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**Datasheet for the decision  
of 16 February 2022**

**Case Number:** T 1994/19 - 3.2.08

**Application Number:** 09704540.5

**Publication Number:** 2235310

**IPC:** E05F5/00

**Language of the proceedings:** EN

**Title of invention:**

DAMPING MECHANISM FOR CABINET HINGE ASSEMBLY

**Patent Proprietor:**

Grass America, Inc.

**Opponent:**

ARTURO SALICE S.P.A.

**Relevant legal provisions:**

EPC Art. 56

RPBA 2020 Art. 13(2)

**Keyword:**

Inventive step - (yes)

Amendment after summons - cogent reasons (no)



**Beschwerdekammern**

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Case Number: T 1994/19 - 3.2.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.08**  
**of 16 February 2022**

**Appellant:** Grass America, Inc.  
(Patent Proprietor) 1202 Highway 66 South  
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**Representative:** Otten, Roth, Dobler & Partner mbB Patentanwälte  
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**Respondent:** ARTURO SALICE S.P.A.  
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**Representative:** Leihkauf, Steffen Falk  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 10 May 2019  
revoking European patent No. 2235310 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairwoman** P. Acton

**Members:** A. Björklund  
F. Bostedt

## **Summary of Facts and Submissions**

- I. The appeal was filed by the patent proprietor (appellant) against the decision of the opposition division to revoke the patent in suit.
  
- II. During the opposition proceedings, the opponent had raised the grounds for opposition under Article 100(a) EPC (lack of inventive step) and 100(c) EPC (extension of subject-matter beyond the content of the application as filed).

The opposition division decided that the subject-matter of dependent claim 12 as granted and of auxiliary request 1 extended beyond the content of the application as filed.

- III. Oral proceedings were held before the Board on 16 February 2022.
  
- IV. At the end of the proceedings the parties' requests relevant to the decision were as follows:

The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request, filed as "Hilfsantrag II" with the notice of appeal.

The respondent (opponent) requested that the appeal be dismissed.

V. Claim 1 of the main request ("Hilfsantrag II", feature designations added by the Board) reads as follows:

- 1.1 "A hinge assembly for mounting a door to a housing, comprising:
- 1.2 a housing fixation section (1);
- 1.3 a hinge cup (3) pivotally connected to the housing fixation section (1)
- 1.4 and a damping mechanism positioned entirely within the hinge cup (3) to dampen movement of the door as it closes on the housing,
- 1.5 wherein the damping mechanism comprises a slider (12, 60),
- 1.6 a biasing member (22, 25, 62, 102, 130)
- 1.7 and a fluid damper (31, 90, 110),
- 1.8 wherein the slider (12, 60) is moveably coupled within the hinge cup (3),
- 1.9 the biasing member (22, 25, 62, 102, 130) urges the slider (12, 60) in a first direction within the hinge cup (3)
- 1.10 and the fluid damper (31, 90, 110) dampens movement of the slider (12, 60) in a second direction, opposite said first direction, within the hinge cup (3), characterised in that
- 1.11 the damping mechanism comprises a cover (13, 70, 106),
- 1.12 that the cover (13, 70, 106) holds the slider (12, 60), the fluid damper (31, 90, 110) and the biasing member (22, 25, 62, 102, 130) within the hinge cup,
- 1.13 the damping mechanism further comprising a mechanism (24, 80, 134) for adjusting the initial position of the slider (12, 60) with respect to the hinge cup."

VI. The following documents are of relevance to the decision:

E1 US 7,065,833 B2  
E2 EP 1 907 657 B1  
E3 DE 102 27 078 A1  
E5 Brochure: "Snap on 3000 Airmatic della Grass"  
E5b Translation of E5  
E6 Brochure: "Grass Sistemas de bisagras"  
E6b Translation of E6

VII. The appellant's arguments, in so far as they are relevant to the decision, can be summarised as follows:

*Inventive step starting from E1*

E1 did not disclose Feature 1.13 in combination with Feature 1.4.

Feature 1.13 required the mechanism for adjusting the initial positioning of the slider to be comprised by the damping mechanism. Feature 1.4 required the damping mechanism to be entirely within the hinge cup. Hence, according to claim 1, the mechanism for adjusting had to be positioned entirely within the hinge cup.

The various mechanisms for adjusting the initial position of the slider of the damping mechanism of the hinges of E2 all had a setting element protruding outside the housing 4.

Thus, even if the skilled person were to provide the hinge of E1 with an adjustment mechanism based on the disclosure of E2, they were not taught to provide this entirely within the hinge cup. Nor would they have been able to put any of the mechanisms shown in E2 entirely

within the hinge cup 2, 23 of the hinge in E1, in particular since it must be possible to access the setting element.

The skilled person would thus not have arrived at a hinge according to claim 1 without involving an inventive step.

*Inventive step starting from E3, E5 and E6*

Also if starting from one of the hinges of E3, E5 or E6, the skilled person would not provide them with a mechanism entirely within the hinge cup for adjusting the initial position of the slider of the damping mechanism.

This neither was taught by the disclosure of E2, nor would this be possible when transferring any of the mechanisms of E2 to one of the hinges of E3, E5 or E6 for the reasons already set out when starting from the hinge of E1.

*Admittance of the late-filed objections*

The objection of lack of inventive step starting from E2 and the objection of extension of subject-matter of claim 1 were late-filed and should not be admitted into the appeal proceedings, under Article 13(2) RPBA 2020. No cogent reasons for raising these objections in the oral proceedings had been put forward by the respondent: a mere change of representative was not a cogent reason.

VIII. The respondent's arguments, insofar as they are relevant to the decision, can be summarised as follows:

*Inventive step starting from E1*

E1 disclosed features 1.1 to 1.12. The problem solved by distinguishing feature 1.13 was to provide a hinge assembly which could be adapted to doors of different weight.

E2 disclosed a hinge with an adjustment mechanism for adjusting the initial position of the slider of the damping mechanism in order to adapt it to different door weights. The skilled person would have applied this adjustment mechanism to the hinge of E1 in order to solve the problem posed. The disclosures of both E1 and E2 taught putting moving parts of the damping mechanism in protected positions in order to protect the mechanisms and the user. Therefore the skilled person would have put the adjustment mechanism entirely within the hinge cup and would thus have arrived at the subject-matter of claim 1 of the main request without involving any inventive step.

*Inventive step starting from E3, E5 and E6*

E3, in particular the embodiment of Figures 8 to 10 where the hinge cup and damping mechanism could have a common housing as disclosed in paragraph [0044], as well as E5 and E6 also disclosed hinges having features 1.1 to 1.12.

For the same reasons as when starting from the hinge of E1, it would have been obvious to the skilled person to provide these hinges with a mechanism for adjusting the initial position of the slider of the damping

mechanism, and as the disclosure of E2 taught to protect the mechanism the skilled person would have placed them entirely within the hinge cup of the hinges of E3, E5 and E6.

The skilled person would thus have arrived at the subject-matter of claim 1 without involving any inventive skill.

*Admittance of the late-filed objections*

The objection of lack of inventive step starting from E2 was relevant and should be admitted since the appellant, at the time proprietor, had stated that E2 was the closest prior art in its reply to the opposition.

The objection of extension of subject-matter of claim 1 was *prima facie* relevant. It was raised in the oral proceedings since the new representative had realised the problem while reviewing the auxiliary requests. It should therefore be admitted into the proceedings.

**Reasons for the Decision**

1. Inventive step of claim 1
  - 1.1 Starting from E1
    - 1.1.1 It is common ground that the hinge disclosed in Figures 1 to 9 of E1 does not have a mechanism for adjusting the initial position of the slider 14 of the damping mechanism 11, 12, 14.



The subject-matter of claim 1 thus differs from the hinge disclosed in E1 at least in feature 1.13.

- 1.1.2 The technical problem solved by this difference can be seen as modifying the hinge of E1 such that it is adaptable to doors of varying weight.
- 1.1.3 It is also common ground that E2 discloses hinges having different types of mechanisms for adjusting the initial position of the slider of their damping mechanisms such that they can be adapted to doors of varying weight.
- 1.1.4 The respondent submits that it would be obvious to the skilled person to provide the hinge of E1 with a mechanism for adjusting the initial position of the slider of the damping element in view of E2.

The disclosure in E1, column 2, lines 12 to 15 taught that it was advantageous to have the "spring element" 11, which corresponds to the damping element of claim 1, in the interior of the hinge cup to protect the spring element from damage and the user from injury. Also the disclosure in E2, paragraph [0009] taught the skilled person that the slider and damping cylinder is positioned inside the hinge cup (housing 4) for protection.

In view of this teaching, the skilled person would have placed the mechanism for adjusting the initial position of the slider entirely within the hinge cup. They would thus have arrived at the subject-matter of claim 1 without involving any inventive skill.

- 1.1.5 However, all the mechanisms for adjustment of the initial positions of the slider disclosed in E2 have

some sort of setting element, namely wheel 11 in the embodiment of Figures 1 to 8, lever 13' in Figure 9, slider 13'' in Figure 10, limit stop 13''' in Figure 11, positioned outside the housing 4. Therefore, even assuming in the respondent's favour that the housing 4 represents a hinge cup, the disclosure of E2 does not teach the skilled person that the adjustment mechanism is provided entirely within the housing 4, but rather that there is a setting element protruding from the housing such that it is manipulable after mounting.

Furthermore, it is not possible to place any of the adjustment mechanisms disclosed in E2 entirely within the hinge cup of the hinge of E1 without making substantial modifications to them and also to the damping mechanism 11 to 14 and the hinge cup 2, 23 of the hinge of E1. This is in particular so if adjustment has to be possible after mounting, as is the case with the adjustment mechanisms of E2.

The skilled person would thus not arrive at the subject-matter of claim 1 even if they were to transfer the teaching of an adjustment mechanism for the initial position of the slider from E2 to the hinge of E1.

1.2 Starting from E3, E5 or E6

1.2.1 It is common ground that none of the hinges of E3, E5 or E6 have a mechanism for adjusting the initial position of the slider in accordance with feature 1.13.

1.2.2 Based on this difference, the problem to be solved is essentially the same as when starting from the hinge of E1, namely to modify the respective hinges of E3, E5 or E6 such that they are adaptable to doors of varying weight.

1.2.3 For the reasons set out under point 1.1.5 with respect to the combination of the hinge of E1 with the adjustment mechanism of E2, even if the skilled person were to transfer any of the adjustment mechanisms for the initial position of the slider from E2 to any of the hinges of E3, E5 or E6, it would not be obvious to place the adjustment mechanism entirely within the hinge cup.

1.3 The subject-matter of claim 1 therefore involves an inventive step.

2. Admittance of the late-filed objections

2.1 Inventive step starting from E2

The respondent raised an objection of lack of inventive step starting from E2 for the first time during the appeal procedure in the oral proceedings before the Board.

It may be true that the appellant, then the patent proprietor, indicated in its reply to the opposition that it considered E2 to be the closest prior art. However, this does not mean that an objection of lack of inventive step starting from this document may be raised at the latest possible moment in the appeal proceedings, but rather underlines that the objection was raised too late and could have been raised at a much earlier stage during the appeal proceedings.

In any case, the respondent did not put forward any exceptional circumstances which might justify the objection being admitted into the appeal proceedings.

2.2 Extension of subject-matter in claim 1

The objection of extension of subject-matter in claim 1 was also raised for the first time in the oral proceedings before the Board.

The respondent submitted that the change of representative was a reason for admitting the objection into the appeal proceedings.

However, a change of representative is not in itself an exceptional circumstance which might justify the admittance of a late-filed objection. If this reason justified such admittance, this would allow a party to change its case at any stage of the proceedings simply by changing representative, which goes against the purpose of Articles 12 and 13 RPBA 2020, that parties should put forward their case completely right at the beginning of the appeal procedure.

The respondent did not put forward any other exceptional circumstance which might justify admittance of the objection.

2.3 The Board therefore decided not to admit any of the late-filed objections into the appeal proceedings, under Article 13(2) RPBA 2020.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:

Description: Columns 1 to 13 of the patent specification

Drawings: Figures 1 to 32 of the patent specification

Claims: Nos. 1 to 7 in accordance with the main request, filed as "Hilfsantrag II" on 10 July 2019.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated