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D E C I S I O N
of 16 December 1994

Case Number: T 0285/93 - 3.2.3

Application Number: 87311400.3

Publication Number: 0273719

IPC: E06B 9/68, E06B 9/32

Language of the proceedings: EN

Title of invention:
Electric blind apparatus

Patentee:
Sharp Kabushiki Kaisha
Kabushiki Kaisha Nichibei

Opponent:
Alcatel SEL AG

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Late filed documents (irrelevant)"
"Inventive step (affirmed)"

Decisions cited:
-

Catchword:
-



Case Number: T 0285/93 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 16 December 1994

Appellant:
(Opponent)

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Representative:

Respondents:
(Proprietor of the patent)

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Decision under appeal:

Interlocutory decision of the Opposition Division
of the European Patent Office dated 3 December
1992, posted on 13 January 1993 concerning
maintenance of European patent No. 0 273 719 in
amended form.

Composition of the Board:

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

Summary of Facts and Submissions

I. With the interlocutory decision announced during the oral proceedings of 3 December 1992 and communicated in written form on 13 January 1993 the Opposition Division upheld the European patent No. 0 273 719 in amended form.

II. Claim 1 thereof reads as follows:

"1. A motorized venetian blind of the kind in which the blind as a whole can be raised or lowered to any position by an electric motor (4) and in which the angle of the vanes (13) of the blind may be adjusted independently of the raising or lowering of the blind as a whole characterised in that the blind is provided with electronic memory means (50) whereby a selected angle for the vanes (13) can be electronically stored so that the selected vane angle can be reproduced subsequently by electronic control means (34) which includes means for stopping the electric motor (4) in response to a stop command and thereafter driving the electric motor so that the vane angle coincides with the vane angle stored in the electronic memory means (50)."

III. In the light of the documents

(D1) DE-A-3 314 081

(D2) DE-A-3 538 797

(D3) GB-A-1 044 871 and

(D4) DE-A-1 659 977

the Opposition Division in its interlocutory decision within the meaning of Article 106(3) EPC came to the result that starting from (D3) the motorized venetian

blind according to Claim 1 underlying the decision is novel and is based on an inventive step in view of (D1) to (D4).

IV. On 20 March 1993 the Opponent (Appellant in the following) lodged an appeal against the interlocutory decision of the Opposition Division paying the appeal fee on the same day. The Statement of Grounds of Appeal was filed on 18 May 1993 and the Appellant cited there for the first time the documents

(D5) CH-A-503 190 and

(D6) EP-A-210 049.

He argued that (D5) and (D6) render obvious the claimed motorized venetian blind according to Claim 1 so that the impugned decision should be set aside and the patent be revoked, since (D5) discloses a blind which can totally or partly be lowered/raised and which can be adjusted in angle in any position, whereby the adjustment in angle is carried out electronically using an electronic store for storing data and since (D6) with its Figures 10 and 11 also discloses a control unit similar to that of (D5).

V. The Patentees (Respondents in the following) contested Appellant's arguments by pointing to the fact that (D5) does not disclose the possibility to **partly** raise/lower the blind but only offers the teaching to adjust the angle of the slats in the lowermost position of the blind. In addition the memory did not store the angle of the slats for returning the slats to the original angle by making use of the stored content; rather the memory is used for automatically changing the slats as a function of the available light (light control). Similar considerations in Respondent's reply are set out in

combination with (D6) which also concerns the automatic adjustment of incident light.

Since neither (D5) nor (D6) deal with the aspect of the present invention that a blind can be positioned in any vertical position and that thereafter a stored angle is reproduced these documents are felt not to anticipate the subject-matter of Claim 1 so that it is requested to dismiss the appeal; by way of an auxiliary petition oral proceedings are requested.

Reasons for the Decision

1. The appeal is admissible.
2. The basic arguments of the Appellant, see Statement of Grounds of Appeal remarks 3. and 4., are essentially based on documents (D5) whereby document (D6) plays a minor role since the Appellant admits that its contents are essentially the same as those of (D5).
3. *Patentibility*
 - 3.1 In (D5) a venetian blind is disclosed whose vanes can be adjusted in angle but only in the **lowermost** position of the blind, see column 1, lines 8 to 10, column 2, lines 15 to 16 and line 36 as well as column 3, lines 34 to 35 of (D5), which leave no doubt about the fact that the blind is opened or closed **only totally**. Appellant's findings are therefore the result of inadmissible hindsight, since (D5) does not deal with the aspect of the present invention that a blind can be positioned in **any vertical position** and that thereafter a stored angle is reproduced. Apart from that (D5) uses a memory for

automatically changing the slats as a function of the available light (light control), whereby the memory did not store the angle of the slats for returning the slats to the stored content.

- 3.2 (D6) concerns - in contrast to what is claimed in attached Claim 1 - **vertical** blades and is insofar irrelevant since these blades are not at all **raised and lowered** but only adjusted in angle.

The problem underlying the patent in suit can therefore not arise in the installation according to (D6) so that it cannot be seen that this document would be helpful for a skilled person to solve the posed problem in the meaning of present Claim 1.

- 3.3 A still further point to be considered is that (D6) is **not prepublished**, but only a document falling under the terms of Article 54(3) EPC for the countries "DE, FR, GB" but not for "IT and NL". This aspect has been considered neither by the Appellant nor by the Respondent (Patentee). Eight from nine priorities claimed in the attacked patent are before the publication date of (D6).

If (D6) was considered at all to be relevant, it could therefore only be used in consideration of the issue of novelty, Article 54(3) EPC. Novelty has, however, not been disputed by the Appellant, see Statement of Grounds of Appeal remarks 3. and 4. thereof.

- 3.4 Therefore, leaving aside the question whether or not (D5) and (D6) should even have been admitted to the proceedings, Article 114 EPC, the Board comes to the conclusion that these documents are irrelevant as far as the crucial issue to be decided, inventive step, is concerned.

4. Appellant's arguments are completely based on (D5) and (D6) for destroying the inventiveness of the motorized venetian blind according to Claim 1, namely that features (a), (b) and (c), see Statement of Grounds of Appeal remark 2., not known from document (D3) are rendered obvious by (D5) and (D6). Since (D5) and (D6) are, however, irrelevant as has been developed above in remarks 3.1 to 3.4 the Appellant has failed to demonstrate that features (a) to (c) seen as distinguishing features over the nearest prior art document by the Opposition Division are obvious. The impugned decision must therefore be confirmed.


Since this decision confirms, in substance, the decision of the first instance under appeal and since the Appellant has had ample opportunity to comment upon all substantive points referred to in this decision, (see the points raised by the Respondent in his letter dated 22 September 1993, particularly in respect of the documents D5, D6) the Board did not consider it to be necessary in this case for it to issue a provisional opinion as a communication under Article 110(2) EPC: such a communication need only be issued if this is deemed necessary by the Board.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:



N. Maslin

The Chairman:



C. T. Wilson