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**Datasheet for the decision
of 30 September 2022**

Case Number: T 2489/18 - 3.2.08

Application Number: 13004211.2

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E06B9/72, E06B9/92, E04D13/035,
E04F10/06

Language of the proceedings: EN

Title of invention:
Tilting roller blind with guides for roof windows

Patent Proprietor:
FAKRO PP Sp. z o.o.

Opponent:
VKR-Holding A/S

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
Novelty - (yes)
Inventive step - (no)



Beschwerdekammern

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Case Number: T 2489/18 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 30 September 2022

Appellant: VKR-Holding A/S
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 24 July 2018
rejecting the opposition filed against European
patent No. 2703595 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairwoman P. Acton
Members: M. Foulger
F. Bostedt

Summary of Facts and Submissions

- I. With the decision posted on 24 July 2018, the opposition division rejected the opposition against European patent No. EP 2 703 595 B1. In particular, the opposition division found that the subject-matter of claim 1 was new over public prior use I and involved an inventive step over the cited prior art.
- II. The opponent filed an appeal against this decision.
- III. The appellant requested that the decision under appeal be set aside and the patent be revoked.
- IV. The respondent requested that the appeal be dismissed, or, in the alternative, that the patent be maintained in amended form on the basis of auxiliary request 1 filed with the reply to the appeal on 24 April 2019.
- V. Claim 1 as granted reads:
- " **(1)** Roof window assembly
(2) comprising a roof window (4) **(2a)** having a frame (41) and **(2b)** a sash, (42)
(3) the assembly further comprising a tilting roller blind
(3a) with a set of guides (3, 36), especially designed for roof windows,
(3b) particularly installed outside the window (4) that opens by rotating its sash (42) around a horizontal axis located above the half of the window sash height,
(3c) the tilting roller blind comprising a flexible screen (2)
(3d) which is wound onto a shaft (5) designed for

winding the flexible screen (2) on it and
(3e) driven by a motor (54), preferably an electric motor,
(3f) the flexible screen (2) being terminated with a sliding beam (21)
(3g) with the ends guided by screen guides (3),
(4) the assembly further comprising a casing (1)
(4a) fixed in a tilting manner, especially affixed to the top member of the window frame (41),
(4b) wherein said casing (1) is designed for holding the flexible screen (2),
(5) the screen guides (3) are made of shapes with guiding cavities (31) open towards each other for guiding the ends of the sliding beam (21) and
(6) with edge cavities (32) designed for guiding the edges of the said flexible screen (2), and
(7) wherein said roller blind further comprises tilting guides (36) connected to the window sash corners located opposite the casing (1), therefore during window opening and closing the set of guides (3, 36) may tilt, preferably together with the casing (1), furthermore,
(8) slidable guiding inserts (6), preferably made of plastic, are provided in the edge cavities (32), and
(8a) each of these slidable guiding inserts (6) has two angular ribs (61) arranged symmetrically in such manner that between their arms directed to each other a longitudinal slot is formed, and
(9) to the edges of flexible screen (2) catches are affixed in regular intervals,
(9a) said catches have the gripping elements (72) with the width greater than the width of said slot,
(9b) these gripping elements (72) move inside the slidable guiding insert (6);
(9c) the narrower portions of the catches pass through the slot between angular ribs of this insert, and

(10) the ends (22) of the sliding beam (21) are pulled away from the casing (1) by cords (8)
(10b) wound on reels (81)
(10c) located in the casing and
(11) rewound by return pulleys (82)
(11a) located on the ends of the screen guides (3)
(11b) located opposite the casing (1)."

(Feature numbering in bold added by the Board)

Claim 1 of the first auxiliary request has the following feature added:

"the edge cavity (62) designed for guiding the edge of flexible screen (2) is made as the deeper part of guiding cavity (31) for sliding beam (21) and is separated from this cavity by two ribs (33) located opposite each other."

VI. The following prior art is cited in this decision:

D8: GB 2 235 005 A

D28: Prior use I - video originally published on "YouTube" - in this decision screenshots from this video are referred to, these have been taken by the Board from the statement setting out the grounds of appeal. The reference numbers have been added by the appellant.

VII. The appellant argued essentially the following:

a) Main request

i) Novelty

The subject-matter of claim 1 as granted was not new

with respect to prior use I.

ii) Inventive step

The subject-matter of claim 1 as granted did not involve an inventive step with respect to prior use I in combination with the teaching of D8.

b) Auxiliary request - Inventive step

The extra features added to claim 1 of the auxiliary request were also known from the prior use I. Consequently, the subject-matter of claim 1 did not involve an inventive step with respect to prior use I in combination with the teaching of D8.

VIII. The respondent argued essentially the following:

a) Main request

i) Novelty

The subject-matter of claim 1 as granted was new with respect to prior use I. Feature 5 was not known because the prior use I disclosed neither how the beam was supported nor what was the function of the cavities. Features 8 and 9 were also not known from the prior use.

ii) Inventive step

The subject-matter of claim 1 as granted involved an inventive step with respect to prior use I in combination with the teaching of D8. In particular, D8 disclosed an insect screen which was not suitable for a roof window as claimed.

b) Auxiliary request

The feature added to the auxiliary request made the purpose of the cavities clear.

Thus, as this was not disclosed by prior use I, the subject-matter of claim 1 was new and involved an inventive step.

Reasons for the Decision

1. State of the art

In opposition and appeal proceedings the appellant has relied on a video (D28) published on the YouTube platform. This video was published before the priority date of the attacked patent and is thus state of the art according to Article 54(2) EPC. This has not been disputed.

2. Main request

2.1 Novelty

Prior use I discloses a roof window and it is common ground that features 1, 2, 3a-f, 4 of claim 1 are shown in D28, see Fig. 6 below:

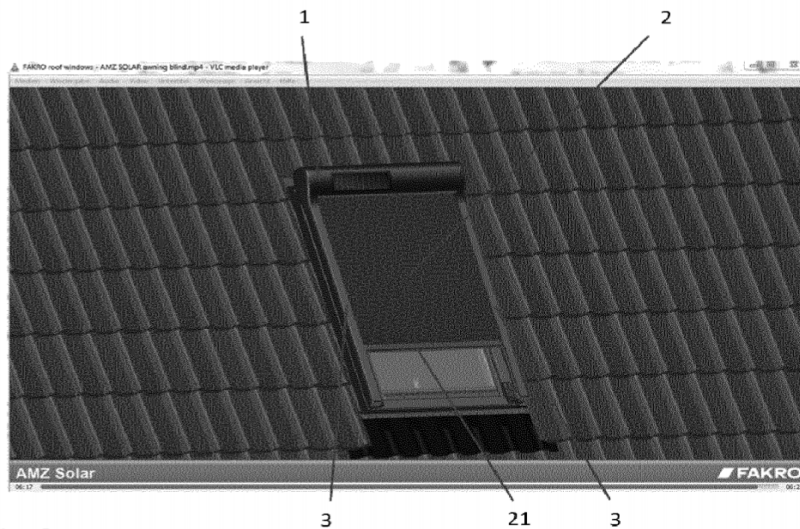


Fig. 6

Regarding feature 3g, a beam 21 is shown in Fig. 6 above although its ends are not clearly shown. The respondent argued that the video did not show how the beam ends were guided. However, the board considers that it is technically necessary that the ends of the beam are guided in order to avoid being blown around by the wind. Thus feature 3g, which requires that the beam ends are guided, is implicitly disclosed.

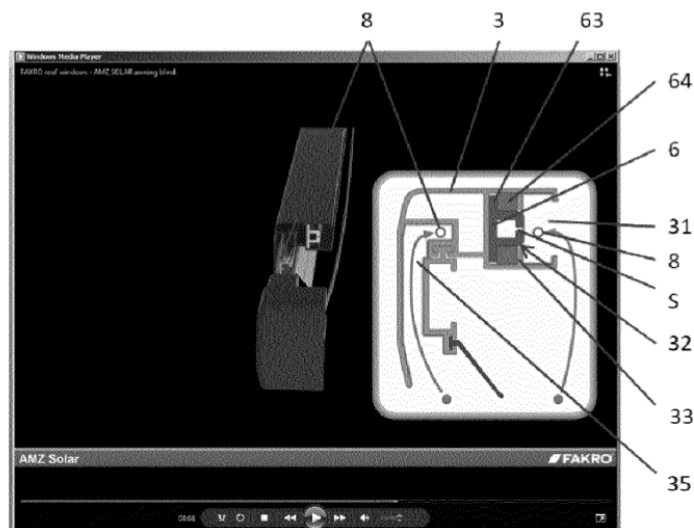


Fig. 2

The above diagram is a copy of Fig. 2 from the statement setting out the grounds of appeal which in turn is taken from the video D28 but with reference numbers added. Below is an enlarged detail:

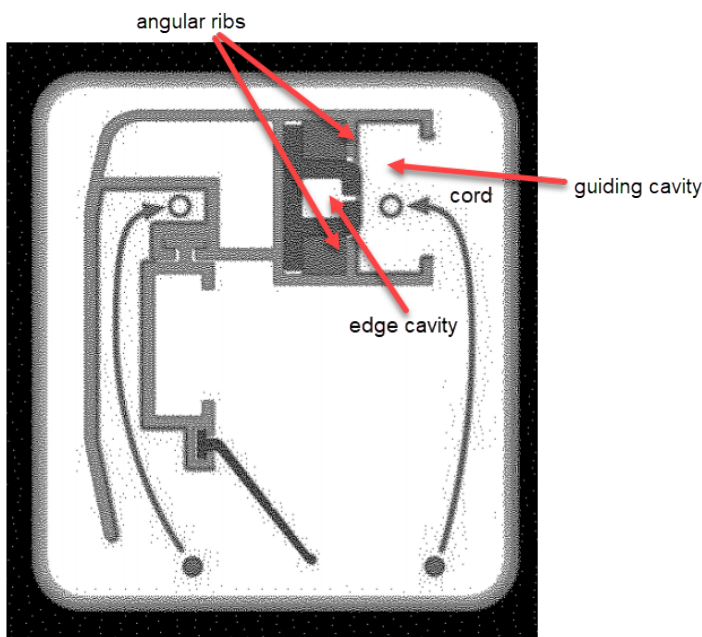


Fig. 2 discloses two cavities. One to the left (the edge cavity) with an insert is separated from the one to the right (the guiding cavity) by two angular ribs.

