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File Number: T 51/90 - 3.4.1

Application No.: 83 305 624.5

Publication No.: 0 106 574

Title of invention: Improvements in display signs

Classification: G09F 13/06

DECISION
of 8 August 1991

Proprietor of the patent: FORD MOTOR COMPANY LIMITED, et al

Opponent: Vondrovsky, Gabriel

Headword:

EPC Article 56

Keyword: "Inventive step (no)"

Headnote



Case Number : T 51/90 - 3.4.1

**D E C I S I O N
of the Technical Board of Appeal 3.4.1
of 8 August 1991**

Appellant :
(Opponent)

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Decision under appeal :

**Decision of Opposition Division of the European
Patent Office dated 23 November 1989 rejecting
the opposition filed against European patent
No. 0 106 574 pursuant to Article 102(2) EPC.**

Composition of the Board :

Chairman : G.D. Paterson
Members : R.K. Shukla
H.J. Reich

Facts and Submissions

- I. The present appeal lies from a decision of the Opposition Division revoking European patent No. 0 106 574.

- II. In its decision, the Opposition Division concluded that the subject-matter of Claim 1 as granted did not involve an inventive step having regard to the following prior art documents cited by the Opponent :

D3 - US-A-3 402 494
D4 - US-A-2 610 423.

- III. Among the other documents relied upon by the Opponent, the following are considered to be relevant by the Board:

D1 - GB-A-1 530 371
D2 - US-A-2 699 620.

- c In a communication-accompanying the summons to the oral proceedings, the Board expressed its provisional view that the subject-matter of Claim 1 was regarded as obvious having regard to the disclosures in documents D1, D2 and D4.

- IV. Along with the Statement of the Grounds of Appeal, the Appellant (Patentee) filed a new set of Claims 1 to 5, a description adapted to the new claims, a Statutory Declaration made by Mr. Allan, an expert in the field of diecastings, and letters commenting on the display sign according to the invention from various companies specialising in the manufacture of signs.

- V. At the oral proceedings held at the request of the Appellant, two further sets of claims forming the basis of first and second auxiliary requests, respectively, were

filed, the independent claims of the main and the auxiliary requests having the following wording:

Main Request

Claim 1: "An illuminated display sign comprising a profiled metal (22) sheet which is bent (24,26) at right angles to the line of the profiling to form a generally planar centre section with a flange at each edge, both flanges extending in the same direction from the centre section and being of substantially the same length so that the sheet forms a rigid structural element, characterised in that the profiled sheet constitutes the display plate (20) of the sign and has at least one cut-out (32) portion shaped in accordance with the desired legend or logo to be displayed."

First Auxiliary Request

Claim 1: "An illuminated display sign comprising a profiled metal (22) sheet which is bent (24,26) at right angles to the line of the profiling to form a general planar centre section with a flange at each edge, both flanges extending in the same direction from the centre section and being of substantially the same length so that the sheet forms a rigid structural element, characterised in that the profiled sheet constitutes in one piece the display plate (20) and top and bottom faces of the sign and has at least one cut-out (32) portion shaped in accordance with the desired legend or logo to be displayed."

Second Auxiliary Request

Claim 1: "An illuminated display sign comprising a display plate (20), and a frame for supporting the display

plate at a distance from a surface on which the sign is to be mounted, characterised in that the display plate and the frame are both formed by a profiled metal (22) sheet which is bent (24,26) at right angles to the line of the profiling to form a generally planar centre section which has at least one cut-out (32) portion shaped in accordance with the desired legend or logo to be displayed, the centre section constituting the display plate (20), and which has a flange at each edge, both flanges extending in the same direction from the centre section and being of substantially the same length so that the sheet forms a display plate with an integral frame."

VI. In the opposition and the appeal proceedings, the Appellant presented essentially the following arguments:

The conventional illuminated signs as shown in documents D1, D2 and D4 all have a strong box or frame for supporting internal light sources and a display plate across the front of the box or the frame. The display plate, apart from providing an attractive display face has no other function. In contrast to this, the present invention is based on a novel and inventive concept that a combination of profiling and the bent flanges at each edge of the display plate produces such a strong display plate that a rigid box or a frame to support the display plate is no longer required.

The sign of document D3 is a small information or safety sign intended for indoor use and is made by diecasting whereas the display sign according to the present invention is clearly intended for outdoor use so that having regard to the dimensions of the display sign in question and the strength required, a man skilled in the art of sign making is most unlikely to consider that the constructional details from the exit sign of document D3

would be of any help to him in improving a display sign to be mounted outdoors. Moreover, as is evident from the Statutory Declaration made by Mr. Allan, a skilled person confronted with the task of producing signs of substantially large dimensions would not consider diecasting as taught in D3 as the right manufacturing method to use. Even if diecasting was used then it was most unlikely that the skilled person would consider providing a corrugated surface to increase the structural strength since this would require expensive shaping of both the external and internal die faces.

VII. The Respondent (Opponent) did not file any observations, and, though he was duly summoned, did not appear at the oral proceedings.

VIII. At the conclusion of the oral proceedings, the decision was announced that the appeal was dismissed.

Reasons for the Decision

Main Request

1. The only issue to be decided in the present appeal is the question of inventive step.
 - 1.1 In the opinion of the Board, a convenient starting point for the assessment of inventive step is the illuminated display sign as disclosed in document D2. In this document there is described a display sign of the type to be mounted outdoors, having a plastics display plate (41) formed with flanges and having transparent display letters or objects (44) (column 1, lines 1 to 3; column 2, lines 14 to 23; Fig. 2). As the display plate has to have built-in strength to support its own weight, and is

additionally provided with flanges, in the Board's view the display plate forms a rigid structural element as in the case of the display sign of the invention.

The display sign according to the invention is therefore distinguished from the display sign of D2 in that (a) the display plate is made of a metal, (b) has a cut-out portion, instead of a transparent portion, shaped in accordance with a desired logo or legend, and (c) is profiled.

As can be seen from the disclosure in document D1, display plates made of aluminium and having apertures to allow the light to pass therethrough are already known in the art (see, in particular, page 1, lines 55 to 61). In the Board's view therefore, the modifications in the display sign known from document D2 according to features (a) and (b) above amount to no more than the use of known alternative measures and must therefore be regarded as obvious to the skilled person. As regards the feature (c), in the art of display signs, as exemplified by document D4 (Figure 3; column 3, lines 24 to 26), profiling is commonly used to provide additional strength to a display plate. This fact has not been disputed by the Appellant. In the Board's view, the application of this feature was also therefore obvious to the skilled person concerned with providing additional structural strength to the display plate of document D2.

- 1.2 In the proceedings before the Opposition Division and the Board, the Appellant emphasised that the essential difference between the conventional display sign as known from D2, D1 or D4 and the present invention was that the former employed a strong box type construction or frame to support the display plate, whereas such a box construction or frame was not required in the present invention since .

the display plate itself had sufficient structural rigidity due to the use of profiling and the flanges. Reference was made to the description in column 1, lines 38 to 42 and column 2, lines 26 to 31 of the patent specification to support the above submission.

In the Board's view, however, this difference between the prior art display sign and the present invention is not reflected in the definition of the display sign according to Claim 1, which does not exclude such a box type construction or a frame to support the display plate. In fact, one detailed embodiment of the invention described with reference to Figure 1 (column 2, lines 22 to 31) shows a frame (14,16) on which two display plates and fluorescent tubes are mounted. Although the text of the description referred to by the Appellant discloses that this frame does not have any substantial structural rigidity and the display plate itself assures structural rigidity of the display sign (column 1, lines 38 to 42; column 2, lines 26 to 31), these features do not form part of the claimed display sign.

Moreover, even if this disclosure cited by the Appellant was taken into account to interpret the extent of the claim pursuant to Article 69(1) EPC, second sentence, in the Board's judgement no inventive step would be involved in these features, since it would be obvious to the skilled person that in order to have an overall light-weight construction of the display sign, a profiled display plate having improved structural strength would not require a relatively heavy and, therefore, strong box structure of the prior art, and that the box structure of the prior art can be replaced by any mounting arrangement having appropriately low structural strength.

- 1.3 The technical advantages, such as low weight to strength ratio and ease of assembly, resulting from the construction of the display sign of the invention, referred to in the aforementioned letters are accepted by the Board. However, these are not surprising or unexpected advantages so that they cannot be regarded as indicative of an inventive step.
- 1.4 In view of the above considerations, in the Board's judgement, the subject-matter of Claim 1 does not involve an inventive step (Articles 56 and 52(1) EPC).
- 1.5 The Appellant submitted in respect of document D3 relied upon by the Opposition Division that, since the sign in D3 is made by diecasting, it would make no technical sense to add profiling to the sign with a view to improving its strength. In this connection, the Board is of the view that the mere fact that the indoor sign described in D3 is made by the diecasting technique would not deter the skilled person from utilising only the described constructional features of the sign since other manufacturing techniques, such as rolling, for profiling and bending large metal sheets, are generally well known in the art. The Board therefore considers that the reasoning advanced in the contested Decision of the Opposition Division did not overlook any important technical aspect when reaching a conclusion of lack of inventive step. On the basis of such reasoning also, in the Board's judgement the claimed invention lacks an inventive step.
- 1.6 Claims 2 to 5 are not allowable in view of their dependence on Claim 1.

Auxiliary Requests

2. Procedural matters

As indicated during the oral proceedings, in accordance with the established jurisprudence of the Boards of Appeal (see in particular Decisions T 95/83, OJ EPO 1985, 75 and T 153/85, OJ EPO 1988, 1), if an Appellant (or Respondent) wishes that one or more alternative sets of claims (that is, new amended claims constituting either a new main request or a new auxiliary request, or both new main and auxiliary requests) should be examined during opposition oral proceedings, the new claims and corresponding requests should normally be filed with the Statement of Grounds of Appeal (or in the case of a Respondent, with the observations in reply), or within a period fixed in communication from the Board (pursuant to Rule 57(1) EPC or Rule 58(2) EPC applied mutatis mutandis under Rule 66(1) EPC). A minimum two months period can then be fixed by the Board pursuant to Article 101(2) EPC and Rule 84 EPC for the filing of observations upon the new claims by the Opponent.

If, exceptionally, a new request is intended to be filed in response to a communication accompanying a summons to oral proceedings (which communication does not contain an invitation under Rule 58(2) EPC to file amendments within a fixed period), the new request should be filed at least one month before the date fixed for such oral proceedings. Especially in opposition proceedings, the filing of a new request later than this (for example during oral proceedings) may be unfair to an Opponent, because there may then be insufficient time and opportunity for him to give proper consideration to the new amendments and to file observations or present comments in reply. In appropriate cases such late-filed amendments could necessitate postponement of oral proceedings and

consequent award of costs. Proposed amendments which are straightforward in nature and such as can be easily understood (for example, simple clarifications or limitations) may be admitted in such circumstances. Nevertheless a Board of Appeal may refuse to admit new requests based even on such amendments, which are filed at a late stage in opposition appeal proceedings and are not in response to an invitation from the Board, if the amendments contained in such requests are not clearly allowable having regard to all relevant provisions of the EPC.

2.1 In the present case, the two alternative sets of claims forming the basis of the first and second auxiliary requests, respectively, were examined by the Board during the oral proceedings, and were found to be clearly unallowable for the reasons set out below. The first and the second auxiliary requests are therefore inadmissible.

2.1.1 First Auxiliary Request

The amended Claim 1 specifies that the the profiled sheet constitutes the display plate and the top and bottom faces of the display sign. There is, however, no specific statement in the original description to support the above amendment. Moreover, as can be seen from the drawing of the embodiment, the top and bottom faces of the display sign include, besides the top and bottom faces of the display plate, top and bottom faces of the mounting frame (16) as well, so that the above amendment contains subject-matter which extends beyond the content of the application as filed.

The First Auxiliary Request is therefore not allowable pursuant to Article 123(2) EPC.

2.1.2 Second Auxiliary Request

Claim 1 contains amendments whereby the flanges are now designated as the frame for supporting the display plate. Though it is evident from the drawing of the display sign that the flanges provide a separation between the display plate and the mounting frame (14,16), the function of the flanges as a support frame for the display plate is not unambiguously derivable from the application documents as filed. Moreover, on interpreting the term " frame" in Claim 1 in the sense it is used in the description as filed, in particular on page 3, lines 15 to 22, it is evident that the display plate (20) is not integral with the frame (14,16) as specified in the claim. Also, nowhere in the description as filed it is disclosed that the frame is formed of a profiled metal sheet. In the Board's view, therefore, Claim 1 does not comply with the requirement of Article 123(2) EPC.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

M. Beer

G.D. Paterson