

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen

D E C I S I O N
of 3 February 1997

Case Number: T 0512/95 - 3.2.3

Application Number: 90200316.9

Publication Number: 0383394

IPC: E04F 21/00

Language of the proceedings: EN

Title of invention:

Tool assembly for use in the cutting of hinge patterns

Patentee:

Boumans, Johannes Adrianes

Opponent:

Striffler Nederland B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

"Inventive step denied"

Decisions cited:

-

Catchword:

-



Case Number: T 0512/95 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 3 February 1997

Appellant: Striffler Nederland B.V.
(Opponent) Hogebrinkerweg 17
NL-3871 KM Hoevelaken (NL)

Representative: de Vries, Erik Eduard
Nederlandsch Octrooibureau
Scheveningseweg 82
P.O. Box 29720
NL-2502 LS 's-Gravenhage (NL)

Respondent: Boumans, Johannes Adrianes
(Proprietor of the patent) Oranje Nassaustraat 2
NL-3405 XK Benschop (NL)

Representative: Kooy, Leendert Willem
Octrooibureau Vriesendorp & Gaade
P.O. Box 266
NL-2501 AW The Hague (NL)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office dated 13 April 1995
rejecting the opposition filed against European
patent No. 0 383 394 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: F. Brösamle
L. C. Mancini

Summary of Facts of Submissions

I. European patent No. 0 383 394 was granted with Claims 1 to 5 on 15 September 1993.

II. Claims 1 and 5 thereof read as follows:

"1. Tool assembly to be used for cutting hinge patterns in a door, a door-frame, a window and/or a window-frame, comprising a pair of interconnected sliding legs which are to be positioned against the door, the door-frame, the window and/or the window-frame, at least one hinge-pattern-cutting templet for a cutting machine and at least one abutment device for positioning the hinge pattern-cutting templet at the desired position along the sliding legs, **characterized in that** the abutment device (13, 14, 15) is adapted to be transferred along the sliding legs (2, 3) and fastened to the sliding legs independently of the hinge-pattern-cutting templet (19), and in that the hinge-pattern-cutting templet (19) is provided with means (21, 22, 23, 16, 17) for its positioning onto the door, etc. independently of the abutment device (13, 14, 15), said abutment device (13, 14, 15) being provided with abutment surfaces for abutment against a hinge blade as well as against cooperating abutment surfaces (26) provided on the hinge-pattern-cutting templet."

and

"5. Method for transferring the correct position of hinge patterns in a door and/or window to the pertaining door-frame and/or window-frame respectively, wherein a pair of interconnected

sliding legs is positioned against the door and/or window, the position of the hinge patterns being set thereon by means of at least one abutment device, said pair of interconnected sliding legs with abutment device fastened thereon being removed from the door and/or window and being positioned against the pertaining door-frame and/or window-frame, respectively, and wherein a hinge-pattern-cutting templet is positioned against the abutment device for cutting the hinge pattern at the correct spot, **characterized in that** the abutment device is transferred along the sliding legs until an abutment surface thereof abuts against a hinge fastened to the door and/or window, and then the abutment device is fixed in position on the sliding legs, and in that, after the pair of sliding legs has been set against the pertaining door-frame and/or window-frame, respectively, the hinge-pattern-cutting templet is placed against the abutment surface and is fixed in that position."

- III. An opposition filed against the patent in suit was rejected by the Opposition Division on 13 April 1995 pursuant to Article 102(2) EPC.
- IV. The Opposition Division came in its decision to the result that the subject-matter of Claims 1 and 5 is patentable so that the opposition was rejected. The opposition was based on the following documents:
- (D1) Brochure "Beschlag-Einlaßmaschinen" published by Max Striffler KG, dated January 1973
 - (D2) Pages from various brochures published by Max Striffler KG, two pages dated December 1956 and August 1957, other pages undated

(D3) US-A-3 203 104 and

(D4) FR-A-1 570 590

V. The Appellant (Opponent) with letter of 13 June 1995 lodged an appeal against the decision of the Opposition Division and paid the fee on the same day. The Statement of Grounds of Appeal was received on 14 August 1995.

He requests (by implication) to set aside the impugned decision and to revoke the patent in suit.

His arguments can be summarised as follows:

- the impugned decision indicates three different features (A, B, C) between Claim 1 and (D1); namely
 - (A) the sliding legs are **interconnected**,
 - (B) the templet is provided with means for positioning the templet onto a door **independently** of the abutment device, and
 - (C) the abutment device is provided with abutment surfaces for abutment **against a hinge blade** as well as against cooperating abutment surfaces on the templet;
- feature (A) which has nothing to do with the aim of the invention is known from (D3); feature (B) is known from (D1), see article No. 118 on page 27 thereof showing a templet and an adjustable clamp screw as well as a centering pin or see page 13 of (D5) Brochure "Fräs-Schablonen zum Beschlageinlassen";

- with this centering pin a marking can be provided by pressing it into the related wooden part;
- the screw article according to (D1) is independent of the sliding leg which can be removed;
- feature (C) relates to the transfer of the position of a hinge from one part to the other using the top or bottom surface of a hinge; using the upper or lower side of a hinge as starting point instead of the centre of the hinge as known from (D1) cannot be seen as an inventive activity;
- Claims 1 to 4 can only define structural features and not their use when compared with the prior art;
- summarising the above considerations the patent in suit should be revoked.

VI. The Respondent (Proprietor) requests to dismiss the appeal.

His arguments are essentially as follows:

- it is admitted that feature (A) **per se** is known from (D3); it is nevertheless a feature of the invention as claimed;
- the Appellant has failed to substantiate his allegation that it would have been known from (D1) to let the templet be provided with means for positioning it onto a door **independently** of the abutment device since in (D1) the templet is received and supported by the abutment device and as a result thereof **depends** for its positioning on the abutment device;

- the centering pin of (D1) is a transversely movable spring loaded pin which cooperates with the wood of the door or door-frame which if it were used in transferring hinge positions would not be as accurate as the results achievable with the tool assembly claimed which is based on the **direct** cooperation of abutment surfaces on the templet, the hinge and the abutment device;

- Claims 1 to 4 include basically structural features and their functional terms cannot make them unallowable.

Reasons for the Decision

1. The appeal is admissible.

2. *Novelty*

The issue of novelty is not disputed in the opposition and appeal proceedings and needs therefore no detailed arguments.

3. *Inventive step*

- 3.1 Novelty not being disputed by the Appellant or the Board (see the Board's communication of 13 May 1996 remark 1), the crucial issue to be decided is inventive step basically in the light of (D1), (D2) and (D3).

The Board comes to the following result:

Claim 1

3.2 The Board agrees with the Opposition Division that the starting point of the invention is (D1). Claim 1 is distinguished from the disclosures of D1 by means of the above-mentioned features (A) to (C).

3.3 According to column 2, lines 12 to 19 of EP-B1-0 383 394 the object of the invention is to provide a tool assembly which is not only suitable for use in the application of new hinge patterns, in both new, untreated doors and pertaining new door-frames etc., but is also capable of measuring and transferring hinge patterns or positions when starting from existing hinges or hinge patterns.

3.4 This object is solved with the features laid down in granted Claim 1 and as set out in sketches "A" to "C" filed by the Respondent in the opposition proceedings:

- legs "2, 3" are interconnected and can be positioned against a door/window and their pertaining frames;
- abutment devices "13, 14" allow the recognition of the position of hinges mounted on the door/window and their pertaining frames and can be fastened on the legs "2, 3";
- the legs "2, 3" together with the prepositioned abutment devices "13, 14" can be transferred from a door/window to the pertaining frames;
- the abutment devices serve to position a hinge-pattern-cutting templet "19" which can be fastened to a door/window etc., independently of the abutment devices;

- the abutment device "13, 14" is provided with abutment surfaces for abutment against a hinge blade as well as against cooperating abutment surfaces "26" provided on the hinge-pattern-cutting templet "19".

3.5 It is immediately obvious that the tool assembly according to Claim 1 is not restricted to the use of a centering pin disclosed in (D1) since the hinge blade is **directly sensed** and used to transfer its position to a pertaining part. The tool assembly of Claim 1 is therefore easier in construction and use since the **upper** or **lower** side of an **existing** hinge can be contacted directly by the abutment device which also serves as a positioning aid to the hinge-pattern-cutting templet "19".

3.6 This solution to the above object allows the claimed tool assembly to be used in combination with existing hinges (measuring an existent position thereof) or in combination with new doors/windows and their pertaining frames so that the skilled man possesses a **versatile tool assembly**.

3.7 Considering the possibilities enabled by the tool assembly disclosed in Claim 1 it is clear that (D1) cannot serve as a model to lead a skilled person starting from (D1) to the tool assembly of Claim 1 since its principle - see spring loaded centering pin for marking a wooden part - is **completely different** from the principle inherent to the tool assembly of Claim 1. The tool assembly according to (D1) is shown in Respondent's sketches "D" and "E"; it can immediately be seen that sliding legs as claimed are missing and that only **one** abutment device **together** with its hinge-pattern-cutting templet can be placed.

Since the abutment device and the hinge-pattern-cutting templet are integrated there is **no independency** of them as claimed.

With respect to the tool assembly of Claim 1 it has furthermore to be observed that in (D1) it is not disclosed that an abutment device is used to be brought into direct contact with an existing hinge and that this abutment device afterwards is brought with its abutment surface into direct contact with the cooperating abutment surfaces provided on the hinge-pattern-cutting templet, see sketch "C" of the Respondent. This arrangement allows to directly sense the upper or lower surface of an existing hinge and to transfer this position very precisely to a door/window or their pertaining frames without using a centering pin or the like.

Only by inadmissible **hindsight** could a person skilled in the art derive from (D1) a hint to the claimed tool assembly.

- 3.8 Since Claim 1 is based on a **combination of features** (see decision T 37/85 OJ EPO, 1988, 86 (headnote only)), it is irrelevant that (D3) discloses interconnected legs "33, 34" according to its Figure 2 for example since its abutment device is also the templet for cutting "62", a construction not realized in the tool assembly according to Claim 1. The **independency** of the claimed abutment device and its related hinge-pattern-cutting templet can, however, not be seen from (D3) so that it is irrelevant in connection with the assessment of inventive step (see also sketch "C" of the Respondent where the arrangement according to Claim 1 is demonstrated).

3.9 Appellant's argument that using the upper or lower side of a hinge instead of the centre thereof is obvious is not supported by any evidence and has therefore to be rejected.

The functional term used in Claim 1, namely "being provided with ... for abutment against ..." in its characterising clause, does not make the claim unclear so that Claim 1 cannot be unallowable only for that reason. As set out above Claim 1 is distinguished from the prior art by **structural** features and not only by a functional term.

3.10 (D2) corresponds essentially to (D1), see for instance its second page, right column under "Normalzubehör", where again a reference is made to centering, ("mit Mittenanzeiger"), which feature is completely contradictory to the general teaching of Claim 1.

3.11 (D4) is based on a single column "1" and not on telescoping sliding legs according to Claim 1. Even the Appellant in his Statement of Grounds of Appeal did not rely on (D4) which document is not more relevant than (D1) to (D3) and (D5) which corresponds essentially to (D1) and (D2).

3.12 In view of the above considerations even a combination of documents (D1) to (D5) would not lead a skilled person **not knowing** the invention to the tool assembly according to Claim 1 so that its subject-matter is inventive. Claim 1 is therefore valid, Articles 100(a), 54 and 56 EPC.

Claim 5

4. Claim 5 is based on a "method for transferring the correct position ..." and is closely linked with its teaching to the teaching of Claim 1, the only difference being that the structural features of Claim 1 are expressed as method steps.

The findings with respect to Claim 1 are therefore also applicable to Claim 5, Article 100(a), 54 and 56 EPC, so that as a result Claim 5 defines a novel and inventive method and is also valid.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:



N. Maslin

The Chairman:



C. T. Wilson