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D E C I S I O N
of 13 May 2005

Case Number: T 1068/03 - 3.2.1

Application Number: 99947724.3

Publication Number: 1119474

IPC: B60R 25/02

Language of the proceedings: EN

Title of invention:
Security device

Applicant:
Dix, Victor George

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56, 113(2)
EPC R. 67

Keyword:
"Novelty (yes)"
"Inventive step (yes)"
"Request for reimbursement of appeal fee for reason of
procedural violation (rejected)"

Decisions cited:
-

Catchword:
-



Case Number: T 1068/03 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 13 May 2005

Appellant: Dix, Victor George
40 Chestnut Grove
Benfleet
Essex SS7 5RX (GB)

Representative: Moran, Paula
OLSWANG
90 High Holborn
London WC1V 6XX (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 28 May 2003
refusing European application No. 99947724.3
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Crane
Members: Y. A. F. Lemblé
S. U. Hoffmann

Summary of Facts and Submissions

- I. European patent application No. 99 947 724.3 (PCT/GB99/03260) was refused by a decision of the Examining Division posted 28 May 2003.
- II. The reason given for the decision was that amended claim 1 was not new in view of the prior art disclosed in

D1: EP-A-0 085 257

D2: US-A-4 779 435

- III. On 7 August 2003 the appellant (applicant) lodged an appeal against this decision and paid the prescribed appeal fee at the same time.

The statement of grounds of appeal was filed on 3 September 2003.

- IV. The appellant requested that the decision under appeal be set aside and that the appeal fee be refunded in accordance with Rule 67 EPC. Following a communication of the Board dated 28 January 2004 and several telephone consultations with the rapporteur, the appellant requested that a patent be granted on the basis of the following documents:

Claims:

- 1 to 19 as filed with letter dated 24 August 2004

Description:

- pages 1 and 20 as published;
- page 3 as filed with letter dated 24 August 2004;
- pages 9 and 18 as filed with letter dated 9 February 2005;
- pages 2, 4-8, 10-17, 19 as filed with letter dated 27 February 2004

Figures:

- 1/15-12/15, 14/15 as published
- 13/15, 15/15 as filed with letter of 8 July 2002

V. Claim 1 according to this request reads as follows:

"A vehicle security device which in use prevents at least one pedal being operated comprising a securing device and a locking member which is releasably connected to the securing device and which prevents the or each pedal being operated;

characterised in that:

said securing device comprises an elongate member (2) sized to extend from the or each pedal through an aperture in the steering wheel into the area normally occupied by a driver when seated within the vehicle in the conventional driving position."

Dependent claims 2 to 19 relate to further developments of the device of claim 1.

VI. The submission of the appellant may be summarized as follows.

The interpretation made by the Examining Division of the term "the area normally occupied by a driver when seated within the vehicle in the conventional driving position" was not fair and at odds with the explanation of this term set out in the application documents. The only reasonable interpretation was that the area in question was the area occupied by a driver's upper body.

The Examining Division made a substantial procedural violation when it took the decision to refuse the application during the oral proceedings held in the absence of the applicant. The 3rd and 4th paragraphs of the minutes of the oral proceedings referred to the objections communicated to the applicant with the summons to the oral proceedings dated 20 January 2003 and to the consultation by telephone dated 10 April 2003. There was, however, no reference to the last set of claims filed with the letter of the applicant dated 25 April 2003. It must therefore be concluded that the decision of the Examining Division, taken during oral proceedings, was not based on the last submission of the applicant. This represented a substantial procedural violation in breach with the provision of Article 113(2) EPC, which justified the request for reimbursement of the appeal fee.

Reasons for the Decision

1. The appeal meets the requirements of Articles 106 to 108 and Rule 64 EPC and is therefore admissible.

2. There are no formal objections under Article 123(2) EPC to the amendments made to the claims and the description, since they are adequately supported by the original disclosure.

More particularly, the features which were added to claim 1 as filed and now form the characterizing part of present claim 1 have a clear basis in the following passages of the application as originally filed:

- claims 2 and 5;
- page 3, line 28 to page 4, line 5;
- page 12, lines 27 to 29.

3. *Novelty*

Claim 1 is based in its pre-characterising portion on the disclosure of the prior art document D2 acknowledged in the introductory part of the description. The security device of document D2 comprises a securing device 11,12 and a locking member 26,29 which is releasably connected to the securing device and which prevents the or each pedal 23 from being operated. The securing device comprises an elongate member 11 which extends from the or each pedal to the steering wheel and has an upper hooked end 12 adapted to engage a portion of the steering wheel. As a matter of language, the expression "an elongate member sized to extend from the or each pedal through an aperture in the steering wheel into the area normally occupied by a driver when seated within the vehicle in the conventional driving position" can only mean that the elongate member extends into an area located beyond the aperture in the steering wheel and

on the side of the steering wheel opposed to that where the pedal is located. Such area is normally occupied by a driver's upper body.

Since the description has now been amended so as to be consistent with this interpretation of the claim, the Board cannot concur with the Examining Division's opinion that the end of the elongate member of D2 extends into the area defined by the characterising clause of claim 1.

The subject-matter of claim 1 is therefore novel over that of document D2. The same conclusion applies when considering the vehicle security device of document D1.

4. *Inventive step*

As indicated in the application as filed (page 2, lines 15-19) the problem with the known security devices of the type shown in D1 or D2, is that they can be disengaged when the driver is seated in the vehicle and thus, a thief having gained entrance to the vehicle can sit within it while trying to free the immobilisation device and is therefore not conspicuous to passers-by.

If the elongate member is sized to extend into the area normally occupied by the driver when seated within the vehicle in the conventional driving position, as claimed in the characterising part of claim 1, a potential thief is prevented from casually sitting in the vehicle whilst attempting to remove the security device. Indeed, the thief is forced to stand outside

the vehicle and lean into the footwell to remove the security device, thus being conspicuous to passers-by.

None of the prior art documents cited in the search report shows or suggests that the elongate member of the securing device be sized in the claimed way.

Accordingly, the subject-matter of claim 1 involves an inventive step.

5. Dependent claims 2 to 19 relate to further developments of the inventive concept disclosed in claim 1 and by virtue of their dependency contain all of the features of claim 1. The above conclusions regarding novelty and inventive step apply equally to these claims which likewise meet the requirements of the EPC.

6. *Procedural violation*

The Board does not share the appellant's view that there had been a substantial procedural violation by the Examining Division. More particularly, the contention of the appellant that "claim 1 as presently on file" referred to in the minutes was not the last claim filed with letter of 25 April 2003, is purely speculative and is not supported by the facts.

The relevant part of the minutes of the oral proceedings before the Examining Division reads: "After deliberation of the Examining Division, it was found that claim 1 **as presently on file** did not fulfil the provisions of Article 54(1) and (2) EPC, because its subject-matter was not new with respect to the prior art disclosed in ... D2, as well as ...D1" (bold

character added by the Board). The claims submitted with letter of 25 April 2003 followed a series of attempts for the applicant to overcome the objections of lack of clarity and lack of novelty made by the examiner in the annex to the summons dated 20 January 2003 and in a telephone consultation dated 10.04.2003. In that last submission, the wording of claim 1 was only slightly modified with respect to the wording of the preceding set of claims (deletion of the word "and" in the characterizing part). As mentioned in the first paragraph of page 2 of the decision, the Examining Division considered that this last amendment did not define any additional technical feature with respect to former claim 1. Whether any substantive difference exists between claim 1 of this set of claims and claim 1 as previously on file is a matter of appreciation and interpretation (see point 3. above). Misinterpretation of the wording of a claim cannot be assimilated to a procedural error.

It follows from these considerations that the Board cannot recognise a substantial procedural violation in the course of actions taken by the Examining Division. The request for reimbursement of the appeal fee must therefore be rejected.

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 with the order to grant a patent on the basis of the documents indicated in point IV above.
3. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

A. Vottner

S. Crane