DECISION
of -

Case Number: T 1162/98 - 3.2.1
Application Number: 93203564.5
Publication Number: 0602755
IPC: B60J 1/14

Language of the proceedings: EN

Title of invention:
Double walled window

Patentee:
POLYPLASTIC B.V

Opponent:
Para Press S.A.

Headword: -

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (denied)"
"No reply to objections made in a communication by the Board"

Decisions cited: -

Catchword: -
Case Number: T 1162/98 - 3.2.1

DECISION
of the Technical Board of Appeal 3.2.1
of

Appellant: Para Press S.A. (Opponent)
Route de Luxembourg
3201 Bettembourg (LU)

Representative: Meyers, Ernest
Office de Brevets Meyers & Van Malderen
261 route d'Arlon
B.P. 111
8002 Strassen (LU)

Respondent: POLYPLASTIC B.V. (Proprietor of the patent)
Vlaardingweg 98
3044 CK Rotterdam (NL)

Representative: Jilderda, Anne Ayolt
Octrooibureau LIOC B.V.
Postbus 13363
3507 LJ Utrecht (NL)

Decision under appeal: Decision of the Opposition Division of the European Patent Office posted 9 November 1998 rejecting the opposition filed against European patent No. 0 602 755 pursuant to Article 102(2) EPC.

Composition of the Board:
Chairman: F. Gumbel
Members: M. Ceyte
J. van Moer
Summary of Facts and Submissions

I. The respondent is proprietor of European patent No. 0 602 755 (application No. 93 203 564.5).

Claim 1 as granted reads as follows:

"1. A double-walled window (5) comprising a substantially transparent outer pane (11) and an inner pane (10) which are interconnected at an edge portion (13) of the window by means of at least an adhesion or fusion joint (15), while at least one of the two panes (10, 11) comprises a central portion which is in an offset position relative to the edge portion of the window, characterized in that the window is provided with an opaque screening layer (16) at the area of the edge portion, which screening layer (16) is applied to the inside (17) of the outer pane (11)."

II. The patent was opposed by the appellant (opponent) on the ground of lack of patentability.

The following state of the art was inter alia cited:


III. By its decision posted on 9 November 1998 the Opposition Division rejected the opposition.

IV. On 14 December 1998 the appellant (opponent) lodged an appeal against the decision, with the appeal fee being paid at the same time.
The statement of grounds of appeal was filed on 4 March 1999. The respondent was invited to file within a period of 4 months any observations upon the statement of grounds of appeal. No comments were received from the respondent in due time or at all.

V. In a communication dispatched on 18 January 2001, the Board submitted the further prior art document:


The Board informed the parties of its provisional opinion that the subject-matter of claim 1 did not apparently involve an inventive step, the content of the communication in that respect being as follows:

(i) In the Board's opinion, Document XA2 appears to represent the nearest prior art: it shows (see page 5) a double-walled window comprising an outer pane and an inner pane which are interconnected at an edge portion. One of the two panes has a central portion which is in an offset position relative to the edge portion of the window. Moreover the depicted window is provided with an opaque screening layer ("UV-beständiger Innenlackierung") applied to the inside of the window.

Thus the claimed window apparently differs from that above by the following features:

(i) the two panes are interconnected by an adhesion or a fusion joint,

(ii) the screening layer is applied to the inside
of the outer pane.

(ii) Although the claimed window is novel vis-à-vis this prior art, it apparently does not involve an inventive step:

The above features (i) and (ii) are not explicitly mentioned in this prior art document, but a skilled person confronted with the problem of reproducing the window disclosed therein would inevitably be led to use an adhesion or a fusion joint (feature (i)) since the panes made of plastic are in superimposed relationship without any external clamping members for holding the two panels together.

The same applies to the feature (ii) above: It seems logical for the skilled person to provide the inside of the outer pane and not that of the inner pane with the screening layer, since the screening layer is intended to function as a decorative frame, preventing the glueing area from being seen through the outer pane.

There is apparently no proper basis for the Opposition Division's allegation that it was surprising that in spite of the presence of the screening layer, a satisfactory glued connection between the two panes was nevertheless achieved.

Reference is made in this respect to EP-A-0 298 788 (cited in the search report), particularly to Figures 1 to 3 and the passage bridging columns 3 and 4: The depicted screening layer (7) lies between the bead of glue (8) and
the windscreen(1) for motor vehicle. It is also applied to the inside of the windscreen and functions as a decorative frame, preventing the glueing area from being seen through windscreen 1. It is specifically stated that the screening layer also promotes adherence between the bead of glue (8) and the surface of the glass and protects bead from the action of ultraviolet rays.

VI. The respondent was invited to file within two months any observations upon the Board's communication. No comments were received from the respondent in due time or at all.

The Board interprets the respondent's silence as a request that the appeal be dismissed.

VII. The appellant requested that the decision under appeal be set aside and the European patent be revoked in its entirety. Furthermore, as an auxiliary request, it asked for oral proceedings to be held.

Reasons for the Decision

1. The appeal is admissible.

2. The respondent was invited to file observations upon the Board's communication within a period of two months. The respondent has not availed himself of this opportunity to refute the arguments as to lack of inventive step contained in the Board's communication. These arguments are therefore still valid.

3. In the Board's view the respondent has had sufficient
opportunity to submit its comments in the sense of Article 113(1) EPC and there is no reason to offer it another opportunity to comment.

4. Since on re-consideration of the case the Board does not arrive at a different assessment concerning the crucial issue of inventive step. It comes to the conclusion that for the reasons given in the Board's communication the subject-matter of claim 1 lacks an inventive step (Article 56 EPC). Therefore, claim 1 is not allowable.

5. As a party's request must be decided as a whole, granted claims 2 to 8 must share the fate of claim 1. The decision of the Opposition Division rejecting the opposition must be therefore set aside and the European patent must be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The European patent No. 0 602 755 is revoked.

The Registrar: The Chairman:

S. Fabiani F. Gumbel