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**Datasheet for the decision
of 28 October 2025**

Case Number: T 0554/23 - 3.2.08

Application Number: 16165754.9

Publication Number: 3235991

IPC: E05F15/41, E05D7/082, E05D7/081

Language of the proceedings: EN

Title of invention:
WINDOW ACTUATOR WITH OBSTACLE DETECTION

Patent Proprietor:
VKR Holding A/S

Opponent:
Aumüller Aumatic GmbH

Headword:

Relevant legal provisions:
EPC Art. 56
RPBA 2020 Art. 13(1), 13(2)

Keyword:
Inventive step - (yes)
Amendment to appeal case - exercise of discretion

Decisions cited:

T 0345/24

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0554/23 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 28 October 2025

Appellant: Aumüller Aumatic GmbH
(Opponent) Gemeindewald 11
86672 Thierhaupten (DE)

Representative: Ernicke, Klaus Stefan
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Respondent: VKR Holding A/S
(Patent Proprietor) Breeltevej 18
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Representative: Nordic Patent Service A/S
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 4 January 2023
rejecting the opposition filed against European
patent No. 3235991 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairwoman P. Acton
Members: M. Foulger
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. With the decision posted on 4 January 2023, the opposition division rejected the opposition against European patent No. 3 235 991 B1.
- II. The opponent filed an appeal against this decision.
- III. The appellant (opponent) requested that the patent be revoked.
- IV. The respondent (patent proprietor) requested that the patent be maintained according to auxiliary request 12.
- V. The following documents are relevant for this decision:
- D1: US 5,449,987 A
D2: GB 2 026 723 A
- VI. Claim 1 of auxiliary request 12 reads as follows:
- "**(1.1)** An actuator (10) for operating a pivot hung or top hung building window (1),
(1.2) said actuator (10) being adapted to perform a first closing operation (101)
(1.3) while monitoring a closing force applied by said actuator (10),
(1.4) said actuator (10) being adapted to initiate a first reversing operation (102) upon said closing force exceeding a first threshold during said first closing operation (101),
and characterized by
(1.5) said actuator (10) being configured to initiate a second closing operation (104) after said first reversing operation (102),

configured to monitor the closing force applied by said actuator during said second closing operation (104), configured to initiate a second reversing operation (105) upon said closing force exceeding a second threshold during said second closing operation (104), said second threshold being higher than said first threshold, and configured to initiate a third closing operation (107) after said second reversing operation (105)."

VII. The essential arguments of the parties are summarised below in the reasons for the decision.

Reasons for the Decision

1. Admission of auxiliary request 12 into the proceedings

With the reply to the statement setting out the grounds of appeal the patent proprietor filed auxiliary requests 1 to 17. Auxiliary requests 1 to 11 are identical to those filed together with the reply to the opposition. Auxiliary requests 12 to 16 are identical to those filed on 12 September 2022 - within the Rule 116(1) EPC deadline - in reaction to the communication of the opposition division. These requests were upheld during opposition proceedings; they were not part of the impugned decision since the opposition division rejected the opposition. Auxiliary request 17 was filed for the first time in appeal proceedings.

With letter dated 10 June 2025, after receiving the Article 15(1) RPBA communication, the patent proprietor withdrew auxiliary requests 1 to 6, filed new auxiliary requests 1 to 3 and renumbered auxiliary request 7 as

17 and auxiliary request 4 as 14.

Therefore, the present auxiliary request 12 is identical to auxiliary request 15, filed on 12 September 2022.

The appellant requested that none of these requests be admitted into the proceedings.

The Board agrees with the appellant that the filing of new auxiliary requests 1 to 3 on the 10 June 2025 constitutes a change in the respondent's appeal case. Accordingly, during the oral proceedings the Board decided not to take into account newly filed auxiliary requests 1-3 under Article 13(2) RPBA because there were no exceptional circumstances justified with cogent reasons by the respondent.

The appellant argued that auxiliary requests 4-14 should not be admitted, on the grounds that they were not convergent with auxiliary requests 1-3.

However, auxiliary requests 1 to 3 were not admitted into the proceedings by the Board. Therefore, they are not in the proceedings, and the Board cannot see how any request could be non-convergent with requests which are not part of the proceedings.

Therefore, the sole remaining auxiliary request 12 is part of the appeal proceedings.

2. Inventive step

D1 is regarded as the closest prior art and discloses features 1.1-1.4 of claim 1.

The appellant argued that the distinguishing feature – namely that the second threshold is higher than the first threshold – merely reflects an arbitrary selection without any associated technical effect. In particular, the appellant pointed to dependent claims 8, 9, and 10 of the patent, which present the alternatives of a higher, equal, or lower second threshold as equally permissible. According to the appellant, selecting one of these alternatives would not require an inventive activity.

The appellant further argued that the feature is broad and indefinite because the claim does not specify by how much the second threshold must be higher than the first. In the appellant's view, the threshold difference could be negligible and therefore without technical effect.

The respondent submitted that the patent did attribute a technical effect to this feature. Paragraph [0013] explains that setting the second threshold higher enables a greater force to be applied during the closing action. This may be necessary to overcome increased resistance due to factors such as excessive friction or wind.

The Board notes that the claim must be interpreted from the perspective of the skilled person. This means that the difference between the first and the second threshold must be of technical relevance. A "negligible" difference would be in the order of magnitude of a tolerance or rounding and would not be considered a technically relevant difference by the skilled person.

The skilled person would therefore understand that the

threshold must be higher by an amount sufficient to produce a technical effect; a negligible or meaningless difference would be disregarded and considered effectively equal. Therefore, the argument that the feature lacks technical effect is not convincing.

Furthermore, there is no teaching in the cited prior art that would lead the skilled person to modify the actuator of D1 so as to increase the second threshold.

The subject-matter of claim 1 is therefore not obvious and accordingly involves an inventive step.

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 with the following claims and a description to be adapted thereto:

Claims:

Nos. 1 to 15 according to the 12th auxiliary request filed with the letter of 10 June 2025.

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated