



Action no: UPC 280/2025  
Revocation action  
Central Division (Section Munich)

**Decision**  
**of the Court of First Instance of the Unified Patent Court**  
**Central Division (Section Munich)**  
**issued on 8 April 2026**

HEADNOTE:

Even if a certain prior art document in the same technical field as the patent in suit is considered to be a realistic starting point, it can be relevant for the assessment of inventive step that it relates to a different kind of device and solves a different problem than the invention of the patent.

KEYWORDS:

Front-loaded procedural system. Claim interpretation. Physical and spatial configuration. Inventive step. Objective problem. Burden of proof and substantiation. Motivation for the skilled person.

CLAIMANT:

**WIRPLAST – Więcek Spółka Jawna**, ul. Stawowa 9 - 42-287 Babienica - Poland

represented by: Oskar Ginko of AOMB Polska sp. z o. o.

DEFENDANT:

**VILPE Oy**, Kauppatie 9 - 65610 Mustasaari - Finland

represented by: Jarkko Tiilikainen and Tatu Ahlskog of Laine IP Oy

PATENT AT ISSUE

European Patent no EP 2 649 380 B1.

PANEL/DIVISION

Panel 1 of the Central Division (Section Munich).

DECIDING JUDGES

This decision has been delivered by András Kupecz (as Presiding judge and judge-rapporteur), Daniel Severinsson (legally qualified judge) and Merja Heikkinen-Keinänen (technically qualified judge).

LANGUAGE OF THE PROCEEDINGS:

English.

SUBJECT-MATTER OF THE PROCEEDINGS

Revocation action.

ORAL HEARING

25 February 2026.

## SUMMARY OF THE FACTS

1. On 2 April 2025, WIRPLAST – Więcek Spółka Jawna (“the Claimant”) brought a revocation action in the Central Division (Section Munich) (“CD Munich”) of the Unified Patent Court (“UPC”) against Vilpe Oy (“the Defendant”) in relation to European Patent EP 2 649 380 B1 (“the Patent”).
2. The Patent is based on the PCT application PCT/FI2011/051045 published as WO 2012/076748, which was filed on 25 November 2011. At the European Patent Office (“EPO”) the application was handled under the application number 11847058.2. The Patent claims priority of Finnish application FI 20106307 of 9 December 2010. The mention of the grant of the Patent was published on 27 June 2018.
3. The Patent is in force in the following UPC Contracting Member States: Belgium, Denmark, Estonia, France, Germany, Latvia, Lithuania, Netherlands and Sweden.
4. The Patent, which was granted in the English language, is entitled “Accessory for an exhaust ventilation pipe” and has the following claims:
  1. An exhaust ventilation pipe, which exhaust ventilation pipe comprises an exhaust pipe (1) of a ventilation channel, provided with a hat (2) and extending through the roof of a building, the upper part of the hat (2) being provided with a conical cup (3) preventing rain water from entering the ventilation channel, **characterized in that** it further comprises a circular spirit level (6) integrated on the top of the conical cup (3) in the hat (2).
  2. The exhaust ventilation pipe according to claim 1, **characterized in that** the exhaust ventilation pipe is a roof extractor further comprising an electric motor and a propeller of the extractor, said electric motor and said propeller being mounted below the conical cup (3) of the hat (2).

## POINTS IN DISPUTE AND REQUESTS OF THE PARTIES

5. The Claimant argues that the Patent is invalid on the ground that its subject-matter is not patentable within the terms of Art. 65(1) and (2) of the Agreement on a Unified Patent Court (“UPCA”) in combination with Art. 138(1)(a) of the European Patent Convention (“EPC”), since it is not based on an inventive step (Art. 56 EPC).

6. Based thereon, the Claimant requests that:
  - 1) the Patent is revoked in its entirety for the territory of the UPC member states Belgium, Denmark, Estonia, France, Germany, Latvia, Lithuania, Netherlands and Sweden, and
  - 2) the Defendant is ordered to bear the costs of the proceedings.
7. The Defendant requests that:
  - The revocation action is dismissed and the Patent is maintained as granted (main request).
  - In case the main request is not granted, that the Patent is maintained on the basis of any of auxiliary requests 1–4, to be considered in that order.
  - Only material provided in the language of the proceedings included in the Statement for revocation to be allowed in the proceedings.
  - The Claimant is ordered to bear the costs of the proceedings.
8. Specifically with respect to the application to amend, the Claimant further requests to dismiss the Defendant’s application to amend the Patent, and thus reject all auxiliary requests.
9. The grounds and defences as brought forward by the parties will, to the extent relevant for this decision, be discussed in detail below.

#### GROUNDS FOR THE DECISION

10. The admissible revocation action is not well-founded and must be dismissed. The subject-matter claimed in the Patent does not follow from the state of the art in an obvious way.

##### **I. (International) jurisdiction and admissibility of the revocation action**

11. Pursuant to Art. 32(1)(d) UPCA, the UPC shall have exclusive competence for actions for revocation of (European) patents. In view of this exclusive competence, and since no opt-out from the exclusive competence of the UPC in relation to the Patent is in effect (cf. Article 83(3) UPCA), the UPC – as a common court of the Member States to the UPCA (Art. 71a of Regulation (EU) No. 1215/2012 (“Brussels Ia”) – has international jurisdiction based on Art. 24(4) in connection with Art. 71b Brussels Ia.
12. The CD Munich is competent in respect of the present Revocation action on the basis of Art. 33(4) UPCA in connection with Rule 17.3 of the Rules of Procedure of the Unified Patent Court (“RoP”) and Annex II to the UPCA.

13. The revocation action is directed against the proprietor of the Patent (Rule 42 RoP). Thus, no concerns as to the admissibility exist in this respect.

## **II. General introduction to UPC proceedings and procedural issues**

14. It follows from the UPCA that decisions on the merits may only be based on grounds, facts and evidence, which were submitted by the parties or introduced into the procedure by an order of the Court and on which the parties have had an opportunity to present their comments (Art. 76(2) UPCA). Even though it is for the Court to actively manage a case in accordance with the RoP, this must not impair the freedom of the parties to determine the subject-matter of, and the supporting evidence for, their case (Art. 43 UPCA).
15. It is further established case law that, under the front-loaded procedural system of the UPC, the parties are required to set out their full case as early as possible (see RoP, preamble at 7, and also e.g. Court of Appeal, UPC\_CoA 71/2025, decision of 29 December 2025, *NJOY/VMR*, paras. 24 and 27, and CD Paris seat, UPC\_CFI 311/2023, decision of 21 January 2025, *NJOY/VMR*, paras. 16–29). It also follows from the RoP that a Statement for revocation should contain, inter alia, an indication of the facts relied on, the evidence relied on and, where appropriate, an explanation of the claimant's proposed claim construction and a copy of each of the documents referred to (Rule. 44(e)-(g)).
16. In the present case in the Statement for revocation, the Claimant relied on four prior art documents (D1 - DE10118226C1 in German, D2 - JP2002106855A in Japanese, D3 - US20070167130A1 in English and D4 - CN2255012Y in Chinese). The Claimant requested that D1, D2 and D4 needed not to be translated into the language of the proceedings (English) in their entirety. Only certain passages of these documents, which the Claimant considered relevant for the grounds for revocation, were initially translated and included in the Statement for revocation.
17. In its Defence to revocation the Defendant requested that the documents that had not been translated into English should not be admitted into the proceedings. At the same time the Defendant submitted a machine translation of D1. The Claimant eventually submitted machine translations of D2 and D4 after being ordered to do so by the Court after the interim conference held on 9 October 2025.
18. At the oral hearing the Defendant clarified that it requested that only material provided in the language of the proceedings included in the Statement for revocation should be allowed in the proceedings. The Claimant confirmed that the revocation action as regards claim 1 of the Patent as granted only relies on those passages of the prior art documents that were translated into English and submitted with the Statement for Revocation.
19. With the parties' clarifications at the oral hearing the Court has no reason to take a decision on the admissibility of those parts of D1, D2 and D4 that were not submitted in English with the Statement for revocation.

### III. The Patent and its interpretation

#### *Introduction*

20. The Patent relates to an exhaust ventilation pipe, extending through an outer roof of a building, provided with a hat with a conical cup preventing rain from entering the ventilation channel (see paragraph [0001] of the description, hereinafter only indicated with the respective paragraph numbers). Installation of such an exhaust pipe into a vertical position at an inclined roof often causes problems, resulting in that the installed exhaust pipe leans in some direction (para. [0002]).
21. The object of the invention is to eliminate such a problem which is achieved by the device according to claim 1 (whereby a circular spirit level is integrated on top of the conical cup in the hat of the exhaust ventilation pipe). Due to this an installer sees immediately without any other accessories when the exhaust pipe is vertical, which considerably facilitates and fastens the installation. (Paras. [0004] and [0008].)
22. Claim 1 of the Patent can be broken down in the following features:
  - F1 An exhaust ventilation pipe, which exhaust ventilation pipe comprises
  - F2 an exhaust pipe (1) of a ventilation channel,
  - F3 provided with a hat (2)
  - F4 and extending through an outer roof of a building,
  - F5 the upper part of the hat (2) being provided with a conical cup (3) preventing rain water from entering the ventilation channel,
  - F6 characterized in that it further comprises a circular spirit level (6)
  - F7 integrated on the top of the conical cup (3) in the hat (2).
23. During the written proceedings of this case neither party has provided a complete claim construction for the above features. However, the parties have debated the interpretation of feature F4 “extending through the roof of a building”, which therefore particularly requires discussion.
24. The principles applicable to claim construction have been set out by the Court of Appeal in its final order in UPC\_CoA\_335/2023 (order of 26 February 2024, as rectified, *Nanostring/10x Genomics*). The Court of Appeal has held that the patent claim is not only the starting point, but the decisive basis for determining the protective scope of a European patent under Art. 69 EPC in conjunction with the Protocol on the Interpretation of Art. 69 EPC. The

interpretation of a patent claim does not depend solely on the strict, literal meaning of the wording used. Rather, the description and the drawings must always be used as explanatory aids for the interpretation of the patent claim and not only to resolve any ambiguities in the patent claim. However, this does not mean that the patent claim merely serves as a guideline and that its subject-matter also extends to what, after examination of the description and drawings, appears to be the subject-matter for which the patent proprietor seeks protection.

25. The patent claim is to be interpreted from the point of view of a person skilled in the art. In applying these principles, the aim is to combine adequate protection for the patent proprietor with sufficient legal certainty for third parties. These principles for the interpretation of a patent claim apply equally to the assessment of the infringement and the validity of a European patent.
26. The skilled person always interprets features in the light of the claim as a whole (see e.g. UPC\_CoA\_768/2024, order of 30 April 2025, *Insulet/EOfFlow*). From the function of the individual features in the context of the patent claim as a whole, the skilled person will deduce which technical function these features actually have individually and as a whole. With regard to the terminology used in a patent, this can lead to the skilled person attributing a meaning to a term that differs from its general usage. The patent specification can define terms independently and may thus represent its own lexicon (see LD Munich, UPC\_CFI\_248/2024, decision of 22 August 2025, *Brita SE/AQUASHIELD*; CD Munich, UPC\_CFI\_836/2024, decision of 20 November 2025, *BAUSSMANN/Raimund Beck*; CD Paris seat, UPC\_CFI\_309/2023, decision of 5 November 2024, *NJOY/Juul*).

#### *The person skilled in the art*

27. The parties have not taken a firm position as to the identity of the person skilled in the art. According to the Court, based on the Patent as a whole, the skilled person should be defined as a mechanical engineer with experience of the design and installation of exhaust ventilation pipes. This definition was suggested at the oral hearing and then not further commented on by the parties.

#### *Interpretation of the claims from the perspective of the skilled person*

28. There is no disagreement between the parties as to the interpretation of features F1–F3, according to which the claimed device is “An exhaust ventilation pipe, which exhaust ventilation pipe comprises an exhaust pipe (1) of a ventilation channel, provided with a hat (2)”.
29. The Court finds that the skilled person, using the description and the drawings of the Patent for aid, would understand features F1–F3 according to their ordinary literal meaning. This means that exhaust ventilation pipe (F1) refers to the whole claimed device comprising an exhaust pipe (F2). The exhaust pipe is a pipe which is connected to a ventilation channel. The ventilation channel is typically located inside the building (under the roof, see e.g. para.

[0007]). The exhaust pipe of F2 is provided with a hat (F3) on top of it, as exemplified in the drawing below.

30. Feature F4 requires that the exhaust pipe of the claimed device is "...extending through an outer roof of a building".
31. The Claimant has argued that this feature should be construed as being suitable for installing in a roof opening and that the feature is not limiting and should therefore be disregarded.
32. The Defendant has argued that when read in its context of an exhaust ventilation pipe, feature F4 establishes a requirement for the claimed exhaust ventilation pipe to be suitable for extending through an outer roof of a building. F4 thus defines the technical function for the exhaust pipe to extend through an outer roof of a building. This is a substantial limitation that excludes, for example, flat mounting plates, that cannot extend through an outer roof of a building but, rather, are in abutment against it.
33. The Claimant has responded that the Defendant's interpretation of F4 is flawed and would mean that the claimed subject-matter includes a whole building with a roof, or at least the roof alone through which the exhaust ventilation pipe extends.
34. First of all the Court finds that, based on the wording of claim 1 itself, the skilled person using common general knowledge understands that "extending through an outer roof" means that the exhaust ventilation pipe passes from below the roof to above the roof. The skilled person also realises that exhaust ventilation pipes in general are designed to transport air from inside a building to outside a building. For the physical and spatial configuration of the claimed elements (cf. UPC\_CoA\_789/2025 and UPC\_CoA\_813/2025, order of 6 March 2026, *Dyson/Dreame*, para. 35), this means that the exhaust ventilation pipe is so configured that it has a lower part under the roof, a part that is located "through" the roof and an outer part above the roof.
35. This ordinary meaning of feature F4 is confirmed when the other features of claim 1 are considered. What is claimed is an exhaust ventilation pipe comprising an exhaust pipe which has a hat and a conical cup preventing rain water from entering the ventilation channel. A "hat" is a part which is typically located at the top of something. The function of the hat is to prevent rain water from entering the ventilation channel. This implies that it is exposed to rain water, i.e. is located "outside" the building. Further, the exhaust pipe of claim 1 is connected to a ventilation channel which is inside the building, i.e. under the roof. How the connection to the ventilation channel is made, is left to the skilled person.
36. This understanding is furthermore in accordance with the only embodiment of the invention that is described in the description, in which an inner pipe (4) of the exhaust pipe (1), is intended to protrude through an outer roof of a building, and it is intended to be attached to a ventilation channel under the roof. In this embodiment, further, by means of a pass-through device matching with the shape of the roofing of the outer roof and having a ball

shaped collar part, the inner pipe (4) of the exhaust pipe will tightly be led through the roof, when the bottom end of the outer mantle of the exhaust pipe 1 is provided with a ball shaped enlargement piece (5) adaptable onto said collar part. (See para. [0007] and Fig. 1 of the Patent, which is shown below.)

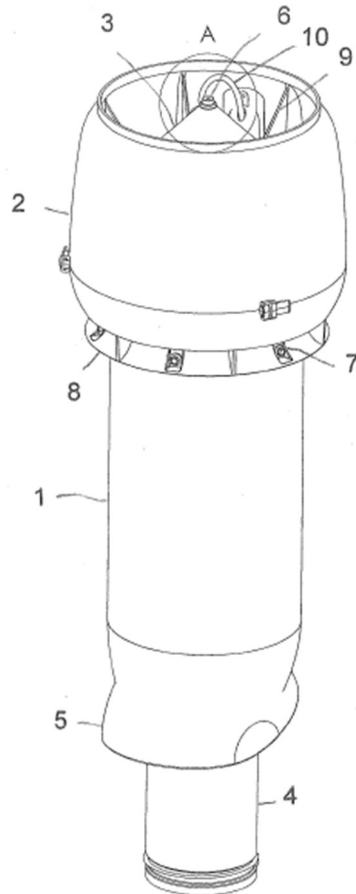


Fig. 1

37. The Court notes that claim 1 as granted is not limited to the described embodiment, whereby the exhaust ventilation pipe has a pass-through device having a ball shaped collar part and an exhaust pipe with an outer mantle provided with a ball shaped enlargement piece. However, the object of the invention is to facilitate installing an exhaust ventilation pipe with a hat in a vertical position. The skilled person, reading claim 1 as a whole and using the description and the drawings as explanatory aids, will understand that the claimed device has an exhaust pipe which is connected to a ventilation channel below the roof of a building and which protrudes through the outer roof of a building and is provided with a hat. The spatial configuration of the claimed exhaust ventilation pipe is therefore that the bottom part of it is inside the building (under the roof) and the upper part of it extends through and above the roof. Claim 1 leaves it to the skilled person exactly how to carry this out.
38. In the context of claim 1 as a whole, feature F4 is therefore not only a functional feature which requires that the claimed exhaust ventilation pipe is suitable for extending through the roof of a building, but also physically and spatially defines the claimed subject-matter.

Exhaust ventilation pipes which are connected to a ventilation channel in a building but do not comprise an exhaust pipe extending through and above the outer roof of a building are not covered by the claim.

39. Further, it is clear to the skilled person, reading claim 1 as a whole with a mind willing to understand, that the claimed subject-matter does not include a building or a roof of a building, as argued by the Claimant. It also follows already from para. [0001] of the Patent that the “[...] invention concerns an exhaust ventilation pipe [...]”.
40. Against this background the Court finds that the skilled person would understand feature F4 “extending through an outer roof of a building” as limiting the claimed subject-matter to exhaust ventilation pipes with exhaust pipes protruding through and above the roof of a building.
41. The parties have not disputed the interpretation of features F5–F7 according to which “the upper part of the hat (2) [is] provided with a conical cup (3) preventing rain water from entering the ventilation channel, characterized in that it further comprises a circular spirit level (6) integrated on the top of the conical cup (3) in the hat (2).”
42. According to the description, the diameter of the conical cup of F5 is smaller than the inner diameter of the hat so that an annular slot is formed between the wall of the hat and the cup, through which rainwater can flow down onto a conical collar fastened by supporting arms to the side wall of the hat, from which collar the water flows out of the hat (para. [0009]). Claim 1 as granted is not limited to this particular embodiment of the invention but explicitly states that the conical cup is “in the hat” (feature F7). The drawings also show a hat with a conical cup inside it. It is thus clear to the skilled person that feature F5 should be understood as the conical cup being placed inside the hat and not on top of the hat.
43. As for the characterizing part of claim 1, features F6 and F7, the description states that a circular spirit level is integrated on the top of the conical cup in the hat. The technical function of this feature is that by means of the circular spirit level, an installer easily sees when said exhaust ventilation pipe is in quite a vertical position, i.e. when the glass pearl of the spirit level is in the middle of the spirit level (para. [0008]).
44. Again, the Court finds that the skilled person, using the description and the drawings of the Patent for aid, would understand these features according to their ordinary literal meaning. It is undisputed between the parties that circular spirit levels, i.e. levels which indicate levelness in all horizontal directions, as such (feature F6) were well known at the priority date. As already noted, feature F7 explicitly says that the conical cup should be placed inside the hat. The skilled person would further understand the term “integrated” as the circular spirit level not being intended to be removed from the top of the conical cup after installation of the exhaust ventilation pipe, but the claim is not limited to any particular method of such integration.

45. Claim 2 refers back to claim 1 and specifies that the exhaust ventilation pipe is a roof extractor further comprising an electric motor and a propeller of the extractor, said electric motor and said propeller being mounted below the conical cup of the hat ([para. 0007]).

#### **IV. Inventive step**

##### *Introduction*

46. The Claimant has argued that the claimed subject-matter lacks inventive step over D1 (DE10118226C1) as starting point, combined with either the skilled person's common general knowledge or one of the documents D2 (JP2002106855A), D3 (US2007/0167130A1) or D4 (CN2255012Y). It is undisputed between the parties that all the documents D1–D4 are prior art in relation to the Patent.
47. As noted above, the Claimant clarified at the oral hearing that for revocation of claim 1 of the Patent as granted it only relies on those passages of D1, D2 and D4 that were translated into English in the Statement for revocation.
48. A European patent is only validly granted for an invention if – apart from other requirements – it involves an inventive step. An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art (Art. 56 EPC).
49. The approach to assessment of inventive step taken by the UPC has been provided by the Court of Appeal in its decisions dated 25 November 2025 in *Amgen/Sanofi* (UPC\_CoA\_528/2024 and UPC\_CoA\_529/2024) and *Meril/Edwards* (UPC\_CoA\_764/2024 and UPC\_CoA\_774/2024) with further references to e.g. the order of the Court of Appeal in the *Nanostring/10X Genomics* case (UPC\_CoA\_335/2023, order of 26 February 2024, as rectified).
50. In the UPC approach, it first has to be established what the object of the invention is, i.e. the objective problem. This must be assessed from the perspective of the skilled person, with its common general knowledge, as at the application or priority date (also referred to as the relevant date) of the patent. This must be done by establishing what the invention adds to the state of the art, not by looking at the individual features of the claim, but by comparing the claim as a whole in context of the description and the drawings, thus also considering the inventive concept underlying the invention (the technical teaching), which must be based on the technical effect(s) that the skilled person on the basis of the application understands is (are) achieved with the claimed invention.
51. In order to avoid hindsight, the objective problem should not contain pointers to the claimed solution.

52. The claimed solution is obvious when at the relevant date the skilled person, starting from a realistic starting point in the state of the art in the relevant field of technology, wishing to solve the objective problem, would (and not only “could”) have arrived at the claimed solution.
53. The relevant field of technology is the field relevant to the objective problem to be solved as well as any field in which the same or similar problem arises and of which the person skilled in the art of the specific field must be expected to be aware.
54. A starting point is realistic if the teaching thereof would have been of interest to a skilled person who, at the relevant date, wishes to solve the objective problem. This may for instance be the case if the relevant piece of prior art already discloses several features similar to those relevant to the invention as claimed and/or addresses the same or a similar underlying problem as that of the claimed invention. There can be more than one realistic starting point and the claimed invention must be inventive starting from each of them.
55. The skilled person has no inventive skills and no imagination and requires a pointer or motivation that, starting from a realistic starting point, directs it to implement a next step in the direction of the claimed invention. As a general rule, a claimed solution must be considered not inventive/obvious when the skilled person would take the next step prompted by the pointer or as a matter of routine, and arrive at the claimed invention.
56. A claimed solution is obvious if the skilled person would have taken the next step in expectation of finding an envisaged solution of his technical problem. This is generally the case when results of the next step were clearly predictable, or where there was a reasonable expectation of success.
57. A reasonable expectation of success implies the ability of the skilled person to predict rationally, on the basis of scientific appraisal of the known facts before a research project was started, the successful conclusion of that project within acceptable time limits.
58. Whether there is a reasonable expectation of success depends on the circumstances of the case. The more unexplored a technical field of research, the more difficult it was to make predictions about its successful conclusion and the lower the expectation of success. Envisaged practical or technical difficulties as well as costs involved in testing whether the desired result will be obtained when taking a next step may also withhold the skilled person from taking that step. On the other hand, the stronger a pointer towards the claimed solution, the lower the threshold for a reasonable expectation of success.
59. It is for the claimant to substantiate why an invention would be obvious for the skilled person (see e.g. Court of Appeal, UPC\_CoA 523/2024, order of 3 March 2025, *Sumi/Syngenta*, para. 88). The burden and presentation of proof with regard to the facts from which the lack of

validity of the patent is derived and other circumstances favourable to the revocation lies with the claimant (Art. 54 and 65(1) UPCA, Rules 44(e)–(g) and 25.1(b)–(d) RoP). Even though proof of certain facts, if contested, may be required, the assessment of the relevant facts and circumstances is a question of law. (e.g. Court of Appeal, UPC\_CoA 764/2024 and UPC\_CoA 774/2024, decision of 25 November 2025, *Meril/Edwards*, para. 130).

*The object of the invention and underlying problem*

60. The parties agree that the technical effect of the invention according to claim 1 of the Patent (integrating a circular spirit level on the top of the conical cup in the hat) is that it is quickly and easily known when the exhaust ventilation pipe is positioned vertically.
61. According to the Claimant, the objective problem should be defined as how to ensure that the exhaust ventilation pipe will be installed correctly, even without additional tools. The Defendant has argued that the Claimant's objective problem contains part of the invention by referring to not needing additional tools. The Defendant has therefore defined the objective problem as how to ensure that the exhaust ventilation pipe will be installed correctly.
62. The inventive concept of the claimed invention is that by integrating a circular spirit level on the top of the conical cup in the hat of the exhaust pipe, an installer of an exhaust ventilation pipe immediately sees when the exhaust pipe is in a vertical position (paras. [0004] and [0008]). This is of particular importance when such exhaust ventilation pipes are installed on an inclined roof (para. [0002]). Against this background the Court finds that the skilled person would understand the underlying problem of the claimed invention as to provide an exhaust ventilation pipe comprising an exhaust pipe provided with a hat and extending through the outer roof of a building, that is configured for easy and fast vertical installation.

*D1 as a starting point*

63. D1 discloses a roof fan with a fan housing which is provided with an upper, conical cover and in the lower part of which an impeller of a radial fan is rotatably arranged. The fan housing has a vertical flow channel, which can be closed by a flow-actuated closure device. The closure device is designed as an annular closure cover which encloses the closed, upper cover of the fan housing. The closure device is guided so as to be vertically movable in the fan housing and, in the idle state, sits tightly closing on the fan housing. (See e.g. claim 1 of D1.)
64. The aim of the invention of D1 is to provide a roof fan which is rainproof, snowproof and protected against wind influences (para. [0005]). The solution is to equip a generic roof fan provided with a vertical flow channel with a flow-actuated annular closure cover which encloses the upper cover of the fan housing and which is guided so as to be vertically movable in the fan housing and, in the idle state, sits tightly closing on the fan housing (para. [0006] and claim 1 of D1).

65. The roof fan of D1 with the fan housing open, in the left part of the drawing inside view and in the right part of the drawing as a longitudinal section, is shown below (Fig. 2 of D1):

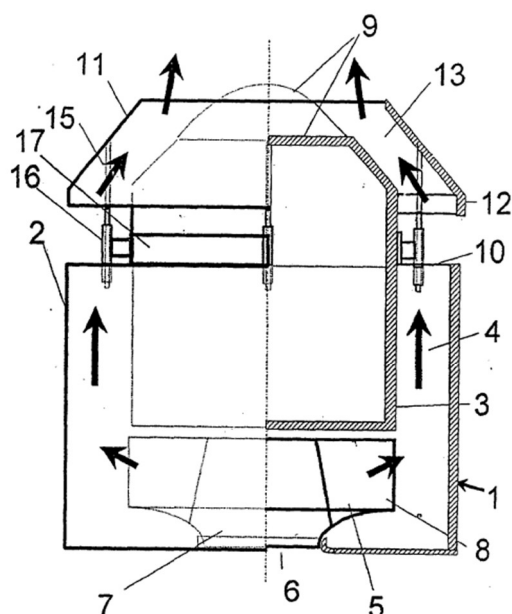


Fig. 2

66. According to D1, the roof fan contains a fan housing (1) provided with a base plate, which can be attached to the roof of a building. The fan housing (1) consists of an outer housing (2) and an inner housing (3), which is arranged within the outer housing (2). A vertical flow channel (4) of uniform width is formed between the outer housing (2) and the inner housing (3). In the lower part of the fan housing (1), the impeller (5) of a radial fan rotating around a vertical axis of rotation is arranged. An inlet nozzle (6) is arranged in the base plate of the fan housing (1) and is connected to the axial inlet (7) of the impeller (5). The radial outlet (8) of the impeller (5) opens into the flow channel (4). (See para. [0013] of D1.)
67. The base plate does not have a reference number in the drawing, but it is clear to the skilled person from the teaching of D1 as a whole that the base plate is at the bottom of the fan housing (1). This is also the common understanding of the parties.
68. The Claimant has argued that D1 should be used as a starting point for the assessment of inventive step since it belongs to the same technical field and discloses all features of both claim 1 and 2 of the Patent with the exception of features F6 and F7. As regards feature F4 the skilled person inevitably knows that exhaust ventilation pipes must be connected to ventilation ducts, for instance by intermediate means, such as additional pipes or adapters that are well known in the art. It would therefore be immediately apparent for the skilled person that feature F4 is implicitly disclosed in D1 or at least that the embodiment of D1 is suitable to extend through an outer roof of a building. In every ventilation system, in which the claimed device may be used, the exhaust pipe must be placed on the outer roof of the building while being connected to other parts of the ventilation system, such as ventilation ducts that run further inside a roof structure and/or a building. Feature F4 is not in the

characterizing part of claim 1 of the Patent and that the patent proprietor did not assert during prosecution of the patent application before the EPO that the feature was not disclosed in D1, which was considered the closest prior art.

69. The Defendant has not disputed that D1 is a realistic starting point but has argued that D1 neither discloses features F4, F6 or F7. As regards feature F4, the inner workings of the ventilation system are not addressed in D1 and it is not inevitable that the fan casing of D1 would have a pipe penetrating the roof. In fact D1 is silent about what sort of system the ventilation fan therein disclosed is supposed to be installed to. D1's disclosure of a base plate that is attached to the roof would imply a planar mounting, where the fan housing of D1 is simply placed in abutment with the outer roof surface. This is a different kind of ventilation device than the invention of the Patent which has a pipe extending through the with a hat at a distance from the roof.
70. The Court agrees with the parties that D1 would have been of interest to the skilled person and is a realistic starting point for the assessment of inventive step of the subject-matter claimed in the Patent. D1 and the Patent belong to the same technical field of ventilation devices. Further, D1 and the claimed subject-matter have several technical features in common which is also an indication that D1 is a realistic starting point for the assessment of inventive step.
71. However, as correctly argued by the Defendant, the roof fan of D1 and the invention of the Patent are essentially different kinds of ventilation devices. The roof fan of D1 is to be placed *on a roof* with its base plate, whereas the claimed device is an exhaust ventilation pipe comprising an exhaust pipe *extending through* the roof of a building (see claim construction above). Accordingly, the underlying problem of the Patent is to provide an exhaust ventilation pipe comprising an exhaust pipe provided with a hat and extending through the outer roof of a building, that is configured for easy and fast vertical installation, whereas the underlying problem of D1 is to provide a roof fan which is rainproof, snowproof and protected against wind influences. As noted above, D1 solves this latter problem by installing a closure cover which closes an annular exhaust opening of the flow channel, and the closure cover is vertically movable and is lifted by the onset of air flow when the radial fan is started up, thereby releasing the exhaust opening. D1 does not at all address the problem of vertical installation of an exhaust ventilation pipe comprising an exhaust pipe which extends through the roof of a building.
72. The skilled person who reads D1 as a whole will find that it discloses a roof fan which comprises an exhaust pipe of a ventilation channel (axial inlet 7), provided with a hat (closure cover 11), the upper part of the hat being provided with a conical cup preventing rainwater from entering the ventilation channel (conical cover 9). Features F1–F3 and F5 of claim 1 of the Patent are thus disclosed in D1, which has not been disputed by the Defendant.
73. As regards feature F4 (extending through an outer roof of a building), based on the teaching of D1, a skilled person would attach the roof fan to the roof of a building with the base plate

comprising the air inlet nozzle facing the roof. Above the inlet, in the air flow direction, is an axial inlet of an impeller of a fan (para. [0013]). For the person skilled in the art, it is clear that the impeller of the fan follows the axial inlet in the air flow direction. The skilled person would know that a ventilation channel of the building can be connected to the air inlet nozzle of the roof fan for extracting the air inside the building via the ventilation channel. The skilled person would use necessary means to make the connection, e.g. additional pipes or adapters. However, there is nothing in D1 to suggest that the roof fan itself would comprise an exhaust pipe extending through the roof of an outer building. On the contrary, the skilled person would understand that the roof fan of D1 has a base plate which is intended to be mounted in abutment against the roof, albeit connected to a ventilation channel. Feature F4 is thus not disclosed in D1. The fact that the patent proprietor did not argue during prosecution at EPO that F4 was not disclosed in D1, and that F4 is not in the characterizing part of claim 1 of the Patent, does not change this assessment.

74. As agreed by the parties, claim 1 of the Patent also differs from the roof fan of D1 in that the exhaust ventilation pipe of the Patent comprises a circular spirit level integrated on the top of the conical cup in the hat (features F6 and F7).
75. To conclude, claim 1 of the Patent differs from D1 in that the claimed exhaust ventilation pipe comprises an exhaust pipe extending through an outer roof of a building and the conical cup in the hat of the exhaust pipe comprises a circular spirit level integrated on the top of the conical cup (features F4, F6 and F7). Even if the Court agrees with the parties that D1 is to be considered a realistic starting point, the Court considers it relevant for the assessment of inventive step to note that D1 refers to a different kind of ventilation device than the invention of the Patent. Further, the teaching of D1 does not at all address the problem of vertical orientation of an exhaust ventilation pipe. On the contrary, it is clear that the roof fan of D1 is intended to be mounted in abutment against the roof and it does not have any means to adjust its position for standing orientation.

#### *D1 and common general knowledge*

76. As mentioned above, the Claimant has argued that it would be immediately apparent for the skilled person that feature F4 is implicitly disclosed in D1 or at least that the roof fan of D1 is suitable to extend through an outer roof of a building. Further it is obvious that rooftop installers will constantly be motivated to ensure that the device is mounted perfectly in a vertical orientation, even when installing roof fans on flat roofs since there are rather high tolerances when buildings are constructed. For this purpose, the installer would use a spirit level since using and attaching such devices have been known for at least 70 years. Using a spirit level, such as the circular spirit level, would therefore be obvious for the skilled person, especially since the spirit level is one of the most basic solutions for determining verticality. Placing the circular spirit level on top of the conical cup is also an obvious choice since this is a place in an axis of the pipe.

77. The Defendant has argued that the roof fan of D1 is correctly installed when the base plate is against the roof at a correct location on the roof. Since the base plate of the roof fan housing of D1 and the surface of the roof determine the angular orientation, there is no need to use any type of level. Even though circular spirit levels were known long before the priority date of the Patent, it was not common general knowledge to integrate circular spirit levels to exhaust ventilation pipes, let alone to conical hats of exhaust ventilation pipes. The skilled person would therefore not have considered angular positioning of the roof fan housing when solving the problem of correct installation. It is particularly so since the exhaust ventilation pipe of D1 is even better rainproof if the pipe is not exactly in an upright position because if there is a small tilt any water runs easily away from the top of the juncture between the closure lid and the cover on top of the seal. In addition, the Claimant has provided no reasoning as to why the skilled person would provide the roof fan of D1 with an exhaust ventilation pipe that extends through an outer roof of a building (feature F4).
78. At the outset, the Court considers that since the roof fan of D1 has a base plate which is intended to be mounted in abutment to the roof and does not have any means to adjust its position for standing orientation, there would be no motivation for the skilled person to modify it for easy and fast *vertical* installation. Further, even though circular spirits level *per se* were well known at the priority date, the Claimant has not established that it was common general knowledge to integrate such levels on top of conical cups in hats of exhaust pipes. According to the Court this would not be a matter of routine modification of D1 but requires inventive skill. Already for these reasons claim 1 of the Patent is inventive over D1 in combination with the skilled person's common general knowledge.
79. The Court also observes that both the exhaust ventilation pipe of the Patent and the roof fan of D1 must be connected to a ventilation channel in a building. Further, it is apparent that exhaust ventilation pipes extending through roofs of a building belonged to the common general knowledge at the priority date. However, for the invention of the Patent to be obvious with regard to D1, it is necessary that the skilled person using his common general knowledge would (not could) have adapted the roof fan of D1 to reach the claimed subject-matter of the Patent. The Claimant has not in any way substantiated why and how the skilled person would modify the roof fan of D1 so that instead of the base plate and an axial inlet as disclosed in D1, it comprises an exhaust pipe of a ventilation channel extending through the roof of a building. Also for this reason, the Claimant has not established that the claimed invention is obvious over D1 and the skilled person's common general knowledge.
80. In conclusion, the subject-matter of claim 1 of the Patent is not obvious over D1 and the skilled person's common general knowledge. As claim 1 is not obvious, the dependent claim 2 is not obvious either.

*D1 and D4*



83. An exploded perspective view of the roof air convector is shown below (fig. 1 of D4).

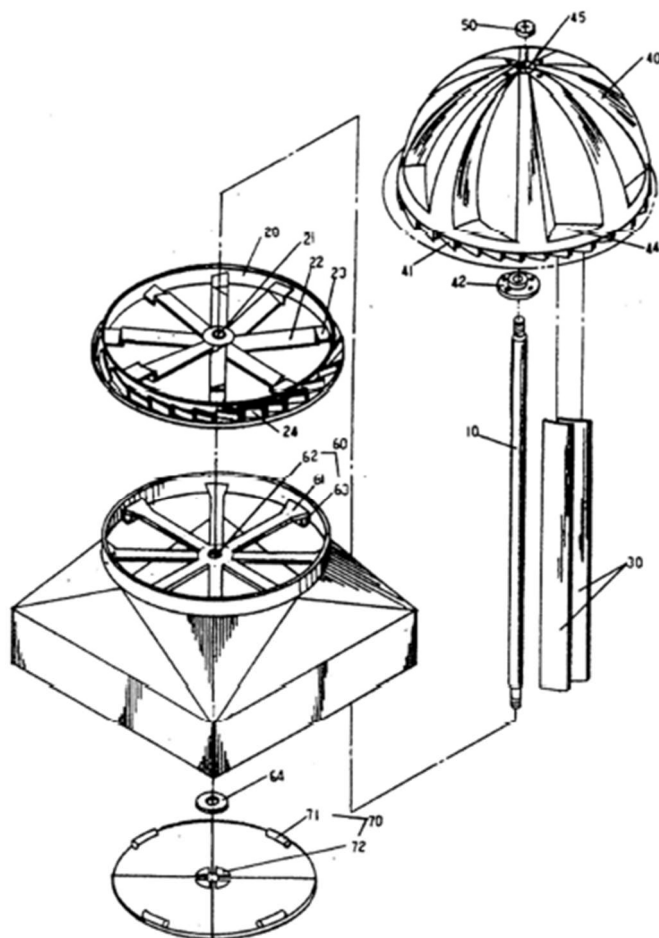


Fig. 1

84. The underlying problem of D4 is to provide a roof air convector with high efficiency, high heat exhaust rate and low cost. D4 solves the problem by providing special circular arc blades, diversion channels, fan blades, deflectors and fan cover for adjusting air volume. D4 also teaches to install a level on the structure to enable the convector to accurately reach the level vertical to the ground plane.
85. The Claimant has argued that the skilled person would be motivated to look for a solution in D4 since it also relates to the field of ventilation devices. The roof air convector of D4 has a circular spirit level integrated on the top of the cup and the description of the Patent does not mention any particular method of integration. It is apparent from the drawings that the level (50) of D4 is a circular spirit level. It is placed in the recess hole centrally at the top, and if the spirit level weren't circular but for instance a tubular, there would have to be at least two tubular spirit levels placed out of the main axis of the device.
86. The Defendant has argued that the roof fan of D1 is correctly installed when the base plate is against the roof at a correct location on the roof. Since the base plate of the roof fan housing of D1 and the surface of the roof determine the angular orientation, there is no need to use any spirit level. The roof air convector in D4 is commonly used in a hot or humid climate for reducing attic temperatures and moisture, and, in contrast, the basic idea of D1

is that the roof fan is rainproof, snowproof and protected against wind influences. The Claimant has provided no reasoning as to why the skilled person would provide the roof fan of D1 with an exhaust ventilation pipe that extends through an outer roof of a building (feature F4), and D4 does not disclose such an exhaust ventilation pipe. Additionally, D4 does not disclose the use of a circular spirit level nor that a spirit level is integrated on the top of the conical cup in the hat. Even if the level (50) would be a circular spirit level, there is no teaching in D4 of how to integrate it on top of a conical cup in the hat (feature F7) as D4 teaches to place level (50) to the impeller with a counterpart in the form of a bearing cap of a centrally placed shaft. Such an attachment could not be used in the fan casing of D1 meaning that the teachings of D4 and D1 are incompatible and would not lead to the claimed solution.

87. First the Court observes that the technical field of the inventions in the Patent, D1 and D4 is ventilation devices. However, D1 relates to ventilation in buildings using an impeller which requires electricity and the object of the invention is to create a roof fan which is rainproof, snowproof and protected against wind influences. In contrast, the roof air convector of D4 does not need electricity and is particularly suitable for discharging hot air in high humidity environments.
88. The underlying problem of claim 1 of the Patent is to provide an exhaust ventilation pipe comprising an exhaust pipe provided with a hat and extending through the outer roof of a building, that is configured for easy and fast vertical installation. As already mentioned, since the roof fan of D1 has a base plate which is intended to be mounted in abutment to the roof and does not have any means to adjust its position for standing orientation, the skilled person would have no motivation to modify it for easy and fast *vertical* installation. The roof fan of D1 and the roof air convector of D4 are also different kinds of ventilation devices. Therefore, in the view of the Court, the skilled person would not consider combining the teachings of D1 and D4 to solve the objective problem. Already for this reason the subject-matter of claim 1 of the Patent involves an inventive step over D1 and D4.
89. Even if the skilled person would consider combining the roof fan of D1 with the teachings of D4 he wouldn't reach the claimed subject-matter of the invention of the Patent.
90. There is no teaching in D4 to install an exhaust ventilation pipe that extends through an outer roof of a building. On the contrary D4 discloses a passive roof air convector which is not connected to a ventilation system in a building at all. As already mentioned, the Claimant has not substantiated why and how the skilled person would modify the roof fan of D1 so that it has an exhaust pipe extending through the roof. This means that even if the skilled person would combine D1 with the teachings of D4, feature F4 of claim 1 of the Patent would be missing. Also for this reason the subject-matter of claim 1 of the Patent is inventive over D1 and D4.

*D1 and D2*

91. D2 discloses an air conditioning apparatus with a level provided at a corner of a rectangular upper surface thereof. Four casters are attached near the four corners of the bottom plate of the air conditioning apparatus and at least one of the casters is provided with a lock function.
92. The air conditioning apparatus of D2 is shown below (Fig. 1 of D2).

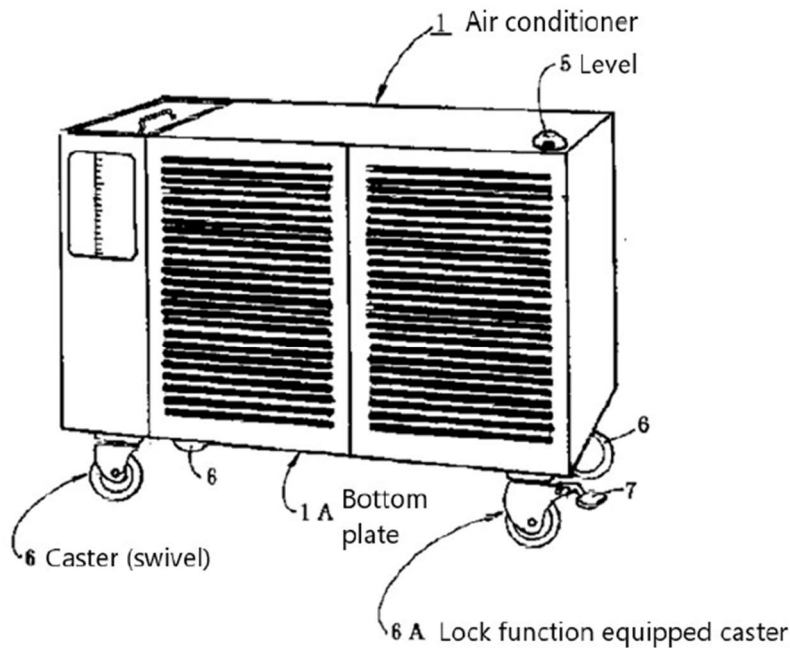


Fig. 1

93. The underlying problem of D2 is to provide an air conditioning apparatus that can be moved easily without lifting, and at the same time, remains in a stable state after moving to a predetermined place, and further allows for horizontal adjustment.
94. The Claimant has argued that D2 discloses a device in a similar field of technology as the invention of the Patent. It follows from the description that after the air conditioner is moved to a predetermined position and the casters are locked, a horizontal state is confirmed by the level (5) disposed on the upper surface of the air conditioner. The skilled person would look for a place on top of the exhaust ventilation pipe of D1 to place the circular spirit level and would find out that the best place for it, which will require the least amount of changes, is at the top of the conical cup. The invention of claim 1 of the Patent is therefore not inventive over D1 and D2.
95. The Defendant has argued that the roof fan of D1 is correctly installed when the base plate is against the roof at a correct location on the roof. Since the base plate of the roof fan housing of D1 and the surface of the roof determine the angular orientation, there is no need to use any type of level. The technical field and the addressed technical problem in D2 are

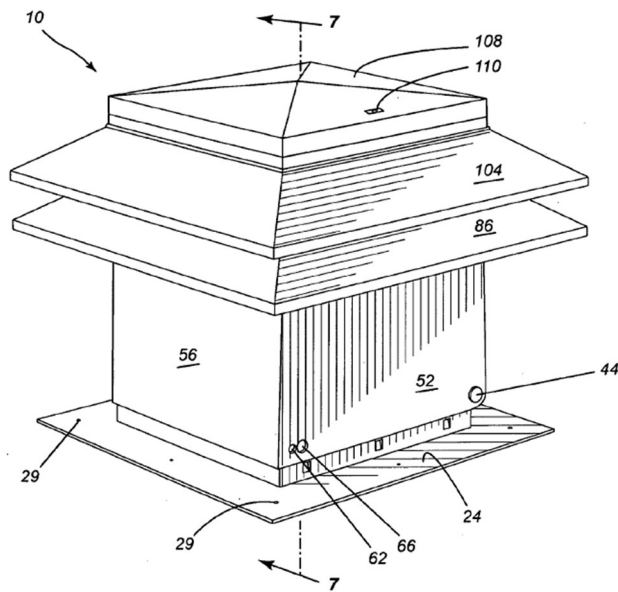
so different from the objective problem of the Patent that the skilled person would not have looked at D2 in an attempt to solve the objective problem. If, for the sake of argument, the skilled person had looked at D2 it does not teach to integrate a circular spirit level on the top of the conical cup in the hat. Further, the Claimant has provided no reasoning as to why the skilled person would provide the roof fan of D1 with an exhaust ventilation pipe that extends through an outer roof of a building (feature F4), and D2 does not disclose such an exhaust ventilation pipe.

96. The Court agrees with the Defendant that there is nothing to suggest that the skilled person would even consider combining the roof fan of D1 with the air conditioning apparatus of D2. Even if the skilled person were to make such a combination the Claimant has not in any way substantiated why and how they would adapt the roof fan so that it has an exhaust pipe extending through the roof of a building. D2 does not provide any guidance in this aspect. Further, the skilled person would have no motivation to add a circular spirit level to the roof fan of D1 since its base plate is to be mounted in abutment to the roof and it does not have any means to adjust its position for standing orientation. Even if the skilled person had such motivation there is no teaching in D2 to integrate a circular spirit level on the top of the conical cup in the hat of the roof fan of D1, and doing so would require inventive skill. Against this background the invention of the Patent involves an inventive step over D1 in combination with D2.

#### *D1 and D3*

97. D3 discloses a static ventilator for ventilating attic spaces. The ventilator has a base having a central opening, an inner housing, an outer housing pivotably connected to the base and means for securing the inner housing to the outer housing in a plurality of positions. The ventilator further has a vent section located above the inner and outer housing and the vent section has a vent passage permitting egress of air from within the housing. Deflectors are located about the vent passage to deflect rain from entering the vent passage. (Para. [0008].) A roof cap is mounted on the vent section to cover the top portion and a level indicator (110) is provided on the roof cap (para. [0048]).

98. The drawing below shows a perspective view of a roof ventilator according to an embodiment of the invention (Fig. 1A of D3).



99. The underlying problem of D3 is to provide a static ventilator for ventilation of attic spaces between the roof and ceiling which functions on snow covered roofs, is not susceptible to moisture penetration during storms with high winds, is suitable for use on roofs of different slopes and is lightweight and easy to install (paras. [0004], [0005] and [0007]).

100. The Claimant has argued that D3 discloses a level and that according to the description the attachment at the correct angle may be done through the visual sighting of indicia, through viewing aperture, or alternatively, level (110) may be utilized. The type of level is not defined and it would be an obvious choice for the skilled person to place a circular spirit level on top of the conical cup of the roof fan of D1.

101. The Defendant has argued that the roof fan of D1 is correctly installed when the base plate is against the roof at a correct location on the roof. Since the base plate of the roof fan housing of D1 and the surface of the roof determine the angular orientation, there is no need to use any type of level. D3 mentions several ways of ensuring that the static ventilator is correctly installed including using the pivoting structure with indicia, using a conventional level during installation or using an incorporated level in one of the components. D3 does not teach to use a circular spirit level and even less so to integrate such a level on the top of the conical cup in the hat. Further, the Claimant has provided no reasoning as to why the skilled person would provide the roof fan of D1 with an exhaust ventilation pipe that extends through an outer roof of a building (feature F4), and D3 does not disclose such an exhaust ventilation pipe.

102. The Claimant has neither responded to the Defendant's arguments nor has it explicitly withdrawn the attack based on combining D1 and D3.

103. Against this background, the Court finds that the Claimant has not sufficiently substantiated why and how the skilled person would adapt the roof fan of D1 so that it has an exhaust pipe extending through the roof of a building. D3 does not provide any guidance in this aspect. Further, the skilled person would have no motivation to add a circular spirit level to the roof fan of D1 since its base plate is to be mounted in abutment to the roof and it does not have any means to adjust its position for standing orientation. Even if the skilled person had such motivation there is no teaching in D3 to integrate a circular spirit level on the top of the conical cup in the hat of the roof fan of D1, and doing so would require inventive skill. The invention of the Patent is thus inventive over D1 in combination with D3.

## **V. Conclusion and costs**

104. Document D1 does not take away the inventiveness of claim 1 of the Patent in combination with either the skilled person's common general knowledge or any of the documents D2–D4. As the subject-matter of claim 1 involves an inventive step over the prior art, so does dependent claim 2 which only adds further features.

105. The legal consequence of the above is that the Claimant's request to revoke the Patent must be rejected. As a consequence, the revocation action is dismissed.

106. The Court does not have to decide on the conditional application to amend the Patent, as the condition under which that application was made (i.e. that the Patent as granted could not be maintained) is not fulfilled.

107. Pursuant to Art. 69(1) UPCA in conjunction with Rule 118.5 RoP, the Court shall decide on the obligation to bear costs. The parties have prior to the oral hearing entered into an agreement regarding the recovery of costs before the first instance of the UPC. Since the Patent is maintained as granted, it follows from the agreement that the Defendant is entitled to recover 75 000 EUR of costs of representation from the Claimant. The Court sees no reason to deviate from the agreement reached between the parties.

## DECISION

I. The revocation action is dismissed.

II. WIRPLAST – Więcek Spółka Jawna shall pay to the VILPE Oy the agreed amount of 75 000 EUR as compensation for the costs of these proceedings.

András Kupecz Presiding judge	
Daniel Severinsson Legally qualified judge	
Merja Heikkinen-Keinänen Technically qualified judge	
For the deputy-registrar	

This decision was read out in open court on 8 April 2026.

Information about appeal

An appeal against the present decision may be lodged at the Court of Appeal, by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of service of the decision (Art. 73(1) UPCA, Rules 220.1(a) and 224.1(a) RoP).

Information about enforcement

Art. 82 UPCA, Art. 37(2) UPCS, Rules 118.8, 158.2, 354 and 355.4 RoP:

An authentic copy of the enforceable decision will be issued by the Deputy-Registrar upon request of the enforcing party (Rule 69 of the Rules governing the Registry of the UPC).