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**Datasheet for the decision
of 6 December 2022**

Case Number: T 2418/19 - 3.2.08

Application Number: 15000903.3

Publication Number: 2924224

IPC: E06B7/215

Language of the proceedings: EN

Title of invention:

CONTROLLABLY OPERATING DRAUGHT EXCLUDER DEVICE

Patent Proprietor:

C.C.E. Costruzioni Chiusure Ermetiche S.r.l.

Opponent:

ASSA ABLOY (Schweiz) AG

Headword:

Relevant legal provisions:

RPBA 2020 Art. 13(2)

EPC Art. 54, 56

Keyword:

Amendment after summons - taken into account (yes)

Novelty - (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

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Case Number: T 2418/19 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 6 December 2022

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
18 July 2019 concerning maintenance of the
European Patent No. 2924224 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. With the decision posted on 18 July 2019 the opposition division found that the patent and the invention to which it related in the form of the then valid 3rd auxiliary request met the requirements of the EPC.
- II. The opponent filed an appeal against this decision.
- III. Oral proceedings took place before the Board on 6 December 2022.
- IV. The appellant (opponent) requested that the decision be set aside and that the patent be revoked. Furthermore, it requested that the decision to admit the 3rd auxiliary request - which corresponds to the now pending main request - into the opposition proceedings be set set aside as a substantial procedural violation and that this request also not be admitted into the appeal proceedings.
- V. The respondent (patent proprietor) requested that the appeal be dismissed and that the patent be maintained on the basis of the main request, filed during the oral proceedings before the opposition division as 3rd auxiliary request, or on the basis of one of the 1st to 3rd auxiliary request, filed with letter dated 12 June 2020.
- VI. Claim 1 of the main request reads:
 - a)** A controllably movable draught-excluder device, for attachment to the bottom edge (B) of a door (P) or window hingedly connected to a fixed frame (T), which device comprises:

- b)** - a strip of a profile (3) made of a flexible material defining a longitudinal axis (L) and adapted to interact with a sill (S) to provide an air sealing effect;
- c)** - drive means (6) acting upon said strip (3) through at least one connecting rod (11) to move said strip (3) between a raised rest position and an active lowered position, in contact with the sill (S);
- d)** - an actuator (7) associated with said drive means (6) to control actuation thereof, said actuator (7) being adapted to move between an extended position, in which it is spaced from the frame (T) when the door (P) is open, and a retracted position in which it contacts the frame (T) when the door (P) is closed;
- e)** - delay means (8) acting upon said drive means (6) to delay the movement of said strip (3);
- f)** said drive means (6) comprising at least one slide (10) connected to said strip (3) through said at least one connecting link (11),
- g)** said slide (10) having an appendix (25) with an end edge (26) adapted to contact engage said delay means (8) to delay the movement of said strip (3) from said raised position to said lowered position upon closure of the door (P),
- h)** said end edge (26) being adapted to be spaced apart from said delay means (8)
- i)** to ensure quasi-instantaneous automatic movement of said strip (3) from said lowered position to said raised position upon opening of the door (P);
- j)** characterized by comprising first elastic means (12) having a bias spring (17) interposed between said actuator (7) and said slide (10)."

(Feature references added in bold)

VII. Documents

The following documents are referred to in this decision:

D1: JP 3138325 U
D1a: machine translation of D1
D2: DE 39 35 790 A1
D3: CH 666 719 A5
D4: GB 616 076
D6: JPH10220124 A
D7: JP 2003-193764 A
D8: JPH09112154 A
D15: WO 2004/053274
D17: EP 0 915 226 A2
D18: EP 0 916 802 A1
D19: DE 31 09 105 A1
D20: GB 625,475 A
D21: US 4,805,345 A

VIII. The appellant argued essentially the following:

a) The opposition division did not respect the appellant's right to be heard (Article 113(1) EPC).

The oral proceedings lasted a long time and the opposition division refused the parties' request to postpone the oral proceedings and insisted on continuing them.

Furthermore, the impugned decision did not include any reasoning with regard to the inventive step attack based on D15 as closest prior art.

b) The main request should not be admitted into the proceedings.

The main request was filed after the Board had summoned to oral proceedings and according to Article 13(2) RPBA should not be admitted into the proceedings.

c) Novelty

The subject-matter of claim 1 of the main request was not new with respect to D1. In particular the leaf spring 15 could be seen as being a "connecting rod" in the sense of the claim because it was rod shaped and fulfilled a connecting function.

Moreover, the figures of D1 did not show means which connected the end edge and the delay means. Thus the end edge was adapted to be spaced from the delay means as claimed.

d) Inventive step

i) With respect to D2 as closest prior art

D2 did not disclose feature j) whereby first elastic means had a bias spring between the actuator and the slide.

The problem to be solved was to move the actuator out as quickly as possible so that all the other parts could move freely. Putting a spring between actuator and slide was well known in the art and so the skilled person would immediately see that this measure would solve the problem posed. The skilled person would apply this to the draught excluder device of D2 without requiring inventive activity.

ii) With respect to D15 as closest prior art

D15 disclosed features a) - d) and f) of claim 1. The problem to be solved was to provide a sealing member which had a delayed descent and could be freely raised.

To solve this problem the skilled person would consider D1 which explicitly disclosed in paragraph [0014] that the sealing member was pulled up quickly. Thus, features h) and i) were rendered obvious by D1. Then should the skilled person wish to further accelerate the operation then they would use a further spring as shown in D17, D18, D3, D4, D6 or D8.

The subject-matter of claim 1 did not therefore involve an inventive step.

IX. The respondent argued essentially the following:

a) Right to be heard

The right to be heard had been respected.

b) Admission of the main request

The main request should be admitted into the proceedings because it was substantively identical to auxiliary request 3 filed during opposition proceedings which was also the request decided upon by the opposition division. Thus, this request should be admitted into the proceedings.

c) Novelty

D1 did not disclose at least the connecting rod required by claim 1. The leaf spring shown in D1 could not be regarded as a connecting rod.

d) Inventive step

i) With respect to D2 as closest prior art

D2 did not disclose features g), h), i) and j). Feature j) was not made obvious by the cited prior art.

ii) With respect to D15 as closest prior art

D15 did not disclose features e), g) - j). Moreover, at least features h) was not known from D1. Thus, the subject-matter of claim 1 involved an inventive step in consideration of D15 as closest prior art.

Reasons for the Decision

1. Right to be heard

The request found allowable by the opposition division was filed very late during the oral proceedings before the opposition division. Despite this and the request by both parties to continue the opposition proceedings in writing, the opposition division continued the oral proceedings.

The admission of this request was a discretionary decision of the opposition division. Moreover the request consisted of a combination of granted claims which, in general, is considered to be reasonable for the opponent to deal with. The Board therefore holds that the opposition division did not apply their discretion in an unreasonable manner.

The appellant also alleges that the opposition division failed to include any reasoning with regard to the

inventive step attack based on D15 as closest prior art which was raised with the letter of 15 January 2019. This attack was however directed against the patent as granted, which the opposition division had already decided was not allowable, and not against the current main request (3rd auxiliary request in opposition proceedings).

Moreover, regarding this request, the minutes of the oral proceedings before the opposition division say that the opponent considered D2 to be closest prior art. It was therefore not necessary for the division to go into D15 for this request.

There was no infringement of the opponent's right to be heard.

2. Admission of the main request into the proceedings

The "new" main request corresponds to that found allowable by the opposition division. This request was however first filed after the Board had summoned to oral proceedings and its admission is therefore subject to Article 13(2) RPBA 2020.

The Board admitted this request in the proceedings because, firstly, it allowed the decision under appeal to be reviewed and, secondly, the features of the claim were the same as in auxiliary request 2, filed with the reply to the appeal, with simply a modification of the two-part form. The Board considered these to be exceptional circumstances in the sense of Article 13(2) RPBA 2020 which justified the admission of this request.

3. Novelty

3.1 The appellant argued that the subject-matter of claim 1 was not new with respect to D1. D1 discloses (references and comments in parentheses refer to D1):

- a)** A controllably movable draught-excluder device, for attachment to the bottom edge of a door (1) hingedly (through hinge 3) connected to a fixed frame, which device comprises:
- b)** - a strip of a profile (sealing member 12) made of a flexible material defining a longitudinal axis and adapted to interact with a sill to provide an air sealing effect;
- c)** - drive means (16) acting upon said strip through at least one ~~connecting rod~~ leaf spring (15) to move said strip between a raised rest position and an active lowered position, in contact with the sill;
- d)** - an actuator (18, see Fig. 5) associated with said drive means to control actuation thereof, said actuator being adapted to move between an extended position, in which it is spaced from the frame when the door is open, and a retracted position in which it contacts the frame when the door is closed;
- e)** - delay means (damper 19) acting upon said drive means to delay the movement of said strip;
- f)** said drive means comprising at least one slide (16) connected to said strip through said at least one connecting ~~rod~~ leaf spring (15)
- g)** said slide (16) having an appendix with an end edge adapted to contact said delay means to delay movement of said strip from said raised position to said lowered position upon closure of the door (see Fig. 5).

The Board considers that the leaf spring 15 shown in D1 cannot be seen as a "connecting rod" in the sense of

the claim.

The appellant's argument that the term "connecting rod" could be considered as being a rod shaped means with connection function is not persuasive.

A connecting rod is defined by the Collins on-line dictionary (see <https://www.collinsdictionary.com/dictionary/english/connecting-rod>) as a

"1. a rod or bar for transmitting motion, esp. one that connects a rotating part to a reciprocating part"

and by Merriam-Webster (see <https://www.merriam-webster.com/dictionary/connecting%20rod>) as

"a rod that transmits motion between a reciprocating part of a machine (such as a piston) and a rotating part (such as a crankshaft)".

Thus a connecting rod must be suitable for transmitting motion. A typical example is the connection between the piston and the crankshaft in an engine. This means that the connecting rod requires a certain axial stiffness which would not be provided by a leaf spring. Consequently, D1 does not disclose a connecting rod (features c) and f)).

