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D E C I S I O N
of 13 December 1995

Case Number: T 0875/93 - 3.2.4

Application Number: 89903510.9

Publication Number: 0401290

IPC: A63F 9/10

Language of the proceedings: EN

Title of invention:
A holder for jigsaws

Applicant:
PARKER HILTON LIMITED

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 52(1), 56, 115
EPC R. 13

Keyword:
"Inventive step (no)"
"Provisional opinion of board unchallenged"
"Observation by third party"

Decisions cited:
-

Catchword:
-



Case Number: T 875/93 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 13 December 1995

Appellant:

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Representative:

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Decision under appeal:

Decision of the Examining Division of the European Patent Office posted 14 May 1993 refusing European patent application No. 89 903 510.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: M. G. Hatherly
J. P. B. Seitz

Summary of Facts and Submissions

I. On 15 July 1993 the appellants (applicants) lodged an appeal against the decision of the examining division dispatched on 14 May 1993 to refuse European patent application No. 89 903 510.9 (International application No. PCT/GB89/00158, International publication No. WO-A-89/07969) for lack of inventive step (Articles 52(1) and 56 EPC). The appeal fee was paid on 16 July 1993 and the statement of grounds of appeal received on 14 September 1993.

II. The following prior art was referred to in the appeal proceedings:

D1: US-A-4 479 651

D2: US-A-3 504 915

D3: GB-A-2 056 865

D4: US-A-4 436 307

D5: GB-A-2 203 056

III. In their statement of grounds the appellants argued that unassembled jigsaw pieces placed on the compressible non-slip inside surface of the cover means of the present jigsaw holder would be retained on this surface for storage when the cover means was pivoted towards the playing surface.

The corresponding surface of the jigsaw holder disclosed by document D2 was not said to be non-slip and the skilled person would have no reason to place unassembled jigsaw pieces thereon. Moreover, even if he did, there was no suggestion that they would be retained thereon when the cover means was pivoted towards the playing surface.

IV. The board commented in its letter of 27 January 1995 that it provisionally considered that

- the trapping of unassembled pieces when closing the holder after play was due to a retaining sheet which was not specified in claim 1 of either the main request or the auxiliary request;
- this retaining sheet was not contained in the present application's first priority document dated 26 February 1988; and that document D5 (which disclosed a divider 34 having the same function as the present retaining sheet) was published on 12 October 1988 i.e. before the present application's second priority date of 25 January 1989;
- Figure 4 of document D2 showed a jigsaw holder comprising a work platform 10' having a friction liner 11' for the assembled jigsaw 12'; a hinged cover 13' releasably secured by resilient straps 16' to overlies the work platform 10' to lock assembled (and obviously also unassembled) jigsaw pieces in position; the blanket 14' of the cover adapted to lie adjacent the work platform 10' was resilient and compressible, and might be of a number of materials, typically a thin layer of polyurethane foam;
- polyurethane foam layers were commonly non-slip and that, while there was no specific disclosure in document D2 of the blanket being non-slip, this would seem to be an obvious choice; if so then jigsaw pieces present thereon when it was pivoted towards the playing surface 11' would be retained until the angle of inclination became too great, just as with the present holder; and

- the user of the cited holder would consider putting unassembled pieces on any available surface near the playing surface 11' and no doubt would find the cover surface ideal; moreover it was a structure which was claimed and this point concerned merely an alleged difference in use.

The board provisionally found no inventive step in any of the claims of either of the main or auxiliary requests.

- V. By letter dated 4 April 1995 the appellants submitted a revised set of claims whose claim 1 reads:

"A holder for a jigsaw comprising a support member having a non-slip playing surface (12) on which a jigsaw (13) can be assembled, a cover means (15) pivoted or hinged to the support member (11) so as to be able to overlie the latter, the surface (16) of the cover means (15) adapted to lie adjacent the support member (11) being of a compressible non-slip nature to lock assembled and/or unassembled jigsaw pieces in position and means (18 to 20) for releasably securing the cover means (15) in overlying relationship to the support member (11), the holder being characterized in that there is provided a flexible retaining sheet (21) adapted to overlie the cover means (15) so that jigsaw pieces present on the surface of the cover means (15) are retained when the latter is pivoted towards the playing surface (12) and when the holder is closed the retaining sheet (21) is sandwiched between the support member (11) and the cover means (12) and serves to retain unassembled jigsaw pieces between same and the cover means (15)."

The appellants argued that claim 1 was novel and inventive over document D5 which, while it disclosed a retaining sheet, did not disclose several other features of Claim 1. The appellants did not comment on document D2 apart from stating that it did not disclose a flexible retaining sheet.

VI. On 26 October 1995 the board summoned the appellants to oral proceedings (as requested auxiliarily by the appellants in their statement of grounds), provisionally commenting in the annex that:

- the closest prior art document D2 discloses all of the pre-characterising portion of claim 1 except for the cover means being non-slip and this would seem to be an obvious choice since polyurethane foam layers are commonly non-slip;
- when using this prior art holder it is clear that if unassembled pieces are put on the blanket 14' of the cover 13' then they have to be taken off when clearing up at the end of the day, otherwise they fall off when the cover is pivoted towards the work platform 10;
- a solution to this problem is to be found in document D5, a retaining sheet whose purpose is immediately apparent to the skilled person, that "not only are the loose jigsaw puzzle pieces held securely in place within the top tray by the foam material on one side of the divider element 34, but the partially assembled jigsaw puzzle is also held securely in place within the base tray 10 by the foam material on the other side of the divider element 34", see page 5, lines 15 to 21;

- the skilled person would immediately realise that this divider could be used to advantage in the holder of document D2 and so would arrive at a holder essentially satisfying claim 1. Document D5 does not disclose the divider to be flexible but this would be an obvious choice, indeed the normal case; and
- document D5 is not even merely in a similar field but in fact in the very narrow specialised field of jigsaw holders and so would certainly be known to the skilled person.

The board provisionally concluded that the subject-matter of claim 1 was not inventive and drew attention to its communication of 27 January 1995 for the dependent claims.

VII. A third party, Mr Denis Parton, sent a facsimile to the EPO on 6 December 1995 objecting to the grant of a European patent on this application and enclosing a copy of a letter dated 7 March 1995 to the UK Patent Office and some pages from patent documents relating to puzzle holders. This submission was faxed to the appellants on 8 December 1995.

VIII. The representative for the appellants informed the board by telephone on 4 December 1995 that the appellants would not attend the oral proceedings and confirmed this by letter dated 5 December 1995.

The oral proceedings were held on 13 December 1995 in the appellants' absence in accordance with Rule 71(2) EPC.

- IX. The appellants request that the decision of the examining division be set aside and that a patent be granted on the basis of claims 1 to 5 filed with the letter dated 4 April 1995.

Reasons for the Decision

1. The appeal is admissible.
2. The appellants have provided nothing in writing to refute the provisional reasons given by the board in the annex to the summons of 26 October 1995 why the subject-matter of claim 1 was not inventive (see section VI above). Moreover the appellants chose not to attend the oral proceedings requested by them. The board thus sees no reason to modify its previously given, provisional opinion.

For the reasons stated above in section VI, in the board's judgement, the subject-matter of claim 1 does not involve an inventive step, contrary to Articles 52(1) and 56 EPC.

3. Moreover the board, along the lines of what it stated provisionally in the letter of 27 January 1995, cannot see that the subject-matter of claim 1 could have been rendered inventive by the addition of any feature or features of the dependent claims, indeed the board can see no way in which the present application could have proceeded to grant.

Accordingly the appeal cannot be allowed.

4. Concerning the third party's submissions of 6 December 1995, the board notes

- on the one hand that the third party objects to the grant of a European patent on this European application and that he cites prior art documents presumably for use against the European application (but which in fact the board does not need to use); and
- on the other hand that the third party's letter does not provide the board with proof that the third party has opened proceedings against the applicants for the purpose of seeking a judgement that he is entitled to the grant of the **European** patent (Rule 13 EPC).

In view thereof and since the submissions would not cause the board to come to a different decision, it was possible for the board to take a final decision at the end of the oral proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:



N. Maslin

The Chairman:



C. Andries

