envisaged than a mere mounting

help in the form of a simple connector device itself. The state of the art appears, thus, to have been restricted to a means for joining the boards only, far enough away from the idea - rather strange in the field of flooring known then - of applying a "high technology" which was introduced by the contested invention into this field for the first time.

5.2 It appears remarkable that the Respondent alleges to have already used the contested invention, according to documents B and D, however, without having informed his customers about the additional advantages of such a rather extraordinary new technology involved. The Board finds such allegations hardly convincing and thinks these documents prove rather the opposite, namely that the idea of a prestressed floor was not intended, not realised, not implied and was far from obvious to the skilled person.

5.3 Document A describes a solution similar to the one of documents B and D. It remains basically within the teaching of the latter ones, presents especially shaped grooves and rims of a clip - without, however, giving information about a prestressing effect of the clip and, therefore, of a spring effect to be made use of. Document A does not add information to that already taken into account above, which might have suggested the solution of the technical problem in the manner claimed in the patent.

6. The subject matter of Claim 1 is not deducible in an obvious way from the cited documents and thus involves an inventive step according to Article 56 EPC.

Claim 2, appendent to Claim 1, remains also valid.

Order

For these reasons, it is decided that:

1. The revocation of the Opposition Division is set aside.
2. The case is remitted to the first instance with the order to maintain the patent as granted.

The Registrar:

The Chairman:

S. Fabiani

S. Fabiani

E. Szabo

E. Szabo

*Su
Kun*