

Publication in the Official Journal Yes / No

File Number: T 544/89 - 3.2.3  
Application No.: 83 200 004.6  
Publication No.: 84 386  
Title of invention: A furniture system

Classification: A47D 11/00, A47D 5/00

DECISION  
of 27 June 1991

Proprietor of the patent: Gielen, Mathieu Jacobus Gerardus  
Achterberg, Jacobus Hendrik

Opponent: Hout-en Staalmeubelfabrieken Vroomshoop B.V.

Headword:

EPC Art. 113(1), 114(1) and 56

Keyword: "Proceedings to be continued after withdrawal of opposition (yes)"  
"Opportunity to present comments (yes)"  
"Inventive step (no)"

Headnote



Case Number : T 544/89 - 3.2.3

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.3  
of 27 June 1991

**Appellant :**  
(Opponent)

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**Representative :**

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**Respondents :**  
(Proprietors of the patent)

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**Representative :**

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**Decision under appeal :**

Decision of Opposition Division of the European  
Patent Office dated 19 June 1989 rejecting the  
opposition filed against European patent  
No. 84 386 pursuant to Article 102(2) EPC.

**Composition of the Board :**

**Chairman :** C.T. Wilson  
**Members :** R. Gryc  
L. Mancini

## Summary of Facts and Submissions

- I. European patent No. 84 386 comprising six claims was granted to the Respondent on 23 July 1986 on the basis of European patent application No. 83 200 004.6 filed on 5 January 1983 claiming priority from national Dutch application No. 8 200 032 of 7 January 1982. Claim 1 as granted reads as follows:

"1. A furniture system comprising two end structures (1,2) which are at least substantially rectangular, boards (15) and a top plate (12); the components of the system being assemblable into a bed using the end structures (1,2) as head and foot ends and the boards (15) as sides releasably interconnecting the end structures; and the components of the system being assemblable into a chest of drawers or cupboard by using the end structures, without altering their shape, as side walls, and the top plate (12) to releasably interconnect the end structures, characterized in that adjacent side of each end structure (1,2) are unequal in length; when assembled as a bed the longer sides of the end structure extend horizontally, each end being formed by a single end structure; and when assembled as a chest of drawers or cupboard, the longer sides of the end structures extend vertically, the length of these sides being such that the top plate is supported thereby at the working level of a standing person."

- II. After an opposition filed by the Appellant had been rejected by a decision of 19 June 1989 of the Opposition Division, the Appellant lodged an appeal on 9 August 1989 and, simultaneously, paid the relevant fee and filed his statement of grounds.

He requested that the patent be revoked on the basis of his argumentation presented during the opposition

proceedings i.e. on the ground of lack of novelty or inventive step of the subject-matter of claim 1 mainly in view of the following documents:

- (1) NL-A-7 107 932
- (2) NL-A-8 100 620
- (3) Design registrations 559-73 01...05/13.08.1981
- (4) Leaflet "Bebinella Kijkboek 1981" front page and pages 24 and 25.

In his reply, the Respondent requested that the attacked decision be confirmed but gave no additional argument in favour of the patentability of the invention.

III. In a communication to the parties dated 19 April 1991, the Board expressed a provisional negative opinion with regard to the non-obviousness of the subject-matter of claim 1 in comparison with the teaching of document (1) and it informed the parties that oral proceedings were appointed in order to give the patentee an opportunity to defend his views if he so wished.

IV. In his reply dated 22 May 1991, the Respondent (Patentee) argued mainly the following:

- The invention solves the long-standing problem of using furniture of a baby room for other purposes, and
- during the period of ten years following the publication of document (1) nobody has made a proposal along the lines of the invention, despite the fact that manufacturers were looking for a solution to the above-mentioned problem.

Except for this general argumentation, the Patentee did not oppose any technical argument to the reasoning of the

Board; he requested to be informed if the Board could not take a favourable decision without oral proceedings.

In the meantime, the Appellant (Opponent) informed the Office that he withdrew his opposition and would not attend the planned oral proceedings (cf. letter of 28.05.91).

- V. By a telex dated 10 June 1991, the Board informed the Respondent that his arguments in favour of the patentability of the invention were not convincing and did not modify the negative provisional opinion of the Board expressed in the communication of 19 April 1991. The Patentee was then asked to confirm whether he intended to attend the oral proceedings.

In his reply dated 11 June 1991 the Respondent argued mainly that the argumentation made against the invention was an ex post facto analysis. He requested the maintenance of the patent as granted and informed the Board that he would not attend the oral proceedings. The oral proceedings were thus cancelled.

#### Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. Examination by the Office of its own motion (Art. 114(1) EPC)
  - 2.1 In all proceedings before the EPO, account must be taken not only of the interests of the parties involved, given the EPO's duty also vis-à-vis the public not to maintain patents of questionable legal validity (see T 156/84, OJ EPO 1988, 372).

After withdrawal of an opposition, the proceedings should be continued if they have reached such a stage that they are likely to result in a limitation or a revocation of the European patent without further assistance from the Opponent (see T 197/88, OJ EPO 1989, 412).

2.2 Since, in the present case, the opposition was withdrawn after a communication of the Board expressing an unfavourable opinion had been issued, the proceedings had to be continued in the public interest until a decision could be reached.

3. Interpretation of claim 1

3.1 It should be remembered that only features recited in or deducible from the claims can be set forth to distinguish the invention from the state of the art. The examples cited in the description of a patent do not limit the scope of the invention unless they are explicitly mentioned in the claims.

Also the reference signs relating to the mentioned features shall not be construed as limiting the claim (Rule 29(7) EPC). But, with regard to the recited characteristics the meaning of which is not immediately clear, the description and drawings can be used to interpret them (Art. 69 EPC).

3.2 In the present case, although the embodiments exemplified in the description all concern children's furniture, this particular purpose cannot be put forward to distinguish the invention from the state of the art since it is not specified in the claims. Moreover, in the introductory part of the description, this limited use is only referred to as a possibility offered by the invention (see for example the use of the verb "can" in column 1, lines 19 and 26).

Therefore, the furniture system as claimed in claim 1 is not limited to furniture for children and can also be regarded as comprising components assemblable in furniture for adults, i.e. having standard dimensions.

3.3 Moreover, since in claim 1, it is not specified whether the "bed using the end structures" is a single or a double one and whether the "standing person" is a child or an adult, details can be found in the description (see column 2, lines 37-41) which make it clear that a single bed and an adult are meant since the length of the longer side of the end structures and the working level should be about 80 to 90 cm i.e. nothing else than the standard width of a single bed and the standard height of a table top for adults.

4. Novelty (Art. 54 EPC)

- 4.1 The system according to claim 1 is distinguishable from the one disclosed in document (1) by the fact that the length of its end structures is such that a single element instead of two side-by-side elements is needed to form one end of a bed.
- 4.2 The content of document (2) does not belong to the state of the art according to Article 54(2) EPC, since this document has been laid open to public inspection after the priority date of the impugned patent.
- 4.3 The design registrations (document (3)) disclose a continuing growth furniture system without a link between the ends of the beds of some designs and the sides of the cupboard of the others.

- 4.4 In the furniture system disclosed in document (4), the ends of the bed are formed by the baby's chests of drawers themselves and not by their sides alone extending horizontally according to the invention.
- 4.5 With regard to the US patent US-A-2 677 832, referred to in the European Search Report, this document also does not teach the use of a single end structure of a bed as side wall for a chest of drawers as claimed in claim 1.
- 4.6 Consequently the subject-matter of claim 1 is novel in comparison with the state of the art described in the documents cited during the proceedings.
5. The state of the art closest to the invention

This state of the art is to be found in document (1) since, as pointed out in paragraph 4.1 above, the system according to Claim 1 differs therefrom only by the fact that the length of the longer sides of the basic rectangular structures is such that a single element is sufficient to form one end of a standard single bed and such that, when extending vertically, it corresponds to the standard working level of a standing adult.

