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T 168



Case Number: T 83 / 83

DECISION
of the Technical Board of Appeal 3.2.1
of 5 July 1984

Appellant:

RS-REKLAM
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Representative:

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Decision under appeal:

Decision of Examining Division 108
Office dated 4 March 1983
application No 80 902 131.4
EPC

of the European Patent
refusing European patent
pursuant to Article 97(1)

Composition of the Board:

Chairman: G. Andersson
Member: P. Ford
Member: K. Schügerl

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Summary of facts and submissions

- I. The European patent application 80 902 131.4 filed under the Patent Cooperation Treaty (PCT) on 31 October 1980 and published by the international bureau of WIPO on 14 May 1981 with the publication number WO 81/01307, was refused by decision of the Examining Division 108 dated 4 March 1983.

The (single) claim had the following wording:

"An edging, preferably a skirting-board, in one flat side of which at least one longitudinal groove is provided, characterised in that the groove or grooves is outwardly open and ends in the flat side directed outwards when the edging is positioned e.g. at a wall, wherein the distance between the upper and lower boundary surfaces of the groove or grooves is so dimensioned, that between these surfaces a flex of an electrical appliance is from outside directly insertable over an arbitrary length of the edging".

- II. The reason given for the refusal was that the subject-matter of this claim was not novel within the meaning of Article 54 EPC having regard to FR-A-1 463 382.
- III. On 26 April 1983, the applicant lodged an appeal against this decision, paid the fee, requested cancellation of the decision and grant of the patent on the basis of an amended claim, or, alternatively, to arrange for an oral hearing. A statement setting out the grounds was received in due time.

IV. In a communication pursuant to Article 11(2) of the rules of procedure of the Boards of Appeal, objection was raised under the terms of Articles 56 and 52(1) EPC, that the subject-matter claimed in the amended claim was lacking in inventive step having regard to FR-A-1 463 382.

V. In the oral proceedings a new (single) claim was agreed by the Board, reading:

"A combination of an edging, preferably a skirting-board, comprising at least one longitudinal groove (2,3) provided in the external flat side of the edging, with a flex (4,5) of an electrical appliance being insertable in that groove over an arbitrary length of the edging, characterised in that the groove (2,3) has parallel upper and lower boundary surfaces and is so dimensioned in relation to the flex (4,5) received therein, that said flex is kept in position in the groove with a light press fit".

Finally the appellant submitted a final copy of that claim and a new description in order to take account of the new wording of the claim and the relevant state of the art.

Reasons for the decision

1. The appeal complies with Articles 106-108 and Rule 64 EPC; it is therefore admissible.
2. The subject-matter of the new claim and of the new description do not extend beyond the content of the application as filed. The amendments are therefore allowable under the terms of Article 123(2) EPC.

3. The precharacterising part of the claim now on file duly acknowledges the state of the art as witnessed by FR-A-1 463 382. In fact, the known arrangement may be considered as a combination of a fixture and a flex, although this fact has no consequences to the dimensioning of the fixture, because the flex floats freely in the circular channel, whose entrance slot, normally closed, can be opened only by an elastic deformation.

4. By contrast, the features of the characterising portion define the dimensional relationship between groove and flex, which results in a light press fit, and further, define also the shape of the cross-section of the groove (parallel upper and lower boundary surfaces), from which follows that the groove is constantly open to the outside.

5. Such an arrangement is new not only with regard to FR-A-1 463 382, but also as compared with FR-A-977 878 and FR-A-1 346 593, both cited in the search report. Moreover, it is also based on inventive step. The background art as witnessed by FR-A-1 463 382 and FR-A-977 878 makes use of an elastic deformation of the board in order to open the entrance slot which is normally (i.e. after insertion of the flex) almost or completely closed, which removes certain restrictions as to the material of the board.

According to another, rather remote state, document forming part of the state of the art (FR-A-1 346 593), a grooved lath, to be covered after insertion of the flex (evidently with plaster or the like) receives separate holders for the flex. In this arrangement the flex is held in the holder and, in turn, the holder in the groove by an elastic deformation of the holder which

means that the holder is fixed in the groove by a press fit. This fact, however, cannot be regarded as a sufficient inducement to the skilled person to dispense with the holders and to arrange the flex directly in the groove, thereby choosing the dimensions of the groove according to the dimensions of the flex. Although the solution is of an extreme simplicity, one had to deviate from the known solutions in a manner not to be attributed to the average skilled worker.

6. For these reasons, the application with the new description and the new claim as set out in paragraph V above, is allowable under the terms of Articles 56 and 52(1) EPC.

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 European Patent on the basis of the claim and the description, page 2, filed on 12 May 1984, of the description, page 3, filed on 22 February 1984 and of the original drawings.

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PF.

J. K. G.

[Signature]