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BOARDS OF APPEAL OF
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D E C I S I O N
of 27 May 1997

Case Number: T 0186/95 - 3.2.3

Application Number: 89111601.4

Publication Number: 0348864

IPC: E03D 13/00

Language of the proceedings: EN

Title of invention:
Water urinal

Patentee:
TOTO Ltd.

Opponent:
VILLEROY & BOCH AG

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0186/95 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 27 May 1997

Appellant:
(Opponent)

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Respondent:
(Proprietor of the patent)

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 28 December 1994
rejecting the opposition filed against European
patent No. 0 348 864 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: J. du Pouget de Nadaillac
M. K. S. Aúz Castro

Summary of Facts and Submissions

- I. The appeal is directed against the decision posted on 28 December 1994 of the Opposition Division rejecting the opposition filed against the European Patent No. 0 348 864 (Application No. 89 111 601.4).

Claim 1 of this European patent reads as follows:

"A urinal (2) including:

an electromagnetic valve (3) for supplying flushing water to a bowl (1) of the urinal;

said valve (3) being housed in a receiving space (2) integrally formed in the urinal;

the urinal including a sensor (7) for controlling the opening and closing of said valve (3);

characterised in that

said receiving space (2) for the valve (3) is in an upper portion of the urinal;

said receiving space (2) has an opening thereto at the front of the urinal;

said opening has a removable cover (11); and said sensor (7) is mounted on said cover (11)."

- II. The appeal was lodged by the Opponent on 25 February 1995, the appeal fee being paid at the same time. On 26 April 1995, the Statement of Grounds was received.

As evidence of the alleged lack of inventive step, the Appellant relied essentially on the following prior art documents among those cited during the opposition proceedings:

D1: DE-U-8 714 298

D2: Preisliste Nr. 4/1987 Laufen.

The availability to the public of document D2 before the priority date of the patent in suit is contested.

III. Oral proceedings were held on 27 May 1997.

The Appellant argued substantially as follows:

FR-A-2 224 607, on which the preamble of Claim 1 is based, discloses a urinal having an electromagnetic valve for supplying flushing water to a bowl of the urinal and a sensor for controlling said valve, both these components being housed in a receiving space formed in the urinal body. Access to the valve necessitates the removal of the whole urinal from the wall surface on which it is installed. The present invention aims at providing a urinal in which access to the valve is possible in an easier way. This problem is solved by the features of the characterising part of Claim 1.

However, a similar solution is shown in document D1. This prior art discloses two receiving spaces integrally formed in the urinal. A first one is at the top of the urinal for the sensor and includes a rectangular cover for the eye of the sensor. The second one is provided at the bottom of the urinal for the valves and other components of the urinal, said second space having a removable cover to permit access to these components when needed.

In this technical field, the skilled person permanently has to bring new ideas and new products on the market, and the modifications are most of design nature. The documents in these proceedings show that one can extend either the upper part of the urinal or its lower part (see in this respect Figure 1 of the patent in suit, Figures 7 and 8 of D1 and the figures of D2). Thus, for the person skilled in the art who looks for a new design, one obvious possibility is to apply the teaching given in D1 for the lower receiving space to the upper space, which also is available in this prior art for the sensor. That is to say to transfer the valve and possibly some other components to the space already available in the upper part of D1 and to arrange the cover so that access to these components is provided. It follows that the sensor is automatically then located on said cover. Therefore, the present invention is only the result of an obvious design development.

IV. The Respondent (Proprietor of the patent) replied thereto by arguing as follows:

The teaching of document D1 merely is to provide a cover at the lower part of the urinal in order to improve its appearance. None of the cited documents gives an indication to locate the magnetic valve in a receiving space integrally formed in the upper portion of the urinal and to mount the sensor on the cover covering a front opening of said space.

V. The Appellant requested the decision under appeal to be set aside and the European patent No. 0 348 864 to be revoked.

The Respondent requested the appeal to be dismissed.

Reasons for the Decision

1. The appeal is admissible.
2. As acknowledged by the Appellant, document FR-A-2 224 607 represents the closest state of the art. It discloses a one-piece urinal comprising all the features specified in the pre-characterising portion of Claim 1. The receiving space integrally formed in the urinal extends from the top to the bottom of the urinal, behind the bowl portion, the back wall of said space abutting against the wall surface on which the urinal is installed. The space is only opened at its bottom. The sensor, which controls the electromagnetic valve, is mounted in the upper part of this space, therefore in the upper portion of the urinal, whereas the electromagnetic valve is located in the lower part. The maintenance of the valve is therefore possible either by working under the urinal or by removing it.
3. The problem underlying the present invention is to provide a urinal in which the electromagnetic valve is readily accessible for service and which is good in external appearance, i.e. the valve is not exposed and the access means to the valve is not recognisable as such.

This problem is solved by the features listed in the characterising portion of Claim 1. The opening at the front of the urinal provides access to the valve in the upper portion of the urinal and the removable cover of this opening, on which the sensor is mounted, appears to be a part of this sensor.

4. According to the Appellant, this solution is obvious having regard to the teaching of document D1. The Board however is not convinced for the following reasons:

4.1. For solving the same problem, that is to say to create an easy accessible space for the valve and other components of the urinal without exposing them to the exterior, this prior art D1 teaches to provide a urinal made of two parts, namely an upper part comprising the bowl portion and a lower part in the form of a large removable cover for enclosing on at least three sides the lowest portion of the bowl and most of the additional components, such as the valves, the control device for the sensor and the pipes or connections for water - all components which are shown arranged behind the bowl portion or below and attached to the wall on which the urinal is mounted. Further, since this document indicates that the sensor is arranged in the upper portion of the upper part, namely the bowl portion, of the urinal, another receiving space is provided in this upper portion for said sensor. However, contrary to the Appellant's assertion, there is in this prior art no mention or suggestion of a cover or plate for covering this further receiving space, even when Figures 3 and 7 of this document are considered, since they only show the location of the sensor without other details.

It is already questionable whether document D1 teaches to arrange the valve within a receiving space integrally formed in the urinal, at least when giving these words their meaning as used in the patent in suit as required by Article 69 EPC. The description of the patent in suit describes a space, which is formed in the urinal body, and not a space merely formed and enclosed by a cover. Purely as a matter of interpretation, the "cover" of D1 cannot constitute both a part of the urinal defining an integrally formed space within the urinal, and a cover for this space.

But both features are defined in Claim 1. Therefore, the teaching of D1 with respect to the corresponding features in Claim 1 of the patent in suit is quite doubtful.

4.2. Moreover, as mentioned above, this document D1 already solves the problem underlying the present invention, however by means of a removable cover placed beneath the bowl portion, that is it teaches another solution. A comparison of the figures of this document D1 with the figures of the closest prior art, namely FR-A-2 224 607, shows that in fact the valve in both cases is nearly at the same level behind the bowl portion, so that the conditions for access to the valve are almost the same. Thus, a combination of these two documents would only have led the person skilled in the art to provide a removable cover below the urinal according to FR-A-2 224 607 in order to improve the appearance of the urinal, and nothing more.

4.3. Document D1 provides no hint to displace the magnetic valve into the upper part of the urinal. According to the Appellant, the skilled person for design purposes would have been inclined to do so because of the presence of the upper receiving space. This assumption is however not substantiated and can only be seen as the result of hindsight.

Moreover, design as such is a question of taste, not a technical object, and therefore cannot be used to assess the inventive step implied by the subject-matter of Claim 1. The case would be different if under this term, some technical improvements, like a better compacting of the device, the hiding of components and so on, are to be understood. However, the only technical teaching that document D1 provides beyond the teaching of FR-A-2 224 607 is to hide the additional components of the urinal by means of a cover. The

- Appellant has put forward no technical reason which could be found in document D1 for moving the magnetic valve from the lower portion of the urinal to its upper portion and, for assessing inventive step, it is not sufficient to argue that the skilled person could have adopted this measure; The question to ask is whether he would have done so in expectation of some improvement or advantage (see decision T 2/83, OJ'EPO 1984, 265). Document D1 gives no answer thereto.
- 4.4. Document D1 also does not give any hint to mount the sensor on the cover, which hides the magnetic valve. The Appellant has not demonstrated why this feature of Claim 1 automatically follows from the technical improvement created by the other features of said claim, and the Board sees no obvious reason therefor. In the devices according to FR-A-2 224 607 and D1, the sensors are shown or said to be mounted in a receiving space and no cover is disclosed for the concerned space.
5. In his written statement of grounds of appeal, the Appellant had also mentioned document D2, since the figures of the page attached to this price list show a urinal comprising at its upper portion an enclosed space formed by a lid covering the fixing screws of the urinal. As already stated by the Board in its communication accompanying the invitation to oral proceedings this document is not relevant, no valve being shown therein and spaces for screws not being comparable with the spaces involved in the attacked Claim 1. In the oral proceedings the Appellant has not objected to this finding.
6. For all these reasons, the subject-matter of Claim 1 implies an inventive step within the meaning of Article 56 EPC, so that the appeal remains without success.

Order

For these reasons it is decided that:

The Appeal is dismissed.

The Registrar:



N. Maslin

The Chairman:



C. T. Wilson

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