However, it should be noticed that while the basic square structures of this known system have a length (40 cm) such that a single structure can form one end of a bed for babies or young children and can also support the top plate of a table at the level of a standing baby or young child, as disclosed two square structures together are sufficient to form one end of a standard single bed and, when extending vertically, correspond to the standard working level of a standing adult.



Moreover, with reference to lines 12 and 13 of page 2 of this document, it appears that the use of basic structures composed of rectangular and non-square frames has also been envisaged.

6. Problem and solution

6.1 Starting from this state of the art closest to the invention and in the light of the difference set out above, the problem to be solved as determined objectively appears to lie in the dimensioning of the basic structures in order to simplify the known system and to improve the solidity of the longest constructions which can be formed with these structures (see column 1, lines 28-31 and 38-41 of the European patent specification), the system being at the same time adapted to adults.

6.2 According to the invention, the solution as claimed in claim 1 is to increase the longest sides of the basic structures known from document (1) to about the standard dimensions of a bed or a table for adults.

7. Inventive step (Art. 56 EPC)

7.1 Since the overcoming of recognised drawbacks and the achievement of improvements resulting therefrom must be considered as the normal task of the skilled person, no contribution to the inventive step of the solution can possibly be seen in the perception of the problem as indicated above in paragraph 6.1.

7.2 The question now arises whether the prior art and/or the common knowledge of the skilled person would provide any indication as to how the furniture system according to document (1) may be simplified and strengthened and adapted to adults.

The skilled person could be expected to normally and immediately realise that the lower the number of components which are assembled into a piece of furniture, the more simple and solid the construction is; moreover, it is obvious that an end of a bed or a side of a cupboard made of two components assembled side by side is not so solid as a construction made in one piece. Since, furthermore the overall length (80 cm) of the two known basic structures assembled side by side corresponds to the standard width of a single bed or the standard height of a table top for adults, the skilled man would be led to adopt such a standard dimension for the longest sides of the basic end structures of the furniture system arriving thus at the subject-matter of claim 1.

Therefore, the Board agrees with the Appellant's conclusion that it is a matter of pure design choice to dimension a system accordingly (see page 3, lines 8-10 of the statement of grounds filed in the opposition proceedings on 23 April 1987).

7.3 The subject-matter of claim 1 does not thus involve an inventive step in the meaning of Article 56 EPC and is not patentable according to Article 100(a) EPC; in application of Article 102(1) the patent should thus be revoked.

8. Opportunity to present comments (Art. 113(1) EPC)

In its communication to the parties dated 19 April 1991 the Board had clearly indicated that it has considerable doubts whether the subject-matter of claim 1 could be considered as inventive and, although a decision could have been taken on the basis of written facts, evidence and arguments, it gave the Patentee an opportunity to defend his views by appointing oral proceedings.

A second indication was given by the Board in the telex sent to the Respondent on 10 June 1991 and again oral proceedings were proposed.

By his letter dated 11 June 1991 and received at the EPO on 13 June 1991, the Respondent (Patentee) has waived his right to oral proceedings (Article 116 EPC). Therefore, the Board considers that the Patentee had sufficient opportunity to defend his views and that the requirements of Article 113(1) EPC have been met.

**Order**

For these reasons, it is decided that:

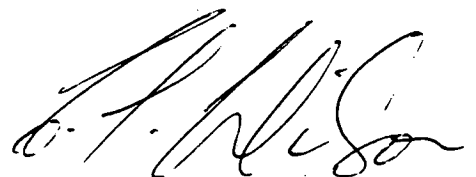
1. The impugned decision of the first instance is set aside.
2. European patent No. 84 386 is revoked.

The Registrar:



N. Maslin

The Chairman:



C.T. Wilson

R.G.  
Rich