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Datasheet for the decision of 1 February 2019

Case Number: T 1955/15 - 3.2.08

Application Number: 00945659.1

Publication Number: 1299613

IPC: E06B9/40, E06B9/08

Language of the proceedings: EN

Title of invention:
A SCREENING ARRANGEMENT

Patent Proprietor:
VKR Holding A/S

Opponent:
FAKRO PP Spolka z.o.o.

Headword:

Relevant legal provisions:
EPC Art. 123(2), 54, 56, 83
RPBA Art. 12(4)

Keyword:
Amendments - disclosure in drawings - added subject-matter (yes) - main request and auxiliary requests 1, 4, 5, 13, 15
Novelty - (yes)
Inventive step - (no) - auxiliary requests 2, 3, 10 - 12 - (yes) - auxiliary request 6

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
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Beschwerdekammern

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Case Number: T 1955/15 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 1 February 2019

Appellant: (Patent Proprietor)	VKR Holding A/S Breeltevej 18 2970 Hørsholm (DK)
Representative:	Bird & Bird LLP Großer Grasbrook 9 20457 Hamburg (DE)
Appellant: (Opponent)	FAKRO PP Spolka z.o.o. Ul. Wegierska 144a 33-300 Nowy Sacz. (PL)
Representative:	Lukaszyk, Szymon Kancelaria Patentowa Lukaszyk ul. Glowackiego 8/6 40-052 Katowice (PL)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 30 July 2015 concerning maintenance of the European Patent No. 1299613 in amended form.**

Composition of the Board:

Chairwoman	P. Acton
Members:	M. Foulger
	P. Schmitz

Summary of Facts and Submissions

I. With the decision posted on 30 July 2015, the opposition division found that account being taken of the amendments made by the patent proprietor according to the then valid revised first auxiliary request, the patent and the invention to which it related met the requirements of the EPC.

II. Both appellant 1 (patent proprietor) and appellant 2 (opponent) filed appeals against this decision.

III. Oral proceedings were held before the Board on 1 February 2019.

IV. At the end of the oral proceedings, the requests were as follows:

Appellant 1 (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request. In the alternative, that the patent be maintained in amended form according to one of the following requests in the following order:
- one of the auxiliary requests 1 - 5 filed with letter dated 8 December 2015,
- one of auxiliary requests 10 - 12 filed with letter dated 26 April 2016,
- auxiliary request 13 filed during the oral proceedings,
- auxiliary request 15 filed with letter dated 31 December 2018,
- auxiliary requests 6, 7 filed with letter dated 8 December 2015,
- auxiliary requests 8, 9 filed with letter of 26 April 2016.

Appellant 2 (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

V. The following documents are referred to in this decision:

E1: DE 38 12 546 A1
E2: DE 27 42 787 A1
E3a: US 4,760,873 A
E4: DE 34 15 551 A1
E7: DE 44 01 056 C1

VI. a) Main request

Claim 1 reads as follows:
"A screening arrangement for a roof window adapted to be built into a roof surface and having a frame structure and a sash structure extending in parallel to the roof surface, each with top and bottom members (4a, 4b, 4", 7) and two mutually parallel side members (12, 13), the screening arrangement comprising
a screening body (1, 1") having a first end, a second end and two side edges,
a bottom bar (5) connected with said first end of the screening body (1, 1") and extending essentially in parallel said top and bottom members of the frame or sash structure,
a top casing (3, 3") extending along the top member (4a, 4b, 4") of the frame or sash structure and having, in each end, an end wall (3a), which is essentially parallel to said side members (12, 13) of the frame and sash structures,
a reception means (2) situated in said top casing (3, 3") and connected with said second end of the screening

body (1, 1"), and
side guide rails (10, 10") to be mounted essentially in parallel with said side members (12, 13) of the frame and sash structure for accommodation and guidance of ends of the bottom bar (5) and said side edges of the screening body (1, 1"),
the screening body (1, 1") being movable between a first end position in which it occupies a rolled-up, pleated or folded position on or at said reception means (2) in the top casing (3, 3"), and a second active screening position, in which it extends in a screening plane to said frame or sash structure,
the screening arrangement **(A)** including at least one rotatable connection (31) situated within said end walls (3a) of the top casing (3, 3") **(P)** for movement of at least said side guide rails (10, 10") of the screening arrangement with the screening body (1, 1") accommodated therein between said screening plane and a plane forming an angle with the roof surface, about a hinge axis (34) essentially parallel to said top and bottom members (4a, 4b ,4", 7) of the frame or sash structure,
(B) said reception means (2) being placed essentially in said screening plane and that the top casing (3, 3") is formed to follow the form of top member (4a, 4b, 4") of the frame and sash structures,
(C) wherein said rotatable connection is provided by at least two sets of spaced hinge fittings (31, 34),
characterized in that
the hinge fitting sets (31, 34) are arranged to have the hinge axis situate at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
(M2) the hinge axis being disposed directly adjacent to the top frame member (4a)."

(Feature references A, B, C, M2 and P added by the Board)

Note that in the following, unless stated otherwise, the preamble of claim 1 is as per the main request. Changes with respect to the main request underlined or struck through except for auxiliary request 6.

b) Auxiliary request 1

The preamble of claim 1 is changed as follows (feature P):
"for movement of ~~at least said side guide rails (10,10',10'') of~~ the screening arrangement with the screening body (1,1',1'')"

The characterising part of claim 1 reads as follows:

"the hinge fitting sets (31,34) are arranged to have the hinge axis situate at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
(M2) the hinge axis, which is defined by a first fitting part (31) and a second fitting part (34) engaging the first fitting part (31), being disposed directly adjacent to the top frame member (4a)"

c) Auxiliary request 2

The characterising part of claim 1 reads:
"the hinge fitting sets (31,34) are arranged to have the hinge axis situate at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
(D) the first part (31) of the hinge fitting sets being connected to a top casing (32) for a window."

(Feature reference D added by the Board)

d) Auxiliary request 3

The preamble of claim 1 is changed as follows (feature P):
"for movement of ~~at least said side guide rails (10,10',10'') of~~ the screening arrangement with the screening body (1,1',1'')"

The characterising part of claim 1 reads as follows:
"the hinge fitting sets (31,34) are arranged to have the hinge axis situated at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
each hinge fitting set comprises a first fitting part (31) and a second fitting part, the first fitting part (31) being connected to a top casing (32) for a window, and the second fitting part (34) being in connection with the top casing (3) of the screening arrangement."

e) Auxiliary request 4

The characterising part of claim 1 reads:
"the hinge fitting sets (31,34) are arranged to have the hinge axis situate at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
the first part (31) of the hinge fitting sets being connected to a top casing (32) for a window so that the **(M2)** hinge axis is disposed directly adjacent to the top frame member."

f) Auxiliary request 5

The preamble of claim 1 is changed as follows (feature P):
"for movement of ~~at least said side guide rails (10,10',10'') of~~ the screening arrangement with the screening body (1,1',1")"

The characterising part reads as follows:
"the hinge fitting sets (31, 34) are arranged to have the hinge axis situate at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
each hinge fitting set comprises a first fitting part (31) and a second fitting part, the first fitting part (31) being connected to a top casing (32) for a window, and the second fitting part being in connection with the top casing (3) of the screening arrangement so that **(M2)** the hinge axis, which is defined by the first fitting part (31) and the second fitting part (34) engaging the first fitting part (31), is disposed directly adjacent to the top frame member."

g) Auxiliary request 10

The preamble of claim 1 is changed as follows (feature P):
"for movement of ~~at least said side guide rails (10,10',10'') of~~ the screening arrangement with the screening body (1,1',1")"

The characterising part of claim 1 reads as follows:

"the hinge fitting sets (31, 34) are arranged to have the hinge axis situated at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
each hinge fitting set comprises a first fitting part

(31) and a second fitting part, the first fitting part (31) being connected to a top casing (32) for a window, and the second fitting part being in the form of an axle journal (34) and in connection with the top casing (3) of the screening arrangement."

h) Auxiliary requests 11 and 12

Claim 1 of these requests corresponds to claim 1 of auxiliary request 10.

i) Auxiliary request 13

The preamble is reformulated as "A screening arrangement and a roof window...".

The characterising part of claim 1 reads as follows:
"the hinge fitting sets (31, 34) are arranged to have the hinge axis situated at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,
each hinge fitting set comprises a first fitting part (31) and a second fitting part, the first fitting part (31) being connected to a top casing (32) for a window, and the second fitting part being in the form of an axle journal (34) and in connection with the top casing (3) of the screening arrangement."

j) Auxiliary request 15

The characterising part of claim 1 reads as follows:

"the hinge fitting sets (31, 34) are arranged to have the hinge axis situated at the underside of the top casing (3) and on an outer side of said top member (4a, 4b) of the frame or sash structure,

each hinge fitting set comprises a first fitting part (31) and a second fitting part, the first fitting part (31) being in the form of a mounting fitting connectable to a top casing (32) for a window and the second fitting part (34) being in the form of an axle journal situated at an end wall (3a) of the top casing (3) of the screening arrangement."

k) Auxiliary request 6

Claim 1 reads:

"A screening arrangement for a roof window adapted to be built into a roof surface and having a frame structure and a sash structure extending in parallel to the roof surface, each with top and bottom members (4a', 4", 7) and two mutually parallel side members (12, 13), the screening arrangement comprising
a screening body (1', 1") having a first end, a second end and two side edges,
a bottom bar (5) connected with said first end of the screening body (1', 1") and extending essentially in parallel said top and bottom members of the frame or sash structure,
a top casing (3', 3") extending along the top member (4a', 4") of the frame or sash structure and having, in each end, an end wall (3a'), which is essentially parallel to said side members (12, 13) of the frame and sash structures,
a reception means (2) situated in said top casing (3', 3") and connected with said second end of the screening body (1', 1"), and
side guide rails (10', 10") to be mounted essentially in parallel with said side members (12, 13) of the frame and sash structure for accommodation and guidance of ends of the bottom bar (5) and said side edges of

the screening body (1', 1"),
the screening body (1', 1") being movable between a first end position in which it occupies a rolled-up, pleated or folded position on or at said reception means (2) in the top casing (3, 3', 3"), and a second active screening position, in which it extends in a screening plane to said frame or sash structure,
the screening arrangement including at least one rotatable connection (41) situated within said end walls (3a') of the top casing (3', 3") for movement of at least said side guide rails (10', 10") of the screening arrangement with the screening body (1', 1") accommodated therein between said screening plane and a plane forming an angle with the roof surface, about a hinge axis (42) essentially parallel to said top and bottom members (4a', 4", 7) of the frame or sash structure,
said reception means (2) is placed essentially in said screening plane and that the top casing (3', 3") is formed to follow the form of top member (4a', 4") of the frame and sash structures,
characterized in that
the rotatable connection is provided at a hinge connection (40-42) between each side guide rail (10') and the top casing (3')."

VII. Appellant 2 (opponent) argued essentially as follows:

a) Admission of E7

This document was filed with the statement setting out the grounds of appeal as a reaction to the impugned decision. It should therefore be admitted into the proceedings.

b) Main request

Feature M2 was not disclosed in the application as originally filed. This feature could not be directly and unambiguously derived from the figures of the application. The request was therefore unallowable.

c) Auxiliary requests 1, 4 and 5

Claim 1 of these requests also contained feature M2 and were also not allowable for the same reasons as for the main request.

d) Auxiliary request 2

Novelty

E7 disclosed all features of claim 1. In particular, it showed a rotatable connection around the axis 11 (see col. 3, l. 11 - 14). The feature that the reception means were placed "essentially in said screening plane" was known from E7 because the term "essentially" was vague and hence to be interpreted broadly.

Inventive step

Starting from E7 as closest prior art, the problem to be solved was to provide a more compact design which did not project above the window.

Both E1 and E3a disclosed arrangements in which the reception means lay in the screening plane. Thus motivated by this teaching, the skilled person would arrange the reception means in the screening plane without the exercise of inventive activity.

The provision of the universal shafts (17) would not

hinder the skilled person in reducing the height of the reception means because these were placed to the side of the reception means. Moreover, it was well within the skilled person's capabilities to make adjustments to the drive shaft layout in order to solve the problem of reducing the casing height.

