

BESCHWERDEKAMMERN  
DES EUROPÄISCHEN  
PATENTAMTS

BOARDS OF APPEAL OF  
THE EUROPEAN PATENT  
OFFICE

CHAMBRES DE RECOURS  
DE L'OFFICE EUROPEEN  
DES BREVETS

**Internal distribution code:**

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

**D E C I S I O N**  
**of 1 March 1999**

**Case Number:** T 0665/95 - 3.2.3  
**Application Number:** 88201378.2  
**Publication Number:** 0301617  
**IPC:** E06B 3/66, E06B 3/02

**Language of the proceedings:** EN

**Title of invention:**  
A plural glass pane

**Patentee:**  
Buva Rationele Bouwproducten B.V.

**Opponent:**  
Timmermans Glasproducten

**Headword:**  
"Examination of opposition - admissibility (yes)"  
"Novelty - public prior use (no)"  
"Inventive step - remote technical field"

**Relevant legal provisions:**  
EPC Art. 100(1), 54(2), 56  
EPC R. 55(c)

**Keyword:**  
-

**Decisions cited:**  
-

**Catchword:**  
-



Europäisches  
Patentamt

European  
Patent Office

Office européen  
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: T 0665/95 - 3.2.3

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.3  
of 1 March 1999

**Appellant:** Buva Rationele Bouwprodukten B.V.  
(Proprietor of the patent) Conradstraat 38  
3013 AP Rotterdam (NL)

**Representative:** Bottema, Johan Jan  
Nederlandsch Octrooibureau  
P.O. Box 29720  
2502 LS Den Haag (NL)

**Respondent:** Timmermans Glasproducten  
(Opponent) Eenmanszack  
Gramsbergerweg 66  
7772 PB Hardenberg (NL)

**Representative:** Schumann, Bernard Herman Johan  
Arnold & Siedsma  
Advocaten en Octrooigemachtigden  
Sweelinckplein 1  
2517 GK Den Haag (NL)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office dated 30 May 1995, posted  
on 9 June 1995, revoking European patent  
No. 0 301 617 pursuant to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** C. T. Wilson  
**Members:** F. Brösamle  
M. Aúz Castro

## Summary of Facts and Submissions

I. European patent application No. 88 201 378.2 was granted on 16 January 1991 as European patent No. 0 301 617.

II. Claim 1 as granted reads as follows:

"1. A plural glass pane, comprising an assembly of at least two glass panes being held at the desired distance by means of distance ledges extending along the edge portions and joining each other, at the outer side of said distance ledges a cement layer being provided for preventing penetration of moisture, holes being formed in at least one of said glass panes which do not communicate with the air space between the glass plates, in which holes fastening means for fastening fitting elements are provided, which holes and fastening means are surrounded by distance ledge portions and cement, so that said holes open into the interspace filled with cement, characterised in that near a hole (10) or a plurality of adjacent holes for fastening means a distance piece (3) is provided, which comprises an annular closed outer rim (4) surrounding a chamber (5) filled with cement around the or each fastening means."

III. An opposition was filed claiming lack of novelty and of inventive step of the patent in suit. It was mainly based on the allegation of two public prior uses falling within the scope of claim 1 of the contested patent.

According to the alleged first prior use two isolating glass panes had been purchased by and delivered to H. J. Voskamp & Zonen in January 1987 and were displayed by that firm in the same month at the Building Trade Fair in Zuidlaren/Holland.

The second prior use concerned the delivery by the opponent of twelve insulating sliding panes to Siepel Isolatiewerken in Borger/Holland in 1980.

- IV. By decision of 9 June 1995 the opposition division revoked European patent No. 0 301 617 in the light of the first public prior use.

Not dealt with in the decision of the opposition division was the alleged second prior use and a further presented written state of the art in the form of

(D1) US-A-2 936 050

(D2) DE-A-3 442 911

(D3) NL-A-7 802 883 and

(D8) NL-A-178 531.

- IV. On 7 August 1995 (Telefax) the proprietor of the patent - appellant in the following - filed an appeal against the above decision, paying the fee on the same day and filing the statement of grounds of appeal on 6 October 1995.

- V. In the parallel Dutch proceedings the Dutch Court of Appeal in its decision of 20 February 1997 had come to the result that neither of the prior uses was proven.

- VI. With communication of 1 September 1997 the board informed the parties that the Dutch Court's findings appeared to be based on a thorough and convincing analysis of the facts and that the board intended to follow these findings as far as lack of proof of the prior uses was concerned.
- VII. By letter of 7 September 1998 the respondent (opponent) withdrew his opposition.
- VIII. The Appellant requested to set aside the impugned decision and to maintain the patent in its granted form. His arguments essentially can be summarized as follows:
- the prior uses "Voskamp" and "Siepel" are not proven i.e. that plural glass panes according to EP-B1-0 301 617 were shown in the exhibition of Zuid Laren in January 1987, (see final decision of the Dutch Court of Appeal filed by the appellant in the language of the proceedings); the novelty objection of the opposition decision is therefore without a basis;
  - the prior art in form of (D8) and (D1), (D2), (D3) is not novel-destroying either and cannot render obvious the subject-matter of granted claim 1;
  - (D8) is already dealt with in the patent specification and (D1), (D2), (D3) were only cited by the former opponent/respondent against dependent claims, namely granted claims 2 to 4;
  - (D1) and (D3) do not disclose a distance piece between two glass panes near a hole for fastening means and no distance piece which comprises a closed outer rim surrounding a chamber filled with cement around the or each fastening means;

- (D2) was only cited against granted claim 4 and is irrelevant for the subject-matter of granted claim 1;
- summarizing, the impugned decision cannot be upheld; since the subject-matter of granted claim 1 is novel and inventive European patent No. 0 301 617 should be maintained as granted.

### Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*
  - 2.1 This issue has to be dealt with in respect of the prior uses raised, namely "Voskamp" and "Siepel".
  - 2.2 In the national proceedings before the Dutch District Court and the Court of Appeal several witnesses were heard and written statements introduced from both parties to these proceedings. The Dutch Court of Appeal could not establish an uninterrupted chain of proof that the alleged public prior uses took indeed place before the priority date of the contested patent. Its conclusion can be summarized as follows:

In view of the first alleged prior use, according to the testimony of P. C. Nijenhuis, a witness named by Mr Timmermans, the former opponent, and the written statement dated 7 May 1993 of his employer Voskamp which the witness co-signed as approved, P. C. Nijenhuis saw the Timmermans isolating glass

panels at the trade fair in 1987. This testimony was based solely on a proforma invoice from Timmermans Glasprodukten to Voskamp, an invoice which bears the date of 5 January 1987. In the statement of Voskamp it was said that their accounts did not show when this invoice had been received by the company.

According to the testimony of another witness presented by Mr Timmermans, Mr Mulder, viewed in conjunction with his statement of 15 July 1992, his knowledge concerning the year of the trade fair where he saw the Timmermans glass panels concerned was based solely on a quotation from Timmermans Glasprodukten to Alraf B.V., the company co-owned by Mr Mulder. This quotation was dated 27 January 1987 and started with the sentence: "Further to our conversation at the Building Trade Fair in Zuid Laren, January last, 1987".

The dates of documents originating from Timmermans were essentially for the witnesses to recall which year they saw the panels at the trade fair.

The Appeal Court considered these testimonies too weak a basis to acknowledge the display of the panels in question at the fair of 1987, in particular as other witnesses, presented by the patent proprietor had given testimony that they had visited the Voskamp stand at the trade fair in 1987, but that they had not seen any Iso hardened glass windows there.

The second public prior use, the delivery of twelve insulating sliding panes to Siepel Isolatiewerken in Borger was confirmed by J. R. Siepel, the owner of the receiving company who was heard as a witness. He took the time of delivery from a Timmermans invoice bearing

a date in August 1980. On this invoice was a telephone number which did not come into use until 1982.

Therefore, the date of that invoice and thus the date of delivery remained doubtful and therefore, the second alleged public prior use was not considered to be proven, either.

2.3 After evaluating the findings of the Dutch Appeal Court the board's judgement is that no further investigations are necessary and that the board can follow the conclusion of the Dutch Appeal Court with the consequence that the subject-matter of granted claim 1 contrary to the findings in the impugned decision of the opposition division is considered to be **novel**.

3. In application of Article 111 EPC the board continues the proceedings with respect to the crucial issue to be decided, namely inventive step, in order not to further delay the proceedings and to come to a final decision about the issue of validity of the patent in suit.

4. *Inventive step*

4.1 The relevant state of the art with respect to the issue of inventive step is (D1), (D2), (D3) and (D8).

4.2 The nearest prior art document is (D8) already dealt with in the patent in suit, (see EP-B1-0 301 617, column 1, lines 3 to 43 and column 2, lines 29 to 37).

According to (D8) two glass panes "1" are held at a given distance by means of distance ledges "2" whereby their outsides are covered by a cement layer "4"; fastening means "6" penetrate holes in the panes "1" and are suited for fastening fitting elements.



- 4.3 A consequence of the above arrangement is that special distance ledges are to be used whereby a cement layer "4" which is visible through the panes is present between the fastening means "6" and the edges of the plural glass panes; in addition it is not possible to arrange fitting elements in this manner at a larger distance from the edges and in particular in the centre of the glass pane.
- 4.4 Starting from (D8) the objectively remaining technical object to be solved by the invention is to overcome the above restrictions and inconveniencies of the nearest prior art construction.
- 4.5 The above object of the invention is solved by the features laid down in granted claim 1, namely by a distance piece "3" which comprises an annular outer rim "4" surrounding a chamber "5" filled with cement around the or each fastening means which are fitted in (a) hole(s) provided in the panes.
- 4.6 The annular outer rim "4" according to claim 1 restricts the flow of cement into the space between the two panes "1,1" and solves the problem of visibility of the cement layer through the panes whereby the **individual** distance pieces "3" of the invention allow an arrangement thereof in any part of the panes without any restrictions to their edges.
- 4.7 With respect to the question whether this solution is based on an inventive step or not in the light of (D1), (D2), (D3) and (D8), the board comes to the following result:

4.7.1 (D8) is not helpful for a skilled person confronted with the object to be solved to enable him to arrive at the plural glass pane of claim 1, (see above remarks 5.3 and 5.4), since the claimed invention is completely different from what is known. The claimed distance pieces "3" are **individual** pieces which can be placed in contrast to (D8) in **any region** of the glass panes since they are not restricted to an arrangement in the region of the edges of the panes. One **or more** of the claimed distance pieces can be used depending on the demands of the fastening means.

4.7.2 (D1) relates to a panel construction without a distance between the panels so that the essential feature of transparency of the panes does not exist in the technical field addressed in (D1); this is also true for the problems of **air tightness** of the known plural glass pane and the aspect of **visibility** of any binding/sealing agent in form of a cement layer.

In the notice of opposition (D1) consequently was not cited with respect to granted claim 1 rather to dependent claims 2 and 4, (see EPO Form 2300.3 04.89, remark X A1).

4.7.3 This is also true for (D2) which was cited only against granted claim 4, (see above reference and its remark X A2).

From (D2) a distance holder "4" is known in which a screw "8" is **directly** screwed in **without** application of **a cement layer**. The pane construction according to (D2) appears to be "low-tech" and not in line with a sealed plural glass pane as defined in granted claim 1 and per se known from (D8) since no sealing arrangement is to

be seen from (D2), (see Figures 2, 6 and 7). Reference number "4" in (D2) relates to a distance piece ("Distanzstück") but obviously has, however, not the same function as in granted claim 1, since in (D2) the panes partly are not flat, (see pane "2" in Figures 2, 6 and 7), and therefore do not require a piece which creates/maintains a distance between the panes.

4.7.4 (D3) comprises a holding assembly "11" which in contrast to granted claim 1 only penetrates one pane "14", (see Figures 7 to 10 thereof). Under these circumstances no distance piece in combination with a fastening means is necessary so that (D3) relates to a completely different approach for arranging fastening elements in combination with plural glass panes as is claimed.

While granted claim 1 is based on a cement layer for sealing the fastening means in the plural glass pane-systems, (D3), (see Figures 7 to 10 and page 7, line 11), obviously makes use of a **preformed** more or less solid sealing means. Under these circumstances it is impossible to achieve the essential feature of granted claim 1, namely "an outer rim surrounding a chamber filled with cement".

4.7.5 (D1), (D2) and (D3) for the above reasons - whether considered singly or in combination with each other or in combination with the nearest prior art document (D8) - cannot lead a skilled person confronted with the object to be solved by the invention to the subject-matter of granted claim 1 so that its novel subject-matter has to be seen also as being non-obvious.

4.7.6 Granted claim 1 consequently complies with the requirements of Article 56 EPC.

Dependent granted claims 2 to 4 relate to embodiments of the invention and are also therefore to be maintained.

**Order**

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

1. The impugned decision is set aside.
2. European patent No. 0 301 617 is maintained as granted.

The Registrar:



N. Maslin

The Chairman:



C. T. Wilson