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**Datasheet for the decision
of 6 March 2012**

Case Number: T 1726/10 - 3.2.08

Application Number: 01914002.9

Publication Number: 1259694

IPC: E06B 3/68

Language of the proceedings: EN

Title of invention:

Methods of making windows and windows made thereby

Patent Proprietor:

Burgess, Alan David

Opponent:

The Real Georgian Bar Company Limited

Headword:

-

Relevant legal provisions:

EPC Art. 84, 100(b), 123(3)

Keyword:

"Clarity (yes)"
"Sufficiency of disclosure (yes)"
"Extension of protection (no)"

Decisions cited:

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Catchword:

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Case Number: T 1726/10 - 3.2.08

D E C I S I O N
of the Technical Board of Appeal 3.2.08
of 6 March 2012

Appellant:
(Opponent)
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Decision under appeal:
Interlocutory decision of the Opposition
Division of the European Patent Office posted
16 June 2010 concerning maintenance of the
European patent No. 1259694 in amended form.

Composition of the Board:

Chairman: T. Kriner
Members: M. Alvazzi Delfrate
D. Keeling

Summary of Facts and Submissions

- I. By decision posted on 16 June 2010 the opposition division decided that European Patent No. 1 259 694, amended according to the main request then on file, and the invention to which it related met the requirements of the EPC.
- II. The appellant (opponent) lodged an appeal against this decision on 16 August 2010, paying the appeal fee on the same day. The statement setting out the grounds for appeal was filed on 15 October 2010.
- III. Oral proceedings before the board of appeal were held on 6 March 2012.
- IV. The appellant requested that the appealed decision be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed.

- V. Independent claims 1 and 18 (as filed during the oral proceedings before the opposition division) read as follows:

"1. A method of furnishing a glazed panel with at least one Georgian-effect glazing bar (45), which method comprises the steps of:
providing a frame (37) for a glazing unit (30);
arranging a generally U-shaped clip (33) to extend around an edge of the glazing unit, the clip having two arms (35, 36) which lie respectively against the side faces (31, 32) of the glazing unit;

cutting a suitable length of moulded hollow-section glazing bar (45) for extending across a side face of the glazing unit, from one frame member to an opposed frame member; and engaging an arm of the clip in an open end of the glazing bar, to hold the end region (49) of the glazing bar against the side face of the glazing unit."

"18. A glazed panel comprising a frame (37) and a glazing unit (30) to fit within the frame the glazing unit carrying Georgian-effect glazing bars (45) attached thereto by generally U-shaped clips (33) characterised in that the U-shaped clips (33) extend around edges of the glazing unit (30), the clips having two arms (35, 36) which lie respectively against the side faces of the glazing unit; and in that a suitable cut length of glazing bar (45) extends across a side face of the glazing unit (30), and an arm of a clip is engaged therein, to hold the end region of the glazing bar against the side face of the glazing unit."

VI. The arguments of the appellant can be summarised as follows:

Article 123(3) EPC

During the opposition proceedings the feature according to which an arm of the clip was engaged with an open end of the glazing bar had been replaced, in both claims 1 and 18, by that according to which said arm is engaged in said open end.

However, it was possible for an arm of the clip to be engaged in an open end of the bar without being engaged

with an open end of it. An example of this possibility was shown in the drawing on page 4 of the statement of grounds for appeal. The arm 6 of the clip depicted in said drawing was clearly engaged in the open end of the bar 2. Since it was not defined how far the "open end" of the bar extended, region 8 could be chosen as said open end. As the clip and the bar were engaged outside said region 8, it could be considered that the arm was not engaged with said open end. Hence, some of the embodiments covered by claims 1 and 18 as granted were not covered by the present claims.

Accordingly, the patent had been amended in a way which extended the protection conferred by it.

Article 100(b) EPC

A number of different possibilities existed to engage the arm of the clip in an open end of the glazing bar. Since claim 1 did not define how this engagement was to be realised, it covered all these possibilities. However, the patent disclosed only one way to engage the arm of the clip in said open end. Hence, its disclosure was not sufficient to carry out the invention over the whole scope of the claim.

Article 84 EPC

Since claim 1 did not state in which way the clip was to be engaged in the open end of the bar, it also lacked clarity.

VII. The arguments of the respondent can be summarised as follows:

Article 123(3) EPC

The feature according to which the arm of the clip was engaged in an open end of the glazing bar was a particular case of the more general feature according to which said arm was engaged with said open end. The arrangement shown on page 4 of the statement of grounds failed to show the contrary, since in said arrangement the arm was engaged not only in but also with the open end of the bar. Accordingly, the patent had not been amended contrary to Article 123(3) EPC.

Article 100(b) EPC

The person skilled in the art had no difficulty in finding how to engage the arm of the clip in the open end of the bar, especially as one possibility was explicitly shown in the drawings of the patent in suit.

Article 84 EPC

It was perfectly clear how the arm of the clip was to be engaged in the open end of the bar. Hence, no lack of lack of clarity arose from the amendments.

Reasons for the Decision

1. The appeal is admissible.

2. Article 123(3) EPC

During the opposition proceedings the wording "... engaging an arm of the clip with an open end of the glazing bar ..." in claim 1 has been replaced by the wording "... engaging an arm of the clip in an open end of the glazing bar ..." Equally, in claim 18 the wording "... a suitable length of glazing bar (45) extends across a side face of the glazing unit (30), and is engaged with an arm of the clip, ..." has been replaced by "... a suitable cut length of glazing bar (45) extends across a side face of the glazing unit (30), and an arm of the clip is engaged therein, ..." (emphasis added).

The board cannot see how an arm of the clip can be engaged in an open end of the bar without being engaged with said open end. It might be possible that said arm is engaged with said open end without being engaged in it, for example by engaging the outer surface of the open end. However, the contrary is not possible. Therefore, the feature according to which the arm is engaged in an open end has to be considered as a restriction of the feature according to which it is engaged with said open end.

The drawing on page 4 of the statement of grounds for appeal fails to convince to the contrary. It is true that it depicts an arrangement wherein it can be considered that an arm (6) of the clip is engaged in the open end of the bar (2). However, in this case it must also be considered that the open end extends at least to the point of engagement and cannot be considered to be restricted to the region 8. Accordingly, said drawing shows an arm of the clip

engaged not only in the open end of the bar but also with said open end.

In view of the foregoing, the patent has not been amended in a way which extends the protection conferred by it.

3. Article 100(b) EPC

Sufficiency of disclosure within the meaning of Article 100 (b) EPC must be assessed on the basis of the information provided by the patent as a whole - including the description and claims - supplemented by the common general knowledge of the person skilled in the art.

In the present case it is undisputed that the description and the drawings of the patent show at least one way of engaging the arm of the clip in an open end of the glazing bar. The board concurs with the appellant that other ways of realising said engagement are possible and covered by claims 1 and 18. However, neither did the appellant put forward nor does the board see any reason why in the light of his common general knowledge the person skilled in the art would not be able to realise further ways of engagement. Hence, the patent discloses the invention according to claim 1 in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

4. Article 84 EPC

The claims state that the glazing bar has a hollow section. Hence, there is no doubt that the feature

according to which the arm of the clip is engaged "in" said bar means that said engagement is realised within this hollow section. Therefore, the amendments carried out during the opposition proceedings do not result in a lack of clarity.

As to the fact that claim 1 does not state in which way the clip was to be engaged in the open end of the bar, it cannot form a ground for revoking the patent in suit, since the term "engaging" was already present in claim 1 of the patent as granted and lack of clarity is not a ground for opposition.

The same findings apply, mutatis mutandis, to claim 18.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

V. Commare

T. Kriner