3.2 Moreover, in the figures of D1 the slide is always shown as being in contact with the delay means 19. Thus, the feature h) of claim 1, wherein "said end edge, being adapted to be spaced apart from said delay means", is not known from D1. It is correct, as argued by the appellant, that no connecting means are shown in D1. The drawings are however schematic and cannot be expected to show every last detail of the arrangement,

therefore the fact that something is not shown does not necessarily mean that it is not there, see also Case Law of the Boards of Appeal, 10th edition, 2022, II.E. 1.13.3.

3.3 Thus, the subject-matter of claim 1 is new with respect to D1.

4. Inventive step

4.1 Inventive step with respect to D2 as closest prior art

D2 discloses (references and comments in parentheses refer to D2):

- a)** A controllably movable draught-excluder device, for attachment to the bottom edge of a door (T) or window hingedly connected to a fixed frame, which device comprises:
- b)** - a strip of a profile (8) made of a flexible material defining a longitudinal axis and adapted to interact with a sill to provide an air sealing effect (col. 4, l. 28 - 30);
- c)** - drive means (20) acting upon said strip through at least one connecting rod (28) to move said strip between a raised rest position and an active lowered position, in contact with the sill (see Fig. 3);
- d)** - an actuator (17) associated with said drive means to control actuation thereof, said actuator being adapted to move between an extended position, in which it is spaced from the frame when the door is open, and a retracted position in which it contacts the frame when the door is closed;
- e)** - delay means (see col. 6, l. 17 - 31) acting upon said drive means to delay the movement of said strip ;
- f)** said drive means comprising at least one slide (20)

connected to said strip through said at least one connecting rod (28).

The opposition division found that features g), h) and i) were also known from D2.

It is common ground that at least the feature of "first elastic means (12) having a bias spring (17) interposed between said actuator (7) and said slide (10)" is not known from D2 (feature j)).

The appellant considered that the problem solved by this feature was to move the actuator out as quickly as possible so that all the other parts can move freely.

In this respect, D17 disclosed a draught excluder with an actuator 23, slide 13 and a spring 24. It aimed to provide a draft excluder in which no readjustment was necessary (see paragraphs [0008] and [0009]). The solution to this problem in D17 was to provide a spring in the pusher assembly so that it could vary elastically in length (see D17, claim 1). Moreover, D18 disclosed that when the door was reopened, the elastic return of the spring 32 caused the actuation pushbutton 20 to protrude and return to its initial position (see D18, paragraph [0039]).

The appellant argued that the skilled person would apply this teaching to the arrangement known from D2 and would thereby arrive at the subject-matter of claim 1 without an inventive step being involved. Moreover, that this feature was well known in the prior art, see for example D3 (spring 7), D4, D6, D7, D8, or indeed D19 - D21 which showed arrangements including a spring to immediately raise a sealing strip.

It is correct, as argued by the appellant, that draught excluders with a spring between actuator and slide are generally known and also that the springs shown contribute to rapidly raising the sealing strip (cf. D19 - D21).

The Board however considers that as there is already a spring in the arrangement of D2, the skilled person would have no reason to introduce a second spring. All of the documents cited by the appellant concern draught excluders with single springs and, hence, teach that a single spring suffices for the operation of the draught excluder. This would dissuade the skilled person from simply adding an extra spring to the arrangement known from D2. It is possible that the skilled person could have arrived at the subject-matter of claim 1 but there is no motivation for the skilled person to have done so.

The skilled person would have therefore needed to use inventive skill to arrive at the subject-matter of claim 1.

4.2 Inventive step with respect to D15 as closest prior art

In written proceedings the appellant also argued that the subject-matter of claim 1 lacked an inventive step with respect to the combination of D15 with D1 and further with D17, D18, D3, D4, D6, D7, D8.

As argued by the appellant, D15 discloses:

a) A controllably movable draught-excluder device, for attachment to the bottom edge of a door (P) or window hingedly connected to a fixed frame, which device comprises:

b) - a strip of a profile (3) made of a flexible material defining a longitudinal axis and adapted to interact with a sill to provide an air sealing effect;

c) - drive means (10) acting upon said strip through at least one connecting rod (10) to move said strip between a raised rest position and an active lowered position, in contact with the sill (see Fig. 1);

d) - an actuator (shown in Fig. 1 attached to 12) associated with said drive means to control actuation thereof, said actuator being adapted to move between an extended position, in which it is spaced from the frame when the door is open, and a retracted position in which it contacts the frame when the door is closed;

f) said drive means comprising at least one slide (12) connected to said strip through said at least one connecting rod.

D15 does not disclose delay means (feature e)) nor does it disclose features g), h), i) or j). Following the argumentation of the appellant, the skilled person would perhaps apply features e) and g) from D1 to the arrangement known from D15. However, this combination would not lead to the subject-matter of claim 1 because feature h) would be lacking. The documents D17, D18, D3, D4, D6, D7 and D8 teach that a spring can be used to accelerate the raising of the sealing strip but do not teach feature h).

Thus, the skilled person would not have arrived at the subject-matter of claim 1 without the exercise of inventive activity.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated