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**Datasheet for the decision
of 26 October 2022**

Case Number: T 1151/19 - 3.2.08

Application Number: 07748494.7

Publication Number: 2029846

IPC: E06B1/60, F16B5/02

Language of the proceedings: EN

Title of invention:

Fastener for fixing a door or window frame to the border of an opening in a building

Patent Proprietor:

Jeld-Wen Sverige AB

Opponent:

Headword:

Relevant legal provisions:

EPC Art. 56

RPBA 2020 Art. 13(2)

Keyword:

Inventive step - (no)

Amendment after summons - exceptional circumstances (no)

Decisions cited:

Catchword:



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Case Number: T 1151/19 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 26 October 2022

Appellant: Jeld-Wen Sverige AB
(Patent Proprietor) 265 81 Åstorp (SE)

Representative: LKGlobal UK Ltd.
Cambridge House
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Respondent:
(Opponent)

Representative:

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 21 February
2019 revoking European patent No. 2029846
pursuant to Article 101(3) (b) EPC.

Composition of the Board:

Chairwoman P. Acton
Members: M. Foulger
Y. Podbielski

Summary of Facts and Submissions

- I. With the decision posted on 21 February 2019, the opposition division revoked the patent because the subject-matter of claim 1 lacked an inventive step in respect of E8 (GB 2 123 513 A) or E9 (FR 2 675 192 A1) in combination with the general knowledge of the skilled person. During the opposition procedure the opponent withdrew their opposition and the opposition division continued on their own motion.
- II. The appellant (patent proprietor) filed an appeal against this decision.
- III. The appellant requested that the decision under appeal be set aside and the patent be maintained as granted, or that the patent be maintained on the basis of the first auxiliary request filed with the statement setting out the grounds of appeal, or on the basis of one of the following requests filed with letter dated 12 October 2022: second and third auxiliary requests, alternative second auxiliary request, alternative third auxiliary request, and a combination of auxiliary requests 1, 2 and 3.
- IV. The appellant had requested that the date of the oral proceedings be changed. The Board refused that request for the reasons set out in the Board's communication dated 26 September 2022.

Oral proceedings took place before the Board on 26 October 2022.

V. Claim 1 as granted reads:

"Frame fixing (1) comprising a cylindrical unit (3) with a threaded outer casing (4) designed with a bore (5; 26) that passes through in an axial direction comprising a first section (6) designed with a cross section in a radial direction that is suitable for the insertion of a tool that is to rotate the cylindrical unit and a second section (7) comprising a flange (8) comprising a circular section that creates a controlling section (9), with the frame fixing (1) comprising a fixing device (13) that can be inserted into the bore (5;26) and the controlling section (9), wherein the controlling section (9) has a cross section D_1 (D_1) in a radial direction that is determined by the length I_1 (L_1) of the controlling section (9) in an axial direction in such a way that the controlling section (9) limits the radial freedom of movement of the central axis of the fixing device (13) in relation to the central axis of the controlling section (9) to a movement of a predetermined maximal size at the end surface of the cylindrical unit (3), characterized in that **(A)** the radial freedom of movement (R_{radial}) of the fixing device (13) is less than or equal to 0.5 mm from the central axis of the fixing device (13) to the central axis of the controlling section (9) at the end surface of the cylindrical unit (3), where the radial freedom of movement is determined by the difference between the diameter of the controlling section (D_1) and the diameter of the body of the fixing device (D_2), when this difference is divided by 2."

Claim 1 of the first auxiliary request comprises the following features added to claim 1 of the main request:

"(A') wherein the diameter of the body of the fixing device (D2) are configured so that $(D1 - D2)/2$ is less than or equal to 0.5 mm,
(B) and the controlling section (9) is further arranged to limit a pivoting freedom of movement of the central axis of the fixing device (13) in relation to the central axis of the controlling section (9) to a maximal pivoting movement (R_{pivot}), wherein $R_{pivot} = L4 \times (D1 - D2) / L1 \times 1/2$; with $L4$ = distance between a head of the fixing device (13) and the end surface of the cylindrical unit (3), excluding the head of the fixing device (13), along the central axis of the fixing device (13) when the head of the fixing device (13) is in contact with the flange (8); and
(C) the diameter (D1) of the controlling section (9) and the length (L1) of the controlling section (9) in the axial direction are configured so that R_{pivot} is limited to a predetermined maximal value for a given value of said distance (L4)."

Claim 1 of the second auxiliary request comprises the following feature added to claim 1 of the first auxiliary request:

(D1) "wherein the pivoting freedom of movement of the fixing device is limited to an approximate maximal angle $\alpha = \arctangens(1/20) \approx 2.9^\circ$ of the central axis of the fixing device in relation to the central axis of the controlling section when R_{radial} is 0.5 mm."

Claim 1 of the alternative second auxiliary request has the following feature added to claim 1 of the first auxiliary request:

(D2) "and the controlling section is 2 cm long."

Claim 1 of the third auxiliary request has the following feature added to claim 1 of the main request:

(E1) "i) wherein the bore (5) comprises a third section comprising a specially designed matching-fit section (10) located in a radial direction on the other side of the flange (8) in relation to the first section (6); wherein the matching-fit section is intended to receive a tool with a corresponding shape as the matching-fit section; or

(E2) ii) wherein the bore comprises a flange creating only the controlling section located between the first section and the end surface of the cylindrical unit and wherein the end surface comprises:

- a peripheral part in the form of a flange designed to receive a tool with a corresponding shape as the peripheral part in order to obtain a good engagement between the tool and the peripheral part upon rotation of the cylindrical unit; or
- one or more recesses or the like designed for a tool with corresponding projecting parts intended to be used to rotate the cylindrical unit."

Feature designations added in bold in the above.

The alternative third auxiliary request comprises claim 1 (which includes feature A) as granted with features A', B, C, E1 and E2 above.

The combination of first, second and third auxiliary requests comprises claim 1 (which includes feature A) as granted with features A', B, C, and the feature "wherein the pivoting freedom of movement of the fixing device is limited to an approximate maximal angle $\alpha = \arctangens (1/20) \approx 2.9^\circ$ of the central axis of the

fixing device in relation to the central axis of the controlling section", D2, E1 and E2, .

VI. The appellant argued essentially the following:

i) Main request

D8 possibly disclosed a similar fixation but certainly did not disclose the characterising features.

The skilled person would know how large the screws should be because this was a standard value. Moreover, D8 did not discuss tolerances probably because a plastic sleeve 5 was provided. The skilled person would therefore not consider specifying a tolerance.

Therefore, the subject-matter of claim 1 involved an inventive step.

ii) First auxiliary request

The subject-matter of claim 1 involved an inventive step since D8 did not disclose nor suggest any limit of the pivoting freedom of movement of the central axis.

iii) Admission of further auxiliary requests filed with the letter dated 12 October 2022.

These were filed as a reaction to the communication of the Board. They also attempted to overcome the reasons for the decision in opposition proceedings.

They were filed late as a result of a change in representation.

Thus, these requests should be admitted into the

procedure.

Reasons for the Decision

1. Main request - inventive step

1.1 It is common ground that D8 is the closest prior art and discloses the features of the preamble of claim 1.

The subject-matter of claim 1 of the patent differs from this known frame fixing by the characteristic of the characterising portion, which specifies that the radial freedom of movement (Rradial) of the fixing device is less than or equal to 0.5 mm from the central axis of the fixing.

The problem to be solved can be considered to be the reduction of fatigue in the frame fixing.

1.2 The skilled person would from their own general knowledge recognise that a connection with less play would result in less fatigue.

Therefore, it would have been obvious for the skilled person to try different screw - controlling section dimensions in order to solve the above problem. As part of their daily work, the skilled person would select dimensions and clearances as this is necessary to implement the teaching of D8 in practice. Also taking into account the general knowledge identified above, the skilled person would have tried to avoid a loose fitting and would have striven for a "snug" fitting. Moreover, the selection of dimensions is in general not considered to involve an inventive step, see Case Law

of the Boards of Appeal, 10th edition, I.D.9.17.

- 1.3 Moreover, the claim merely defines the clearance in absolute terms. However, for solving the problem stated by the appellant the clearance must be considered in relation to the screw size - for a small screw a smaller clearance is necessary and for a larger screw a larger clearance would be necessary. Thus, the technical effect supposedly achieved by the invention does not extend over the extent of the claim. The appellant argued that screw sizes for windows and doors were standard, and hence known to the skilled person, and thus the claimed clearance did indeed have a technical effect over the effective whole scope of the claim.

However, the Board does not find this convincing because there is nothing in the claim that would indicate exactly how large the screws should be and even if a certain size were to be considered usual in the art, other sizes are not excluded.

- 1.4 The plastic bushing used in D8 is analogous to the adapter 23 shown in Fig. 5 of the patent which is considered to be part of the controlling section (patent p. 15, l. 19 - 21). Hence, the presence of such an element in D8 does not alter the above analysis.
- 1.5 Thus, the skilled person would have arrived at the subject-matter of claim 1 without an inventive step being involved.

2. First auxiliary request - inventive step

Claim 1 of the first auxiliary request is further restricted over the main request by the addition of

features B and C.

These features define that a pivoting freedom of movement (R_{PIVOT}) is limited to a predetermined maximal value. The claim does not however define what this maximal value should be. It is clear from the drawings of D8 that the pivoting freedom of movement is limited by the sides of the controlling section. This further feature is therefore also known from D8. Consequently for the reasons given above for the main request, the subject-matter of claim 1 does not involve an inventive step.

3. Admission of the auxiliary requests filed with the letter of 12 October 2022

These auxiliary requests were filed on 12 October 2022, i.e. two weeks before the oral proceedings. According to Article 13(2) RPBA 2020, any amendment to a party's appeal case after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

In the current case, the appellant argued that the late submissions were due to a change in the appellant's representative. According to the established case law of the Boards of Appeal (see Case Law of the Boards of Appeal, 10th edition, V.A.5.8.2 (relating to RPBA 2007) and V.A.4.5.6 (relating to RPBA 2020)), such a change in representation is not a valid reason for the late filing of requests.

Moreover, the appellant argued that the requests did not represent a change in their appeal case (see letter

dated 12 October 2022, page 1). The Board did not find this convincing because the introduction of features from the description into the claims can only be viewed as a change in the appeal case. Furthermore, these features were never discussed in either opposition or appeal proceedings.

Hence, the Board cannot identify any exceptional circumstances that would justify the admission of these requests into the appeal proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated