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File Number: T 678/90 - 3.2.3
Application No.: 85 201 219.4
Publication No.: 0 168 901
Title of invention: A ventilating hatch

Classification: E04D 13/035

DECISION
of 27 April 1992

Proprietor of the patent: Peeters, H.G.B.

Opponent:
I : Atmos Technische Beratungen AG
II : Colt International GmbH
III : J. Eberspächer

Headword:

EPC Article 56

Keyword: "Inventive step (affirmed)"

Headnote



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Boards of Appeal

Chambres de recours

Case Number : T 678/90 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 27 April 1992

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Decision under appeal :

Decision of Opposition Division of the European Patent Office dated 10 May 1990, posted on 1 August 1990, rejecting the oppositions filed against European patent No. 0 168 901 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : C.T. Wilson
Members : F.Brösamle
J. Van Moer

Summary of Facts and Submissions

- I. European patent application No. 85 201 219.4 filed on 19 July 1985 and published on 22 January 1986 under publication No. 0 168 901 was granted with three claims.

Claim 1 as granted reads as follows:

"1. A ventilating hatch comprising a frame (1) to be mounted on the roof or in the façade of a building, the opening of said frame being divided into a plurality of compartments (5) by substantially U-shaped cross members (2, 3, 4) having outwardly oriented legs, each compartment being closable by a separate hinged cover (7), and the top edge (14) of each compartment including a resilient, elastic packing coating with an associated cover, the covers being positioned on the same side of the compartments, characterised in that the top panel (10) of each of the covers (7) is a separate slat and that at least the adjoining edge of the covers extending parallel to a cross member (2, 3, 4) is a profiled longitudinal section (8) including a U-shaped portion (16), and that to the insides of the legs (17, 18) there are attached strips of flexible material (19, 21; 20, 22) for sealingly clamping the slat (10) to be arranged between the two legs (17, 18) of a U-shaped portion (16), and that there is integrally moulded with the one leg (18) situated on the outside of the frame (1), a portion (27) extended relatively to its top face for forming a trough (29) together with the strip of flexible material (20) and with the slat (10) installed".

II. The patent was opposed in due time by

- Opponent I "Atmos Technische Beratungen AG"
(Appellant I, in the following)
- Opponent II "Colt International GmbH"
(Appellant II in the following)
- Opponent III "J. Eberpächer"
(Party as of right in the following),

who requested revocation of the patent essentially on the grounds of Article 100(a) EPC in the light of the following documents (numbering as in the impugned decision):

- (D1) FR-A-2 497 855 of 5 January 1982
- (D2) Price- List 65-81 "Gesellschaft für Metallbau" of 1 April 1981
- (D3) Brochure 60/K1 - "Gesellschaft für Metallbau"
- (D4) NL-A-7 303 534 of 17 September 1974
- (D5) NL-A-7 300 303 of 11 July 1974
- (D6) NL-A-7 511 613 of 5 April 1977
- (D7) DE-A-2 116 087 of 12 January 1978
- (D8) Drawing "Colt International" - Ref. 83/0651 of 18 July 1983
- (D9) Brochure "WEMA-Lichtband" of Eberspächer of 1972
- (D10) AT-B-350 764 of 15 November 1978
- (D11) DE-A-2 226 974 of 28 December 1972 and
- (D12) GB-A-2 067 635 of 4 January 1980.

III. The oppositions were rejected pursuant to Article 102(2) EPC in the oral proceedings of 10 May 1990, whereby the reasoned decision was posted on 1 August 1990. The Opposition Division came to the conclusion that the ventilating hatch according to the wording of granted Claim 1 is both novel and inventive and that this

independent claim is valid so that the grounds of opposition did not prejudice maintenance of the patent as granted.

- IV. The Appellants I and II appealed against this decision on 17 August 1990 and on 20 September 1990 respectively, paying the appeal fee on these days. The Statements of the Grounds of Appeal were received on 30 November 1990 and on 29 November 1990.

The Opponent III did not appeal against the decision of the Opposition Division so that he is dealt with as a party as of right.

- V. The Appellants I and II request to set aside the impugned decision and to revoke the attacked patent, since in granted Claim 1 it is not prescribed in which direction the trough-building extension "27" is arranged in respect of the top face and since documents (D1), (D4), (D5), (D6), (D7), (D8) and (D10) would therefore render obvious a ventilating hatch according to granted Claim 1 (Appellant I) and since the Appellant II has pointed to the combination of documents (D1) and (D8), whereby a new document

(D13) Brochure "Lichtstraßensystem, Typ Horizon" No. 306 of "Colt International"

was cited and incorporated in his chain of arguments. A significant difference between fixed windows and pivotable windows and ventilating hatches is denied by the Appellant II. He furthermore contended that in document (D8) a trough is already disclosed (see detailed drawing "C" thereof) so that the combination of documents (D1), (D8) and (D13) would lead a skilled person directly to the claimed ventilating hatch.

With his letter of 30 July 1991, received on 1 August 1991 the Appellant II declared "Hiermit wird der Einspruch gegen obiges Patent zurückgenommen".

- VI. The Respondent (Proprietor) requests to dismiss the appeals and to maintain the patent in suit as granted, since both appeals fail to show that the impugned decision was incorrect. He pointed to the fact that the Appellants have not produced new arguments in the appeal proceedings but only relied on arguments already discussed before the Opposition Division. In respect of (D13) it is emphasized that this document is similar to the construction laid down in (D8), whereby neither documents shows a trough within the meaning of the contested patent.

Reasons for the Decision

1. The appeals I and II are admissible. The Appellant II has declared that his opposition is withdrawn; this declaration is interpreted by the Board as a withdrawal of his appeal so that he is no longer a party to the appeal proceedings.
2. Article 123 EPC
 - 2.1 The patent was granted basically in its originally filed version, since in Claim 1 only reference signs have been added and since in the opening of the description only a reference to (D1) as the nearest prior art document has been inserted (Article 123(2) EPC).
 - 2.2 Since the patent is defended in its granted version the requirements of Article 123(3) EPC are also met.
 - 2.3 As a consequence of the foregoing observations granted Claims 1 to 3 are not open to an objection under Article 123 EPC.

3. Nearest prior art document, problem to be solved and its solution

3.1 Document (D8) has been accepted as prior art, (see minutes of the oral proceedings before the Opposition Division held on 10 May 1990, paragraph bridging pages 1 and 2).

Document (D13) submitted only in the appeal proceedings can, however, not be admitted to the proceedings (Article 114(2) EPC), since this document is not pre-published as can be seen from its last page where a printing date of "10/84", i.e. October 1984, can be seen. The attacked patent claims, however, a priority of 20 July 1984.

3.2 Without any doubt (D1) reflects the starting point of the invention. In the pre-characterising clause of granted Claim 1 all features known from (D1) are set out (Rule 29(1)(a) EPC), (see also attacked patent column 1, lines 3 to 14).

In line 63 of column 1 to line 12 of column 2 of the attacked patent it is set out that a layer of water may be formed on the exterior of the cover, especially if the cover when closed occupies a horizontal position. When said cover is opened after a rain-shower, the water will flow towards its lowest side, i.e. in the direction of the ventilating hatch and possibly into the subjacent space. True, the U-shaped cross members can serve as a discharge trough but since these are designed in general as narrow as possible, from an aesthetic viewpoint, and for maximising the ventilating opening, it is possible that

the water flowing downwardly along the cover arrives over the cross members into the next compartment.

Another drawback of the known construction is the way in which the covers are extruded, since for any specific width and synthetic plastics material a suitable die has to be foreseen, whereby these dies are rather expensive so that the manufacture of covers of different widths and types of material is quite expensive (see attacked patent column 1, lines 27 to 30 and lines 31 to 41).

Starting from (D1) it is therefore the object of the present invention to obviate the above drawbacks and to provide such a modified construction of the covers that the many specific dies can be dispensed with, and a single die will suffice for a great many different cover thicknesses, irrespective of the type of material, and that, at the same time, a provision for appropriately discharging water lying on a cover can be realised - with the same die - in a simple manner.

- 3.3 A ventilating hatch as defined in the preamble of granted Claim 1 solves the above object by the following features (Rule 29(1)(b) EPC):
- (a) the top panel (10) of each of the covers (7) is a separate slat;
 - (b) at least the adjoining edge of the covers extends parallel to a cross member (2, 3, 4);
 - (c) the adjoining edge is a profiled longitudinal section (8) including a U-shaped portion (16);
 - (d) to the insides of the legs (17, 18) there are attached strips of flexible material (19, 21; 20, 22) for sealingly clamping the slat (10) to be arranged between the two legs (17, 18) of a U-shaped portion (16);

- (e) there is integrally moulded with the one leg (18) situated on the outside of the frame (1) a portion (27) extended relatively to its top face and
- (f) the portion (27) forms a trough (29) together with the strip of flexible material (20) and with the slat installed.

3.4 With this ventilating hatch it is achieved by feature (a) according to above 3.3 that the use of many different cover thicknesses and different cover-materials does not necessitate the provision of many expensive extrusion dies, whereby features (b) to (f), solve the aspect of appropriately discharging water lying on a cover, especially if one of the covers is tilted to enable ventilation.

3.5 From remark 3.3 follows already the novelty of the ventilating hatch as defined in granted Claim 1 (Article 54 EPC); since this issue is not under discussion between the parties it needs no further argument.

3.6 It has now to be decided whether or not the subject-matter of Claim 1 is based on an inventive step within the meaning of Article 56 EPC:

3.6.1 The Appellant I has raised an objection against features (e) and (f) according to remark 3.3. The following has to be observed in this respect:

It is true that granted Claim 1 only mentions that a portion "27" extends relatively to the top face of the one leg "18". This feature has, however, to be seen in combination with the following text of the characterising clause of granted Claim 1 "for forming a trough (29) together with ...", which text makes it clear that not every portion is embraced by feature (e), but only

portions which are trough-forming i.e. which are of a C-shape, since the resilient member and the slat have to be seen as forming the remaining legs of a trough-section. Should there be any doubt what a "trough" is like then Figure 2 of the attacked patent has to be consulted by any reader of the claim under discussion to get further information about the shape of the portion "27". From Figure 2 it can be seen that the extension/portion "27" has a C-form i.e. a trough-building form (Article 69 EPC). Granted Claim 1 is therefore interpreted in the following in this way, whereby reference is also made to the description column 4 lines 50 to 52 of the patent in suit, where again an information in the sense of how a trough can be built can be derived when seen in combination with Figure 2. The interpretation of the extension/portion "27" in the sense of constituting a C-form is therefore fully backed up by the description and drawing as granted.

- 3.6.2 Before the prior art documents are dealt with in detail the Board would like to draw attention to the decision T 2/83 published in OJ EPO 1984, 265 in which decision it is clearly set out that, for a correct approach to the question of inventive step, the proper question to be asked in the present case is not whether the skilled man could have provided the separate slat for each of the covers and a trough for appropriately discharging water lying on a cover in a simple manner but whether he would have done so in expectation of some improvement or advantage.
- 3.6.3 Considering the principles laid down in the decision T 2/83 it has to be observed that the documents dealt with in some detail before the Board i.e. only (D1) and (D8) by the Appellant II and (D1), (D4), (D5), (D6), (D7) and (D10) by the Appellant I, do not disclose a trough formed by a portion "27" extended relatively to the top face of a

tiltable slat "10", by a strip of flexible material "20" and by the slat "10" in order to appropriately discharge rain-water lying on the slat in a simple manner, since (D4), (D5), (D6), (D7), (D8) and (D10) relate to windows and not to a ventilating hatch as claimed in granted Claim 1.

3.6.4 In the constructions laid down in (D4) and (D5) only condensate is collected and discharged by an interior channel in contrast to rain-water which is discharged by a trough arranged on the outside of the cover and which basically enters into effect when the slat is tilted. (D6) does not disclose a trough either in the meaning of granted Claim 1.

3.6.5 The construction laid down in (D7) is similar to that of (D8). In both documents slats are held in position by strips of resilient members, whereby in (D7) a trough "30" is foreseen for discharging rain-water which might enter from the outside, for instance by penetrating the resilient members "27, 28" which according to page 6, lines 18 to 24 thereof can pass through the resilient members being made from a foam or the like, see page 5, paragraph 2, lines 5 to 7 of (D7). Though in (D7) a trough is realised it has to be observed that this trough is arranged on the inside of the window and in combination with no tiltable ventilating hatch. Only by inadmissible hindsight could a skilled person therefore come to the conclusion that a trough can also be foreseen on the outside/top face of a slat which is tiltable i.e. in combination with a ventilating hatch. Without knowing the invention such an information cannot be derived, however, from (D7).

3.6.6 The construction realised in (D8) is characterised by a profile and a resilient member which supports a slat. Due

to tolerances it is clear that a gap between the profile and the slat has to be maintained; it is, however, not justified to derive from the detailed drawing "C" of (D8) the information that this gap is a "trough" in the meaning of granted Claim 1 since nothing in (D8) points to the fact that rain-water should be discharged with this trough when the slat is tilted. The very small dimension of this gap in the order of only 1,5 mm, is in addition a clear sign that this gap cannot be interpreted as a trough in the meaning of granted Claim 1 without interpreting (D8) with the knowledge of the present invention.

3.6.7 From document (D10) a sill "25" can be seen; this sill obviously has the purpose to protect the wall from access of rain. Not knowing the claimed invention it appears artificial to interpret this sill as a trough in the meaning of granted Claim 1. Even if one would admit this sill to be a trough, it would not be composed by the three components claimed, namely an extension of the holding profile, a strip of flexible material supporting a slat and the slat itself and the known trough-defining elements of (D10) would not be tiltable as is the case by the ventilating hatch defined in granted Claim 1. (D10) can therefore not lead a skilled person to the invention as claimed.

3.6.8 Summarising the Board is convinced that starting from (D1) the documents (D4), (D5), (D6), (D7), (D8) and (D10) taken singly or in combination cannot render obvious the ventilating hatch of granted Claim 1, so that the findings of the first instance are correct and this claim has to be seen as valid. Under these circumstances the (remaining) appeal has to be dismissed.

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar:



N. Maslin

The Chairman



C.T. Wilson