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**Datasheet for the decision  
of 27 April 2021**

**Case Number:** T 0348/17 - 3.2.08

**Application Number:** 09788420.9

**Publication Number:** 2419589

**IPC:** E05D5/04, E05D7/082

**Language of the proceedings:** EN

**Title of invention:**

HINGE OF A ROOF WINDOW PIVOT SASH AND A UNIT FOR FASTENING THE  
HINGE TO THE FRAME, IN PARTICULAR OF A ROOF WINDOW SASH

**Patent Proprietor:**

Fakro PP Spolka z o.o.

**Opponent:**

VKR-Holding A/S

**Headword:**

**Relevant legal provisions:**

RPBA Art. 12(4)  
EPC Art. 54, 56, 114(2)

**Keyword:**

Late-filed evidence - admitted (no)

Novelty - (yes)

Inventive step - (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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**Case Number:** T 0348/17 - 3.2.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.08**  
**of 27 April 2021**

**Appellant:** VKR-Holding A/S  
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**Respondent:** Fakro PP Spolka Z O.O.  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 12 December  
2016 rejecting the opposition filed against  
European patent No. 2419589 pursuant to Article  
101(2) EPC.**

**Composition of the Board:**

**Chairwoman** P. Acton  
**Members:** M. Foulger  
C. Schmidt

## **Summary of Facts and Submissions**

- I. With the decision posted on 12 December 2016, the opposition division rejected the opposition against European patent No. 2 419 589 B1.
- II. Oral proceedings took place before the Board on 27 April 2021.
- III. The appellant (opponent) requested that the decision be set aside, that the patent be revoked and that D11 be admitted into the proceedings.
- IV. The respondent (patent proprietor) requested that the appeal be dismissed and that D11 not be admitted into the proceedings.
- V. Claim 1 of the granted patent reads:  
  
" **(a)** A hinge  
**(b)** of a roof pivot window  
**(c)** swinging around a theoretical axis of rotation of the hinge located at the outer side of the window pane surface,  
**(d)** especially with a wooden sash frame,  
**(e)** comprising two sub-assemblies, each of them is fastened to one of the window units connected with this hinge,  
**(f)** wherein one sub-assembly (4) has an arc-shaped guide (41) and the other sub- assembly (1) has an arc-shaped slide (11) placed in this guide (41) and the guide (41) and slide (11) curvature centre points are on said theoretical axis of rotation of the hinge, and  
**(g)** wherein at least one hinge sub- assembly (1,4), in particular the one fastened to the window sash, has a

fastening plate (12) adjacent to the side surface of the frame mating the hinge and is secured to this frame with threaded fasteners (3), in particular screws, and fixed relative to the frame,

**(h)** advantageously with locating pins (17) mounted in the hinge fastening plate (12), **characterized in that**

**(i)** the fastening plate (12) has at least one oblique holder (13) for at least one threaded fastener (3) located at an acute angle relative to the main surface of adhesion of this fastening plate (12) to the side surface (22) of the frame mating the hinge,

**(j)** and the geometrical axes of the holes (15) in the oblique holders (13) are in planes crosswise to the longer side of the fastening plate (12)."

(Feature references in bold, as used by the parties, added by the Board)

VI. The following documents are relevant for this decision:

D3: WO 2008/013464 A1

D9: EP 0 786 575 A1

D11: EP 0 874 103 A2

VII. The appellant argued essentially the following:

i) Admission of D11 into the proceedings

The opposition division had erred in their appreciation of the *prima facie* relevance of this document. D11 disclosed a hinge for exactly the same kind of window referred to in claim 1, i.e. a hinge of a roof window. Moreover, Fig. 6, part 42 clearly showed an oblique attachment of the hinge on the wooden sash. The type of hinge was not important as hinges such as defined by feature (f), known generally as "banana" hinges were

well known in the art.

Hence, this document was *prima facie* relevant, at least for inventive step.

ii) Novelty

D9 disclosed a hinge which was attached by means of oblique screws. Claim 1 was directed to a hinge rather than a roof window so all that was required to be novelty destroying was the suitability for the intended use.

It had been disputed by the respondent that feature (f) was known from this document, however the following passages: col. 1, l. 34 - l. 48

col. 1, l. 57 - col. 2, l. 2

col. 3, l. 16 - l. 19

col. 3, l. 46 - l. 58

showed that such "banana" hinges were clearly contemplated in the disclosure of D9. These hinges were indisputably known at the filing date of D9 and were thus included by the statement "[t]he hinge can be any hinge known from the prior art". Thus, Features (f) and (b) were also at least implicitly known from D9.

Features (i) and (j) of claim 1 were visible in the figures of D9.

Hence, all features of claim 1 were known from D9.

iii) Inventive step

a) Combination of the teachings of D3 and D9

D3 disclosed the features of the preamble of claim 1.

Thus, taking D3 as closest prior art led to the objective technical problem of how to fasten the hinge of D3 to non-parallel surfaces so that the wood did not split. Although D3 related primarily to windows made of multi-cell plastic profiles, the use of wood was not excluded by this document. Moreover, the patent itself stated when describing D3 (see [0002]) that this document disclosed a wooden sash frame.

In seeking to solve the above problem, the skilled person would have considered D9 which was also concerned with the problem of the wood splitting, see col. 1, l. 51 - l. 48.

D9 proposed a solution to this problem in that the screw was inserted obliquely.

Thus, to solve the objective technical problem the skilled person would apply the teaching of D9 to the hinge known from D3 and thus arrive at the subject-matter of claim 1 without the exercise of inventive activity.

b) Combination of the teachings of D9 and D3

D9 could also be regarded as closest prior art because the claim merely specified a hinge and the hinge of D9 was suitable for use in a roof window.

D9 disclosed Features (i) and (j) of claim 1 but possibly not feature (f), whereby one sub-assembly has an arc-shaped guide and the other sub-assembly has an arc-shaped slide placed in this guide and the guide and slide curvature centre points are on said theoretical axis of rotation of the hinge.

The objective technical problem was therefore to provide a hinge in a centre-hung window which stopped the sash from flipping.

D3 disclosed a "banana" type hinge according to feature (f). It was well known that such hinges prevented the sash from flipping thus the skilled person would apply this teaching to the hinge of D9 and thus arrive at the subject-matter of claim 1 without the exercise of inventive activity.

Hence, the subject-matter of claim 1 did not involve an inventive step.

VIII. The respondent argued essentially the following:

i) Admission of D11 into the proceedings

The opposition division had decided correctly that D11 was not *prima facie* relevant for either novelty or inventive step. D11 did not disclose a hinge of the type defined in the preamble of claim 1.

Hence, D11 should not be admitted into the proceedings.

ii) Novelty

D9 did not disclose a hinge of the type defined in the preamble of claim 1, in particular feature (f) was not disclosed.

Even if it was mentioned that any type of hinge could be used, this could only be regarded as a general disclosure which could not deprive the specific hinge of claim 1 of novelty.



The subject-matter of claim 1 was thus new.

iii) Inventive step

a) Combination of the teachings of D3 and D9

D3 did not disclose a wooden frame but rather a hollow cell plastic frame . The statement in the patent that D3 disclosed a wooden frame was not correct. The problem suggested by the appellant of avoiding the wood splitting was thus not derivable from D3.

The skilled person would have no motivation to look for solutions in the field of vertical windows when seeking to improve the fixation of a roof window hinge because the loading was different.

Hence, the skilled person would not have combined the teachings of D3 and D9.

b) Combination of the teachings of D9 and D3

D9 disclosed a "barrel" type hinge, i.e. a different type of hinge from that specified in the preamble of claim 1. As it was a different type of hinge, D9 could not be regarded as the closest prior art. The hinge of D9 was clearly intended to be used on a vertical window rather than a roof window. Therefore the problem suggested by the appellant was not derivable from D9 and could only be regarded as being influenced by hindsight.

The subject-matter of claim 1 involved an inventive step.

## Reasons for the Decision

### 1. Admission of D11 into the proceedings

The opposition division did not admit D11 into the proceedings because they found that it was not *prima facie* relevant. The appellant argued that the opposition division had not correctly recognised the relevance of D11 which was immediately evident in Fig. 6.

According to established case law a board of appeal should only overrule such a discretionary decision if it concludes that the opposition division used its discretion according to the wrong principles or in an unreasonable way (see Case Law of the Boards of Appeal, 9th edition, 2019, IV.C.4.5.2).

In the current case the opposition division applied the correct principle, i.e. *prima facie* relevance, in a correct way, see impugned decision section II.2. Moreover, the Board sees no reason to doubt the conclusion of the opposition division regarding the *prima facie* relevance of D11.

Hence, the Board sees no reason to set aside this discretionary decision of the opposition division and does not admit D11 into the proceedings (Article 114(2) EPC and Article 12(4) RPBA).

### 2. Novelty

D9 does not specifically disclose a hinge whereby one sub-assembly has an arc-shaped guide and the other sub-assembly has an arc-shaped slide placed in this guide and the guide and slide curvature centre points are on

said theoretical axis of rotation of the hinge (feature (f)).

It is correct that D9 does state at col. 3, l. 16 - l. 19 that "any type of hinge may be used". This is however at most a generic disclosure of a hinge and according to the established case law a generic disclosure does not destroy the novelty of a specific feature (see Case Law of the Boards of Appeal, 9th edition, 2019, I.C.5.2.6).

Hence, feature (f) cannot be considered as being known from D9 and the subject-matter of claim 1 is new with respect to D9.

### 3. Inventive step

#### 3.1 Combination of the teachings of D3 and D9

It is common ground that D3 discloses a hinge according to the preamble of claim 1 because feature (d) relating to the wooden sash frame is merely optional.

The subject-matter of claim 1 differs from the hinge of D3 in that the fastening plate has at least one oblique holder for at least one threaded fastener located at an acute angle relative to the main surface of adhesion of this fastening plate to the side surface of the frame mating the hinge (feature (i)), and the geometrical axes of the holes in the oblique holders are in planes crosswise to the longer side of the fastening plate (feature (j)).

D3 relates however to a multi-cell plastic profile, see p. 2, 3rd and 5th paragraphs, although, as argued by the appellant, this is merely a preferred material and

the disclosure is not restricted to this material. Use of wood for the sash frame is thus not excluded in D3 but neither is it specifically disclosed.

The fact that the patent in suit itself states when describing D3 (see [0002]) that this document refers to a wooden sash cannot be considered as clear and unambiguous disclosure of a wooden sash in D3 either since this statement is manifestly incorrect.

As there is no disclosure of the window frame or sash being made of wood the objective problem cannot be to stop the wood splitting because this does not arise in the hinge disclosed in D3. The problem to be solved is, as suggested by the respondent, to improve the fixation of the hinge on the window frame.

D3 is also concerned with this problem, see p. 2, 3rd paragraph. D3 however suggests providing fastening protrusions which are preferably perpendicular to the surface of the hinge plate, see D3, claim 1. This teaching goes against the teaching of D9 which suggests the use of oblique fasteners. Thus, starting from D3 as closest prior art, the skilled person would not consider D9 to solve the problem of improving the fixation of the hinge on the window frame.

The subject-matter of claim 1 involves an inventive step in view of D3 as closest prior art combined with the teachings of D9.

### 3.2 Combination of the teachings of D9 and D3

As discussed above D9 does not disclose feature (f) of claim 1. Thus, the hinge of D9 is not for the same purpose as that of the invention. Hence, D9 cannot be

regarded as being the closest prior art because to arrive at an improved "banana type" hinge the skilled person would start from a hinge of this type.

The appellant suggested that the problem to be solved was to provide a hinge in a centre-hung window which stopped the sash from flipping.

This is not at all related to the hinge disclosed in D9, the skilled person would therefore require knowledge of the invention to arrive at the problem suggested by the appellant. Consequently, this problem suffers from the application of hindsight because it is formulated in a manner which provides a pointer to the solution. In order to improve the hinge of D9 the skilled person would retain the type of hinge disclosed and not just the screws. Therefore, the skilled person would not have arrived at the subject-matter of claim 1 without the exercise of inventive skill.

- 3.3 Hence, the subject-matter of claim 1 involves an inventive step. Moreover, the subject-matter of claim 10, as it includes all features of claim 1, is also new and inventive.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairwoman:



D. Magliano

P. Acton

Decision electronically authenticated