The subject-matter of claim 1 did not involve an inventive step.

e) Auxiliary request 3

The above arguments concerning auxiliary request 2 also applied to this request and hence the subject-matter of claim 1 did not involve an inventive step.

f) Auxiliary requests 10 - 12

The further feature of claim 1 concerning the hinge was merely a choice between two equally feasible alternatives - either the axle journal was attached to the top casing or it was attached to the window frame. The choice between these alternatives would not require any inventive activity on the part of the skilled person.

Therefore, the subject-matter of claim 1 of these requests did not involve an inventive step.

g) Auxiliary request 13

Admissibility

This request was filed during the oral proceedings. It could, and should, have been filed earlier and therefore should not be admitted into the proceedings.

Added subject-matter

The preamble contained feature P whereby at least the the side guide rails were rotatable. The rotation of the side guide rails related to the embodiment of Fig. 3 in the published application. The features of the characterising part of the claim were however directed to the embodiment of Figs. 1 and 2. Thus, these features had not been disclosed in combination and therefore the subject-matter of claim 1 extended beyond that of the application as originally filed.

h) Auxiliary request 15

The arguments regarding added subject-matter above for auxiliary request 13 also applied to this request.

i) Auxiliary request 6

Added subject-matter

Claim 1 of the published application specified that the rotatable connection allowed movement of the screening arrangement. Claim 1 of this request specified that the rotatable connection allowed movement of at least the guide rails. This meant that a completely different object was claimed compared to the originally filed application. Thus, the subject-matter of claim 1 of this request extended beyond that of the application as filed.

Sufficiency of disclosure

Feature P of the preamble whereby "at least said guide rails" were rotatable was in contradiction with the

characterising part whereby only the guide rails were rotatable. This contradiction meant that the skilled person could not carry out the claimed invention.

Inventive step

Either E2 or E4 could be regarded as the closest prior art, both these documents disclosed the preamble of claim 1.

The position of the rotatable connection did not provide any technical effect. It was thus an arbitrary choice which did not involve an inventive step.

VIII. Appellant 1 (patent proprietor) argued essentially as follows:

a) Admission of E7

This document had been filed outside of the nine month opposition period. It was thus late filed and should not be admitted into the proceedings.

b) Main request

The feature M2 was directly and unambiguously derivable from Figs. 1 and 2 of the application. This feature was to be understood in that the axis was in closest proximity to the top frame member.

A direct line could be drawn with no intermediate elements between the axis and the upper frame member, i.e. there was a clear line of sight between axis and upper frame member. Thus feature M2 was directly and unambiguously disclosed in Figs. 1 and 2 of the application as originally filed.

c) Auxiliary requests 1, 4 and 5

This request further defined the feature M2 by referring to the fitting parts. These requests were allowable for the same reasons as the main request.

d) Auxiliary request 2

Novelty

E7 did not disclose features A, B, C and D:

- feature A: the rotatable connection was within the end walls; this feature was to be understood in that the connection was located within the thickness of the walls and not merely between the walls,
- feature B: the reception means were in the screening plane. As only the axis of the reception means was shown in E7 it was impossible to determine whether the reception means were in the screening plane,
- feature C: it comprised spaced hinge fitting sets,
- feature D: the second fitting means were attached to the top casing.

Therefore the above features were not known from E7 and the subject-matter of claim 1 was new.

Inventive step

Starting from E7 as closest prior art, the problem to be solved by the distinguishing features was to provide a more compact design which did not project over the roof window.

This was not obvious from E7. If the reception means

were placed in the plane of the screening means then the universal shafts (17) would be almost at 90° to each other. At this angle the joints of the shafts would not operate correctly, therefore the skilled person would be dissuaded from making this modification. Moreover, in order to solve the above problem, the skilled person could also provide a smaller roller as the reception means - this would however not lead to the subject-matter of claim 1.

Hence, the subject-matter of claim 1 involved an inventive step.

e) Auxiliary request 3

The above arguments for auxiliary request 2 applied equally to auxiliary request 3.

f) Auxiliary requests 10 - 12

Compared with claim 1 of the second auxiliary request claim 1 of these requests further specified that: each hinge fitting set comprised a first fitting part and a second fitting part, the first fitting part being connected to a top casing for a window and the second fitting part being in the form of an axle journal and in connection with the top casing of the screening arrangement.

Thus, this provided a further difference from the prior art in addition to the reasons discussed above for auxiliary request 2. Hence, the subject-matter of claim 1 involved an inventive step.

h) Auxiliary request 13

Admissibility

This request was an attempt to deal with clarity objections raised during the oral proceedings. The amendments were not complicated in nature such that both appellant 2 (opponent) and the Board could be reasonably expected to deal with them during the oral proceedings. This request was therefore to be admitted into the proceedings.

Added subject-matter

The features of the characterising portion were clearly visible in the figures of the published application. Moreover, the feature whereby at least the guide rails were rotatable (feature P) was supported by the two embodiments shown in the Figs. 1 - 3.

h) Auxiliary request 15

The arguments regarding added subject-matter above for auxiliary request 13 also applied to this request.

i) Auxiliary request 6

Added subject-matter

That the rotatable connection allowed movement of the guide rails was clearly and unambiguously disclosed in fig. 3 of the application as published. The requirements of Article 123(2) EPC were therefore met.

Sufficiency of disclosure

The patent described at least one way of carrying out the claimed invention. This is illustrated in Fig. 3.

Thus the patent describes the invention in a manner sufficiently clear and complete such that the person skilled in the art could carry it out.

Inventive step

E2 or E4 disclosed the features of the preamble of claim 1.

The subject-matter of claim 1 therefore differed from these prior art disclosures in that the rotatable connection was provided at a hinge connection between each side guide rail and the top casing.

The prior art screening devices suffered from the problems that firstly it was necessary to drill holes in the window frame in order to fix the hinges and that secondly the kink in the guide rails increased friction when actuating the screening means. The problem to be solved was to overcome these deficiencies.

The claimed solution was inventive because there was no hint in the prior art to place the rotatable connection between the side guide and the casing.

Reasons for the Decision

1. Admission of E7

This document was submitted with the grounds of appeal as a reaction to the impugned decision which itself was based on claims filed for the first time during the oral proceedings before the opposition division. The appellant could not therefore have filed this document earlier in the proceedings. According to Article 12(4)

(a) RPBA, E7 is admitted into the proceedings.

2. Main Request - Added subject-matter

Feature M2 is not disclosed literally in the application as originally filed. The proprietor argues that this feature is visible in figures 1 and 2 of the application. Moreover, the expression "directly adjacent" in feature M2 should be interpreted such that no intermediate element is arranged between the hinge axis and the top frame member. Furthermore, since there was a clear line of sight (i.e. a direct line could be drawn) between the hinge axis and the top frame member with no intermediate member, these elements were to be regarded as being directly adjacent.

The term "adjacent" has the meaning of being "next to", c.f. Oxford English Dictionary (http://www.oed.com/view/Entry/2414?redirectedFrom=adjacent#eid). In Figs. 1 and 2 of the application as filed, the mounting fitting 31 is attached to the top casing 32 for the window (see figs. 1, 2 and p. 7, l. 8 - 17). Thus, the casing 32 is, at least functionally, between the hinge axis and the top frame member. Moreover, the actual axis is not next to the top frame member 4a but is rather next to the casing 32. Thus, there is no disclosure of the hinge axis being disposed directly adjacent to the top frame member (feature M2). Consequently, the claim infringes Article 123(2) EPC.

3. Auxiliary requests 1, 4 and 5

The above reasons also apply to the first, fourth and fifth auxiliary requests because they also contain feature M2 discussed above. These requests thus also do

not comply with Article 123(2) EPC.

4. Second auxiliary request - Novelty and Inventive Step

E7 discloses:

A screening arrangement for a roof window ("Rolladen für ein Dachfenster") adapted to be built into a roof surface and having a frame structure and a sash structure extending in parallel to the roof surface, each with top and bottom members and two mutually parallel side members, the screening arrangement comprising
a screening body ("Rolladen") having a first end, a second end and two side edges,
a bottom bar connected with said first end of the screening body and extending essentially in parallel said top and bottom members of the frame or sash structure (claim 1 feature c),
a top casing (10) extending along the top member of the frame or sash structure and having, in each end, an end wall which is essentially parallel to said side members of the frame and sash structures,
a reception means ("Wickelwelle" - col. 3, l. 10 - 14) situated in said top casing and connected with said second end of the screening body, and
side guide rails (12) to be mounted essentially in parallel with said side members of the frame and sash structure for accommodation and guidance of ends of the bottom bar and said side edges of the screening body, the screening body being movable between a first end position in which it occupies a rolled-up, pleated or folded position on or at said reception means in the top casing, and a second active screening position, in which it extends in a screening plane to said frame or sash structure (see col. 2, l. 41 - 51),

the screening arrangement including at least one rotatable connection (11) situated within said end walls of the top casing for movement of at least said side guide rails of the screening arrangement with the screening body accommodated therein between said screening plane and a plane forming an angle with the roof surface, about a hinge axis (11) essentially parallel to said top and bottom members of the frame or sash structure (Figs. 1 - 3),
the top casing is formed to follow the form of top member of the frame and sash structures (Fig. 3)
wherein said rotatable connection is provided by at least two sets of spaced hinge fittings,
the hinge fitting sets are arranged to have the hinge axis at the underside of the top casing (11 is shown towards the bottom of the top casing) and on an outer side of said top member of the frame or sash structure (Fig. 3 shows a bracket),
the first fitting part being connected to a top casing (5) for a window.

The argument that feature A is not disclosed in E7 is not persuasive. There is neither an indication in the claim nor in the patent that this phrase should be read as meaning "within the thickness of the walls". Therefore, the Board considers that the phrase "within the walls" indicates that the hinges are positioned somewhere in the space between the two walls. The hinge 11 of E7 is clearly located in between the outer walls. Hence, feature A is known from E7.

E7 shows, in Figs. 2 and 3, an axis 11 which transverses a bracket. In col. 3, l. 11 - 12, it is explained that the casing 10 is rotatable about this axis. Thus there is a clear disclosure of a hinge. A hinge always comprises first and second fitting parts

respectively connected to the parts to be rotated. In the consideration of novelty, a prior art document should be read as it would have been read by the skilled person (c.f. Case Law of the Boards of Appeal of the EPO, 8th Edition 2016, I.C.2.3). The skilled person would recognise that two hinges were necessary in the arrangement of E7 in order to secure the screening arrangement. Due to this necessity the skilled person would understand from the disclosure of E7 that two sets of spaced hinge fittings were provided. Thus, feature C is also known from E7.

Feature D is also known from E7 because from the disclosure of col. 3, l. 11 - 13, it follows that part of the hinge must be attached to the casing - otherwise it would not be rotatably mounted as described.

The argument that feature B was also known from E7 is not persuasive. It is correct that with the term "essentially" there is a certain amount of vagueness introduced into the feature. However, as it is not known how large the reception means are in E7, it cannot be determined whether the reception means are essentially in the screening plane or not at all in the screening plane.

Thus, the subject-matter of claim 1 differs from the screening arrangement disclosed in E7 in that:
the reception means are placed essentially in the screening plane.

Starting from E7 as closest prior art, the problem to be solved is to provide a screening arrangement with a more compact design which does not project over the roof window.

For the skilled person it is immediately obvious that moving the reception means downwards such that they were closer to the window frame 7 would reduce the projection of the casing over the roof window. This would also lead to the reception means being essentially in the screening plane. As argued by appellant 1 (proprietor), this would necessitate a less advantageous angle for the universal shaft 17. The skilled person would however be able to make minor adjustments to the drive arrangement in order to compensate for this change. Moreover, having the reception means in the reception plane is known from E1, see Fig. 1, and E3a, see Fig. 1. The skilled person would therefore make this change without an inventive step being involved and would thereby arrive at the subject-matter of claim 1.

The subject-matter of claim 1 does not involve an inventive step.

5. Auxiliary request 3

The same arguments as for auxiliary request 2 apply. This request is also not allowable because the subject-matter of claim 1 does not involve an inventive step.

6. Auxiliary requests 4 and 5

Claim 1 of these requests also includes feature M2 which was found for the main request to extend beyond the subject-matter of the application as originally filed. Hence, for the same reasons these requests are not allowable.

7. Auxiliary requests 10 - 12 - Inventive step

As discussed above, the subject-matter of claim 1 of auxiliary request 2 does not involve an inventive step. Compared with claim 1 of auxiliary request 2, claim 1 of these requests additionally specifies that each hinge fitting set comprising a first fitting part (31) and a second fitting part, the first fitting part (31) being connected to a top casing (32) for a window and the second fitting part being in the form of an axle journal (34) and in connection with the top casing (3) of the screening arrangement.

From Figs. 2 and 3 of E7 it is not visible which part of the hinge axis 11 is connected to the top casing of the screening arrangement. Thus, the feature whereby the second fitting part in the form of an axle journal is in connection with the top casing, is not known from E7.

There are only two possibilities for a hinge joint such as shown in E7 - either the shaft with axis 11 is attached to the top casing of the screening arrangement or the bearing is.

The skilled person would choose between these two equally feasible alternatives without requiring any inventive activity.

Thus, the addition of the above features does not lead to a different conclusion as compared to auxiliary request 2. Consequently, the subject-matter of claim 1 of auxiliary requests 10 - 12 does not involve an inventive step.

8. Auxiliary request 13

8.1 Admissibility

This request substantially corresponds to auxiliary request 13 filed on 31 December 2018. It attempts to deal with clarity objections raised with regard to auxiliary request 1 during the oral proceedings. The amendments were not complicated in nature such that both appellant 2 (opponent) and the Board could be reasonably expected to deal with them during the oral proceedings.

The Board therefore admitted this request into the proceedings.

8.2 Added subject-matter

The preamble of claim 1 contains the feature "for movement of at least said side guide rails". Claim 1 of the published application reads "for movement of at least said side screening arrangement".

The formulation of the originally filed claim relates to the embodiment of Figs. 1 and 2 of the application where the whole screening arrangement is rotatable. The modified formulation also encompasses the embodiment of Fig. 3 where only the guide rails rotate.

The features of the characterising part of claim 1 relate to the embodiment of Figs. 1 and 2 because the hinge axis is situated at the underside of the top casing. This is not the case in Fig. 3 where the rotatable connection is provided at a hinge connection between the side guide rail and the top casing.

Thus, the combination of the feature "at least the guide rails" with the features of the characterising

part was not originally disclosed. The request is therefore not allowable under Article 123(2) EPC.

9. Auxiliary request 15

The same reasons as for auxiliary request 13 also apply to this request.

10. Auxiliary request 6

10.1 Added subject-matter

According to the original claim 1 as published, the rotatable connection allows the movement of the screening device. The current claim 1 only requires "movement of said guide rails". This modification is supported by fig. 3 of the published application so that the subject-matter of claim 1 does not extend beyond that of the application as filed.

10.2 Sufficiency of disclosure

The patent describes at least one way of carrying out the claimed invention. This is illustrated in Fig. 3. Thus the patent describes the invention in a manner sufficiently clear and complete such that the person skilled in the art could carry it out.

10.3 Inventive step

It is common ground that the screening arrangement according to E2 is the closest prior art and discloses the features of the preamble of claim 1. E4 also discloses these features.

The prior art screening devices suffer from the

problems that firstly it is necessary to drill holes in the window frame in order to fix the hinges and that secondly the kink in the guide rails increases friction when actuating the screening means. The problem to be solved is to overcome these deficiencies.

Thus, the argument that the distinguishing features did not provide any technical effect is not persuasive as they clearly help overcome the above problems of the prior art.

The claimed solution is also inventive as there is no hint in the cited prior art to place the rotatable connection between the side guide and the casing.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division with the order to maintain the patent on the basis of claims 1 to 8 of auxiliary request 6 filed with the letter of 8 December 2015 and a description to be adapted.

The Registrar: The Chairwoman:

I. Aperribay P. Acton

Decision electronically authenticated