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**D E C I S I O N**  
**of 12 September 2002**

**Case Number:** T 1199/00 - 3.2.3

**Application Number:** 91915534.1

**Publication Number:** 0561783

**IPC:** E04G 11/00, E04G 13/00,  
E02D 27/01

**Language of the proceedings:** EN

**Title of invention:**  
Casting mould device

**Applicant:**  
LINDGREN, Hakan

**Opponent:**  
-

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 52, 54, 56

**Keyword:**  
"Novelty, no"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 1199/00 - 3.2.3

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.3  
of 12 September 2002

**Appellant:** LINDGREN, Hakan  
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**Representative:** Wibom, Hans Sven-Erik  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 16 June 2000  
refusing European application No. 91 915 534.1  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. T. Wilson  
**Members:** J. du Pouget de Nadaillac  
J. P. B. Seitz

## Summary of Facts and Submissions

I. The appeal is directed against the decision dated 16 June 2000 of an examining division of the European Patent Office which refused the European patent application No. 91 915 534.1 (international patent application WO 92/03626) for lack of novelty of the subject-matter of its claim 1 filed on 15 October 1999, having regard to the disclosure of the following prior art document:

D2: GB-A-696 260

In the decision, the examining division also indicated that the subject-matter of a previous claim 1 filed with the letter dated 24 October 1997 was not new in the light of the same document (Articles 52 and 54 EPC).

II. Claim 1 filed on 15 October 1999 reads as follows:

"1. A casting mould device for casting concrete and similar, e.g. for base plates, walls, columns, recesses and similar, comprising a number of transverse supports (3) of substantially triangular shape with a post (4), which is connected with a pivotable joint (11) to a base part (5) at one end of said post and base part, and a brace part (6) extending between the post and the base part, wherein the brace part is joined pivotably or displacably to the post and base part resp. for setting an angle between the post and the base part, which can be varied from a straight angle in both directions, the posts 4) of the transverse supports (3) supporting a mould space delimiting element (2) with the aid of support beams (1), e.g. with a profile shape

which consists of a Z-shape or comprises a Z-resembling part and which are held by the transverse supports (3) with fastening means (7) and which carry or form a part of the space delimiting elements, characterized in that the casting mould is arranged for transferring the mould pressure exerted by the cast concrete in the casting operation on the mould space delimiting element (2) to the post of the transverse supports and through the brace part (6) to the base part (5) thereof, and from the base part to a base, against which the base part (5) applies and to which it is secured, the post (4) and the base part (5) consisting of elongated profile beams, and wherein one end of the brace part (6) is locked to the post (4) or base part (5) in a desired position for setting the angle between the post and the base part."

Claim 1 filed previously, namely on 24 October 1997, reads as follows:

"1. A casting mould device for casting concrete and similar, e.g. for base plates, walls, columns, recesses and similar, comprising a number of transverse supports (3) of substantially triangular shape with a post (4) which is connected to a base part (5) and a brace part (6) extending between the post and the base part, the posts (4) of the transverse supports (3) supporting a mould space delimiting element (2) with the aid of support beams (1), which are held by the transverse supports (3) with fastening means (7) and which carry or form a part of the space delimiting elements, said posts transferring the mould pressure exerted on said posts by said mould space delimiting element (2) in the casting operation onto the base part (5) connected thereto through the brace part (6),

c h a r a c t e r i z e d by at least one end of said brace part being displacable along said post (4) or base part (5) and arranged to be locked in a desired position for setting an angle between the post and the base part, which can be varied from a straight angle in both directions, said base parts (5) being arranged for transferring the mould pressure exerted on said mould space delimiting element (2) onto a base against which the base parts (5) apply."

III. The applicant - hereinafter the appellant - filed the notice of appeal on 25 August 2000, having paid the appeal fee the day before. In the grounds of appeal which was received on 26 October 2000, the appellant requested the above mentioned decision to be set aside and, as main request, a patent to be granted on the basis of claims 1 to 5 underlying the impugned decision, optionally by introducing into claim 1 that "the end of the brace can be locked in a desired position for setting a desired angle between the post and the base part", or, as auxiliary request, on the basis of claims 1 to 6 filed on 24 October 1997.

In a communication attached to the summons to oral proceedings dated 17 May 2001, which were planned for the 15 January 2002, the board of appeal informed the appellant of its provisional opinion that all the features of the claimed subject-matter were known from D2.

By a fax received on 8 January 2002, the representative of the appellant requested a postponement of the oral proceedings for health reasons, a report issued by a hospital being joined. The oral proceedings were postponed by the board of appeal until the 12 September

2002 and the appellant was informed by a fax sent on the 9 January 2002. Said fax was confirmed by a communication dated 11 January 2002 of the board of appeal.

On the 10 and 11 September, during the course of several phone calls between the representative of the appellant and the registry of the board of appeal, the representative confirmed that he had received the fax sent on the 9 January 2002, that he was not sure whether he would attend the oral proceedings and asked, firstly whether it would be possible for him to withdraw his request for oral proceedings and ask for a decision on the state of the file, (it was confirmed that this would be possible), and secondly whether it would be possible to withdraw his request for oral proceedings and continue the procedure by writing. He was informed by the registry, which had consulted the board of appeal, that this would not be possible since the board intended to take a decision at the oral proceedings. He, then, asked for, and was given, the name of the rapporteur, so that he could ring him and discuss the case with him. This he did not, however, do.

On 12 September 2002, the oral proceedings took place in the absence of the representative of the appellant, who had sent a fax received by the board fifty minutes before the beginning of said proceedings, confirming that he would not attend the oral proceedings and requesting the postponement of the oral proceedings because of an acute heart disease. At the end of the oral proceedings, namely at 09.15 hrs, the board issued the decision.

Later the same day the appellant filed new documents.

IV. The arguments of the appellant as presented in the grounds of appeal can be summarized as follows:

D2 does not anticipate the claimed invention as regards the method of taking up the mould pressure and is even quite silent about the mould pressure. Figure 7 of this document, which is said to show the bracket as used for securing the shuttering of a concrete wall, shows a bracket only on one side of the wall. Conventionally, as shown by another prior art document, namely D1 (FR-A-1 175 132), the mould pressure is taken by tie rods extending through the mould cavity and holding opposite mould elements together.

Moreover, D2 discloses a step-wise change of the length of the brace part of the bracket for setting the angle between the post and the base part, whereas the present invention uses for the same purpose a locking bolt and nut assembly which is slidable in a slot in the base part, so that it is possible to set any desired angle between the post and the base part. This aspect of the invention can be made more explicit by the proposed amendment of the wording of claim 1 according to the main request.

V. The requests of the appellant, which reached the board of appeal before the end of the appeal proceedings, are the following:

- that the decision under appeal be set aside and
- that a patent be granted on the basis of claims 1 to 5 underlying the impugned decision, optionally

with the addition of the words "the end of the brace can be locked in a desired position for setting a desired angle between the post and the base part" in claim 1 and the deletion of the words "aluminium and aluminium alloys" from claim 2, or

- auxiliarily, that a patent be granted on the basis of claims 1 to 6 filed on 24 October 1997, and finally
- that the oral proceedings of 12 September 2002 be postponed (fax received by the board just fifty minutes before the beginning of said proceedings).

### **Reasons for the Decision**

1. The appeal is admissible.
2. **Procedural matters**, namely the postponement of the oral proceedings of 12 September 2002 and the filing of new documents after the end of the oral proceedings.
  - 2.1 The request for postponement of the present oral proceedings is refused since on the one hand no evidence at all has been filed in order to support it, and since on the other hand a second postponement at this late stage will only result in a undue prolongation of the appeal procedure. It must also be borne in mind that the appellant has had more than sufficient time to present his comments on the communication of the board dated 17 May 2001. Therefore the board considers it expedient that the oral proceedings take place at the scheduled date.



2.2 Requests on the substantive matter filed after the announcement of the decision by the board are not admissible and require no further comment.

3. *Claim 1 according to the main request*

3.1 Document D2 discloses means for supporting shuttering in the construction of concrete walls in suit, said means comprising a number of transverse supports, called "brackets", of substantial triangular shape, each bracket comprising a post (X1, X2), which is connected to a base part (Y1, Y2), and a brace part (Z1, Z2) extending between the post and the brace part. The posts of the transverse supports support a mould space delimiting element with the aid of support beams (waling boards W) which are held by the transverse supports (brackets) with fastening means (nails) and which carry or form part of the space delimiting elements (shutters). Thus, although not expressly mentioned, a casting mould device is described. Each bracket is characterised in that the upper end of the brace part can be displaced along a part of the post by means of locking means slidable in a slot (see Figure 1) and the lower end of the brace part can be displaced along the base part by moving the extension X2 of the base part into the channel part X1 of said base part, holes being foreseen at given intervals in both of these elements Y1 and Y2 to bolt them together. The brace part and the post also are made of two elements, respectively Z1, Z2 and X1, X2, which are displaceable along each other either by channel means or by telescopic tubes, so that the lengths of the post and of the brace part, like that of the base part, can be varied. The lower end of the post is moreover pivotally connected to the base part, in such a way

that the angle between the post and base part can be greater or less than 90° (page 1, right column, lines 79 to 81), that is to say "the angle can be varied from a straight angle in both directions".

- 3.2 In this document, it is moreover specified that the load (see page 1, lines 75, 76 and 83 to 85) or stress (see claim 1) is transferred through the post to the base part, which itself is said to be anchored to the floor or base supporting the whole casting mould device. Therefore, the first argument of the appellant - see the second paragraph of the above point IV - is not understood. If any kind of load supported by the posts, for example the weights of the mould elements or shutters, are transferred by the posts to the base, then this also applies to the mould pressure exerted by the cast concrete in the casting operation. Thus, supposing that this result is not expressly mentioned in D2, it is nevertheless achieved by the casting mould device according to D2, since all the structural features mentioned in claim 1 for achieving this result are found in this prior art, taking into account that claim 1 concerns a device and not a method.

When producing said first argument, the appellant also pointed out that D2 describes a bracket **only on one side** of the wall to be constructed and he furthermore indicated - by mentioning D1 - that, for taking up the mould pressure, previously tie rods were used, extending through the mould cavity and holding opposite mould elements together. If the appellant wanted to emphasize thereby that in the present invention the mould pressure is transferred only by the claimed transverse supports on **both** sides of the wall to be constructed, this part of the argument cannot be taken

into account, since there is no clear support in the documents of the patent application, as originally filed, that the expression "casting mould device" embraces the whole number of transverse supports placed on **both** sides of the wall to be cast. In the embodiments according to figures 17 and 18 of the patent application, this interpretation is even to be excluded. Therefore, this part of the argument is not supported by the documents of the patent application, as originally filed (Article 123(2) EPC).

- 3.3 The second and last argument of the appellant concerns the means for setting an angle between the post and the base part. He argued that, because of the intervals between the holes along the telescopic tubes of the brace part, D2 discloses only a step-wise change of about 8° of the angle, so that it is not possible to set a desired angle, as is the case with the present invention, in which the end of the base part can slide in and be locked in any position along a longitudinal slot of the base part. However, claim 1 only requires one end of the brace part to be locked to the post or the base part in a desired position for setting the said angle. This feature is also achieved in D2, which in fact discloses three possibilities for setting the angle, namely by varying the length of the base part or that of the brace part and by displacing the upper end of the brace part along the short slot provided in the upper portion of the post. By playing with these three possibilities, a setting of a desired angle can be obtained. Claim 1, moreover, does not - at least clearly - exclude a step-wise change of the angle, the expression "a desired angle" being vague and sufficiently broad to include "some determined angles".

- 3.4 Claim 1 according to the main request and including the optional amendment.

With this amendment, "**one** end of the brace part" is changed into "**the** end of the brace part", the reference to the post or base part being deleted, and, instead of the words "for setting the angle", the expression "for setting the **desired** angle" is introduced. The first change brings no new information and is unclear, since no determined end of the brace part was mentioned before. Thus, this amendment cannot be seen to restrict the scope of the claim. The second change is also unclear, since it seems to be superfluous in view of the preceding expression "in a desired position". Moreover, as in the previous claim 1, it does not exclude a step-wise change of the angle or require any particular desired angle. Therefore, the whole amendment does not introduce any new features.

4. *Claim 1 according to the auxiliary request*

The content of this claim is essentially the same as that of the claim 1 according to the main request. The sole clear difference is to be seen in the indication that "one end of the brace part" is "displaceable along said post or base part"... "for setting an angle". However, neither the end of the brace part which is concerned nor the angle range is specified, so that this feature is anticipated by the disclosure of D2 according to which the upper end of the brace part is displaceable along a slot of the post and can be locked in a desired position, so that the angle between the post and the base part can be slightly varied.

5. In conclusion, the subject-matter of claim 1 according

to the main request, with or without the optional amendment, and that of claim 1 according to the auxiliary request do not fulfil the requirement of novelty within the meaning of Article 54 EPC and are therefore not patentable (Article 52(1) EPC).

6. Even if the above claims 1 would have been more precisely drafted, so that it would have been clear that the desired angle could be steplessly set between the post and the base part by displacing the lower end of the brace part along the whole post, the board is of the opinion that no inventive step would have been implied by such a feature, which is suggested by D2, since this prior art, as seen above, discloses a displacement of the lower end of the brace part and means for slightly displacing its upper end comprising a slot. For a person skilled in the art, it is obvious to apply in a broader way to the lower end of the brace part the displacing means known for its upper end (Article 56 EPC).

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

A. Counillon

C. T. Wilson