The circles 8 in Fig. 2 are cords as can be seen in the video. Thus features 10 and 11 are also known, this has not been disputed.

The respondent argued that it was not known how the cords were attached to the beam and whether the guiding cavity was for guiding the ends of the beam. The Board, however, considers that, in order to actuate the screen, the beam must be attached to the cords, thus the beam must at least partly be located in the guiding cavity identified above because in the video the cords are shown passing along this guiding cavity. Hence,

feature 5 is known from prior use I.

Moreover, feature 6 only requires that the edge cavities are suitable for guiding the edges of the flexible screen. Given the shape of the cavity and the slot with which it opens onto the guiding cavity, the edge cavity identified above is suitable for guiding the edge of the screen. Therefore, feature 6 is also known from prior use I.

The catches defined in feature 9 are not visible in the video and it cannot be seen whether the "guiding inserts" are slidable (feature 8) - this would be dependent on the blocks being elastic which is not disclosed. The appellant is correct that some sort of lateral fixation is required but exactly how this should be arranged is not directly and unambiguously disclosed in the video.

Hence, features 8 and 9 are not directly and unambiguously disclosed in D28 and the subject-matter of claim 1 is new.

2.2 Inventive step

As discussed above, the subject-matter of claim 1 differs from the roof window known from the prior use I in that slidable guiding inserts as defined in feature 8 and catches as defined in feature 9 are provided.

The problem to be solved can therefore be considered as being to provide a support for the screen suitable for a roof window.

D8 discloses a screen system wherein:

(8) slidable guiding inserts (10), preferably made of

plastic, are provided in the edge cavities and
(8a) each of these slidable guiding inserts has two angular ribs arranged symmetrically in such manner that between their arms directed to each other a longitudinal slot (for the screen 5) is formed (see Fig. 5), and
(9) to the edges of flexible screen (5) catches (7 comprised of the zipper half and the strip of tape) are affixed in regular intervals,
(9a) said catches (7) have the gripping elements (the zipper half) with the width greater than the width of said slot (see Fig. 5),
(9b) these gripping elements move inside the slidable guiding insert;
(9c) the narrower portions of the catches pass through the slot between angular ribs of this insert (see Figs. 4 and 5 - in Fig. 4 it can be seen that the wider elements are attached to a strip of material which is the narrow portion of the catch - but which is not yet the screen (5)),

The screen disclosed in D8 is principally for use as an insect screen. The respondent argued that this would dissuade the skilled person from applying these features to the roof window known from D28.

This is however not persuasive. Firstly, the purpose of the screen is not defined in claim 1. Therefore, whether the arrangement is for an insect screen or a sun or wind screen is not decisive. Secondly, D8 also discloses the use of the screen for a skylight, see page 1, line 5. The skilled person would therefore consider that the arrangement shown in D8 is indeed also suitable for use on a roof window.

Moreover, the respondent argued that D8 did not

disclose the essential features of the invention according to claim 1 whereby two **separate** cavities are provided which ensure, *inter alia*, that the solid ends of the beam do not damage the slidable guiding inserts.

It is correct that this feature is not shown in D8. It is however already known from the video D28 - see the enlarged detail of Fig. 2 above which shows the two separate cavities. In this connection, the respondent argued that the video D28 showed two chambers but not their purpose. Starting from D28, the skilled person is already confronted with two separate cavities. The objective problem is, therefore, not related to the issue of two separated cavities (or their purpose). As stated above, the problem to be solved is to provide a support for the screen suitable for a roof window. It is merely the connection of the screen to the cavity that the skilled person would take from D8. Therefore, the combination of the teachings of D28 and D8 leads to the subject-matter of claim 1.

Thus, the subject-matter of claim 1 does not involve an inventive step.

3. First auxiliary request

The feature added to claim 1 of the first auxiliary request whereby "the edge cavity (62) designed for guiding the edge of flexible screen (2) is made as the deeper part of guiding cavity (31) for sliding beam (21) and is separated from this cavity by two ribs (33) located opposite each other" is also known from D28. In Fig. 2, two ribs are shown which separate the deeper part of the guiding cavity from the outer part. These are labelled as "angular ribs" in the detail view above.

The combination of the teachings of D28 and D8, as discussed above for the main request, would therefore also lead the skilled person to the subject-matter of claim 1 of the first auxiliary request without the exercise of inventive activity.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated