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Aktenzeichen / Case Number / N^o du recours : T 718/89 - 3.2.1

Anmeldenummer / Filing No / N^o de la demande : 84 300 242.9

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 119 682

Bezeichnung der Erfindung: A detachable bag intended particularly for use
Title of invention: with a mobile container
Titre de l'invention :

Klassifikation / Classification / Classement : B62B 3/10

ENTSCHEIDUNG / DECISION

vom / of / du 13 November 1990

Anmelder / Applicant / Demandeur : Lucas, Peter et al.

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPO / EPC / CBE Art. 54

Schlagwort / Keyword / Mot clé : "Interpretation of a feature in the claim"
"Novelty (no)"

Leitsatz / Headnote / Sommaire



Case Number : T 718/89 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 13 November 1990

Appellant : Lucas, Peter et al.
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Decision under appeal : Decision of Examining Division 079 of the
European Patent Office dated 11 July 1989
refusing European patent application
No. 84 300 242.9 pursuant to Article 97(1)
EPC

Composition of the Board :

Chairman : F. Gumbel
Members : P. Alting van Geusau
J.-C. Saisset

Summary of Facts and Submissions

- I. European patent application No. 84 300 242.9, filed on 16 January 1984 and published on 26 September 1984, was refused by a decision of the Examining Division dated 11 July 1989.
- II. The decision was based on Claims 1 to 3 filed on 11 October 1988 with letter of 28 September 1988.

The reason given for the refusal was that the subject-matter of Claim 1 was not novel having regard to the state of the art disclosed in the document (D1):

"The Better Way", from "The Good Housekeeping Institute's Consumer Service", November 1982, page 258: "Super Size Shopping Bags".

- III. An appeal was lodged against this decision on 1 August 1989, accompanied by the payment of the appeal fee.

In the Statement of Grounds of Appeal, filed on 26 September 1989, the Appellant put forward that the hooks known from the bag No. 3 in D1 were not capable of providing a positive gripping action on the perimeter of a supermarket trolley container such as defined in Claim 1. In order to substantiate this fact and the differing function of the invention, he filed samples of the hook means disclosed in D1 and of the gripping hooks in accordance with the present application.

- IV. In a communication dated 11 April 1990 the Board expressed their preliminary view that Claim 1 did not contain any technical feature for achieving a different gripping action than was achieved with the hooks disclosed in D1 and was therefore not considered, in its current form, to

define novel subject-matter when compared to this nearest prior art.

V. In oral proceedings appointed in accordance with the Appellant's request filed on 21 May 1990, the Appellant essentially put forward the following arguments in support of his request for grant of a patent on the basis of Claims 1 to 3 filed on 11 October 1988.

- i) The term "gripping action" should be interpreted in the sense of the term "securing means" used in the original Claim 1, which in its proper meaning defines a function of "holding fast". This is also the interpretation given to "securing" in the Oxford Dictionary.
- ii) The concept of "securing means" being thus disclosed, it was clear for the skilled person that the embodiments shown in Fig. 3 and Fig. 4 of the application as filed did not fall within the terms of original Claim 1, and thus did not form part of the invention.
- iii) The embodiment of Figs. 5 and 6 clearly shows securing means in its proper sense and, as regards the embodiment according to Fig. 1 comprising hooks as securing means, the hook shown in Fig. 2 would easily be recognised by the skilled man to have a releasable positive gripping action to hold the periphery of the bag to the perimeter of the trolley container because of the inwardly bent hook portion. In order to clarify the function of the gripping means in the claim, this term could be amended to read "securing means".

IV. The current Claim 1 reads as follows:

"1. A detachable receptacle for use in a conventional open topped supermarket trolley container (17), the receptacle (11) being formed from flexible sheet material and having a flat base part (12) and upstanding walls (13, 14, 15, 16) to receive within them a supply of goods, hook means (31) having base portions mounted at the upper ends of two opposed upstanding side walls (13, 14) of the receptacle with the hooks facing downwardly to locate over the upper perimeter (19) of opposed sides (18, 19) of the trolley container to support the flexible sides of the receptacle against the sides of the container and two strap form handles (28, 29) attached to said two upstanding walls (13, 14) of the receptacle on said opposing side thereof, each strap form handle being attached to an upper portion of the wall of the receptacle to either side of the respective hook means (31) attached to the wall, wherein the hook means (31) are constructed to act as gripping means for engaging the upper perimeter of the trolley container with a releasable gripping action."

Reasons for the Decision

1. The appeal is admissible.
2. The current Claim 1 is based on Claim 1 as filed in the original application and contains further features disclosed or implied in relation to the embodiment of Figs. 1 and 2.

Considering the "hook means", which according to Claim 1 have "a releasable gripping action", this feature is disclosed when interpreted to relate to a simple hanging action of the hooks with respect to the upper perimeter of the trolley container from which perimeter the hooks can easily be detached merely by an upward movement.

Claims 2 and 3 are essentially repetitions of the original Claims 4 and 5.

None of the claims therefore contravenes the provisions of Art. 123(2) EPC.

3. Novelty

3.1 The nearest prior art is considered to be disclosed in D1.

Considering the "Kiwi Trolley Bag" described in the text and shown in the drawing No. 3 of this disclosure, the following features of Claim 1 are considered to be directly derivable by the skilled person from this prior art:

A detachable receptacle (bag) for use in a conventional open topped supermarket trolley container, the receptacle being formed from flexible sheet material and having a flat base part and upstanding walls to receive within them a supply of goods (see drawing), hook means having base portions mounted at the upper ends of two opposed upstanding side walls of the receptacle with the hooks facing downwardly to locate over the upper perimeter of opposed sides of the trolley container to support the flexible sides of the receptacle against the sides of the container and at least two strap form handles attached to said two upstanding walls of the receptacle on said opposing side thereof, each strap form handle being attached to an upper portion of the wall of the receptacle to either side of the respective hook means (see drawing) attached to the wall, wherein the hook means are constructed to act as gripping means for engaging the upper perimeter of the trolley container with a releasable gripping action (see middle of second column of the text,

according to which the hooks round the edge enable the trolley bag to be looped onto the perimeter of the shopping trolley).

A comparison of this known receptacle and the receptacle defined in Claim 1 reveals that the known receptacle comprises all the features of Claim 1 and therefore takes away the novelty of the claimed subject-matter.

- 3.2 Defending the novelty of the subject-matter of Claim 1 the Appellant argued that the feature "gripping means with a releasable gripping action" should be interpreted with regard to the proper meaning of the term "securing means" used to define these gripping means in the original Claim 1.

Since "securing" means "holding fast" according to the Oxford Dictionary, the Appellant further argued that in the light of such a meaning the hooks in the present Claim 1 not only provide a simple hanging action as in D1 but provide a positive gripping action which is achieved with the inwardly bent position of the hook, details of which are shown in Fig. 2. Against this background of information the skilled person would immediately realise that the inwardly bent portion, while being sufficiently flexible, is intended for co-operation with the upper bar of a trolley to give an additional locking function; this locking function is realised by proper selection of the hook opening to be slightly smaller than the trolley bar, and is not achieved either by the U-bend hooks shown in D1 or by the embodiments shown in Fig. 3 and Fig. 4 of the present application, which thus fall outside the scope of the invention as initially filed.

- 3.3 However, even in view of the information provided by the Oxford Dictionary the Board comes to the conclusion that the term "securing" cannot be regarded as having just one

single unequivocal meaning, but rather that the meaning depends on the circumstances of its use. In this respect, attention is drawn to the use of the term securing in combination with "fixedly" or "releasably".

In the present case, in which hooks are used to secure a bag to the perimeter of a trolley, a general meaning still, in the Board's opinion, in line with the Oxford Dictionary is a fastening to guard the bag effectually from falling into the trolley. It will be clear that such a fastening can also be achieved with the hooks shown in D1, and also with the arrangements disclosed in Fig. 3 and Fig. 4 of the present application, themselves identified as "gripping" and "securing" means in the application. Therefore no contradiction between the original Claim 1 and these embodiments is considered to exist.

Further, the hook form shown in Fig. 2 does not necessarily, in the Board's opinion, result in a positive gripping action in the sense intended by the Appellant, i.e. in the sense of a clamping action.

In this context the Board notes that the application does not refer to the material of which the hook is made, upon the basis of which its flexibility could have been recognised. Moreover, the effect of an inwardly bent portion depends on the diameter of the respective perimeter bar and is not necessarily restricted to the alleged clamping action; hooks with an inwardly bent portion near the open end are well known in the art for preventing unintentional detachment of the hook when swivelling over the part on which it hangs. Therefore, although, in principle, it is possible to base a disclosure of a feature exclusively on a drawing (see T 169/83 OJ EPO 1985, 193), the condition that such a feature must be unambiguously derivable from the application is, in the Board's opinion, not met in the present case.

Hence, a restriction of Claim 1 to hook means executing a clamping action could not be envisaged by the Board under Article 123(2) EPC.

Since neither the term "securing" nor the hook shown in Fig. 2 of the application can be considered as clearly identifying a clamping action as referred to by the Appellant, the Appellant's suggestion that "securing means" be inserted into Claim 1 instead of "gripping means" would not have led to a positive conclusion regarding novelty of the subject-matter of Claim 1.

- 3.4 For the reason that they are dependent on an unallowable independent claim and since the Board had to decide on the basis of the only subsisting request, Claims 2 and 3 must fall as well.

Thus, Claims 1 to 3 of the Appellant's request do not meet the requirements of Art. 52(1) EPC and, for this reason, cannot form the basis for grant of a patent.

Order

For these reasons, it is decided that:

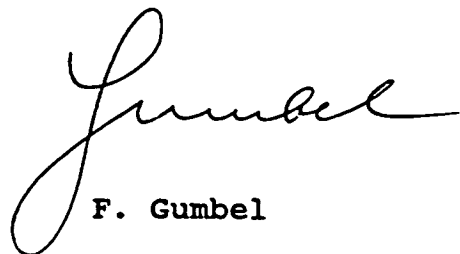
The appeal is dismissed.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel

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