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# D E C I S I O N
**of 25 April 1995**

**Case Number:** T 0889/92 - 3.2.3

**Application Number:** 87108509.8

**Publication Number:** 0250989

**IPC:** E04B 2/96, E06B 3/54, E06B 3/68

**Language of the proceedings:** EN

**Title of invention:**
Structural glass walling with joints formed from structural sealants and metal structures

**Patentee:**
Alessi, Manfredo and Zerboni, Carlo Alberto

**Opponent:**
I Josef Gartner & Co.
II Flachglas Aktiengesellschaft

**Headword:**
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**Relevant legal norms:**
EPC Art. 54

**Keyword:**
"Novelty-objection, proven general technical knowledge"

**Decisions cited:**
-

**Catchword:**
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Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

**Case Number:** T 0889/92 - 3.2.3

**D E C I S I O N**
**of the Technical Board of Appeal 3.2.3**
**of 25 April 1995**

**Appellant:** (Proprietor of the patent)
Alessi, Manfredo
Via Borgazzi 134
Monza (IT)

Zerboni, Carlo Alberto
Via R. Fucini 1
Milano (IT)

**Representative:**
Gervasi, Gemma, Dr.
Notarbartolo & Gervasi Srl
33, Viale Bianca Maria
I-20122 Milano (IT)

**Respondent:** (Opponent)
Josef Gartner & Co.
D-8883 Gundelfingen (DE)

**Representative:**
Müller-Boré & Partner
Patentanwälte
Isartorplatz 6
Poftfach 26 02 47
D-80059 München (DE)

**Respondent II:** (Opponent II)
Flachglas Aktiengesellschaft
Otto-Seeling-Promenade
D-8510 Fürth (DE)

**Representative:**
Andrejewski, Walter, Dr.
Patentanwälte
Andrejewski, Honke & Partner
Postfach 10 02 54
D-45002 Essen (DE)

**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office dated 22 July 1992 revoking European patent No. 0 250 989 pursuant to Article 102(1) EPC.**

**Composition of the Board:**

**Chairman:** C. T. Wilson
**Members:** F. Brösamle
L. Mancini

**Summary of Facts and Submissions**

I. With decision of 22 July 1992 the Opposition Division has revoked the European patent No. 0 250 989 pursuant to Article 102(1) EPC for lack of inventive step Article 56 EPC having regard to Claim 1 as granted.

II. The wording of this claim is the following:

"1. Structural glass walling wherein individual façade glass plates comprise joints formed from structural sealants and from metal elements fixed to an internal metal support structure characterised in that recesses (4) are made in the side edges of the individual façade glass plate in the form of slots entering the glass material parallel to the principal plane of the plates, thereby conserving the integrity of both the major plate surfaces, in particular the outer façade surface."

III. The Opposition Division in its decision to revoke the patent in suit argued that document

(D2) US-A-3 672 107

discloses all the features of granted Claim 1 apart from the features that the walling material is glass (instead of glass-ceramic) and that the recesses are in the form of slots "16" entering the glass material parallel to the principal plane of the plates "S" so that the claimed subject-matter is novel but not inventive since a skilled person is aware of the possibilities of drilling or milling glass and glass-ceramic and of using both materials for walling purposes. The specification of the form of recess slots entering the glass material

parallel to the principal plane of the plates is seen as obvious so that granted Claim 1 does not involve an inventive step within the meaning of Article 56 EPC.

IV. On 22 September 1992 the Appellant (Proprietor) lodged an appeal against the above decision paying the appeal fee on 23 September 1992 and filing the Statement of Grounds of appeal on 19 November 1992.

The Appellant requests that the impugned decision be set aside.

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

- glass is completely different from a ceramic material, since glass is amorphous and a ceramic material has a crystalline structure;
- document (D2) teaches a thickness of the facing material of 2 to 3 inches and is therefore outside the range claimed in Claims 4 and 5 as granted;
- based on a technical opinion of an expert, an obstacle against replacing marble or the like by glass in combination with the structural application of glass is seen;
- apart from technical reasons the impugned decision has to be set aside for legal/procedural reasons, Article 113(1) EPC, since the Appellant was not invited to comment in the first instance;
- oral proceedings were not held despite Respondents' I and II (Opponents' I and II) requests and despite Appellant's statements asking for the maintenance of the patent in re without any need of an oral hearing.
- the impugned decision was not immediately issued but Respondents I and II were allowed to comment;
- the procedure followed by the Opposition Division is seen as "clearly disadvantageous for the Patentee".

VI. Respondents I and II (Opponents I and II) requested the dismissal of the appeal and by way of an auxiliary request oral proceedings in case the Board did not dismiss the appeal.

VII. The arguments raised by Respondents I and II are as follows:

- the Appellant had the possibility to comment on Respondent's arguments;
- the Opposition Division was right **not** to hold oral proceedings since the Appellant himself declared them to be "useless" in the instant case;
- the technical opinion submitted by the Appellant is seen as irrelevant for the issues of novelty and inventive step since the disclosure of the revealed prior art is crucial;
- glass and glass-ceramic are seen as similar materials whereby reference is made to document (D2), column 2, lines 20 ff.;
- recesses in the form of slots are known, see document (D1), i.e. DE-C-597 963;
- apart from this feature document (D1) is seen as an anticipation which in itself renders obvious the subject-matter of granted Claim 1.

VIII. In the Board's communication pursuant to Article 110(2) EPC dated 18 October 1993 the Board gave its provisional opinion under Articles 54 and 56 EPC with regard to documents (D1), (D2) and (D6), i.e. DE-C-576 235.

**Reasons for the Decision**

1. The appeal is admissible.

2. *Procedural aspects*

2.1 With letter of 2 July 1991 received on the same day, Respondent I cited inter alia document US-A-3 672 107, see page 4, remark II thereof, now document (D2). Also cited was document (D1).

Respondent II cited inter alia (D6), see letter of 12 July 1991, received as telecopy on 15 July 1991.

2.2 The above notices of opposition were duly communicated to the Appellant, respectively with communication of 16 July 1991 (Respondent I) and of 23 July 1991 (Respondent II).

2.3 With communication of 30 August 1991 attention was again drawn to both notices of opposition, the Appellant being requested to file observations within a time limit of **four months**.

2.4 As can be seen from Appellant's letters of 20 December 1991 documents (D1) and (D2) are clearly dealt with and an oral hearing is considered useless.

2.5 The file clearly shows that the Appellant was made aware of the relevant documents (D1), (D2) and (D6) and had the opportunity to comment on them.

2.6 Therefore the Board can not see any violation of Appellant's rights laid down in Article 113(1) EPC. The Opposition file also proves that the Appellant clearly **did not want** - expressing this explicitly - oral

proceedings: Thus he cannot lawfully argue in the proceedings before the Board that he was taken by surprise.

2.7 As a matter of fact, as evidenced by the records on file, the proceedings before the Opposition Division were properly carried out without any negative bias towards any party, the interests of the Appellant in particular not being violated in an arbitrary way.

2.8 The Appellant has further argued that the technical opinion of the expert submitted by the Appellant was not duly considered by the Opposition Division and not even by the Board. Actually this argument too is not supported by the facts.

2.9 Assessment of novelty and inventive step by the Board has to follow **objective criteria** as for instance the disclosure of prior art documents, i.e. patent specifications, handbooks etc.

Having regard to document (D1), see lines 1/2 thereof, it is known without any doubt and without any need for interpretation that in the art of structural wallings **glass** is a material used and useful for this purpose ("Wandverkleidung aus Glasplatten an Wänden"). A technical opinion brought forward by the Appellant which comes to a different conclusion is therefore **not binding on the Board** since it is at the discretion of the Board to weigh the disclosure of a patent specification against the technical opinion of the expert. The Board's findings are that (D1) and its disclosure on lines 1/2 has to be seen as relevant state of the art, so that a skilled person is aware of glass as a suitable material in the claimed context, namely structural wallings.

3. *Patentability*

3.1 From the Appellant's request to have the impugned decision set aside it must be followed in the absence of a further specific request that granted Claims 1 to 9 should form the basis for maintaining the European patent No. 0 250 989. In the following, Claim 1 as granted is therefore dealt with.

3.2 According to this claim, recesses "4" are made in the side edges of the individual façade glass plate in the form of slots entering the glass material.

Claim 1 as granted embraces thus the two possibilities of obtaining the recesses "4", see patent specification Claim 2 and column 3, lines 23 to 27, namely:

(a) by milling in combination with a unitary glass panel or
(b) by using a stratified glass whereby the dimensions of the individual component layers are so chosen that the intermediate layer has shorter edges than the outer layers.

3.3 In document (D2), see column 2, lines 19/20 it is set out that its mounting system "may be used with any of the well known building facing materials"; this general statement as to its applicability is followed by the words "it is particularly useful ... with a glass-ceramic facing material ...", which is narrower than the preceding general statement.

3.4 Document (D2) discloses therefore a structural glass walling with individual glass ceramic plates "S" which comprise joints formed from structural sealants "44" and from metal elements "20, 24, 36" fixed to an internal metal support structure "A, B, C" whereby recesses "16"

are made in the side edges of the plates "S" conserving the integrity of both the major plate surfaces, in particular the outer façade surface, see Figures 2 and 3 in particular.

3.5 Summarising, the question whether document (D2) when interpreted in the light of proven general technical knowledge - see above remark 2.10 in combination with document (D1) - is a novelty-destroying document to the subject-matter of granted Claim 1, need not be answered, since as set out below, the subject-matter of the claim is lacking anyway in inventive step.

3.7 From (D2) as the nearest prior art document, all features of Claim 1 are clearly known except for (see impugned decision):

(a) the walling material is glass;
(b) the recesses are in the form of slots entering the glass material parallel to the principal plane of the plates.

3.8 Since a stratified glass panel is also embraced by Claim 1, see above remark 3., when applying the problem-solution approach the problem to be solved would be to make arrangements to mount glass panels so that they can move under thermal stresses.

3.9 A skilled person would immediately consider (D1) where this problem has been dealt with, which document discloses glass as the walling material and which document proves that glass - if necessary - can be machined (for instance by drilling).

3.10 From (D1), see reference signs "a, a'" for glass panel, "h" for pin and hole, "b" for metal holder and "c" for support structure as well as Figures 1/2 and page 1, lines 11 to 17, lines 46 to 49 (no visible mounting members) and page 2, lines 23 to 29 as well as Claim 3, it is therefore known that glass can be machined and that mounting members can interact with these recesses to mount glass panels without excluding thermal dilation of the glass panels.

3.11 The combination of (D2) and (D1) would therefore render obvious the subject-matter of Claim 1, Article 56 EPC.

3.12 Being based on the alternative "stratified glass panels" of Claim 1 the document (D6) would also be highly relevant, since a skilled person would consider any system in which stratified glass is used in whatever technical field.

(D6) teaches the provision of a (longitudinal) recess in the glass panel and the possibility that a "mounting part", see reference sign "J", enters in this recess.

The combination of (D2) and (D6) would therefore also render obvious the subject-matter of Claim 1, particularly when (D1) is also considered, which teaches not to disturb the outer panel surface by the applied mounting system.

3.13 The Board in its communication pursuant to Article 110(2) EPC has clearly argued in this direction and given the Appellant the opportunity to comment.

4. In the letter of 15 February 1994 the Appellant has come to the conclusion that the Board has again discussed only **technical** points.

In this context it has to be pointed out that a communication is no decision, and that the Board only gives a provisional opinion about the case to be decided, inviting the parties to comment on that provisional opinion.

As can be seen from the Appellant's reply to the Board's communication he essentially pointed to the technical opinion of the expert but has not given convincing arguments why the Board should give more weight to this opinion than to the clear written disclosure of document (D1). Similarly, he objects to a comparison being made between the facing material of D1 and the material of Claim 1, without giving any explanation why. The Board's line of argument of the communication has obviously not been disputed.

Appellant's argument that glass and ceramic material have a completely different microstructure is irrelevant since document (D1) discloses the possibility to use glass as a structural walling and document (D2) the application of the mounting system to **all** well-known building facing materials (i.e. including glass).

Appellant's further argument that document (D2) is irrelevant since in this document different wall thicknesses are disclosed is again irrelevant since granted Claim 1 is not restricted to any particular wall thickness, this information being only given in the **dependent** Claims 4 and 5 as granted.

5. The request of the Appellant to maintain the granted set of claims has to be seen as a whole. Since Claim 1 thereof is not valid the whole request has to be rejected. Since all circumstances for the non-validity

of granted Claim 1 were known to the Appellant - see the Board's communication pursuant to Article 110(2) EPC - the requirements of Article 113(1) EPC have been met by the Board.

6. Appellant's arguments as far as the legal and technical aspects of the present appeal are concerned have been dealt with in detail so that it is not necessary to further discuss arguments not exactly defined by the Appellant with improper reference to other appeal cases. The Board has to make only one remark in this context:

If the EPO communicates documents of parties or its own reports and grants a time limit to file observations then the parties are invited to produce their arguments. Such arguments **being not submitted in due time** the EPO has the right to decide on the case as it is, be it the Opposition Division or the Board.

7. At the end of the communication pursuant to Article 110(2) EPC the Board gave its provisional final opinion of the case, (see remark 8), namely that patentable subject-matter could not be seen in the European patent No. 0 250 989.

With the indication to the Appellant to consider withdrawing the appeal, the Board did not intend to (and obviously could not) express its lack of competence to deal with the present appeal, but a fair possibility to terminate the proceedings without a written final decision of the Board, reasons of economy being the background of the Board's suggestion in this context. Clearly the Board has the necessary competence to deal with the present appeal.

8. One independent claim of the granted set of claims not being valid the request that the impugned decision be set aside is without basis.

**Order**

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

The appeal is dismissed.

| The Registrar: | The Chairman: |
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| | |
| N. Maslin | C. T. Wilson |