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D E C I S I O N
of 26 February 1999

Case Number: T 0480/96 - 3.2.4

Application Number: 90312237.2

Publication Number: 0427552

IPC: A47G 25/50

Language of the proceedings: EN

Title of invention:
Garment hanger

Patentee:
Karner & Company Aktiebolag

Opponent:
W. Willpütz Kunststoffverarbeitungs GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step - yes"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0480/96 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 26 February 1999

Appellant: W. Willpütz Kunststoffverarbeitungs GmbH
(Opponent) Kirschbaumweg 16
50996 Köln (DE)

Representative: Freischem, Werner, Dipl.-Ing.
Patentanwälte Freischem
An Gross St. Martin 2
50667 Köln (DE)

Respondent: Karner & Company Aktiebolag
(Proprietor of the patent) Stengatan
531 18 Lidköping (SE)

Representative: Deans, Michael John Percy
Lloyd Wise, Tregear & Co.
Commonwealth House
1-19 New Oxford Street
London WC1A 1LW (GB)

Decision under appeal: Interlocutory decision of the Opposition Division
of the European Patent Office posted 25 March
1996 concerning maintenance of European patent
No. 0 427 552 in amended form.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The interlocutory decision of the opposition division was dispatched on 25 March 1996 to maintain the European patent No. 0 427 552 in amended form.

On 25 May 1996 the appellant (opponent) filed an appeal against this decision and simultaneously paid the appeal fee. The statement of grounds of appeal was received on 30 July 1996.

- II. Claim 1 of the main request, which is the claim 1 maintained by the opposition division, reads:

"A garment hanger comprising: a support bar (1); suspension means (2) adapted for supporting a central portion (3) of the support bar (1) from a hanging rail or the like, the support bar (1) being supported generally horizontally in operation; respective gripping means (5) coupled to the support bar at or adjacent the opposite distal extremities (4) of the support bar (1) and adapted to receive and releasably hold a thickness of material of a garment supported by the hanger; and location means integral with the support bar and arranged to receive widthwise excess material of a garment exceeding the length of the support bar from one gripping means to the other; the location means comprising location bars (9) which are connected to the said central portion (3) and extend generally alongside the support bar on either side of the central portion (3) towards the opposite distal extremities (4) of the support bar for a major portion of the length of the support bar (1), the support bar (1) having extreme distal end portions (10) which

extend generally downwardly when the hanger is suspended as aforesaid, and each location bar (9) having a corresponding extreme distal end portion (11) which extends generally downwardly when the hanger is suspended as aforesaid, the spacing between each location bar (9) and the associated portion of support bar (1) and the resilience of each location bar (9) being such that the location bar (9) is adapted for locating a garment in the spacing defined between each location bar (9) and the associated portion of the support bar (1)."

III. The prior art referred to during the appeal proceedings was as follows:

Willpütz clothes hanger HM28 (see section 3 below)

GB-A-2 181 046

GB-A-2 206 041

BE-A-1 000 523

IV. Oral proceedings took place on 26 February 1999 in the presence of the parties.

V. The appellant argued that it would be obvious to lengthen the location bars of the Willpütz clothes hanger HM28 and to extend the ends of the location bars downwardly in order to arrive at a clothes hanger in accordance with the clothes hanger defined by claim 1 of the main request. He also presented arguments against the auxiliary requests.

The respondent (patentee) countered these arguments, saying in particular that it was not obvious to extend the ends of the location bars downwardly.

- VI. The appellant requested that the decision under appeal be set aside and the patent revoked.

The respondent's main request was that the appeal be dismissed (which would mean maintenance of the patent in accordance with the interlocutory decision to maintain the patent according to the first auxiliary request then on file).

The respondent's first auxiliary request was that the decision be set aside and the patent maintained on the basis of claims 1 to 7 of his first auxiliary request in his letter of 23 February 1999.

The respondent's second auxiliary request was that the decision be set aside and the patent maintained on the basis of claims 1 to 6 of his second auxiliary request in his letter of 23 February 1999.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments - main request*

Claim 1 of the main request is the combination of the granted claims 1, 3 and 4.

Claims 2 to 8 of the main request correspond to the

granted claims 2 and 5 to 10 respectively.

The description of the main request corresponds to the granted description, merely amended to bring it into line with the new claim 1.

The drawings of the main request are those as granted.

The board, undisputed by the parties, sees no objection to the patent documents of the main request under either Article 123(2) or 123(3) EPC.

3. *The Willpütz clothes hanger HM28*

The opposition division found in section II.2 of the interlocutory decision that the Willpütz clothes hanger HM28 (a sample of which was supplied by the appellant) was publicly used before the priority date of the present patent, and the respondent accepts this (see the respondent's letter of 4 July 1997, page 6, section V.6.1). The board agrees with these findings and therefore considers the Willpütz clothes hanger HM28 to be state of the art made available to the public before the priority date of the present patent.

4. *Novelty - claim 1 of the main request*

4.1 *The Willpütz clothes hanger HM28*

4.1.1 Lines 5 to 8 of claim 1 of the main request (the line numbers referring to the version filed as the first auxiliary request during the oral proceedings before the opposition division) specify that respective gripping means are coupled to the support bar at or

adjacent the opposite distal extremities of the support bar and are adapted to receive and releasably hold a thickness of material of a garment supported by the hanger. The board cannot follow the respondent's argument that the end jaws of the Willpütz clothes hanger HM28 are clamping means and not gripping means. The claim does not specify how strongly the jaws are to be biased together and the board considers the prior art jaws to be gripping means which clearly must **releasably** hold material otherwise the garment could not be detached from the hanger.

4.1.2 The board considers that the spaces between the support bar and the underlying small bars on the Willpütz clothes hanger HM28 could receive widthwise excess material of a garment exceeding the length of the support bar from one gripping means to the other (as specified in lines 8 to 11 of claim 1 of the main request). Moreover since the small bars would locate something hung thereon, the board finds that they can be called location bars (the term used in line 13 of the claim). It is irrelevant for this finding whether they are better or worse at this job than the location bars of the present invention.

4.1.3 Lines 13 to 17 of the claim specify that these location bars are connected to the central portion of the support bar and extend generally alongside the support bar on either side of the central portion towards the opposite distal extremities of the support bar for a major portion of the length of the support bar.

Whether these location bars can be said to be connected to the **central** portion of the support bar depends on

what one considers the central portion to be. On the other hand it is clear that each location bar of the Willpütz clothes hanger HM28 extends along the support bar for less than half of the distance from the centre of the support bar to its distal extremity and so the location bars do not extend along the support bar for a major portion of the length thereof. The words "a major portion" mean more than half, they are the contrast to "a minor portion", they do not mean simply "a substantial portion".

4.1.4 The board considers that lines 17 to 19 of the claim that specify that the support bar has extreme distal end portions which extend generally downwardly are satisfied by the Willpütz clothes hanger HM28. The board cannot agree with the respondent that the prior art end portions are separate integers mounted at the end of the support bar - the prior art hanger is clearly a one piece, and therefore integral, moulding.

4.1.5 Lines 20 to 23 of claim 1 of the main request specify that each location bar has an extreme distal end portion which extends generally downwardly when the hanger is suspended generally horizontally in operation. The corresponding bars of the Willpütz clothes hanger HM28 on the other hand are straight, with no downwardly extending portions. This generally downwardly extending extreme distal end portion of each location bar and the other main part of each location bar together form with the corresponding parts (i.e. associated portions) of the support bar the so-called "spacing" (see line 23) which is generally uniform throughout the whole length of the location bar.

4.1.6 Thus the subject-matter of claim 1 of the main request is novel over the Willpütz clothes hanger HM28.

4.2 Neither does any of the prior art **documents** on file disclose all the features of claim 1 of the main request.

Moreover the appellant has made no objection under novelty to claim 1 of the main request.

4.3 Therefore the subject-matter of claim 1 of the main request is considered novel within the meaning of Article 54 EPC.

5. *Closest prior art, differences over this prior art, problem and solution - claim 1 of the main request*

5.1 The clothes hanger of the present invention is structurally much closer to the Willpütz clothes hanger HM28 than to the multi-hooked clothes hanger of GB-A-2 181 046, which is cited in the present patent. The board therefore agrees with the appellant that the Willpütz clothes hanger HM28 is the closest prior art to the present invention i.e. it is the starting point for the examination of inventive step. The respondent's argument that he was unaware of this prior art hanger when making his invention is irrelevant.

5.2 The differences of the subject-matter of claim 1 of the main request over the Willpütz clothes hanger HM28 are those set out in sections 4.1.3 and 4.1.5 above, namely the greater length of each location bar, its downwardly extending extreme distal end portion and the associated spacing.

5.3 The problem to be solved by the present invention (which must be formulated such that it does not give pointers to the solution) is seen by the board to be to make a more versatile clothes hanger.

5.4 This is achieved by the two features set out at the end of section 5.2. Lengthening the location bars gives them greater resiliency which aids insertion of material into the slot between the location bar and the support bar and helps keep the material there once it is in. Extending the end of each location bar downwardly aids entry of garment material into the slot and decreases the danger of the location bar end piercing the garment by providing a larger abutting surface during introduction of the garment material. Both the features also have the effect of lengthening the slot (i.e. the spacing - see line 23) between the location bar and the support bar, thus providing more room widthwise for excess material and increasing the security of holding of the garment because the length of support bar and location bar in contact with the material is increased thus increasing the interference and frictional effect.

6. *Inventive step - claim 1 of the main request*

6.1 The appellant stated in the oral proceedings that, while there was no reason for the skilled person to lengthen the location bars of the Willpütz clothes hanger HM28 because it had no disadvantages and could be used to accommodate an excessively wide garment, it would be obvious to lengthen the location bars in order to hold a greater excess width. The appellant added that, since the sample hanger according to the

invention was shorter than the Willpütz clothes hanger HM28, it would be necessary for accommodating the same excess width to lengthen the location bars. The board cannot wholly follow this last argument since the end jaw to end jaw distance of the sample hanger according to the invention is only slightly shorter than the corresponding distance on the Willpütz clothes hanger HM28 whereas the difference in the lengths of the location bars is appreciable.

6.2 It is not in fact necessary for the board to decide whether it would have been obvious for the skilled person merely to lengthen the location bars of the prior art hanger since it will be seen from the succeeding paragraphs 6.3 to 6.3.3 that the necessary inventive step of the subject-matter of the claim is already given by the feature of extending the ends of the location bars downwardly.

6.3 The appellant does not present convincing arguments as to why the skilled person would (as opposed to merely could) extend the ends of the location bars downwardly. Indeed he argues that the Willpütz clothes hanger HM28 is functionally perfectly satisfactory so that there is no need for the features of the present invention. Alternatively he argues that advantages could be achieved in different ways to that of the present invention.

6.3.1 The appellant argues that accidental damage is prevented in the Willpütz clothes hanger HM28 by the rounded, blunted ends of the location bars but the board concludes therefrom that there would then be no reason for the skilled person to downwardly extend the

ends. However the appellant also states that the small end of the prior art location bar tends to pierce the garment and so fixes the garment better on the hanger. The board considers that if this effect is held by the skilled person to be beneficial then he will not wish to lose it by downwardly extending the end of the location bar.

6.3.2 Then the appellant states that to make the location bar end blunter it is not necessary to bend it because the overall height of the location bar can be increased instead. The board does not see this as the optimum solution because the flexibility of the bar would suffer and more material would need to be used. However if this solution were taken, it would not be the solution employed in the present invention. Likewise the solution proposed by the appellant of increasing the clamping force by decreasing the slot width is not the solution of the present invention.

6.3.3 The appellant argued that the prior art disclosed similar constructions to the downwardly extending end of the location bar of the patent. Thus Figure 2 of GB-A-2 206 041 shows that the end of finger 40 is bent downwardly and Figure 3 of BE-A-1 000 523 shows that the clips 7 and 13 have bent ends. Moreover the ends of the top clips of the Willpütz clothes hanger HM28 are bent away from the support bar.

These clips however are merely short clips and have nothing in common with the construction and function of the location bars of the Willpütz clothes hanger HM28 and the patent. In BE-A-1 000 523 the clips run vertically not horizontally and so accommodate

differently sized garments in another way to that of the invention. In GB-A-2 206 041 the horizontal extent of the clips is insufficient to efficiently accommodate excess material.

- 6.4 The board therefore does not see that the skilled person would be led by these documents to the solution specified in claim 1 of the main request.

While lengthening the location bars and downwardly bending their ends compared to the Willpütz clothes hanger HM28 are small changes, they are not only made to a well developed article sold in very great numbers at a low price (just one order for the Willpütz clothes hanger HM28 was for 55000 hangers at 19 pfennigs per hanger) but also relate to features which have a clear useful purpose.

Accordingly the board finds that the subject-matter of claim 1 of the main request involves an inventive step (Article 56 EPC).

This finding that, having regard to the state of the art, the subject-matter of claim 1 is not obvious to a person skilled in the art is taken after considering the appellant's arguments relating to and relying on the examination of the corresponding German Utility Model. It is however not the board's task to comment on the difference between the inventive step required for a **German** Utility Model and that required for a **German** patent.

7. The subject-matter of claim 1 of the main request is thus patentable as required by Article 52 EPC. The

patent may thus be maintained amended based on this independent claim and on claims 2 to 8 which are dependent thereon.

For completeness it is repeated that the patent documents for this main request are the documents in accordance with the opposition division's interlocutory decision to maintain the patent according to the first auxiliary request then on file.

8. Consideration of the respondent's auxiliary requests is thus unnecessary.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

N. Maslin

C. Andries