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D E C I S I O N
of 11 January 2002

Case Number: T 0595/01 - 3.2.1

Application Number: 98200829.4

Publication Number: 0864483

IPC: B62D 31/02, B62D 29/04

Language of the proceedings: EN

Title of invention:
Vehicle construction

Applicant:
Fokker Special Products B.V.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 111(1)

Keyword:
"Novelty (yes)"
"Decision re. appeals remittal (yes)"

Decisions cited:
-

Catchword:
-



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Boards of Appeal

Chambres de recours

Case Number: T 0595/01 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 11 January 2002

Appellant: Fokker Special Products B.V.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 3 July 2000
refusing European patent application
No. 98 200 829.4 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. A. Gumbel
Members: J. Osborne
H. Preglau

Summary of Facts and Submissions

I. The appeal is directed against the decision of the Examining Division to refuse European application No. 98 200 829.4 (EP-A-0864 483), which was posted on 3 July 2000. Notice of appeal was filed on 8 August 2000, together with payment of the due fee. The grounds of appeal were received on 13 November 2000.

II. The application as originally filed contained 18 claims of which Claims 1, 4 were independent. All except Claims 5, 6 were dependent upon at least Claim 1. In the search report, which stated that it was drawn up for all claims, the following documents were cited as being relevant to the claims indicated in brackets:

D1 US-A-5 042 395 (12, 13, 15)

D2 DE-U-8 807 208 (7, 8)

D3 EP-A-0 687 612 (1, 7, 8, 12, 13, 15, 16)

D4 US-A-3 100 458 (1)

D5 US-A-3 897 974 (16).

III. The Examining Division objected that the subject-matter of Claims 1, 4 as originally filed lacked novelty with respect to the disclosure of D1. With a letter dated 28 January 2000 the applicant deleted original Claims 1 to 3, re-numbered the remaining claims with original Claim 4 as the new Claim 1 and rebutted the arguments of the Examining Division concerning novelty of the subject-matter of this claim.

IV. The Examining Division refused the application because it remained of the opinion that the subject-matter of the new Claim 1 lacked novelty with respect to the disclosure of D1. The Examining Division pointed out that in the description of the application an "integral fixing section" 11 serves to connect the wall 3 to the base. It reasoned that connecting the base strip 33 to the base 1 by means of the integral fixing section 11 results in the body panel 1 being integrally extended at its edge by the horizontal base strip 33. With reference to D1 Figure 4, which discloses that a body panel 6 is connected to an essentially horizontal base strip 28 by means of an integral fixing section 14, the Examining Division then applied the same reasoning and concluded that the longitudinal wall panels 2.4 are integrally extended by the base strip 28 which in turn is fixed to the longitudinal edges of the panel which forms the remainder of the base 2.2.

V. Upon appeal the applicant requested that the decision to refuse be set aside and that a patent be granted on the basis of an amended Claim 1 filed with the grounds for appeal and Claims 2 to 15 filed with the letter of 28 January 2000. With a letter of 5 April 2001 the applicant filed an auxiliary request to amend the wording of Claim 1.

VI. Claim 1 according to the applicant's main request reads as follows:

"Vehicle construction comprising a body with a base (1, 41), a roof (2, 42), two longitudinal walls (3, 43) joining the base and the roof and at least four wheels connected to the base, which base, roof and longitudinal walls comprise sandwich panels

which are joined to one another at their longitudinal edges, characterised in that the sandwiched panels forming the longitudinal walls (3, 43) are each contoured according to an essentially horizontal base strip (33) and a wall strip (34) adjoining the latter in such a way that said longitudinal walls (3, 43) are each integrally extended at their underside by an essentially horizontal base strip (33), the base strips (33) being fixed to the longitudinal edges of the sandwich panel which forms the remainder of the base (1, 41)."

Reasons for the Decision

1. The appeal is admissible.

2. D1 discloses a vehicle construction comprising a body with a base 2.2, a roof 2.1 and two longitudinal walls 2.3, 2.4 joining the base and the roof. The base, roof and longitudinal walls each comprise sandwich panels which are joined to one another at their longitudinal edges (Column 3, Lines 15 to 30). The sandwich layers comprise cover layers 4, 6 bonded to a honeycomb core material 18. During the fabrication of the sandwich panels peripheral support frame parts 14 are bonded between the cover layers 4, 6 in such a way that a portion of each support frame part protrudes from the sandwich. During build of the vehicle body wall panels 2.4 and a base panel 2.2 are connected by adhering the respective protruding support frame parts in slots formed in a connecting profile 28.
 - 2.1 It is common ground between the applicant and the Examining Division that the support frame parts 14 are

integral with the sandwich panels. However, the Examining Division argues that the connecting profile 28 is also integral with the sandwich panels. The Board cannot agree with the Examining Division on this point.

2.1.1 According to Claim 1 in suit "the longitudinal walls are each **integrally extended** at their underside by an essentially horizontal base strip, the base strips being **fixed** to the longitudinal edges of the sandwich panel which forms the remainder of the base" (emphasis added). According to this wording there is a distinction between the connection of the base strip to the remainder of the longitudinal wall, on the one hand, and to the sandwich panel which forms the remainder of the base, on the other hand. By contrast, according to D1 both connections between the respective sandwich panels and the connecting profile are the same and are made by adhering the protruding support frame parts in the slots of the connecting profile (Column 4, Lines 25 to 36).

2.1.2 According to D1 the support frame parts are bonded into the sandwich panels during their manufacture, thereby becoming an integral part thereof. However, the connection of the sandwich panels to the connecting profile takes place only during the construction of the body itself. The use of the integral support frame part to connect the sandwich panel to the connecting profile does not render the latter integrally connected to the former.

2.1.3 Similarly, the Board cannot agree with the reasoning of the Examining Division that the disclosure in the description of the application in suit of "integral

fixing sections" connecting two panels (Page 4, Lines 17 to 19) renders one of those panels an integral extension of the other. The description gives no further detail as regards the construction represented by this term and in the opinion of the Board this part of the description merely discloses fixing sections which are integral with one or more of the panels. The interpretation by the Examining Division of the term "integrally extended" in Claim 1, which forms the basis of the novelty objection, therefore finds no basis in the description. It follows that, even if the wording of the claim were interpreted in the light of the description, it would not result in subject-matter which is anticipated by the disclosure of D1.

3. D2 relates to a vehicle structure in which a plurality of sandwich construction sections are connected end-to-end to form two lateral half shells which are then joined to form the body. Within each section the base and the roof are integral with the side wall and there are no base, roof and longitudinal walls panels which are joined to one another at their longitudinal edges. In the vehicle body construction according to D3 the wall elements 5 do not comprise a generally horizontal section. D4 discloses a railway vehicle body which is produced by joining two longitudinal moulded half shells. It follows that there are no roof, base and longitudinal wall panels joined at their edges. D5 relates only to the installation of seats in a vehicle.
4. The Board therefore finds that the subject-matter of Claim 1 in suit is novel with respect to the prior art cited in the search report. Since Claim 1 according to the auxiliary request contains all features of Claim 1 according to the main request, this finding applies to

both requests. However, Claim 1 in suit is based on original Claim 4 and the Board notes that, although this was an independent claim, none of the documents in the search report was cited as being relevant to it. Under these circumstances the question arises whether Claim 4 was recognised by the Search Division as being an independent claim. Until it has been established that the search in respect of the subject-matter of Claim 1 in suit is complete, further consideration of patentability of the claim is superfluous. The Board therefore considers it appropriate to make use of its discretion in accordance with Article 111(1) EPC to remit the case to the first instance for further prosecution. In the opinion of the Board, that further prosecution should include consultation with the Search Division concerning the extent of the search carried out in respect of the subject-matter of Claim 1 in suit.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel