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**Datasheet for the decision  
of 18 August 2023**

**Case Number:** T 0842/21 - 3.2.08

**Application Number:** 12183466.7

**Publication Number:** 2706178

**IPC:** E05F1/00, E05F15/20, E05F15/04

**Language of the proceedings:** EN

**Title of invention:**  
Façade window, in particular a smoke window

**Applicant:**  
Rothgangl, Erhard

**Headword:**

**Relevant legal provisions:**  
EPC Art. 111(1), 123(2)

**Keyword:**  
Remittal to the department of first instance - fundamental  
deficiency in first instance proceedings (no)  
Amendments - extension beyond the content of the application  
as filed (yes)



**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 0842/21 - 3.2.08

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.08**  
**of 18 August 2023**

**Appellant:** Rothgangl, Erhard  
(Applicant) Domaine de Champfort  
61130 Saint Germain de la Coudre (FR)

**Representative:** Kacperski, Andrzej  
Kancelaria Prawno-Patentowa  
ul. Kupa 3/9  
31-057 Krakow (PL)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 3 February 2021  
refusing European patent application No.  
12183466.7 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairwoman** P. Acton  
**Members:** A. Björklund  
I. Beckedorf

## **Summary of Facts and Submissions**

- I. The appeal was filed by the applicant (appellant) against the decision of the examining division to refuse the patent application.

The examining division decided that the subject-matter of claim 1 of the main request and of auxiliary requests I and II then on file did not comply with the requirements of Article 123(2) EPC.

- II. Oral proceedings were held before the Board on 18 August 2023.

- III. The appellant requested:

that the decision under appeal be set aside and that the case be remitted to the examining division for further processing on the basis of one of the requests labelled as auxiliary requests 1 to 3 and filed on 12 October 2020, or that a patent be granted on the basis of one of the requests labelled as auxiliary requests 1 to 3 and filed on 12 October 2020.

- IV. Independent claim 1 of the request labelled "auxiliary request 1", reads:

F1 "Façade window, in particular a smoke window, comprising a window frame seated in a window opening and a movable sash secured in the window frame,  
F2 having at least on a part of the periphery of the frame of this sash slidable slats with

- bolts mating corresponding catches in the window frame locking the sash in the window frame in the closed position,
- F3 said window provided with an opening and closing system with an actuator, having a remote releasing mechanism of the bolts, characterised in that
- F4 - a piston rod (11) of the actuator (8) secured to the window frame (1) or the sash frame (3) is connected in an articulated joint on an axle (12),
- F5 - the axle (12) is slidably movable in a longitudinal guide (13) of a yoke (14) secured to the sash frame (3) or to the window frame (1),
- F6 - a movable slide (15) constituting the cover of the yoke (14) is mounted on the axle (12)
- F7 - a slidable pusher (16) is connected to the slide (15), movable linearly along the frame (3) of the sash (2),
- F8 - the pusher (16) has an arm (16a), (16b) mating a pin (7) of a slidable slat (4) with a bolt (5),
- F9 - a spring (17) is seated in a hole of the yoke (14), said spring (17) interlocked with a bumper (18),
- F10 - the stroke phase of the actuator's (8) piston rod (11) that actuates the bolts (5) is determined by the length of the guide (13) of the actuator's (8) piston rod (11) articulated joint axle (12) in the yoke (14),
- F11 - the length of the stroke phase of the actuator's (8) piston rod (11) that actuates the bolts (5) corresponds to the length of the linear shift of the bolts (5) enabling

them to be released or interlocked within the catches (6),

F12 - in the window closed position the spring 17 presses the slide 15 to the actuator 8, the pusher 16 through the pin 7 holds the bolt 5 of the slat 4 immobilized within the catch 6, the window is locked,

F13 - during opening the window the initial phase of stroke of the actuator's 8 piston rod 11 causes the spring 17 resistance to be overcome and a shift of the slide 15 along with the pusher 16 to its extreme position from the actuator 8 on the length of the guide 13 in the yoke 14, in this position the bolts 5 are released by a movement of slats 4 actuated with the pusher 16 and the lock is unlocked, the further phase of the stroke of the actuator's 8 piston rod 11 causes the window to be opened,

F14 - after opening the window the slide 15 is held by the spring 17 in its extreme position [paragraph 0030; fig. 4, fig. 9] and the bolts are in the unlocked position

F15 - during closing the window the slide 15 and the pusher 16 are in their extreme position further from the actuator 8, and the bolts 5 are in their unlocked position, after the action of the actuator 8 has stopped, the spring 17 returns to its former position moving the slide 15, so also the pusher 16 towards the actuator 8 and by a shift of the pusher 16 - the slats 4 are shifted, the bolts 5 are locked within the catches 6 and the lock is closed, it causes the window sash 2 to be pressed to the window frame 1."

Independent claim 1 of the requests labelled "auxiliary request 2" and "auxiliary request 3" differs from claim 1 of the main request in that features F12 to F15 have been deleted. In the request labelled "auxiliary request 2", features F12 to F15 were introduced as dependent claim 2.

V. The appellant's arguments can be summarised as follows:

*Substantial procedural violation and remittal to the examining division*

The appellant submitted as "special reasons" for a remittal of the case to the examining division that they had failed to correctly consider and decide on all aspects relevant to the issue of added subject-matter in claim 1 of the requests then on file, which the appellant described as a fundamental procedural deficiency.

*Extension of subject-matter*

Feature F14 had a basis in Paragraph [0030] of the published application.

Furthermore, it was true that the application as filed disclosed the direction of the force of the spring as pushing the slide towards the actuator due to a translation error. However, the skilled person would understand from the mechanical structure of the opening and locking mechanism described in the application that the spring was compressed, and the window locked when the slide was in the position shown in Figure 8 and that the spring was uncompressed, and the window unlocked when the slide was in the position shown in Figure 9.

In claim 1 of auxiliary request 2, the features regarding the biasing force of the spring had been removed and only the mechanical structure remained. This request thus did not extend beyond the content of the application as filed as understood by the skilled person.

### **Reasons for the Decision**

1. Substantial procedural violation and remittal to the examining division

The appellant requested remittal to the examining division due to a substantial procedural violation.

- 1.1 The appellant did not, however, put forward any convincing arguments as to which specific arguments or requests of the applicant were overlooked by the examining division and had an impact on the outcome of the entire examination proceedings.

The examining division not being convinced by arguments put forward by the appellant is a matter of substantive examination rather than of procedure and therefore does not constitute a substantive procedural violation.

- 1.2 The Board could not identify any other substantive procedural violation in the present case either.

The request for remittal to the examining division for further processing under Article 111(1) EPC was therefore refused.

2. Request labelled "Auxiliary request 1" - Article 123(2) EPC

The subject-matter of claim 1 of this request does not fulfil the requirements of Article 123(2) EPC.

- 2.1 According to Feature F14, "*after opening the window the slide 15 is held by the spring 17 in its extreme position and the bolts are in the unlocked position*".

- 2.1.1 The first part of this wording defines that the slide is held in its "extreme position".

Feature F12 specifies that "*in the window closed position the spring 17 presses the slide 15 to the actuator 8 ...*" and Feature F13 specifies that "*during opening the window the initial phase of stroke of the actuator's 8 piston rod 11 causes the spring 17 resistance to be overcome ...*" (emphasis added by the Board).

Features F12 and F13 implicitly define the direction of biasing force exerted by the spring as being towards the actuator. Therefore, the extreme position referred to in Feature F14 must be the extreme position closest to the actuator, i.e. the lower position of the slide as shown e.g. in Figures 3 and 8.

- 2.1.2 Feature F14 thus defines that the slide is in the lower extreme position closest to the actuator while the bolts are in the unlocked position.

- 2.2 According to the appellant, Feature F14 is based on paragraph [0030] of the published application, which corresponds to page 7, last paragraph of the application as filed.

However, the wording of the first part of Feature F14 comes from paragraph [0029], corresponding to page 7, penultimate paragraph of the application as filed, which concerns the window in its open state. The wording of the second part of Feature F14 comes from paragraph [0030] which describes the closing and locking of the window. Feature F14 is thus based on a combination of disclosures from two different positions or movements of the window.

The crucial point is that the application as filed does not disclose that the slide can be in the lower extreme position closest to the actuator described in paragraph [0029] while the bolts (of the slats) are in an unlocked position described in paragraph [0030]. The latter paragraph explicitly discloses that the "*slide 15 and the pusher 16 are in their other extreme position, further from the actuator, and the bolts 5 are in their unlocked position*" (emphasis added by the Board). This is contrary to what is required by Feature F14.

- 2.3 Feature F14 thus defines a combination of positions of the slide and the bolts which is not disclosed in the application as filed. Its subject-matter therefore extends beyond the content of the application as filed contrary to the requirements of Article 123(2) EPC.
3. Request labelled "auxiliary request 2" - Article 123(2) EPC

The subject-matter of claim 2 of this request does not fulfil the requirements of Article 123(2) EPC.

- 3.1 In this request, Features F12 to F14 have been deleted from independent claim 1 and inserted as dependent claim 2.

Moving Feature F14 from the independent claim to a dependent claim does not change the fact that this feature in itself extends beyond the content of the application as filed. Consequently, this claim does not fulfil the requirements of Article 123(2) EPC.

4. Request labelled "auxiliary request 3" - Article 123(2) EPC

The subject-matter of claim 1 of this request does not fulfil the requirements of Article 123(2) EPC.

- 4.1 In this request, features F12 to F14 have been deleted from independent claim 1. They are not present in any of the dependent claims either.

- 4.2 The deletion of features F12 to F14 without any replacement results in Claim 1 of this request lacking a definition of the direction in which the force is exerted by the spring and of the operation of the opening and locking mechanism.

However, the description of the application as originally filed discloses a single embodiment with a specific direction of the force applied by the spring and only one way to operate the system in order to open and close the window. The subject-matter of claim 1 as originally filed was also restricted to this sole embodiment.

Claim 1 of "auxiliary request 2", which does not define any direction of the force exerted by the spring, nor

how the opening and locking mechanism operates, thus extends beyond the content of the application as filed.

- 4.3 The appellant argued that the skilled person seeing the structure of the mechanism would have understood that the spring was in a compressed state when the slide was in the position shown in Figure 8 and in a decompressed state when the slide was in the position shown in Figure 9. It was due to a mistranslation of the French original that these conditions of the spring were not correctly stated in the description.

However, even if this were the case, claim 1 of auxiliary request 2 does not define the direction of forces exerted by the spring which would result from the "correct" understanding of the application as filed. On the contrary, the claim is completely silent as to the forces exerted by the spring.

- 4.4 The subject-matter of claim 1 of "auxiliary request 2" therefore extends beyond the content of the application as filed.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated