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D E C I S I O N
of 31 January 1996

Case Number: T 0924/95 - 3.2.4

Application Number: 93201573.8

Publication Number: 0574073

IPC: A47C 9/00

Language of the proceedings: EN

Title of invention:
Chair

Applicant:
Van Deursen, Leonardus Laurentius Joseph Maria

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step - yes"

Decisions cited:
-

Catchword:
-



Case Number: T 0924/95 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 31 January 1996

Appellant:

Van Deursen, Leonardus Laurentius Joseph Maria
Schepenenstraat 65
NL-5663 GH Geldrop (NL)

Representative:

Vollebregt, Cornelis Jacobus, Ir.
Algemeen Octrooibureau
World Trade Center
P.O. Box 645
NL-5600 AP Eindhoven (NL)

Decision under appeal:

Decision of the Examining Division of the European
Patent Office posted 29 May 1995 refusing European
patent application No. 93 201 573.8 pursuant to
Article 97(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: R. E. Gryc
M. Lewenton

Summary of Facts and Submissions

- I. The appellant lodged an appeal, received on 24 July 1995, against the decision of the Examining Division, sent on 29 May 1995, refusing application No. 93 201 573.8.

The fee for appeal was paid on 24 July 1995 and the statement setting out the grounds of appeal was received on 21 September 1995.

- II. The Examining Division held that, by carrying out trial tests on the chair disclosed in D1 (DE-A-3 324 788) considered as the closest prior art, it would be obvious for a skilled person trying to solve the problem of reducing the risk of suffering from low back pains during prolonged sitting periods to arrive at the subject-matter of Claim 1.

In the search report the following two documents were also cited:

D2: GB-A-2 133 995 and

D3: DE-C-56 274.

- III. In his statement setting out the grounds of appeal, the appellant argued as follows:

In the first embodiment described in D1, it is not clear whether the back of the disclosed chair is fixed to the seat or to the leg. Depending on the manner the jacks of the chair are actuated, the seat will perform a kind of tumbling movement with respect to the supporting plate.

Such a movement is completely different from a rotation about a vertical axis as claimed in the present application and, in D1, no indication of a pivoting movement of the seat about a vertical axis can be found.

In the second embodiment of D1, the back is not supported by the leg so as to be fixed but will move along a more or less elliptical path with respect to the seat and the seat will perform the same movement as in the first embodiment.

The chair according to the invention does not make any movements at all comparable to the movements of the chair in D1 and the subject-matter of Claim 1 is therefore not obvious in view of this prior art.

IV. The appellant requested that the decision under appeal be reversed and a patent granted on the basis of the following documents:

Claims: 1 to 4 filed with the letter dated 4 April 1995;

Description: pages 1, 2 and 4 as originally filed and page 3 filed with the letter dated 4 April 1995;

Drawings: Figures 1 and 2 as originally filed.

V. The wording of Claim 1 reads as follows:

"A chair provided with at least one leg (1) supporting the chair on the ground, with a back (4) supported by said leg(s) (1) and with a seat (6) supported by said leg(s) (1), whereby said seat (6) is pivotable with

respect to said back (4) about an at least substantially vertical axis (5), characterised in that by means of driving means (7) said seat (6) is pivotable to the left and to the right through maximally 10° from a central position."

Reasons for the Decision

1. The appeal is admissible.

2. *Amendments (Article 123(2) EPC):*

During the examination proceedings Claim 1 was amended in application of Rule 29(7) EPC by adding reference signs to the mentioned technical features; however no feature has been either added or deleted.

In application of Rule 27(1)(b) EPC, page 3 of the description as originally filed was also amended in the course of the proceedings so as to incorporate a short description of the state of the art disclosed in D1.

These amendments do not contravene the requirements of Article 123(2) EPC and are therefore allowable.

3. *Novelty (Article 54 EPC):*

3.1 Although in D1 (see page 3 renumbered 5, lines 26 to 30) Figures 2, 3 and 4 are all presented as cross-sections of Figure 1 (i.e. cross-sections of the same embodiment), in reality they illustrate different embodiments (see D1: page 5 renumbered 7, lines 16, 17 and page 6, renumbered 8, lines 9 to 11).

According to the embodiments disclosed in connection with Figure 1, the seat can rock either forwards and backwards or sideways (see D1: page 4 renumbered 6, lines 22, 23 and page 5 renumbered 7, lines 1 to 12) i.e. it is pivotable with respect to the supporting frame about horizontal axes.

According to the further embodiments shown respectively in Figures 2 and 3, 4, the seat is mounted on a rubber block 32 which allows it to pivot substantially about a pivoting center.

In none of all the above mentioned embodiments is the seat described as being pivotable about a "substantially vertical axis" as claimed in Claim 1. The double vertical arrows P represented in Figures 2 and 4 of D1 do not indicate a vertical axis but the possible directions of movement caused by the lifting jacks 24 and 26 (see D1: page 5 renumbered 7, line 33 to 35 and page 6, renumbered 8, lines 19, 20). Even the arrows at the upper ends of rods 20 in Figure 4 do not suggest a pivotable movement of the seat about one specific substantially vertical axis.

- 3.2 In D2, the seat of the disclosed chair is mounted on a universal joint and performs a rotary tilting motion without the seat itself rotating about a specific substantially vertical axis. Therefore the seat of the chair known from D2, although being pivotable about the pivoting center of the universal joint, moves differently from a rotation "about an at least substantially vertical axis" within the meaning of the invention.

3.3 As far as D3 is concerned, it appears clearly from the figures and also from the description that the disclosed chair does not comprise any driving means for pivoting the seat.

3.4 Therefore, in comparison with the cited prior art, the subject-matter of Claim 1 is new within the meaning of Article 54 EPC.

4. *The closest state of the art*

Since D3 is the only cited document disclosing a chair with a seat being pivotable with respect to the back about a vertical axis, the Board agrees with the appellant that this document discloses the closest state of the art.

The chair claimed in Claim 1 is distinguished from the said prior art in that it comprises driving means for oscillating the seat of the chair through an angle of maximum 10° from one side to the other of a central position .

5. *Problem and solution*

When considering the above-mentioned difference, the objectively determined problem to be solved by the person skilled in the art is to improve the chair known from D3 so that it could be used as a normal chair during prolonged sitting without causing lower back pain to the user (see for example column 2, lines 21 to 24 and line 40 of the published patent application).

The solution according to Claim 1 is to equip the seat of the chair with driving means for oscillating the seat with respect to the back through a small and predetermined angle.

The Board has no reason to doubt that the claimed solution fails to obtain the desired result.

6. *Inventive step (Article 56 EPC)*

- 6.1 When examining whether the modification of the closest state of the art along the lines of the claimed solution involves an inventive step, what should first be investigated is whether the prior art seen by the skilled person in the light of his general common knowledge would provide him with a clear teaching and place the essential means at his disposal, so that he could arrive at the invention. Secondly the question should be considered whether the prior art would prompt the skilled person to use these means in and apply this teaching to the closest prior art in expectation of the improvement he was searching for.

Moreover, in line with the established case law of the Boards of Appeal (see in particular decision T 56/87, OJ EPO 1990, 188), when investigating inventive step it should also be borne in mind that:

"...the technical disclosure in a prior art document should be considered in its entirety, as it would be done by a person skilled in the art. It is not justified arbitrarily to isolate parts of such document from their context in order to derive therefrom a technical information, which would be distinct from or even in contradiction with the integral teaching of the document."

- 6.2 The main concern of D3, considered as a starting point, is to provide a chair to be used as a normal chair but having a seat which can follow and make easier every turn by the user (see D3: right column, lines 7, 8 and Claim 1). This document does not suggest either that the

ability of the seat to rotate could be used to avoid lower back pain to the user or that the seat could be driven by additional driving means, let alone that the rotation of the seat should be limited to a specific range.

Consequently the teaching of D3 considered in its entirety does not give any indication that may lead the skilled person to the invention.

- 6.3 At first sight, the teaching of D1 may prompt the skilled person to use special means for preventing back pain. However, apart from the possibility that the skilled person could be dissuaded from using the driving means disclosed in D1 since it appears to be rather complicated in comparison with the simple rotating system used on the chair in D3, the disclosure of D1 considered in its entirety does not lead the skilled person to use means generating the single oscillatory motion as claimed in Claim 1. Indeed, according to D1, to relieve lower back pain the driving means of the seat should generate combined lateral flexion movements of the spine of the user without, however, creating a rotation of the seat about a specific substantially vertical axis (see above section 3.1).

This teaching is confirmed by the disclosure of D2 referring to a back-exercising apparatus used in the treatment or relief of lower back pain, said apparatus comprising a non-rotatable seat inclined about an horizontal axis and performing a rotary tilting motion which tends to overbalance the patient (see D2: page 1, lines 8 to 20 and above section 3.2).

- 6.4 Therefore, starting from D3 as the closest prior art, the skilled person would not find, either in the cited state of the art or from his general common knowledge,

the essential means of the invention i.e. the driving means for oscillating the seat about a vertical axis. The teaching of Claim 1 thus does not follow plainly and logically from the prior art illustrated by D1 to D3 but implies an inventive step within the meaning of Article 56 EPC.

7. A patent can therefore be granted based on amended Claim 1 filed with the letter of 4 April 1995.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent based on the following documents:
 - Claims 1 to 4 filed with the letter dated 4 April 1995;
 - Description pages 1, 2 and 4 as originally filed and page 3 filed with the letter dated 4 April 1995;
 - Drawings (Figures 1 and 2) as originally filed.

The Registrar:



N. Maslin

The Chairman:



C. Andries