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**Datasheet for the decision  
of 17 March 2015**

**Case Number:** T 2364/13 - 3.2.08

**Application Number:** 05106994.6

**Publication Number:** 1624146

**IPC:** E05D11/00

**Language of the proceedings:** EN

**Title of invention:**  
Hinge for door or window frames

**Patent Proprietor:**  
GSG INTERNATIONAL S.p.A.

**Opponent:**  
Dr. Hahn GmbH & Co. KG

**Headword:**

**Relevant legal provisions:**

EPC Art. 56, 114(2)  
RPBA Art. 12(4)

**Keyword:**

Inventive step - (yes)  
Late submitted material - document admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
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Case Number: T 2364/13 - 3.2.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.08**  
**of 17 March 2015**

**Appellant:** Dr. Hahn GmbH & Co. KG  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 2 October 2013 rejecting the opposition filed against European patent No. 1624146 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman** T. Kriner  
**Members:** M. Foulger  
C. Schmidt

## **Summary of Facts and Submissions**

- I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division, dispatched on 2 October 2013, rejecting the opposition against European patent EP 1 624 146.

The notice of appeal and the statement setting out the grounds of appeal were filed within the given time limits.

- II. Oral proceedings took place before the Board of Appeal on 17 March 2015.

- III. The appellant requested that the decision be set aside and the patent be revoked.

- IV. The respondent (patent proprietor) requested that the appeal be rejected, alternatively that the patent be maintained on the basis of one of the four auxiliary requests filed with the letter dated 17 February 2015.

- V. Claim 1 of the main request, i.e. the patent as granted, reads as follows:

"A hinge for metal door or window frames of the type comprising two hinge bodies (2, 3), each consisting of a tubular portion (4, 5) with a first hole (6, 7) through the centre of it and a flap (8, 9) for securing it to a mobile frame or fixed frame (10, 11), and a hinge pin (18) inserted coaxially in the first holes (6, 7) to allow the hinge bodies (2, 3) to rotate relative to each other about a central axis (19) of the pin (18) itself; each flap (8, 9) extending laterally from the respective tubular portion (4, 5) and having at least one second through hole (12, 15) in which an element (14, 17) for securing the flap (8, 9) to the

mobile frame or the fixed frame (10, 11) can pass; the hinge (1) further comprising, for each body (2, 3), a respective metal cap (25, 31) for covering at least the securing elements (14, 17), each cap (25, 31) consisting of a first portion (26, 32) for covering the respective tubular portion (4, 5), and a second portion (27, 33) for covering the respective flap (8, 9), the first covering portion (26, 32) being shaped in such a way as to fully cover the lateral surface of the respective tubular portion (4, 5) except for a longitudinal strip adjacent to the respective flap (8, 9), both these portions being made as one in a single piece."

The remaining requests do not play a role in this decision.

VI. The following documents cited in appeal proceedings were filed within the nine-month opposition period according to Article 99(1) EPC:

E1: WO 98/41720 A1  
E2: EP 1 091 066 A2  
E5: GB 2 381 291 A.

The following documents were filed in appeal proceedings after the Board had invited the parties to oral proceedings:

E6: WSS-Türband 3D Einbauanleitung  
E7: Innovation 2004 - 3D-Leichtmetall-Türbänder für Aluminiumtüren.

VII. The appellant argued essentially the following:

Regarding the late-filed documents:

These were only found by coincidence and therefore

could not have been filed earlier. They were prima facie relevant regarding novelty of the subject-matter of claim 1 and should therefore be admitted into the proceedings.

Inventive step:

E1 as closest prior art:

E1 disclosed all features of claim 1 except that the further covering portion is shaped in such a way as to fully cover the lateral surface of the respective tubular portion except for a longitudinal strip adjacent to the respective flap. E1 also implicitly disclosed that the cap was made of metal because of the shading used in the drawings. Furthermore, the person skilled in the art would recognise that the cap was metal due to its function and form. Moreover, a metallic cap was known from E5 such that even if new then this feature would not involve any inventive activity.

The problem to be solved could therefore be regarded as being either to improve the visual appearance of the hinge or to make the hinge tamper-proof.

E2 disclosed specifically in paragraph [0042] that the cap covered the visible side of the hinge. Thus the person skilled in the art would recognise that this both improved the visual appearance of the hinge and made it more tamper-proof. The person skilled in the art would therefore apply this teaching to the hinge of E1 without the exercise of inventive activity in order to solve the above problem.

The subject-matter of claim 1 did not therefore involve

an inventive step in the sense of Article 56 EPC.

E2 as closest prior art:

Although E2 referred primarily to a hinge with one hinge body, E2 could also be regarded as the closest prior art because E2, [0005], stated that alternatively a conventional hinge could be used. E2, [0027] further stated that, in such a case, the pin extended the whole length of the hinge.

The problem to be solved was therefore to provide a hinge with two flaps in accordance with the desired door arrangement. In following the suggestion of paragraph [0005] of E2, the skilled person would arrive at the subject-matter of claim 1 without the exercise of inventive activity.

VIII. The respondent argued essentially the following:

Regarding the late-filed documents:

The appellant being a major company in this technical field should have known about E6 and E7 because such a company is expected to monitor closely the developments of their competitors. Thus, these documents should have been filed within the nine-month opposition period of Article 99(1) EPC. These documents were also not prima facie relevant because the perspective drawings did not show how far the covering portion extended around the tubular portion. Moreover, these documents did not disclose a metal cap because although the hinge may be anodised it was not clear to which element of the hinge this related. Documents E6 and E7 should therefore be rejected as being late filed. Furthermore, it was requested that the case be remitted to the Opposition

Division should the Board admit E6 and E7 into the proceedings.

Inventive step

a) E1 as closest prior art

E1 was regarded as the closest prior art, it did not however show the features whereby each cap consisted of a further portion for covering the respective tubular portion, the further covering portion being shaped in such a way as to fully cover the lateral surface of the respective tubular portion except for a longitudinal strip adjacent to the respective flap, both these portions being made as one in a single piece and whereby the cap was made of metal.

The problem to be solved was as set out in the patent i.e. to provide a tamper proof hinge. The covering portion of E2 did not extend far enough around the tubular portion to prevent a crowbar from being inserted. The teaching of E2 would therefore not solve the problem posed and consequently the person skilled in the art would not have considered E2. Moreover E2 did not disclose that the further covering portion was shaped in such a way as to fully cover the lateral surface of the respective tubular portion except for a longitudinal strip adjacent to the respective flap and also not that the cap was made of metal.

Therefore, the person skilled in the art would not have combined E1 and E2 and moreover such a combination would not have led to the subject-matter of claim 1.

b) E2 as closest prior art

E2 concerned a completely different type of hinge from

that claimed. Modifying the hinge of E2 to arrive at the subject-matter of claim 1 would require a complete redesign of the hinge of E2 which would have required inventive activity.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Late filed documents:

E6 and E7 were filed after the expiry of the nine-month opposition period defined in Article 99(1) EPC and after the Board had issued a communication in accordance with Article 15(1) RPBA. Hence it is within the power of the Board to hold these documents inadmissible (Article 114(2) EPC and Article 12(4) RPBA).

The Board considers that the feature whereby the first covering portion is shaped in such a way as to fully cover the lateral surface of the respective tubular portion except for a longitudinal strip adjacent to the respective flap is not clearly disclosed in either E6 or E7 - the perspective views shown in these documents do not allow this feature to be seen. Thus, prima facie these documents do not put the patentability of the granted claims in doubt.

Moreover the admission of the new documents into the proceedings would entail a completely new case which, as also requested by the respondent, would require remittal to the Opposition Division. This would go against the principle of procedural economy.



Consequently the Board did not admit documents E6 and E7 into the proceedings (Article 114(2) EPC and Articles 12(4) RPBA).

3. Inventive step

3.1 E1 as closest prior art:

3.1.1 E1 discloses,

a hinge for metal door or window frames of the type comprising two hinge bodies (10,12), each consisting of a tubular portion (14,18) with a first hole (24,26) through the centre of it and a flap (16,20) for securing it to a mobile frame or fixed frame, and a hinge pin (22) inserted coaxially in the first holes to allow the hinge bodies to rotate relative to each other about a central axis of the pin itself; each flap extending laterally from the respective tubular portion and having at least one second through hole (72,74) in which an element for securing the flap to the mobile frame or the fixed frame can pass; the hinge further comprising, for each body, a respective cap (76,78) for covering at least the securing elements, with a portion for covering the respective flap.

3.1.2 The subject-matter of claim 1 therefore differs in that each cap consists of a further portion for covering the respective tubular portion, the further covering portion being shaped in such a way as to fully cover the lateral surface of the respective tubular portion except for a longitudinal strip adjacent to the respective flap, both these portions being made as one in a single piece. That the cap is made of metal is not explicitly mentioned in E1, however, as shown below in paragraph 3.1.6, this does not play a role in the

decision.

- 3.1.3 The problems to be solved by the invention are, according to the patent, paragraphs [0011] and [0012], to provide a hinge for door or window frames with improved tamper-proof features and to provide a hinge for door and window frames that is simple and economical to produce.
- 3.1.4 The above problems are solved by the hinge according to claim 1 in that the first covering portion being shaped in such a way as to fully cover the lateral surface of the respective tubular portion except for a longitudinal strip adjacent to the respective flap. As the lateral surface of the tubular portion is completely covered by the first covering portion except for a strip then there is no space to insert a crowbar or chisel in order to remove the cover.
- 3.1.5 The Board considers that the feature of claim 1 whereby the first covering portion is "shaped in such a way as to fully cover the lateral surface of the respective tubular portion except for a longitudinal strip adjacent to the respective flap" must be interpreted as meaning that the cover extends substantially around the cylindrical part. This is because the word strip in itself implies that it is narrow and also because it must be read in conjunction with "fully cover". The Board therefore considers that the covering portion of E2 does not fulfill this requirement because it only extends over 180° of the tubular portion.
- 3.1.6 Therefore the combination of the teachings of E1 and E2 would not lead to the subject-matter of claim 1, irrespective of whether the cap being metallic is known

from E2 or made obvious by E5.

3.2 E2 as closest prior art

3.2.1 The Board is not convinced by the appellant's argument that E2 could also be regarded as the closest prior art. Normally the closest prior art is that having the most relevant technical features in common with the invention, i.e. requiring the minimum of structural modifications, see Case Law of the Boards of Appeal, 7th Edition, 2013, I.D.3.1.

3.2.2 In the current case, E2 does not disclose a hinge comprising two hinge bodies as defined in claim 1. The first hole does not extend through the hinge body as claimed. To modify the hinge to arrive at the subject-matter of claim 1 would therefore require a redesign of the entire hinge.

3.2.3 It is true that E2 makes the statement that a conventional joint pivot pin may be used, see E2, column 2, line 6. E2 does not however disclose what this should look like nor what features it should have. Thus this "conventional" hinge cannot be regarded as being clearly and directly derivable from E2. Moreover as discussed above, the Board considers that E2 does not disclose a cap in accordance with claim 1.

3.2.4 Therefore the Board considers that E2 cannot be regarded as the closest prior art because it is a completely different type of hinge with only one hinge body.

3.3 Consequently the subject-matter of claim 1 involves an inventive step.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



V. Commare

T. Kriner

Decision electronically authenticated