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**Datasheet for the decision  
of 12 November 2013**

**Case Number:** T 1747/10 - 3.2.03

**Application Number:** 04803065.4

**Publication Number:** 1706557

**IPC:** E04D 13/03

**Language of the proceedings:** EN

**Title of invention:**

Window and insulating frame kit

**Patent Proprietor:**

VKR Holding A/S

**Opponent:**

FAKRO PP Spolka z.o.o.

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56

RPBA Art. 13(1)

**Keyword:**

"Inventive step - (yes)"

"Late-filed documents - admitted (no)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 1747/10 - 3.2.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.03  
of 12 November 2013

**Appellant:** FAKRO PP Spolka z.o.o.  
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**Respondent:** VKR Holding A/S  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 14 June 2010  
rejecting the opposition filed against European  
patent No. 1706557 pursuant to Article 101(2)  
EPC.

**Composition of the Board:**

**Chairman:** U. Krause  
**Members:** V. Bouyssy  
K. Garnett

## **Summary of Facts and Submissions**

- I. European patent No. 1 706 557 (in the following: "the patent") concerns a window for installation in an inclined roof surface, the window comprising a window frame, cover members, a flashing frame and an insulating frame.
- II. The patent as a whole was opposed on the grounds of Article 100(a) EPC for lack of novelty and inventive step over a brochure (D1) allegedly made available to the public before the priority date of the patent (30 December 2003). The opposition division decided to reject the opposition (Article 101(2) EPC). The decision was posted on 14 June 2010.
- III. The opponent (here appellant) lodged an appeal against this interlocutory decision on 19 August 2010, paying the fee for appeal on 20 August 2010. The statement setting out the grounds of appeal was received on 24 October 2010.
- IV. With the summons to oral proceedings, the Board sent a communication pursuant to Article 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) indicating to the parties its preliminary, non-binding opinion of the case.
- V. Oral proceedings before the Board were held on 12 November 2013.

VI. Requests

The appellant requested that the decision be set aside and the patent be revoked.

The patent proprietor (here respondent) requested that the appeal be dismissed and the patent be maintained as granted.

VII. Claim 1 as granted reads as follows:

"A window for installation in an inclined roof surface, comprising  
a window frame having a plurality of frame pieces (1, 2, 3, 4) each frame piece having an upper side (1a), a lower side (1b), an inner side (1d) and an outer side (1c), a height direction being defined by a direction extending from the lower side to the upper side,  
a set of cover members (11, 12, 13, 14), each cover member having a first leg (11a) for covering the upper side (1a) of a respective frame piece and a second leg (11b) extending at an angle with respect to the first leg (11a) and covering a part of the outer side (1c) of the frame piece,  
a flashing frame including flashing members (21, 22, 23, 24), each flashing member having a first leg (25a) lying substantially in the plane of the roof and a second leg (21b) extending at an angle with respect to the first leg (21a), said second leg (21b) being at least partly overlapped by the second leg (11 b) of the corresponding cover member, and  
at least one insulating frame including a plurality of insulating frame pieces (31, 32, 33, 34), each insulating frame piece having a first side (31c) facing

the window frame piece and a second side (31b) facing the flashing member and/or cover member, characterized in that, in a first insulating frame (31,32, 33, 34), each insulating frame piece has a bottom portion (31c) having a predetermined maximum width and positioned substantially in the plane of the first leg (21a) of the flashing member, the width between the first side (31a) and the second side (31b) decreasing from said maximum width in the height direction of the insulating frame piece such that the second side (31b) forms a predetermined angle ( $\alpha$ ), other than perpendicular with the bottom portion (31c); and that the second leg (21 b) of the flashing member and the second leg (11 b) of the cover member each extends substantially in parallel with the second side (31b) of the insulating frame piece."

VIII. The appellant relied on the following documents which had already been filed in the opposition proceedings:

D1: Brochure "Maßrenovierungsfenster" of Fakro Dachfenster GmbH, Hannover, 2 pages, dated 31.10.03

D12: EP0679773B1

In its letter dated 13 August 2013, the appellant referred to the following documents:

D13: DE3837377A1

D16: DE2142733A1

IX. The arguments of the parties in the written and oral proceedings can be summarised as follows:

(a) Public prior availability of D1

The appellant contended essentially that brochure D1 was made available to the public at the "Baufach" fair held in Leipzig, Germany, from 6 to 9 November 2003. In its letter dated 13 August 2013, the appellant referred to the pieces of evidence which had been filed in the opposition proceedings in support of these allegations, namely an invoice, five sworn statements and an article from a journal. In this letter, the appellant also requested that the authors of the five sworn statements be heard as witnesses.

The respondent disputed that D1 was publicly available before the priority date of the patent (30 December 2003). More specifically, the respondent expressed doubts as to whether the evidence, which was late filed by the opponent in the opposition proceedings, was sufficient to establish that D1 was publicly available at the "Baufach" fair, from 6 to 9 November 2003.

(b) Admissibility of documents D13 and D16

In its letter dated 13 August 2013 and at the oral proceedings, the appellant referred to D13 and D16. The latter document was filed with this letter. The appellant contended that D13 was already present in the proceedings as it was cited in paragraph [0003] of the patent specification.

The respondent contended that D13 and D16 were late-filed documents and that neither D13 nor D16 added anything to the prior art already on file, so that these late-filed documents should not be admitted in the proceedings.

(c) Inventive step vs. D1

Appellant's case:

The subject-matter of claim 1 differed from the replacement window of D1 only in that, on the right-hand and left-hand sides of the window, the second leg of the cover member extended substantially parallel with the second leg of the flashing member as well as the inclined second side of the insulating frame piece.

This distinguishing feature did not provide the technical effect alleged in the patent specification (see paragraph [0008], second sentence), namely that the position of the window with respect to the plane of the roof could be adjusted as the second legs of the cover and flashing members could be displaced with respect to each other. For instance, if the window was installed higher relative to the roof plane than shown in Figure 2 of the patent specification, the second legs of the cover and flashing members would inevitably come apart so that there would no longer be a weather-tight protection of the window frame. Conversely, if the window was installed lower relative to the roof plane than shown in Figure 2 of the patent specification, the cover and flashing members would need to be modified as the second leg of the flashing member would prevent a downward movement of the cover

member. To sum up, if the position of the window with respect to the roof plane were to be adjusted, the cover and flashing members would need to be modified or at least displaced in the plane of the roof to maintain a weather-tight protection. Finally, the flashing member could not be displaced relative to the cover member if adjoining flashing members were connected with each other (claim 7 as granted), or if the second legs of the flashing and cover members were connected with each other (claim 9 as granted).

Thus, starting from D1, the objective technical problem could only be seen as how to provide an alternative solution to ensure a weather-tight protection of the window frame, in particular to ensure a weather-tight contact between the cover and flashing members.

For the installer or the manufacturer of roof windows, the distinguishing feature would be the most obvious solution to this technical problem. In fact, the distinguishing feature was a matter of routine design, as shown for instance in Figure 2 of D12.

In practice, the replacement window of D1 could be installed lower relative to the roof plane than shown on page 1 of D1 and the installer would then inevitably cut away any excess upwardly projecting part of the flashing member and also bend the second leg of the cover member with an appropriate tool, so that this second leg would become parallel with the second leg of the flashing member, in order to ensure a weather-tight contact between these two second legs. By so doing, he/she would arrive at the claimed solution. The installer would proceed accordingly if, starting from



page 1 of D1, the height of the triangular insulating frame piece was so increased that its apex was close to the upper side of the respective window frame piece.

Respondent's case:

The replacement window of D1 failed to disclose the following features required in claim 1:

- that, at the top of the window, the cover member has a second leg which covers the outer side of the respective window frame piece, overlaps the second leg of the respective flashing member and extends substantially parallel with the second leg of the flashing member and with the inclined second side of the respective insulating frame piece; and
- that, at the bottom and at the right-hand and left-hand sides of the window, the second leg of the cover member extends substantially parallel with the second leg of the respective flashing member and with the inclined second side of the respective insulating frame piece.

These features distinguishing claim 1 from D1 allow to the position of the cover member to be easily adjusted relative to the flashing member when modifying the position of the window with respect to the roof plane. In fact, the installer would have no difficulty to displace the second legs of the cover and flashing members with respect to each other, in parallel with the roof plane, to guarantee a weather-tight contact between these second legs.

Thus, starting from D1, the objective technical problem could be seen as how to provide a window which is more flexible regarding the installation conditions and independent with respect to the roofing chosen, while maintaining the satisfactory insulating properties and without jeopardizing the appearance of the window.

The claimed solution was not obvious for the person skilled in the art in view of D1 or D12. In particular, the custom-made window of D1 was neither intended nor suitable to be modified as alleged by the appellant. In fact, the entire thrust of the disclosure of D1 was that the replacement window was custom-made depending on the actual installation conditions and there was no motivation for a window manufacturer or installer to modify the bottom, the top and the right-hand and left-hand sides of this window in the claimed manner. D12 also did not disclose the claimed solution.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Admissibility of D13 and D16
  - 2.1 The appellant referred to documents D13 and D16 for the first time in its letter dated 13 August 2013, thus long after the filing of the appeal (19 August 2010) and even after oral proceedings had been arranged. The appellant relied on D13 and D16 in support of the allegation that, as shown in Figure 2 of D12, it was standard practice for the skilled person to arrange the second leg of the cover member parallel with the second

- leg of the flashing member in order to ensure a weather-tight contact between the two legs.
- 2.2 In the patent specification (paragraph [0003]), D13 is cited as prior art, along with two other patent applications, but it is not acknowledged as an essential piece of prior art, let alone as the closest prior art of the claimed invention. Thus, D13 was not automatically part of the opposition and appeal proceedings and was late-filed evidence, whose admittance was subject to the discretion of the Board (see e.g. Case Law of the Boards of Appeal of the EPO, Seventh Edition, September 2013, IV.C.1.5).
- 2.3 D13 does not disclose a roof window but an insulating wedge for flat roofs. Further, even though Figures 2 and 3 of D13 and Figures 3 to 5 of D16 show that the cover and flashing members have two overlapping legs which extend substantially parallel, these legs extend substantially perpendicular with the roof plane, as in Figure 2 of D12. Thus, D13 and D16 are not *prima facie* more relevant than the documents on file, in particular than D12.
- 2.4 In view of their lack of relevance, the current state of the proceedings and the need for procedural economy, the Board decided not to admit D13 and D16 into the proceedings, pursuant to Article 114(2) EPC and Article 13(1) RPBA.
3. In the appealed decision, the opposition division held that the subject-matter of claim 1 as granted was novel and inventive over D1, so that the question of the public prior availability of D1 was not dealt with. The

opposition division then decided to reject the opposition.

The appellant contended essentially that the opposition division's decision was wrong because the subject-matter of claim 1 as granted lacked an inventive step when starting from D1.

In the Board's opinion, it is appropriate to review this decision of the opposition division first before, if necessary, turning to the question of whether D1 is prior art under Article 54(2) EPC, an issue in dispute between the parties.

4. Interpretation of claim 1

4.1 The definition of the second legs of the cover and flashing members in claim 1 was disputed by the parties. Before turning to the question of inventive step, it is essential to decide how these features are to be interpreted.

4.2 In claim 1, the terms "window frame", "flashing frame", "insulating frame" and "cover members" are clear and, in the absence of any other specific indication in the claim, they can only be given their normal meaning in the art of roof windows. Hence, the window frame, the flashing frame and the insulating frame are each formed of frame pieces/members. The cover members together form a cover frame covering both window frame and flashing frame. The window frame surrounds the opening of the window while the flashing, insulating and cover frames surround the window frame to respectively provide a weather-tight transition between the window

frame and the roof surface, a satisfactory insulation of the window frame and a weather protection for the window frame.

4.3 In this context, claim 1 requires that "each cover member" has "a second leg ... covering a part of the outer side of the frame piece", that "each flashing member" (i.e. each of the members forming the flashing frame) has "a second leg ... being at least partly overlapped by the second leg of the corresponding cover member", that "each insulating frame piece" (i.e. each of the pieces forming the insulating frame) has "a first side facing the window frame piece and a second side facing the flashing member and/or cover member" and forming "a predetermined angle, other than perpendicular with the bottom portion" thereof, and that "the second leg of the flashing member and the second leg of the cover member each extends substantially in parallel with the second side of the insulating frame piece".

4.4 Hence, it follows from claim 1 read alone that this combination of the second leg features is required for all cover members and all pieces/members of the flashing and insulating frames, i.e. that this combination of features is required all around the opening of the window. In the event that the roof window is rectangular, as is common in the art, the combination of the second leg features is thus required at the bottom, the top, the right-hand side and the left-hand side of the window.

4.5 The above understanding of claim 1 is confirmed by the teaching in the patent specification: see paragraphs

[0019], [0021], [0022], [0024] and [0025] and the illustrated embodiments, especially Figure 1 showing a rectangular window frame formed of four frame pieces 1-4, a cover frame formed of four cover members 11-14, a flashing frame formed of four flashing members 21-24 and an insulating frame formed of four insulating frame pieces, whereby "in Figure 1, only the right-hand and left-hand side insulating frame pieces 31 and 33, and the bottom insulating frame piece 32 are visible" (see col. 4, lines 38-40). In particular, it follows expressly from col. 3, lines 35-41 that the description of "the right-hand side frame piece of the window frame and the elements associated with this frame piece" as shown in Figures 2 and 3 applies "to the other frame pieces and the elements associated to these pieces".

4.6 The appellant contended that claim 1 covers an embodiment wherein the window is rectangular and the above combination of the second leg features is required only at the right-hand and left-hand sides of the window, and not at the bottom and the top of the window. In particular, the appellant argued that the expressions "a window frame having a plurality of frame pieces", "a flashing frame including flashing members" and "at least one insulating frame including a plurality of insulating frame pieces" in claim 1 are broad and may be read as referring to only the two side frame pieces/members of the window frame, the flashing frame and the insulating frame, respectively. This interpretation, however, is derived from the above expressions read in isolation, disregarding their context, and is not technically sound. Moreover, this interpretation would contradict the teaching in the patent specification that the combination of the second

leg features allows the position of the window (as a whole) to be adjusted with respect to the plane of the roof (see paragraph [0008], second sentence and paragraph [0025], last sentence).

5. Inventive step vs. D1

5.1 In the disputed patent, the claimed invention aims to provide a roof window as defined in the preamble of claim 1 and as already known from D12, "in which the installation and utilisation conditions are improved, and which at the same time makes it possible to provide satisfactory insulating properties" (see paragraphs [0004] to [0006]).

5.2 The appellant contends that the subject-matter of claim 1 lacks an inventive step over D1.

5.3 It is undisputed that D1, if public prior art, can be regarded as an appropriate starting point for the assessment of inventive step.

5.4 D1 discloses a custom-made replacement window ("Maßrenovierungsfenster") to replace an old window in an inclined roof surface. The old window is shown in the top drawings on pages 1 and 2 of D1 (see the designation "Alt" on page 2). D1 teaches that the window frame of the replacement window is custom-made to the measured width B and length H of the interior lining of the old window (see page 2, left column, paragraph 2 and paragraph 3, point 1, first sentence; see points 1 and 2 of "Austausch-Kurzbeschreibung", in particular "Die Größen B und H ausmessen" and "Auftragsformular ausfüllen"). The window also comprises

a custom-made flashing frame (see "Thermoisolationseindeckrahmen" in the bottom drawing on page 1 and page 2, right column, paragraph 1, "Eindeckrahmen ... nach Mass hergestellt"). The custom-made replacement window is shown in the bottom drawings on pages 1 and 2 of D1 (see the designation "Maßrenovierungsfenster" on page 1, bottom drawing and the designation "Neu" on page 2, bottom drawing), whereby the bottom drawing on page 1 of D1 is a transversal cross-section of the replacement window (see "B" designating the width of the interior lining), while the bottom drawing on page 2 of D1 is a longitudinal cross-section of this window (see "H" designating the length of the interior lining).

- 5.5 It is undisputed by the parties that it follows from the drawings of D1 that the replacement window of D1 comprises, using the words of claim 1: a window frame having frame pieces; a set of cover members, each cover member having a first leg for covering the upper side of a respective frame piece and a second leg extending at an angle with respect to the first leg; a custom-made flashing frame (see "Thermoisolationseindeckrahmen" on page 1 and "Eindeckrahmen" on page 2) including flashing members, each flashing member having a first leg lying substantially in the plane of the roof and a second leg extending at an angle with respect to the first leg; and an insulating frame including frame pieces and being integral with the flashing frame, each insulating frame piece having a first side facing the window frame piece and a second side facing the flashing member and/or cover member, each insulating frame having a triangular cross-section, with a bottom portion having a predetermined maximum width and being



positioned substantially in the plane of the first leg of the flashing member, the width between the first side and the second side decreasing from this maximum width in the height direction of the insulating frame piece such that the second side forms a predetermined angle, other than perpendicular with the bottom portion.

5.6 It is also undisputed by the parties that, at the right-hand and left-hand sides of the replacement window, D1 does not disclose the feature of claim 1 that the second leg of the flashing member and the second leg of the cover member each extends substantially in parallel with the inclined second side of the insulating frame piece.

5.7 The parties have however disputed whether or not claim 1 further differs from the window of D1 in that,

- at the bottom of the window, the second leg of the cover member extends substantially parallel with the second leg of the respective flashing member and with the inclined second side of the respective insulating frame piece; and
- at the top of the window, the cover member has a second leg which covers the outer side of the respective window frame piece, overlaps the second leg of the respective flashing member and extends substantially parallel with the second leg of the flashing member and with the inclined second side of the respective insulating frame piece.

5.8 The Board agrees with the respondent that these additional features also distinguish claim 1 from the replacement window of D1 for the following reasons:

5.9 Firstly, it follows from points 4.3 and 4.4 above that, for a rectangular window as disclosed in D1, these additional features directly result from the wording of claim 1.

5.10 Secondly, D1 does not disclose these additional features because it follows clearly from the longitudinal cross-section of the window as shown in the bottom drawing on page 2 of D1:

- that, at the bottom of the window (see left-hand side of the drawing), the cover member has a first leg for covering the upper side of the window frame piece and a second leg extending downwardly and substantially at a right angle with respect to the first leg and covering a part of the outer side of the frame piece, this second leg extending substantially in parallel with the first side of the insulating frame piece facing the window frame piece and at a distance from the second leg of the flashing member to let air circulate; and
- that at the top of the window (see right-hand side of the drawing), the cover member has a first leg for covering the upper side of the window frame piece and a second leg extending upwardly and substantially at a right angle with respect to the first leg, this second leg being covered by a relatively high hook-shaped end-portion of the flashing member, which forms a top gutter.

5.11 Thus, the subject-matter of claim 1 differs from the replacement window of D1 in that:

- (a) at the top of the window, the cover member has a second leg which covers the outer side of the respective window frame piece, overlaps the second

- leg of the respective flashing member and extends substantially parallel with the second leg of the flashing member and with the inclined second side of the respective insulating frame piece;
- (b) at the bottom of the window, the second leg of the cover member extends substantially parallel with the second leg of the respective flashing member and with the inclined second side of the respective insulating frame piece; and
  - (c) at the right-hand and left-hand sides of the window, the second leg of the cover member extends substantially parallel with the second leg of the respective flashing member and with the inclined second side of the respective insulating frame piece.

5.12 The effect of these distinguishing features is that "a satisfactory balance has been found between the need for improving the insulating properties and considerations of installation and utilisation of the window" (see paragraph [0008], first sentence, in the patent specification). More precisely, the position of the window with respect to the plane of the roof may be adjusted, without the need to adapt the flashing and cover members or to provide customized parts, since the overlapping second legs of the cover and flashing members can be easily displaced with respect to each other, in parallel with the roof plane (see paragraph [0008], second sentence and paragraph [0025], last sentence, together with paragraph [0005]). At the same time, the insulating frame still provides satisfactory insulating properties and the first leg of the cover member can be shorter than in D1, which is

implicitly advantageous from an aesthetic point of view (paragraph [0004]).

5.13 These effects are achieved even if adjoining flashing members are interconnected by flashing corner members (see paragraph [0013] and claim 7 of the patent specification). In fact, this additional feature has no effect on the relative displacement between cover and flashing members.

5.14 These effects are also achieved if the second legs of the cover and flashing members are connected with each other, e.g. integrally (see paragraph [0015], paragraph [0025], fourth sentence and claims 9 and 10 of the patent specification). Indeed, it is implicit that, in this preferred embodiment, the second legs of the cover and flashing members are not connected in a fixed manner, so that the above mentioned relative displacement is still possible.

5.15 Thus, starting from D1, the objective technical problem can be seen as how to provide a roof window which is more flexible regarding the installation conditions and independent with respect to the roofing chosen, while maintaining the satisfactory insulating properties and without jeopardizing the appearance of the window (see also paragraph [0006] in the patent specification).

5.16 For a skilled person, i.e. a manufacturer or an installer of roof windows, starting from D1 and facing this objective technical problem, it was not obvious from either D1 or D12 to arrive at the claimed solution.

5.17 In D1, the cover and flashing members are arranged at the bottom, the top and the right-hand and left-hand sides of the window in a specific manner to provide a specific function. At the bottom, the cover and flashing members are arranged to let air circulate. At the top, the cover and flashing members together form a top gutter for draining off the water from the roof surface above the window. At the sides, the free end of the cover member is in weather-tight contact with the flashing member. There is no clear motivation for the skilled person to modify the cover and flashing members in the claimed manner, at the bottom, the top and the right-hand and left-hand sides of the window of D1.

5.18 The appellant argued that a manufacturer of roof windows would recognize the advantages of the arrangement of the cover and flashing members at the right-hand and left-hand sides of the replacement window of D1 (see page 1) and that he/she would obviously consider implementing such cover and flashing members also at the top and bottom of this window. However, the manufacturer would rather keep the arrangement of the cover and flashing members at the bottom and top of the window so as to maintain the above mentioned functions, i.e. air circulation at the bottom and water drainage at the top. Finally, even if the manufacturer were to modify the window of D1 as argued by the appellant, he/she would still not arrive at the feature of claim 1 whereby the second leg of each cover member extends substantially parallel with the second leg of the respective flashing member and with the inclined second side of the respective insulating frame piece.

5.19 The appellant also argued that, in practice, the replacement window of D1 might eventually be installed lower relative to the roof plane than shown in D1 and that, in such a case, the installer of the window would inevitably modify the cover members and the flashing members in the claimed manner at the top, the bottom and the right-hand and left-hand sides of the window. However, the replacement window of D1 is made to measure and arrives at the roof in the form shown in D1 and the installer has hardly any possibility of adjusting its position relative to the roof plane, especially as at the top of the window the cover member is made to fit the flashing member in the particular way shown on page 2 of D1. Even if, in a particular case, a slight adjustment of the window's position was required, it is unrealistic to assume that the installer would change the way of connecting the top cover and flashing members on the roof, because this is simply not possible by using the tools available on the roof and, furthermore, it is not necessary: the installer would only have to keep the cover and flashing members as delivered and shift the bending line of the top flashing member around the outer end of the top cover member or shorten the upper leg of the flashing member as necessary. Thus, even in this particular case, the installer would not necessarily arrive at distinguishing feature (a). If a slight adjustment of the window's position was required, the installer would most probably not modify the bottom cover and flashing members as long as their function could be maintained, i.e. as long as air can circulate at the bottom. Thus, he/she would not necessarily arrive at distinguishing figure (b). At the right-hand and left-hand sides of the window, if the window's

position was slightly modified, the installer would most probably bend each side cover member only to the extent that its free end still pressed against the respective flashing member to guarantee a weather-tight contact, as shown on page 1 of D1. This, however, does not necessarily imply that the second legs of the cover and flashing members would become parallel, as required by distinguishing figure (c). Hence, in practice, the installer would not arrive at the claimed solution in an obvious manner.

5.20 The Board cannot accept the appellant's argument that, starting from page 1 of D1, the skilled person would increase the height of the triangular insulating frame piece so that its apex would be close to the upper side of the respective window frame piece and that he/she would then inevitably modify the cover members in the claimed manner. In fact, there is no clear motivation for such a modification of the insulating frame piece as shown in D1.

5.21 The appellant argued that, starting from page 1 of D1, distinguishing figure (c) is a matter of routine design to provide a weather-tight protection of the window frame, in particular to provide a weather-tight contact between the cover and flashing members. The appellant referred to Figure 2 of D12 to support this allegation. However, as reasoned above, features (a) to (c) distinguish claim 1 from D1 and, when starting from D1 and seeking to solve the afore mentioned objective technical problem, the skilled person has no clear motivation to provide features (a) to (c). The same holds true if the skilled person were to consider D12. In Figure 2 of D12, the cover member 20 and the

flashing member 15 have two overlapping legs which extend substantially parallel to the insulating frame piece 2 and substantially perpendicular with the roof plane. Thus, even if the skilled person were to combine the teaching on page 1 of D1 with that of D12, such a combination would lead to second legs extending substantially perpendicular with the roof plane. This is not what is specified in distinguishing figure (c). D12 also does not provide any hint to features (a) and (b). In addition, the Board notes that, contrary to the appellant's assertion, it cannot be derived from Figure 2 of D12 that the two overlapping legs are in weather-tight contact. On the contrary, these legs seem to be spaced apart to let air circulate (see also Figure 1 of D12). This is similar to the arrangement at the bottom of the window of D1. Thus, it is not even clear why the skilled person would consider this teaching of D12.

- 5.22 The Board therefore agrees with the opposition division that the subject-matter of claim 1 involves an inventive step when starting from D1.
  
6. Under these circumstances, there is no need to consider the question of whether or not D1 is prior art under Article 54(2) EPC.
  
7. No other prior art was relied on by the appellant in its attack on inventive step.



**Order**

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

The appeal is dismissed.

The Registrar

The Chairman

C. Spira

U. Krause