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Datasheet for the decision of 19 October 2020

Case Number: T 2529/18 - 3.2.08

Application Number: 12008299.5

Publication Number: 2743442

IPC: E06B9/42, E06B9/24

Language of the proceedings: EN

Title of invention:
Automatic roller blind for roof windows and a method of controlling thereof

Patent Proprietor:
FAKRO PP
Spolka z ograniczona odpowiedzialnoscia

Opponent:
VKR-Holding A/S

Headword:

Relevant legal provisions:
EPC R. 99(2)
EPC Art. 100(c), 123(2), 104(1)

Keyword:
Admissibility of appeal - appeal sufficiently substantiated (yes)
Amendments - added subject-matter (yes)
Apportionment of costs - (no)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2529/18 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 19 October 2020

Appellant: (Patent Proprietor)	FAKRO PP Spolka z ograniczona odpowiedzialnoscia Ul. Wegierska 144a 33-300 Nowy Sacz (PL)
Representative:	Lukaszyk, Szymon Kancelaria Patentowa Lukaszyk ul. Glowackiego 8 40-062 Katowice (PL)
Respondent: (Opponent)	VKR-Holding A/S Breeltevej 18 2970 Horsholm (DK)
Representative:	Nordic Patent Service A/S Bredgade 30 1260 Copenhagen K (DK)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 31 July 2018 revoking European patent No. 2743442 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairwoman	P. Acton
Members:	A. Björklund
	P. Schmitz

Summary of Facts and Submissions

I. The appeal was filed by the patent proprietor (appellant) against the opposition division's decision to revoke European patent No. 2743442 (hereinafter "the patent").

The opposition division decided that the subject-matter of the claims as granted and as amended during the opposition proceedings extended beyond the content of the application as filed.

II. In preparation for the oral proceedings, the Board issued a communication pursuant to Article 15(1) RPBA, setting out its provisional opinion.

III. In reply, by letter of 21 September 2020, the appellant filed amended first and second auxiliary requests.

IV. Oral proceedings before the Board were held on 19 October 2020.

V. At the end of the oral proceedings the requests were as follows:

The appellant requested that the decision under appeal be set aside and the patent be maintained as granted or, in the alternative, that the patent be maintained on the basis of either of auxiliary requests 1 and 2 filed with the letter of 21 September 2020. Additionally, it requested remittal to the opposition division if one of the requests fulfilled the requirements of Article 123(2) EPC.

The respondent (opponent) requested that the appeal be rejected as inadmissible or, if the Board were to consider it admissible, that the appeal be rejected. Additionally, the respondent requested apportionment of costs.

VI. **Claim 1** of the **main request** (patent as granted), with the feature numbering of the impugned decision, reads:

F1.0 "An automatic roller blind (1), in particular for roof windows, comprising

F1.1 a curtain (15),

F1.2 a motor (2) driving the curtain (15),

F1.3 a rechargeable battery (6) to store energy required to operate the motor (2),

F1.4 a photovoltaic panel (4) charging said rechargeable battery (6) and

F1.5 a microcontroller (7) to control an operation of the blind in response to control signals

characterised in that

F1.6 at least a control signal represents a sunlight level being an output electrical power of the photovoltaic panel (4) and

F1.7 a control signal represents the output voltage of said rechargeable battery (6),

F1.8 said microcontroller (7) works in at least two working modes including:

F1.8.1 a manual working mode (8c), where automatic control of a blind is disabled,

F1.8.2 wherein the microcontroller (7) works in said manual working mode (8c) if the output voltage of said rechargeable battery (6) is higher than a predefined manual working mode voltage threshold;

F1.8.3 and an automatic working mode (8a), where position of the curtain (15) is set as often as necessary in response to said control signals,

F1.8.4 wherein the microcontroller (7) works in said automatic working mode (8a) if the output voltage of said rechargeable battery (6) is higher than a predefined automatic working mode voltage threshold."

Claim 1 of the **first auxiliary request**, with the **decisive features for the decision marked in bold**, reads:

"An automatic roller blind (1), in particular for roof windows, comprising a curtain (15), a motor (2) driving the curtain (15), a rechargeable battery (6) to store energy required to operate the motor (2), a photovoltaic panel (4) charging said rechargeable battery (6) and **a microcontroller (7) to control an operation of the blind in response to control signals** including at least a control signal representing a sunlight level **and a control signal representing the output voltage of the rechargeable battery (6)** characterised in that said control signal representing the sunlight level is an output electrical power of the photovoltaic panel (4) and the microcontroller (7) controls the operation of the blind (1) also on the basis of the output voltage of said rechargeable battery (6), the blind (1) operates in one of three independent working modes: manual, semi-automatic and automatic, given working mode is set by the user if only the battery voltage enables to choose this mode, and three predefined voltage thresholds are stored within the microcontroller (7) memory: a manual working mode voltage threshold as a first voltage threshold, a

semi-automatic working mode voltage threshold as a second voltage threshold and an automatic working mode voltage threshold as a third voltage threshold, wherein said microcontroller (7) works in one of three independent working modes including:
a manual working mode (8c), where automatic control of a blind is disabled, wherein the microcontroller (7) can work in said manual working mode (8c)
- if the output voltage of said rechargeable battery (6) is above the first voltage threshold but lower than the second voltage threshold, or
- if the output voltage of said rechargeable battery (6) is above the second voltage threshold but lower than the third voltage threshold, or
- if the output voltage of said rechargeable battery (6) is above the third voltage threshold;
an automatic working mode (8a), where position of the curtain (15) is set as often as necessary in response to said control signals, wherein the microcontroller (7) can work in said automatic working mode (8a)
- if the output voltage of said rechargeable battery (6) is above the third voltage threshold; and
a semi-automatic working mode (8b), where position of the curtain (15)is maintained after it is set, wherein the microcontroller (7) can work in said semi-automatic working mode (8b)
- if the output voltage of said rechargeable battery (6) is above the second voltage threshold but lower than the third voltage threshold voltage threshold [sic], or
- if the output voltage of said rechargeable battery (6) is above the third voltage threshold."

Claim 1 of **the second auxiliary request**, with the **decisive features for the decision marked in bold**, reads:

"An automatic roller blind (1), in particular for roof windows, comprising a curtain (15), a motor (2) driving the curtain (15), a rechargeable battery (6) to store energy required to operate the motor (2), a photovoltaic panel (4) charging said rechargeable battery (6) and **a microcontroller (7) to control an operation of the blind in response to control signals** including at least a control signal representing a sunlight level **and a control signal representing the output voltage of the rechargeable battery (6)** characterised in that said control signal representing the sunlight level is an output electrical power of the photovoltaic panel (4) and the microcontroller (7) controls the operation of the blind (1) also on the basis of the output voltage of said rechargeable battery (6), the blind (1) operates in one of three independent working modes: manual, semi-automatic and automatic, given working mode is set by the user if only the battery voltage enables to choose this mode, the blind additionally comprises a module (8) providing user control signal for the microcontroller (7), wherein the switch/indicator module (8) is provided with switches (81) to set the given working mode and indicators (82) displaying the current working mode along with a low battery indicator, and three predefined voltage thresholds are stored within the microcontroller (7) memory: a manual working mode voltage threshold as a first voltage threshold, a semi-automatic working mode voltage threshold as a second voltage threshold and an automatic working mode voltage threshold as a third voltage threshold, wherein said microcontroller (7) works in one of three independent working modes including:

a manual working mode (8c), where automatic control of a blind is disabled, wherein the microcontroller (7) can work in said manual working mode (8c)
- if the output voltage of said rechargeable battery (6) is above the first voltage threshold but lower than the second voltage threshold, and all switches (81) are disabled and indicator (82c) signals working in manual mode, or
- if the output voltage of said rechargeable battery (6) is above the second voltage threshold but lower than the third voltage threshold, and only switches (81b) and (81c) are enabled and indicator (82b) or (82c) signals the working mode chosen by the user using the switch (81b) or (81c), or
- if the output voltage of said rechargeable battery (6) is above the third voltage threshold, and all switches (81) are enabled;
an automatic working mode (8a), where position of the curtain (15) is set as often as necessary in response to said control signals, wherein the microcontroller (7) can work in said automatic working mode (8a)
- if the output voltage of said rechargeable battery (6) is above the third voltage threshold, and all switches (81) are enabled; and
a semi-automatic working mode (8b), where position of the curtain (15)is maintained after it is set, wherein the microcontroller (7) can work in said semi-automatic working mode (8b)
- if the output voltage of said rechargeable battery (6) is above the second voltage threshold but lower than the third voltage threshold voltage threshold [sic], and only switches (81b) and (81c) are enabled and indicator (82b) or (82c) signals the working mode chosen by the user using the switch (81b) or (81c), or

- if the output voltage of said rechargeable battery (6) is above the third voltage threshold, and all switches (81) are enabled."

VII. The appellant essentially argued the following:

Extension of subject-matter

Original claim 1 and page 2, lines 21 to 26 of the original description disclosed that the roller blind had a microcontroller to control the operation of the blind in response to control signals. It was therefore clear to the skilled person that the operation of the blind depended upon two control signals. The first signal was the output power of the photovoltaic panel or the various signals listed on page 7, lines 3 to 13 of the description as originally filed. From page 2, lines 9 to 13 of the original description, the skilled person would understand that the output voltage of the rechargeable battery was the second signal, as was also disclosed in line 17 of original claim 2.

Moreover, in consideration of the general technical meaning of the application as filed, the skilled person would understand from page 2, lines 9 to 13 that the microcontroller also operated on the basis of the output voltage.

It was therefore disclosed in the application as originally filed that the position of the curtain was set in response to control signals representing the battery output voltage. The combination of features F1.5 to F1.7 together with F1.8.3 of claim 1 of the main request thus did not extend beyond the content of the original application.

The same applied to the auxiliary requests.

Apportionment of costs

The appellant had only filed two auxiliary requests, which either addressed objections known by the respondent since they had been part of the opposition proceedings, or were reactions to the objections in the Board's communication.

The amendments made were neither surprising nor difficult to identify. The mistake in the main request appended to the grounds of appeal was an unintentional error.

An apportionment of costs was therefore not justified.

VIII. The respondent essentially argued the following:

Admissibility of the appeal

The appeal should be rejected as inadmissible.

The grounds of appeal did not set out why the opposition division's decision should be amended. In particular, no attempt had been made to address or counter the objections made by the opposition division under items 15.1, 15.2 and 16.2 of the impugned decision. Consequently, the appellant had not clearly set out the reasons why it was requesting a reversal of the decision as regards the main request and first auxiliary request, as required by Article 12(2) RPBA 2007.

Extension of subject-matter

Read together, features F1.5, F1.7and F1.8.3 of claim 1 of the main request specified that the position of the curtain was set in response to the control signal representing the output voltage of the rechargeable battery.

However, the application as originally filed did not disclose that the position of the curtain was set in response to the battery voltage, merely stating that the battery voltage determined which working mode(s) could be selected. Claim 1 of the main request thus extended beyond the content of the application as originally filed.

The same features were also present in claim 1 of the first and second auxiliary requests, which therefore also extended beyond the content of the application as originally filed.

Apportionment of costs

The appellant had not identified all the amendments made in the main request or the auxiliary requests filed with the letter of 21 September 2020.

It therefore took the respondent considerable time to identify all the amendments made. The cost of this additional work, which could have been avoided had the appellant correctly identified all the amendments, should be borne by the appellant.

Reasons for the Decision

1. Admissibility of the appeal

The admissibility of an appeal is governed by Article 108 EPC and Rule 99 EPC. According to Rule 99(2) EPC, in the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned and the facts and evidence on which the appeal is based.

These requirements are fulfilled at least by the reasoning given for auxiliary request 1 filed with the grounds of appeal. The last paragraph on page 6 and the first five paragraphs on page 7 of the grounds of appeal contain substantiated arguments as to why, in the appellant's view, the opposition division decided incorrectly on the first auxiliary request, namely since the switches and indicators were not essential features. This is a clear indication of the reasons why the decision on the first auxiliary request should be set aside, so at least this part of the statement of grounds of appeal fulfils the requirements of Rule 99(2) EPC.

The admissibility of an appeal can only be assessed as a whole (Case Law of the Boards of Appeal of the European Patent Office, Ninth Edition, 2019, V.A. 2.6.8). Since reasons have been given as to why at least the oppositions division's decision on the first auxiliary request was wrong, the appeal is admissible.

2. Main request (patent as granted) - extension of subject-matter

2.1 Feature F1.5 of claim 1 of the main request specifies that the claimed automatic roller blind comprises "a microcontroller to control an operation of the blind in response to control signals", feature F1.6 specifies that "at least a control signal represents a sunlight level..." and feature F1.7 specifies that "a control signal represents the output voltage of the rechargeable battery [of the roller blind]". Feature F1.8.3 specifies "an automatic working mode, where [the] position of the curtain is set as often as necessary in response to said control signals".

Consequently, features F1.5 to F1.7 and F1.8.3 together require the claimed automatic roller blind to have an automatic working mode where the position of the curtain of the blind is set as often as necessary in response to control signals representing the sunlight level and the output voltage of the battery.

2.2 However, contrary to the appellant's arguments, the application as originally filed does not disclose that the position of the curtain is set in response to a signal representing the output voltage of the rechargeable battery.

2.3 Original claims 1 and 2 disclose that the position of the curtain is set in response to control signals in the automatic working mode and that "a control signal represents the sunlight level". No further control signals are addressed in these claims.

Page 7, lines 3 to 13 of the original description discloses the control signals in response to which the position of the curtain can be set: sunlight level, time, outside temperature, state of the curtain and,

optionally, inside temperature. The battery output voltage is, however, not among these control signals.

Therefore, none of these parts of the application as originally filed discloses the combination of features F1.5 to F1.7 and F1.8.3.

2.4 Original claim 1 (lines 10 to 11), original claim 2 (lines 16 to 19) and page 2, lines 9 to 13 and 21 to 26 of the original description do disclose that the microcontroller "controls the operation of the blind also on the basis of the output voltage of the rechargeable battery". However, this "control signal" is used for choosing the availability of the mode in which the blinds will be working (manual, semi-automatic, automatic) and not for positioning the curtain as required by feature F1.8.3. No other interpretation of these passages is possible in view of the application as originally filed as a whole, and especially the description of the preferred embodiment (page 5, line 5 to page 7, line 2).

2.5 Consequently, the application as originally filed does not disclose a control of the curtain position in response to a control signal representing the output voltage of the rechargeable battery as defined in claim 1 of the main request.

The subject-matter of claim 1 of the main request (patent as granted) thus extends beyond the content of the application as filed. Consequently, the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted.

3. First and second auxiliary requests - extension of subject-matter

Claim 1 of both auxiliary requests contains the combination of features in claim 1 of the main request which extend beyond the content as filed; see the features marked in bold in each claim 1 in point IV of the summary of facts and submissions.

It follows that claim 1 of the first and second auxiliary requests extends beyond the content of the application as originally filed for the reasons already set out with respect to the main request.

Consequently, both requests contravene Article 123(2) EPC.

4. Apportionment of costs

Each party bears the costs it has incurred unless a different apportionment of costs is required for reasons of equity (see Article 104(1) EPC). An apportionment of costs is justified if the conduct of a party is not in keeping with the care required, that is if costs arise from culpable actions of an irresponsible or even malicious nature (Case Law of the Boards of the European Patent Office, Ninth Edition, 2019, III.R.2). The respondent submitted that the appellant did not act with the required care. In claim 1 of the main request, which was appended to the statement setting out the grounds of appeal, the word "wherein" had been omitted. In the auxiliary requests, the amendments made had not been clearly indicated. It took the respondent extra time to see what the changes were and additional costs were occurred.

The Board does not see any culpable behaviour on the appellant's part which would justify an apportionment

of costs. In the statement of grounds of appeal, the appellant clearly requested that the patent be maintained as granted, i.e. as published in the B-specification, so its request was clear. Appending a copy which contained an unintentional error, as explained by the appellant, cannot be deemed misconduct, nor can the filing of the auxiliary requests without track changes. In its letter the appellant had explained which amendments had been made and the reasons why. Checking these new claims together with the appellant's explanations cannot be deemed an undue burden, but rather is part of the respondent's normal procedural obligations. Thus, the request for apportionment of costs is rejected.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairwoman:

D. Magliano P. Acton

Decision electronically authenticated