

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 4 December 2008**

Case Number: T 0943/06 - 3.2.03
Application Number: 99944928.3
Publication Number: 1114234
IPC: E06B 9/24, E06B 9/386,
E06B 9/36
Language of the proceedings: EN

Title of invention:

Window blind for decoration and sun protection

Patentee:

Van Amelsvoort, Marco Johannes Christina

Opponent:

HUNTER DOUGLAS Industries B.V.
Lecluyse N.V.

Headword:

-

Relevant legal provisions:

EPC Art. 56, 114, 123(2), 84
RPBA Art. 13(1)(3)

Keyword:

-

Decisions cited:

-

Catchword:

-



Case Number: T 0943/06 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 4 December 2008

Appellant I: HUNTER DOUGLAS Industries B.V.
(Opponent 0I) Piekstraat 2
NL-3071 EL Rotterdam (NL)

Representative: Roberts, Mark Peter
J.A. Kemp & Co.
14 South Square
Gray's Inn
London WC1R 5JJ (GB)

Appellant II: Lecluyse N.V.
(Opponent 0II) Staatsbaan 32
B-8610 Kortemark (BE)

Korbel N.V.
Staatsbaan 30
B-8610 Kortemark (BE)

Representative: Quintelier, Claude
Gevers & Vander Haeghen
Holidaystraat 5
B-1831 Diegem (BE)

Respondent: Van Amelsvoort, Marco Johannes Christina
(Patent Proprietor) Hintham 166
NL-5246 AK s'-Hertogenbosch (NL)

Representative: Prins, Adrianus Willem
Vereenigde
P.O. Box 87930
NL-2508 DH Den Haag (NL)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 9 June 2006
rejecting the opposition filed against European
patent No. 1114234 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: U. Krause
Members: Y. Jest
K. Garnett

Summary of Facts and Submissions

I. Appeals were lodged on 21 June 2006 by Opponent OI (hereinafter: Appellant I) and on 10 August 2006 by Opponent OII (hereinafter: Appellant II) against the decision of the Opposition Division, posted 9 June 2006, to reject the oppositions and to maintain European Patent No. 1114234 as granted (European patent application No. 99944928.3 on the basis of International application PCT/NL99/00577 filed on 16 September 1999 and published as WO-A-00/15939). The appeal fees were respectively paid the same day and the grounds of appeal were submitted on 5 October 2006 by Appellant I and on 19 October 2006 by Appellant II.

The oppositions were based on Article 100(b) EPC for lack of disclosure of the invention and on Article 100(a) EPC for lack of novelty and inventive step of the claimed subject-matter. The Opposition Division came to the conclusion that the invention was sufficiently disclosed and that the subject-matter of granted claim 1 was new and involved an inventive step.

II. The Board of Appeal expressed its provisional opinion of the case in a communication accompanying the summons to oral proceedings pursuant to Rule 115(1) EPC, dated 28 July 2008.

Appellant I submitted with a letter dated 4 August 2008 four new documents (A14 to A17) and the Proprietor (hereinafter the Respondent) filed six sets of amended claims (AR1 to AR6) with letter of 29 October 2008.

III. Cited prior art considered in the proceedings was as follows:

A1: US-A-4893667 A4: DE-A-19537190
A5: FR-A-2195749 A11: US-A-4813468
A12: US-A-2646114

Evidence submitted by Appellant I on 4 August 2008 was as follows:

A14: US-A-3086584 A15: US-A-2188575
A16: US-Re.34273 A17: US-A-4621672

IV. Wording of claim 1:

(a) as granted

"A window decoration in the form of a vertical slatted blind, **characterized in that** the window decoration, when brought into a condition ready for use, comprises a first face extending in horizontal direction over at least substantially the full width of the window decoration and a second face extending in horizontal direction of the window decoration, wherein the first and the second face are formed by the vertical slats, while to each of said slats it applies that it transmits substantially no light for a first portion of the relevant slat, said first portion forming part of the first face, and partially transmits light for a second portion of the relevant slat, said second portion forming part of the second face so that the first face transmitting substantially no light, the second face subduing the incident light in such a manner that a person present at his workplace in an inner space provided with the window decoration can

still look outside through the second face, the first face being located above the second face."

(b) according to the amended set of claims AR1:

"A window decoration in the form of a vertical slatted blind, **characterized in that** the window decoration, when brought into a condition ready for use, comprises a first face extending in horizontal direction over at least substantially the full width of the window decoration and a second face extending in horizontal direction of the window decoration, wherein the first and the second face are formed by the vertical slats, while to each of said slats it applies that it transmits substantially no light for a first portion of the relevant slat, said first portion forming part of the first face, and partially transmits light for a second portion of the relevant slat, said second portion forming part of the second face so that the first face transmitting substantially no light, the second face subduing the incident light in such a manner that a person present at his workplace in an inner space provided with the window decoration can still look outside through the second face, the first face being located above the second face and wherein the first face extends over a substantial proportion of a height of the window decoration."

(c) according to the amended set of claims AR2:

"A window decoration in the form of a vertical slatted blind, **characterized in that** the window decoration, when brought into a condition ready for use, comprises a first face extending in horizontal direction over at

least substantially the full width of the window decoration and a second face extending in horizontal direction of the window decoration, wherein the first and the second face are formed by the vertical slats, while to each of said slats it applies that it transmits substantially no light for a first portion of the relevant slat, said first portion forming part of the first face, and partially transmits light for a second portion of the relevant slat, said second portion forming part of the second face so that the first face transmitting substantially no light compensating for the transmission of a certain amount of light through the second face, the second face subduing the incident light in such a manner that a person present at his workplace in an inner space provided with the window decoration can still look outside through the second face, the first face being located above the second face and wherein the first face extends over a substantial proportion of a height of the window decoration."

(d) according to the amended set of claims AR3:

"A window decoration in the form of a vertical slatted blind, **characterized in that** the window decoration, when brought into a condition ready for use, comprises a first face extending in horizontal direction over at least substantially the full width of the window decoration and a second face extending in horizontal direction of the window decoration, wherein the first and the second face are formed by the vertical slats, while to each of said slats it applies that it transmits substantially no light for a first portion of the relevant slat, said first portion forming part of

the first face, and partially transmits light for a second portion of the relevant slat, said second portion forming part of the second face so that the first face transmitting substantially no light, the second face subduing the incident light in such a manner that a person present at his workplace in an inner space provided with the window decoration can still look outside through the second face, the first face being located above the second face, wherein the first face is higher than the second face."

(e) according to the amended set of claims AR4:

"A window decoration in the form of a vertical slatted blind, **characterized in that** the window decoration, when brought into a condition ready for use, comprises a first face extending in horizontal direction over at least substantially the full width of the window decoration and a second face extending in horizontal direction of the window decoration, wherein the first and the second face adjoin each other, wherein the second face extends down to a lower side of the window decoration and wherein the first face extends up to an upper side of the window decoration, wherein the first and the second face are formed by the vertical slats, while to each of said slats it applies that it transmits substantially no light for a first portion of the relevant slat, said first portion forming part of the first face, and partially transmits light for a second portion of the relevant slat, said second portion forming part of the second face so that the first face transmitting substantially no light, the second face subduing the incident light in such a manner that a person present at his workplace in an

inner space provided with the window decoration can still look outside through the second face, the first face being located above the second face, wherein the first face is higher than the second face."

(f) according to the amended set of claims AR5:

"A window decoration in the form of a vertical slatted blind, **characterized in that** the window decoration, when brought into a condition ready for use, comprises a first face extending in horizontal direction over at least substantially the full width of the window decoration and a second face extending in horizontal direction of the window decoration, wherein the first and the second face adjoin each other, wherein the second face extends down to a lower side of the window decoration and wherein the first face extends up to an upper side of the window decoration, wherein the first and the second face are formed by the vertical slats, while to each of said slats it applies that it transmits substantially no light for a first portion of the relevant slat, said first portion forming part of the first face, and partially transmits light for a second portion of the relevant slat, said second portion forming part of the second face so that the first face transmitting substantially no light compensating for the transmission of a certain amount of light through the second face, the second face subduing the incident light in such a manner that a person present at his workplace in an inner space provided with the window decoration can still look outside through the second face, the first face being located above the second face, wherein the first face is higher than the second face."

(g) according to the amended set of claims AR6:

"A window decoration in the form of a vertical slatted blind, **characterized in that** the window decoration, when brought into a condition ready for use, comprises a first face extending in horizontal direction over at least substantially the full width of the window decoration and a second face extending in horizontal direction of the window decoration, wherein the first and the second face adjoin each other, wherein the second face extends down to a lower side of the window decoration and wherein the first face extends up to an upper side of the window decoration, wherein the first and the second face are formed by the vertical slats, while to each of said slats it applies that it transmits substantially no light for a first portion of the relevant slat, said first portion forming part of the first face, and partially transmits light for a second portion of the relevant slat, said second portion forming part of the second face so that the first face transmitting substantially no light, the second face subduing the incident light in such a manner that a person present at his workplace in an inner space provided with the window decoration can still look outside through the second face, wherein the first portions of the slats together form the first face and the second portions of the slats together form the second face, the first face being located above the second face, wherein the first face is higher than the second face."

V. Requests

(a) Proprietor (Respondent)

The Respondent requested that the appeals be dismissed and the patent maintained as granted (main request) or that the impugned decision be set aside and the patent maintained in amended form on the basis of one of the revised sets of claims according to six auxiliary requests AR1 to AR6 filed with letter of 29 October 2008, and further that the late submitted documents A14 to A17 not be admitted.

(b) Opponents OI and OII (Appellants I and II)

Appellants I and II requested that the impugned decision be set aside and the patent revoked. Furthermore they requested that documents A14 to A17 be admitted into the proceedings but not the late filed auxiliary requests AR1 to AR6.

VI. Appellants I and II argued essentially as follows:

(a) Documents A14 to A17

Documents A14 to A17 submitted with letter of 4 August 2008 were prima facie relevant and should therefore be allowed into the proceedings. In particular A15 was novelty destroying for the claimed invention.

(b) claim 1 as granted

The definition of the subject-matter of granted claim 1 was very broad. For instance, the claimed window

decoration did not contain any limitation relative to the means required to be mounted and thus to the orientation of the slats in use. Furthermore the wording of claim 1 did not enable a clear technical distinction between the face transmitting substantially no light and the other face subduing light. Another example of the broad scope of claim 1 was that neither the number, the size nor the location of the faces was indicated.

(i) Novelty

Because of that, the claimed subject-matter was disclosed in either A1, A4 or A15 when considering that:

- any part of the blind constituted by adjacent portions of slats between two distant rows of perforations could define the first, i.e. substantially no light transmitting, face while for instance any part of the blind located below said first face and comprising perforations could correspond to the claimed second, light subduing, face; furthermore the invention according to A1 was not limited to slats of a window blind all having the same and uniform pattern of perforations from top to bottom, and even then two or more faces having different coefficient of light transmission could arbitrarily be determined by selecting parts of the slats either having perforations or not;
- the slatted blind of A4, though mounted according to Figure 2 with its first face below the second face, could just as easily be mounted in the upside-down position as compared to the one illustrated;
- in the embodiment of Figure 3 of A15, the first face consisted of the upper slats 30 in closed position

while the lower slats 31 formed the second face in that they would transmit a certain amount of light when rotated towards their opened position.

(ii) Inventive step

Starting from A1 as closest prior art the objective problem would be to find a balance between shade or subdued light in the room and visibility through the slatted blind. The skilled person would simply have to apply his/her general knowledge, which knowledge would encompass non-uniform face structures of slats for window decorations as illustrated for instance in A4. The skilled person would thus arrive at a non-uniform face structure of the blind, in which apertures were made only in the region of the blind through which the person present in the room would actually look. The claimed subject-matter was thus obviously derivable for the skilled person.

(c) claim 1 of amended sets AR1 to AR6

Claim 1 of auxiliary requests AR1 to AR6 raised new issues under Articles 123(2) and 84 EPC, so that all the auxiliary requests AR1 to AR6 were prima facie not allowable. Since these requests were late filed, they should not be admitted into the proceedings.

The additional features of claim 1 of auxiliary request AR4 could not render the subject-matter inventive because once the skilled person has divided the surface of the blind of A1 into two faces (the second and lower one with regions comprising apertures, the first and higher other one being without apertures) it remained a

matter of trial and error to determine the relative extension in height of both faces. The selection of a taller first face as compared to the second face was a purely arbitrary limitation without any additional effect with regard to the solution of the problem as disclosed in the main request.

Since claim 1 of auxiliary request AR3 was broader than claim 1 of auxiliary request AR4 it followed that the subject-matter of claim 1 of both requests AR3 and AR4 did not involve an inventive step.

VII. The Respondent argued essentially as follows:

(a) Late submissions

The teaching of late submitted documents A14 to A17 was prima facie technically not relevant since they concerned either decoration structures made of horizontal slats or blinds made of vertical slats which were rotatable or telescopic to allow variation in the transmission of light through them. They should therefore be disregarded.

The revised set of auxiliary requests AR1 to AR6 were filed in response to the observations made in the Board's communication mentioning some formal deficiencies of the initially filed auxiliary requests. These auxiliary requests comprised also amendments which further limited the scope of claim 1. All the amendments were unambiguously disclosed in the originally filed documents in the Dutch language as well as in the corresponding publication WO-A-00/15939 in the English language, so that the requirements of Article 123 EPC were met.

The definition of the invention according to each revised claim 1 of these auxiliary requests was sufficiently clear to meet the requirements of Article 84 EPC.

It followed that auxiliary requests AR1 to AR6 should be admitted in the procedure.

(b) Novelty

The subject-matter of claim 1 of the main request (MR) was clearly new over the cited prior art documents A1, A4 and A15.

The window decoration shown A1 had slats with a regular pattern of uniformly distributed perforations and could therefore not disclose the claimed blind characterised by a non-uniform face, e.g. with at least two different faces having different light transmissibility. A purely arbitrarily selected small upper band of the slats of A1 could not be compared with the claimed first face substantially blocking light; such an approach would be against the established practice in that the content or teaching of document A1 would be distorted and construed in a manner never contemplated in the document itself.

The blind known from A4 had a face with an inverted arrangement in the vertical direction of light-transmitting and light-blocking faces as compared to the invention. The blind of A4 would not be suitable to be mounted upside-down because it was neither conceived nor constructed for such an implementation; this was emphasized by the positioning of the mounting hole in the slats at their very top portion as illustrated in the drawings.

The decoration disclosed in A15 did not consist in a single row of vertical slats having different faces, e.g. faces provided by the structure of the slats themselves. This known blind actually presented a second lower row of vertical slats rotatably connected to the upper row of slats. This in the vertical direction the composite structure of the blind allowed light transmission through the space provided between two rotated slats of the lower row but certainly not through the slat structure itself as claimed.

(c) Inventive step

In general terms the invention defined in claim 1 of MR could be distinguished from the closest prior art A1 by a non-uniform surface of the blind, namely a face comprising two horizontally extending regions located one above the other and differing by their light transmissibility. Therefore the lower face had means allowing visibility while the upper face was substantially opaque, blocking incident light.

None of the cited documents showed such an arrangement for a blind made of one set of vertical slats.

A1 itself recommended a uniform pattern of perforations allowing visibility and thus one single uniform face transmitting a constant amount of light over the total height of the blind.

A4 was concerned with the totally opposite objective, namely to provide privacy for the person sitting in the room close to the window provided with the blind. This blind was therefore structured in the opposite way as compared to the invention, namely with a lower face

blocking light/visibility and an upper face transmitting light.

In prior art documents A5, A11 and A12 variable configurations of faces were shown but the documents remained silent on any preferred arrangement having an upper face blocking light and a lower face allowing visibility.

The definition of the claimed invention given in auxiliary requests AR3 and AR4 were limited further in that it was additionally stated therein that the upper face was taller (i.e. higher in absolute terms) than the lower face. The additional requirement of the relative sizing of the faces was neither disclosed in the cited documents nor self-evident for the skilled person. No prior art would have prompted the skilled person to amend the window decoration of A1 in the way claimed in AR3 or AR4.

(d) Clarity

Claim 1 of auxiliary requests AR1, AR2 and AR5 was clear within the meaning of Article 84 EPC.

The feature added in claim 1 of auxiliary request AR1, namely that the first face extended over a substantial proportion of a height of the window decoration, gave a clear indication to the skilled person of the relevant proportions. If necessary one could see in Figure 4 of the patent that a substantial proportion was about a third of the total height.

Furthermore paragraph [0005] of the patent clearly described the meaning of the feature "compensating for the transmission of a certain amount of light through

the second face" added in Claim 1 of both auxiliary requests AR2 and AR5.

VIII. Oral proceedings took place on 4 December 2008 at the end of which the Board pronounced its decision.

Reasons for the Decision

1. The appeals are admissible.
2. Late filed submissions
 - 2.1 Documents A14 to A17 were cited by Appellant I with letter of 4 August 2008, and thus long after the filing of the appeal (21 June 2006).

It is therefore within the Board's discretion to admit these late filed pieces of evidence (Article 13 RPBA).

 - 2.1.1 The blinds in A14 and A15 are made of vertical slats and allow a different degree of light transmission between the lower part of the face of the blind and its upper part. These documents could thus be considered as potentially relevant for the issue to be discussed.
 - 2.1.2 On the other hand, both documents A16 and A17 concern blinds made of a plurality of horizontal slats so that they could neither form the closest prior art nor be taken into account by the skilled person when seeking a balance between allowing visibility through the blind made of vertical slats and subduing sufficiently light though the same. These documents thus add no further relevant information to that already available in the evidence on file.

- 2.1.3 The Board thus came to the conclusion to admit documents A14 and A15 according to Article 114(1) EPC but to disregard documents A16 and A17 (Article 114(2) EPC).
- 2.2 The Respondent filed six new auxiliary requests AR1 to AR6 with letter of 29 October 2008. New auxiliary requests AR1 and AR3 correspond to auxiliary requests 3 and 4 filed previously on 8 March 2007 together with the response to the appeals and are therefore admitted into the proceedings. Concerning the late filed auxiliary requests AR2 and AR4 to AR6 the Board exercised its discretion in line with the Rules of Procedure (Article 13 RPBA) and arrived at the following conclusions.
- 2.2.1 The amendments made to claim 1 of auxiliary requests AR2, AR4 and AR5 reveal real attempts to meet the objections raised against the patent and to further distinguish the claimed subject-matter from the most relevant prior art, especially A1 but also A15 cited for the first time with Appellants I's letter of 4 August 2008. The amendments consist in adding features which were originally disclosed and try to limit further the invention without changing the case or the issues to be decided. Having regard to these considerations the Board admitted late filed auxiliary requests AR2, AR4 and AR5 into the proceedings.
- 2.2.2 The following feature added in claim 1 of auxiliary request AR6:

"wherein the first portions of the slats together form the first face and the second portions of the slats together form the second face"

was not disclosed in the originally filed application and cannot be derived unambiguously from the figures so that its addition introduces fresh subject-matter.

As a result claim 1 of auxiliary request AR6 prima facie introduces fresh subject-matter (Article 123(2) EPC) and thus can not be admitted.

3. In summary only auxiliary requests AR1 to AR5 are admitted into the proceedings.

4. Main request

4.1 Novelty

The objection of lack of novelty compared to prior art document A5 raised during the opposition proceedings was not pursued by the Appellants. The Board sees no reason to deviate from the grounds given in this respect by the opposition division. The claimed decoration differs from A5 at least because it is made of vertical slats as compared to the rolled blind made of textile material.

Thus the relevant issue is whether the definition given in claim 1 as granted can distinguish the invention from the state of the art disclosed in either A1, A4 or A15.

4.1.1 Claimed subject-matter

The Appellants objected that the definition of the invention given in granted claim 1 was very broad because:

- it concerned a window decoration made of vertical slats without any further details about essential parts characterising the conditions of use, e.g. the required attaching/suspending means;
- there was no limitation on the total number of faces or on their shape or aspect;
- in the absence of explicit indications about the physical properties of a face substantially blocking light on one hand and of a face partially transmitting light on the other, the requirements regarding the light transmissibility of both faces could even overlap so that it was not possible to clearly distinguish both faces solely by the features of claim 1 concerning light transmission. This was to a great extent due to the fact that the different properties of light transmissibility of the faces were defined by the results to be achieved, namely the second face subduing light so as to allow visibility while the first substantially blocked light, and that the result "see outside" did not require a high degree of light transmission, so that a decoration having a single face, thus identical first and second faces (for instance having a similar pattern of perforations) could also meet the criteria set out in claim 1.

According to the Board's understanding of claim 1, the invention as claimed relates to a decoration made of adjacent vertical slats provided with at least two faces in the vertical direction. These faces differ

from each other by their degree of light transmission so that the blind or decoration can darken the room sufficiently while allowing visibility through portions of the slats. At least some of the slats making the decoration of claim 1 must have a face with a non-uniform aspect, namely with a first portion substantially blocking light (substantially opaque) and a second portion being more translucent so as to enable visibility and located vertically below the first portion in the position of use.

The position of use of the blind is implicitly defined since the mounting means implicitly carried by the blind are commonly provided at the upper edge portion of the slats when the decoration is attached close to the ceiling of the room.

4.1.2 Prior art A1

Each vertical slat of the window decoration disclosed in A1 comprises a plurality of rows of perforations which are uniformly provided along the vertical direction of the slat i.e. in direction of its height in the mounted position. The uniform distribution of the perforations 36,38 is shown in all the detailed embodiments as illustrated in the figures.

The explicit disclosure according to the description of A1 does not provide any indication whatsoever of a non-uniform distribution of the rows of perforations.

The description contains the following indications:

- according to column 1, lines 47 to 53, the density and size of the perforations should be chosen so as to permit sufficient light

transmission and a minimum of thermal loss through the blind;

- according to column 2, lines 34 to 40 and column 6, lines 4 to 9, the height of the perforations should be sufficient for a suitable visual perception and their shape could be selected with aesthetic requirements;

These indications merely teach that the shape of perforations can be chosen to achieve a compromise between several criteria, such as visibility, reduction of heat transfer and aesthetic requirements. This optimising process of the perforations would nevertheless not mean departing from a regular and uniform pattern of perforations distributed over the height of the slats. No hint is provided in A1 that visibility could be limited to a part of the blind while maintaining the remaining part substantially opaque.

Furthermore, although the definition of the invention according to claim 1 as granted can be considered as relatively broad and large in scope, claim 1 cannot be construed as encompassing blind constructions having a regular and uniform distribution of perforations like in A1. The blind of A1 shows a single and uniform face provided with a regular pattern of perforations from top to bottom; A1 does not distinguish larger regions of the slats or of the blind which should differ by their respective degree of light transmissibility.

Any reading and evaluation of the state of the art disclosed in A1 by which:

- the claimed first face substantially blocking light transmission would be identified by the

uppermost band of continuous material located above the top row of perforations 36,38 or by any subsequent band of material located between two (in the vertical direction) adjacent rows of perforations,

- while any area of the slats including one or more rows of perforations would correspond to the claimed second face or second portion of the slat, would inevitably go beyond the overall content of document A1 when objectively assessed.

The state of the art disclosed in A1 can therefore not be read onto the wording of granted claim 1 without unduly distorting either the definition of the invention as given by claim 1 or the objective technical teaching of A1.

Therefore the claimed subject-matter differs from A1 by the characterising features of granted claim 1 and is new over A1.

4.1.3 Prior art A4

The window decoration disclosed in A4 is made of vertical slats (claim 1: "Vertikaljalousielamelle") and has, when brought into a condition of use as shown in figures 1 and 2, an upper first face 12 and a second face 14 located below the first face 12, both extending in a horizontal direction over the full width of the blind. The first and second faces 12,14 have different degrees of light permeability. However the face arrangement is inverted as compared to the claimed structure since light is transmitted according to A4 by the first and upper face while the second and lower face is relatively opaque (see abstract). The general

distinction made in A4 between the upper and lower parts of the blind ("oberes Teil" and "unteres Teil") is unambiguously made with reference to the mounted position of the blind, as confirmed by the provision of suitable mounting means like the mounting hole 26 shown close to the top edge of the slats in figures 1 and 2. This specific design and mounting means of the slats allows the objectives of A4 to be achieved, namely to avoid dazzling a person present in the room at his work-place by direct incident light while elsewhere allowing maximum light into the room.

The blind disclosed in A4 is not suitable to be used in an upside-down configuration, i.e. with the light transmitting face 12 below the relative opaque face 14. The blind of claim 1 is thus clearly distinguishable from the state of the art disclosed in A4.

4.1.4 Prior art A15.

The window blind according to the embodiment illustrated by figure 3 of A15 comprises first and second rows of vertical slats, whereby each slat 31 of the second row is attached at the bottom of a slat 30 of the first row. By relative rotation of the first and second rows of slats different light transmission may be obtained between the upper and lower parts of the so-constructed blind.

However this is different to the claimed subject-matter, which requires at least two different portions of a single slat and that light be transmitted through the second face of the slat, which means through the structure or material of the slat.

In A15 light transmission is not allowed through the slats themselves but exclusively through the gap or space formed between two horizontally adjacent slats when rotated towards their opened position.

4.1.5 Conclusion

The window decoration of claim 1 as granted (main request) is new over the cited state of the art and thus meets the requirements of Articles 52(1), 54(1) and 54(2) EPC.

4.2 Inventive step

4.2.1 As mentioned previously the closest prior art A1 discloses a window blind made of vertical slats 18 having a pattern of perforations 36,38, allowing suitable light transmission and thus visibility through the blind, whereby the pattern of perforations appears to be regular and uniform from top to bottom of each slat.

The skilled person is further taught by A1 to adjust the degree of light transmission by choosing properly the size/shape and density of the perforations so as to permit virtually unrestricted visibility from inside while reducing heat loads or losses (column 1, lines 12 to 20 and lines 47 to 53).

4.2.2 The difference of the claimed invention over A1 thus lies in the fact that the aspect of the face of the blind is not uniform but comprises two distinguished faces as defined in the characterising portion. The objective problem thus lies in the need to block more of the daylight transmitted through the blind

known from A1 without jeopardizing the results gained with respect to visibility through the window blind.

4.2.3 The person skilled in the art, when performing the invention described in A1 would as a first step attempt to optimise the parameters of the uniform pattern of perforations 36,38, namely their density, their shape and their size, in order to find the very best compromise between visibility and reduction of incoming light.

If, however, it was an object to block incident light to a still greater extent, the skilled person would have to envisage a further step in which the blind structure resulting from the optimisation process would undergo further structural amendments.

At this stage, it would be immediately apparent for the skilled person that the means provided for allowing visibility, e.g. the perforations 36,38, fulfil their function only in a limited area of the blind. This area corresponds to the field of vision of a person present in the room and looking to the outside from that position. This area depends of course on several parameters such as the size and location of the window and the chosen position of said person in the room. It may be admitted that this area is in normal practice situated in the middle or lower region of a window rather than in its top part, especially if the person in the room wishes to be able to look outside when sitting at a desk.

From these considerations the skilled person would provide the rows of perforations exclusively in the limited area where they are definitely needed, namely in the very region through which one would want to look

outside through the closed blind. By leaving the remaining parts of the slats opaque, and in particular their upper parts through which no one will normally look outside, and in particular free from any perforations, an increased amount of incident light could then be blocked by the blind.

The skilled person would thus obviously be led to a blind having all the features of claim 1 as granted, namely to a structure including slats each having:

- an opaque upper first portion, and
- a second portion, lower than the first portion, comprising several vertically spaced rows of perforations,
- so that the first portions define a first upper face extending in a horizontal direction of the blind and blocking substantially all the incident light, the second portions define a second lower face partially transmitting incident light.

It may be noted that the person skilled in the art would depart from the uniform distribution of perforations derivable implicitly from A1 because this arrangement is not essential for the invention described in A1 and the general concept of blinds made of vertical slats, each having two faces with different degrees of light transmissibility, is already known in the prior art, as illustrated for instance in A4 (regions 12 and 14 in figure 1).

4.2.4 The subject-matter of claim 1 as granted therefore does not involve an inventive step and does not meet the requirement of Article 56 EPC.

5. Auxiliary requests AR1, AR2 and AR5

5.1 Amendments

5.1.1 Claim 1 of auxiliary request AR1 is formed by the features of claim 1 as granted and by additional feature M1:

M1: "and wherein the first face extends over a substantial proportion of a height of the window decoration".

Feature M1 can be derived from the drawings, see figures 3 and 4 of the patent (corresponding to originally filed figures 4 and 5 of WO-A-00/15939 (WO)), in which the first face extends over a height "I" (column 2, lines 47-48) representing a significant portion of the overall height of the blind.

5.1.2 Claim 1 of auxiliary request AR2 is based on claim 1 of AR1 (ie claim 1 as granted and feature M1) to which the following feature M2 has been added:

M2: "compensating for the transmission of a certain amount of light through the second face".

Feature M2 was originally disclosed at page 2, lines 14 to 20 of (WO), see also paragraph [0005] of the patent.

5.1.3 Claim 1 of auxiliary request AR5 comprises the features of claim 1 as granted and of added features M2 (see AR2), M3 and M4:

M3: "wherein the first face is higher than the second face"

M4: "adjoin each other, wherein the second face extends down to a lower side of the window decoration and wherein the first face

extends up to an upper side of the window decoration".

Feature M3 was the subject-matter of granted dependent claim 9 (originally filed as claim 19) while feature M4 is contained in paragraph [0016] of the patent (originally described by claims 5, 6 and 7 of the application (WO)).

5.1.4 The requirements of Article 123(2) EPC are thus met by claim 1 of auxiliary requests AR1, AR2 and AR5.

5.2 Clarity

The definition given by each of the features M1 and M2, which have been taken from the description, is unclear for the reasons indicated below and renders the claims including any of these features unclear within the meaning of Article 84 EPC.

It is not possible to determine or assess the meaning and scope of the expression "substantial proportion of a height of the window decoration" (*underlining added*) in feature M1 (contained in claim 1 of AR1, AR2 and AR5) because the notion of "a height" is indefinite and it cannot be clearly defined what proportion of such a height should be "substantial". This feature must be clear in itself and cannot be defined by proportions illustrated in drawings.

The functional requirement imposed by feature M2 (contained in AR2 and AR5) that a certain amount of light passing through the second face should be compensated by the first face substantially transmitting no light is vague and appears to define a

result to be achieved under undefined conditions rather than a clear limitation and detailed definition of the claimed device. The description in paragraph [0005] of the patent, which relates to a compensation enabling a proper reading of a computer screen, cannot clarify the concept of compensation since the reading depends from a lot of parameters like screen location relative to the light source, screen orientation, vertical position of the screen, physical ability of the user.

5.3 Auxiliary requests AR1, AR2 and AR5 are thus not allowable since the amendments made to their respective claim 1 introduces a lack of clarity within the meaning of Article 84 EPC. They therefore do not require further examination.

6. Auxiliary requests AR3 and AR4

6.1 Amendments (Article 123 and 84 EPC)

6.1.1 Claim 1 of auxiliary request AR3 is formed by the features of claim 1 as granted and additional feature:

M3: "wherein the first face is higher than the second face",

which is supported by originally filed claim 19 (corresponding to granted dependent claim 9).

Claim 1 of auxiliary request AR4 comprises the features of claim 1 as granted, feature M3 (see AR3) and additionally feature M4:

M4: "adjoin each other, wherein the second face extends down to a lower side of the window decoration and wherein the first face

extends up to an upper side of the window decoration",

which is disclosed in paragraph [0016] of the patent and in claims 5, 6 and 7 of the originally filed application (WO).

The requirements of Article 123(2) EPC are thus met by claim 1 of the auxiliary requests AR3 and AR4.

6.2 Other formal issues (Clarity)

The Appellants objected that the wording of feature M3 present in both AR3 and AR4 was not clear in the sense that the qualifying term "higher" was equivalent to the expression "located above" already present in claim 1 and could not mean "taller" as argued by the Respondent. This interpretation was confirmed by the text of the International application PCT/NL99/00577 originally filed in Dutch language, in which the term "hoger" (claim 15), translated into "higher" in the patent, has the first meaning of being located above.

It may be agreed with the Appellants that one and maybe even the most usual meaning of the expression "higher" is "located above". However it is not excluded that in some circumstances "higher" can also mean "taller". In the current case, claim 1 as granted already comprised an explicit indication of "the first face being located above the second face" (last feature of claim 1). The person skilled in the art when reading granted dependent claim 9: "characterized in that the first face is higher than the second face", would have understood that this further limiting feature meant the first face being taller than the second face, i.e.

having a greater extension or height in the vertical direction of the blind. This interpretation is further in line with the term "height" used in the application/patent. For instance paragraph [0013] refers to height I for the first face and to height II for the second face which are shown in the drawings as referring to the vertical extension of the different faces and not to any notion of relative altitude (in the meaning of "above" when compared to a reference line) whatsoever.

Consequently the Board considers that term "higher" in feature M3 is wholly clear and means "taller" so that the revised claim 1 of auxiliary requests AR3 and AR4 fulfil the requirements of Article 84 EPC.

6.3 Novelty and Inventive step

As mentioned earlier claim 1 of both requests AR3 and AR4 are based on granted claim 1, which meets the requirement of novelty so that novelty is also met by the subject-matter of those claims.

6.3.1 Auxiliary request AR4

The following features M3 and M4:

M3: "wherein the first face is higher than the second face",

M4: "adjoin each other, wherein the second face extends down to a lower side of the window decoration and wherein the first face extends up to an upper side of the window decoration",

which have been added to claim 1 as granted, cannot in themselves add anything inventive to the claimed subject-matter.

The board came to the conclusion for the main request that it would have been obvious for the person skilled in the art to change the structure of the blinds disclosed in A1 so as to arrive at the claimed window decoration, namely with a face divided up into a first upper face extending in a horizontal direction of the blind and blocking substantially all the incident light and a second lower face partially transmitting incident light.

The requirement according to added feature M4 is thus already fulfilled by such an amended blind of A1.

Feature M3 defining that the first face is taller than the second face does not provide any additional or surprising effect but merely concerns an arbitrary limitation of the claimed subject-matter.

When optimising the face structure of the blind known from A1 according to the steps exposed previously, the person skilled in the art might well arrive at a concrete solution whereby the first face is taller than the second face, for instance for decorations of very tall windows for which a major part of the slat may be left opaque without perforations.

Thus the subject-matter of claim 1 of AR4 does not involve an inventive step.

6.3.2 Auxiliary request AR3

Claim 1 of AR3 is based on claim 1 as granted and feature M3 and is thus broader in scope than claim 1 of AR4.

As a matter of consequence, its subject-matter lacks inventive step too.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

A. Counillon

U. Krause