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**Datasheet for the decision  
of 18 October 2006**

**Case Number:** T 0048/04 - 3.2.07

**Application Number:** 96200038.6

**Publication Number:** 0721901

**IPC:** B65G 25/06

**Language of the proceedings:** EN

**Title of invention:**

Loading floor for lorries or trailers

**Patentee:**

Cargomac B.V.

**Opponents:**

Hyva International B.V.  
Keith International GmbH

**Relevant legal provisions:**

EPC Art. 54, 56, 83, 84, 100(a)(b), 104(1), 111(1), 113(1),  
123  
EPC R. 65, 67

**Keyword:**

"Admissibility of appeals (yes)"  
"Admissibility of new requests (partially)"  
"Admissibility of late filed prior art (partially)"  
"Slide presentation (partially admitted)"  
"Novelty (main request - no)"  
"Inventive step (third auxiliary request - yes)"  
"Reimbursement of appeal fee (no)"  
"Apportionment of costs (no)"

**Decisions cited:**

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**Catchword:**

-



Case Number: T 0048/04 - 3.2.07

**DECISION**  
of the Technical Board of Appeal 3.2.07  
of 18 October 2006

**Appellant 01:** Hyva International B.V.  
(Opponent) P.O. Box 347  
NL-2400 AH Alphen aan de Rijn (NL)

**Representative:** Uittenbogaart, Gustaaf Adolf  
Indeig B.V.  
P.O. Box 3  
NL-2050 AA Overveen (NL)

**Appellant 02:** Keith International GmbH  
(Opponent) Am Wiesenbusch 2  
NL-45968 Gladbeck (NL)

**Representative:** Land, Addick Adrianus Gosling  
Arnold & Siedsma  
Advocaten en Octrooigemachtigden  
P.O. Box 18558  
NL-2502 EN Den Haag (NL)

**Respondent:** Cargomac B.V.  
(Patent Proprietor) Laan van Malkenschoten 95  
NL-7333 NP Apeldoorn (NL)

**Representative:** Ferguson, Alexander  
Octrooibureau Vriesendorp & Gaade B.V.  
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NL-2501 AW Den Haag (NL)

**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 27 November 2003  
rejecting the opposition filed against European  
patent No. 0721901 pursuant to Article 102(2)  
EPC.

**Composition of the Board:**

**Chairman:** P. O'Reilly  
**Members:** H. Felgenhauer  
E. Lachacinski

## Summary of Facts and Submissions

- I. Opponents 01 and 02 (appellants 01 and 02) each filed an appeal against the decision of the opposition division rejecting the oppositions against European patent No. 0 721 901.
- II. Opposition had been filed against the patent as a whole based on the grounds of opposition according to Article 100(a) (lack of novelty and of inventive step) and (b) EPC (insufficient disclosure).
- III. The opposition division was of the opinion that claims 1 and 8 as granted are novel and involve an inventive step in view of the following documents:

D1: Hyva Drawings "Mooving floor Assembly"  
dated 14 June 994 with pictures 9990-5 and 9990-8

D6: US-A-5 263 573

D8: 2000 SERIES HALLCO-GLIDE LIVE FLOOR  
INSTALLATION INSTRUCTIONS, p. 12 - 15.

Additionally in the appeal proceedings the following documents have been considered:

D13: Walking Floor, INSTRUCTIONS FOR USE MK  
II-150 & MK II-250

D14: CARGO HANDLING SYSTEMS B.V.,  
Bedieningshand-leiding, CARGO FLOOR Type: CF-300 &  
CF 400

D15: Cargo Floor CF-I including assembly drawing No. D1102 dated 10 June 1993 and Cargo Floor CF-II including assembly drawing No. D1177 dated 14 February 1995

IV. In the decision under appeal the opposition division held that concerning the ground of opposition according to Article 100(b) EPC the example in the patent in suit discloses the invention in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art. The loading floor according to claim 1 has been considered as being novel in view of the loading floor according to document D6, based on the understanding that the first bridge beam according to D6 is not provided with a recess for accommodating at least a part of the cylinders.

The problem to be solved with respect to D6 as closest prior art is to provide a driving apparatus having adequate stiffness while it is simple, weighs less and can be more economically manufactured.

In the impugned decision it is concluded that none of the cited documents leads to an attachment of the cylinders as defined in claims 1 and 8.

V. In a communication attached to the summons for oral proceedings the Board *inter alia* addressed the issues of admissibility of the appeals of appellants 01 and 02 and the meaning of features of claim 1 relating to the understanding of the expression "cylinders" and the definition of the arrangement of the cylinders relative to the first bridge beam.

- VI. In response to the communication of the Board the respondent (proprietor) filed within the time limit set in the communication auxiliary requests 1 to 26 with letter of 25 August 2006.
- VII. Oral proceedings before the Board were held on 18 October 2006 in the absence of appellant 01 which had indicated with letter of 14 September 2006 its intention not to attend the oral proceedings.
- VIII. Appellants 01 and 02 requested that the decision under appeal be set aside and that the patent be revoked. Appellant 02 further requested reimbursement of the appeal fee and apportionment of costs.
- IX. The respondent requested that the appeals be rejected as inadmissible, alternatively, that the appeals be dismissed, i.e. the patent be maintained as granted (main request), or that the patent be maintained on the basis of one of the auxiliary requests 3, 4, 5 and 18 which have been filed with letter of 25 August 2005 and maintained at the oral proceedings.
- X. Claims 1 and 8 according to the main request and auxiliary request 3, respectively, read as follows:

*Main request*

"1. Loading floor for lorries or trailers, comprising two main beams (100a, 100b) extending in the longitudinal direction of the loading space and a plurality of bearing beams (110) supported by the main beams and extending in the transverse direction of the loading space, wherein the actual loading floor is

formed by at least three groups of alternately arranged slats (121) forming a loading surface, said slats being supported by the bearing beams and being reciprocable back and forth over said bearing beams in longitudinal direction of the loading space, each group of slats being connected to a first side, preferably the upper side, of an associated driving foot (6a, 6b, 6c) or driving beam for back and forth movement thereby, the at least three driving feet extending in transverse direction and being arranged side by side in longitudinal direction and each extending above the movable component (10a, 10b, 10c) of an associated driving assembly formed by a cylinder/ piston/ piston rod assembly and each being connected on a second side, preferably their lower side, to said movable component for the back and forth movement of the slats, the driving assemblies having a stationary component (9a, 9b, 9c) which extends at least substantially parallel to the loading surface, the driving assemblies being rigidly attached at one end at said stationary components by means of attaching means (12a-d) to a first bridge beam (2) which extends substantially continuously in transverse direction, said first bridge beam being attached to said main beams, characterised in that said attaching means (12a-d) for the said ends of the driving assemblies are located at least in part within the vertical spaces defined by the bearing beams, wherein the cylinders (9a, 9b, 9c) of the driving assemblies are rigidly attached to the first bridge beam (2), wherein - viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space - the cylinders (9a, 9b, 9c) coincide at least in part with the average section of the first bridge beam (2), and wherein the first

bridge beam (2) is provided with a recess for accommodating at least a part of the cylinders (9a, 9b, 9c) of the driving assemblies."

"8. Modular built-in unit (1) for incorporation in a loading floor for lorries or trailers, as described in any one of the preceding claims, in an arrangement wherein said loading floor comprises two main beams (100a, 100b) extending in the longitudinal direction of the loading space and a plurality of bearing beams (110) supported by the main beams and extending in the transverse direction of the loading space, wherein the actual loading floor is formed by at least three groups of alternately arranged slats (121) forming a loading surface, said slats being supported by the bearing beams and being reciprocable back and forth over said bearing beams in longitudinal direction of the loading space, each group of slats being connected to a first side, preferably the upper side, of an associated driving foot (6a, 6b, 6c) or driving beam for back and forth movement thereby, the at least three driving feet extending in transverse direction and being arranged side by side in longitudinal direction and each extending above the movable component (10a, 10b, 10c) of an associated driving assembly formed by a cylinder/piston/piston rod assembly and each being connected on a second side, preferably their lower side, to said movable component for the back and forth movement of the slats, the driving assemblies having a stationary component (9a, 9b, 9c) which extends at least substantially parallel to the loading surface, the driving assemblies being rigidly attached at one end at said stationary components by means of attaching means (12a-d) to a first bridge beam (2) which extends

substantially continuously in transverse direction, said first bridge beam being attached to said main beams, characterised in that the cylinders (9a, 9b, 9c) of the driving assemblies are rigidly attached to the first bridge beam (2), wherein - viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space - the cylinders (9a, 9b, 9c) coincide at least in part with the average section of the first bridge beam (2), and wherein the first bridge beam (2) is provided with a recess for accommodating at least a part of the cylinders (9a, 9b, 9c) of the driving assemblies, wherein the driving feet (6a, 6b, 6c) are attached on the piston rods (10a, 10b, 10c) of the driving assemblies and the piston rods are slidably supported with their free end in a second bridge beam (3), arranged substantially parallel to the first bridge beam (2), wherein the first bridge beam (2), the driving assemblies, a second bridge beam (3), the driving feet (6a, 6b, 6c) and two longitudinal girders (4, 5), rigidly connected to the bridge beams and forming a frame with them, form said modular built-in unit."

*Third auxiliary request:*

"1. Loading floor for lorries or trailers, comprising two main beams (100a, 100b) extending in the longitudinal direction of the loading space and a plurality of bearing beams (110) supported by the main beams and extending in the transverse direction of the loading space, wherein the actual loading floor is formed by at least three groups of alternately arranged slats (121) forming a loading surface, said



slats being supported by the bearing beams and being reciprocable back and forth over said bearing beams in longitudinal direction of the loading space, each group of slats being connected to a first side, preferably the upper side, of an associated driving foot (6a, 6b, 6c) or driving beam for back and forth movement thereby, the at least three driving feet extending in transverse direction and being arranged side by side in longitudinal direction and each extending above the movable component (10a, 10b, 10c) of an associated driving assembly formed by a cylinder/ piston/ piston rod assembly and each being connected on a second side, preferably their lower side, to said movable component for the back and forth movement of the slats, the driving assemblies having a stationary component (9a, 9b, 9c) which extends at least substantially parallel to the loading surface, the driving assemblies being rigidly attached at one end at said stationary components by means of attaching means (12a-d) to a first bridge beam (2) which extends substantially continuously in transverse direction, said first bridge beam being attached to said main beams, characterised in that said attaching means (12a-d) for the said ends of the driving assemblies are located at least in part within the vertical spaces defined by the bearing beams, wherein the cylinders (9a, 9b, 9c) of the driving assemblies are rigidly attached to the first bridge beam (2), wherein - viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space the cylinders (9a, 9b, 9c) coincide at least in part with the average section of the first bridge beam (2), and wherein the first bridge beam (2) is provided with a recess for accommodating at least a part of the cylinders (9a, 9b,

9c) of the driving assemblies and wherein the cylinders are vertically clamped against the first bridge beam."

"8. Modular built-in unit (1) for incorporation in a loading floor for lorries or trailers, as described in any one of the preceding claims, in an arrangement wherein said loading floor comprises two main beams (100a, 100b) extending in the longitudinal direction of the loading space and a plurality of bearing beams (110) supported by the main beams and extending in the transverse direction of the loading space, wherein the actual loading floor is formed by at least three groups of alternately arranged slats (121) forming a loading surface, said slats being supported by the bearing beams and being reciprocable back and forth over said bearing beams in longitudinal direction of the loading space, each group of slats being connected to a first side, preferably the upper side, of an associated driving foot (6a, 6b, 6c) or driving beam for back and forth movement thereby, the at least three driving feet extending in transverse direction and being arranged side by side in longitudinal direction and each extending above the movable component (10a, 10b, 10c) of an associated driving assembly formed by a cylinder/piston/piston rod assembly and each being connected on a second side, preferably their lower side, to said movable component for the back and forth movement of the slats, the driving assemblies having a stationary component (9a, 9b, 9c) which extends at least substantially parallel to the loading surface, the driving assemblies being rigidly attached at one end at said stationary components by means of attaching means (12a-d) to a first bridge beam (2) which extends substantially continuously in transverse direction,

said first bridge beam being attached to said main beams, characterised in that the cylinders (9a, 9b, 9c) of the driving assemblies are rigidly attached to the first bridge beam (2), wherein - viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space - the cylinders (9a, 9b, 9c) coincide at least in part with the average section of the first bridge beam (2), and wherein the first bridge beam (2) is provided with a recess for accommodating at least a part of the cylinders (9a, 9b, 9c) of the driving assemblies, wherein the driving feet (6a, 6b, 6c) are attached on the piston rods (10a, 10b, 10c) of the driving assemblies and the piston rods are slidably supported with their free end in a second bridge beam (3), arranged substantially parallel to the first bridge beam (2), wherein the first bridge beam (2), the driving assemblies, a second bridge beam (3), the driving feet (6a, 6b, 6c) and two longitudinal girders (4, 5), rigidly connected to the bridge beams and forming a frame with them, form a modular built-in unit, and wherein the cylinders are vertically clamped against the first bridge beam."

XI. The arguments of appellant 01 presented in the written part of the appeal proceedings can essentially be summarised as follows:

- (a) Its appeal is admissible since the company "Hydraulic Floor Systems B.V." which originally filed an opposition and the appeal merged with other companies, the universal successor, also with respect to the present appeal proceedings, being the company "Hyva International B.V."

- (b) The patent in suit does not disclose the invention in a manner sufficiently clear and complete such that it can be carried out by the person skilled in the art. The extent of protection of claim 1 is much broader than what would be justified in view of the single disclosed embodiment, which should not be the case. Concerning the attachment of the cylinders a different possibility to the one given in the description, according to which the first bridge beam has a U-profile with cut outs and plates welded to the U-profile in the area of the cut outs, cannot be envisaged. Furthermore the feature of claim 1 referring to an average section is unclear since the beam comprises different portions, namely end portions having the U-profile, a central section with the cut outs and the welded plates and transition areas inbetween. It appears to be essential for the invention to be carried out, that the cylinders coincide at least in part with the end portions of the first bridge beam and a manner different from the one according to the embodiment is not disclosed. Consequently, since the loading floor defined in claim 1 does not comprise such features the invention defined by claim 1 cannot be carried out. This applies correspondingly with respect to the angle stiffeners which are not defined in claim 1 although according to the embodiment such stiffeners are provided to stiffen the connection of the first bridge beam and main beams.
- (c) Claim 1 lacks novelty in view of document D6 taking into consideration that, with respect to

the feature of claim 1 according to which the cylinders coincide at least in part with the average section of the first bridge beam, all sections of this beam have to be taken into account and that with respect to D6 the connector beam of the cylinder assembly D6 is a part of the driving assembly coinciding at least in part with the average section of the first bridge beam.

- (d) In the case that claim 1 is found to be novel with respect to document D6 the loading floor according to claim 1 does not involve an inventive step when considered by itself or in combination with document D13 which has been submitted with the grounds of appeal to demonstrate that it is known to provide recesses accommodating at least a part of cylinders in bridge beams.

XII. The arguments of appellant 02 can essentially be summarised as follows:

- (a) Its appeal is admissible since the notice of appeal clearly indicates the impugned decision since it refers to the number of the European patent, the representative's file number and the name of the proprietor. Furthermore in the notice of appeal it is indicated that the signature is the one of the representative. It is thus clear that the notice of appeal has been filed on behalf of opponent 02.
- (b) The patent in suit does not disclose the invention in a manner sufficiently clear and complete such that it can be carried out by the person skilled

in the art. The reason being that the meaning of the feature of claim 1, which defines that the cylinders coincide at least in part with the average section of the first bridge beam and that the first bridge beam is provided with a recess for accommodating at least part of the cylinders, cannot be understood, as the meaning of the term "average portion" can neither be derived from the description nor from the drawings. In this respect it also needs to be taken into consideration that approximately one half of the first bridge beam has a U-shaped cross section whereas the remaining half is of varying cross section. Furthermore consideration must be given to the fact that the feature of claim 1 referring to the "average section of the first bridge beam" is located before the feature of claim 1 defining that the first bridge beam is provided with a recess and thus its cross section, which further renders the meaning of the expression "average section of the first bridge beam" unclear.

- (c) The opposition division failed to request the filing of document CF 400 referred to by the proprietor in the opposition proceedings as prior art despite an offer of the proprietor to file a copy of the document if required and despite a request of opponent 01 for the filing of this document. The proprietor was allowed to refer to this document in the oral proceedings, as can be derived from the minutes, without making it accessible to the opponents upon request, which amounts to a substantial procedural violation. As a consequence the case should be remitted to the

opposition division and the appeal fee be reimbursed.

- (d) Document D14 filed by appellant 02 should be admitted into the proceedings since, disclosing the novelty destroying unit CF 400-II, it is, like document D15, filed by the respondent and discloses likewise the unit CF 400-II which is highly relevant. Furthermore, in the opposition proceedings the proprietor had already admitted that loading floors in accordance with the documents D14 and D15 have been sold before the priority date of the patent in suit. The allegation of the respondent, that only the unit CF 400-I in accordance with document D15 has been sold before the priority date of the patent in suit while the unit CF 400-II according to documents D14 and D15 having a structure as disclosed in the patent in suit has been sold only after the priority date, is not convincing. Thus, on the balance of probabilities it is more likely that the unit CF 400-II, as referred to in documents D14 and D15, has been sold before the priority date. Moreover the conduct of the respondent, which referred to loading floors of this type in the opposition proceedings, whilst at the same time withheld document D15 which disclosed the unit CF 400-II, amounts to an abuse of procedure. The reason being that due to this behaviour it appears from the file that the prior art according to CF 400 as disclosed in documents D14 and D15 has been dealt with in the opposition proceedings, while in reality this has not been the case. Since appeal proceedings might have been

avoided if the respondent would have filed document D15 disclosing the unit CF 400-II as requested, the costs for the appeal proceedings should be borne by the respondent.

- (e) The patent in suit does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art since the feature of claim 1 according to which "viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space - the cylinders coincide at least in part with the average section of the first bridge beam (2)" is unclear and it cannot be derived from the embodiment of the patent in suit how cylinders are to be arranged according to this feature. Furthermore it appears that the arrangement of the cylinders shown in figure 5 is in contradiction with this feature of claim 1.
  
- (f) The loading floor according to claim 1 lacks novelty with respect to document D6. D6 discloses a loading floor the first bridge beam of which is made of consecutive sections 10, 44 and 10 which extend, as already stated in the decision under appeal, substantially continuously in transverse direction. Moreover, contrary to the finding of the impugned decision, the bridge beam is provided not only with a recess for the piston rods but also with a further one in the intermediate section 44 which, corresponding to the last feature of claim 1, accommodates due to its L-shaped cross section, at least a part of the cylinders of the driving assemblies.



- (g) The auxiliary requests are late filed and should not be admitted into the proceedings since the claims of these requests do not satisfy the requirements of Articles 84 and 123(2) EPC and since furthermore claims 1 and 8 of these requests do not appear to be *prima facie* allowable.
  
- (h) Claims 1 and 8 of the auxiliary request 3 are not novel in view of D6 since for the loading floor according to D6 to function properly it is required that, corresponding to the feature added to claims 1 and 8, it is likewise necessary that the cylinders are vertically clamped to the first bridge beam. In case the subject-matters of claims 1 and 8 are considered as being novel they do not involve an inventive step since it is obvious that, to make the attachment of the cylinders more rigid, the cylinders can be clamped vertically.
  
- (i) A slide presentation, the contents of which have been filed beforehand, should be admitted since referring to these slides during the oral proceedings certain aspects of the prior art from which these slides have been derived could be made better understood.

XIII. The arguments of the respondent can essentially be summarised as follows:

- (a) Both appeals are inadmissible, the one of opponent 01 since original opponent 01, the company Hydraulic Floor Systems B.V., ceased to exist due to a merger and the one of opponent 02 since from the notice of appeal it cannot be derived in which name the appeal has been filed such that it remains unclear who, on the side of appellant 02, is the true appellant.
  
- (b) The patent in suit discloses the invention in a manner sufficiently clear and complete such that it can be carried out by the person skilled in the art. In particular the meaning of the feature of claim 1 defining that the cylinders coincide at least in part with the average section of the first bridge beam can be derived considering the normal understanding of the expression average or mean section as referred to in the application underlying the patent in suit. The average or mean section of the first bridge beam is the one which is the result of an addition of the values of the various cross sections of the first bridge beam, each value weighed by the length of the portion having such a cross section, the thus obtained sum being divided by the length of the first bridge beam. The feature according to which the cylinders coincide at least in part with the average section of the first bridge beam is thus sufficiently clear and does not pose an obstacle for the invention being carried out by the person skilled in the art. Furthermore the structural details

referred to in the description with reference to the drawings are specific ones provided for the given embodiment. For a person skilled in the art it is evident that such a specific structure is not required for carrying out the invention as defined by claim 1 and that the loading floor according to this claim can for example also be stiffened by other, likewise obvious, structural means.

- (c) Unit CF 400 has been referred to in the opposition proceedings as one disclosing a loading floor similar to the one according to D1 which has already been considered in the opposition proceedings. This reference has been made in case it is necessary to further demonstrate the development with respect to the design of loading floor lorries or trailers which actually took place at the time before the priority date of the patent in suit. Apparently the opposition division did not consider this to be the case since it did not request filing of a document showing this unit. Consequently on the part of the proprietor there has been no need to file such a document. In this conduct there cannot be seen any abuse of procedure since on the one hand the unit referred to as CF 400 was indeed the unit CF 400-I of document D15, sold up to the time around the priority date of the patent in suit. This loading floor design clearly does not render the loading floor according to claim 1 obvious. On the other hand the unit CF 400-II of documents D14 and D15, which shows a loading floor of the kind defined by claim 1, has been made available to the public

only after the priority date of the patent in suit. For this reason the unit CF 400-II cannot be considered as relevant. Since corresponding document D14 has been late filed it should not be admitted into the proceedings.

- (d) Since the circumstances under which CF 400 has been referred to cannot be considered as amounting to an abuse of procedure an apportionment of costs to the detriment of the respondent lacks any justification.
  
- (e) The invention as defined in the claims is disclosed in a manner sufficiently clear and complete in the description of the patent in suit, in particular the portion concerning the embodiment, with reference to the drawings is such that it can be carried out by the person skilled in the art. In particular the feature of claim 1 according to which "viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space - the cylinders coincide at least in part with the average section of the first bridge beam (2)" contributes in a sufficiently clear manner to the definition of the arrangement of the cylinders. Furthermore the arrangement of the cylinders as defined in claim 1 is not in contradiction with the manner in which this arrangement is shown in figure 5.
  
- (f) The loading floor according to claim 1 of the main request is novel with respect to the one in accordance with document D6 considering, that the

bridge beam is provided with a recess for the piston rods as is commonly known, but not with a recess accommodating at least a part of the cylinders of the driving assemblies. In this regard it should also be taken into account that the term "cylinders" as referred to in claim 1 relates only to the cylindrical portion within which a piston moves, whereas according to document D6 the part of the cylinders associated with the first bridge beam is one connected with this cylindrical portion.

- (g) Auxiliary requests 3, 4, 5 and 18 maintained in the oral proceedings have been filed in due time with letter dated 25 August 2006. Since the claims of these requests do not pose any problems with respect to the requirements of Articles 84 and 123(2) EPC and since furthermore it is evident that claims 1 and 8 of these requests are *prima facie* allowable, these requests should be admitted into the proceedings.
  
- (h) Claims 1 and 8 of auxiliary request 3 are novel with respect to document D6 and involve an inventive step in view of this document D6 considered by itself or in combination with any other cited document, since none of these documents gives an indication leading to the attachment of the cylinders as defined in this claim.

- (i) In so far as the slide presentation is limited to slides showing figures contained in prior art documents admitted into the proceedings, this presentation is not objected to.

## **Reasons for the decision**

### **1. *Admissibility of appeals 01 and 02***

The appeal of appellant 01 is admissible. Notice of appeal has been filed 8 January 2004 in the name of Hydraulic Floor Systems, i.e. the name of the original opponent 01. According to the protocol of a shareholder meeting of Hydraulic Floor Systems B.V. of 27 August 2003 filed with letter of 22 December 2004 the companies Hydraulic Floor Systems B.V., Hyva Produktie B.V. and Hyva Nederland B.V. ceased to exist due to a merger, the company Hyva International B.V. obtaining all assets of the three companies as universal successor. From this protocol it can be concluded that, although the company of opponent 01 ceased to exist due to a merger as pointed out by the respondent, the opposition and consequently the right to appeal has been transferred by way of universal succession from original opponent 01 to the succeeding company Hyva International B.V.. Consequently the notice of appeal has to be considered as having been filed for Hyva International B.V. as the universal successor of the original opponent. The notice of appeal was deficient in that as name of the appellant 01 erroneously the name of the original opponent 01, Hydraulic Floor Systems B.V., was given. This deficiency has been remedied by appellant 01 in that correction of its name

has been requested with letter of 26 October 2005 (Rule 65 EPC).

The appeal of appellant 02 is likewise admissible. In the notice of appeal the number of the European patent is given such that the impugned decision can clearly be identified. Although the name of appellant 02 is not given in the notice of appeal it can clearly be established from the representative's file number, which is given in the notice of appeal is taken into account. Furthermore with respect to the signature the notice of appeal comprises a statement associating it with the person acting as representative, i.e. not in his own name. Contrary to the opinion expressed by the respondent it is thus clear that the notice of appeal has been filed on behalf of opponent 02.

2. *Admissibility of auxiliary requests*

Of the auxiliary requests 1 - 26 filed with letter of 25 August 2006 only auxiliary requests 3, 4, 5 and 18 have been maintained in the oral proceedings. These requests have been admitted taking into consideration that they have been filed by telefax dated 25 August 2006, and thus within the time limit set in the communication of the Board accompanying the summons to the oral proceedings of 26 May 2006, that no new issues have been raised by these requests, and that the subject-matter of the independent claims of each of these requests appeared to be *prima facie* allowable. Because of the decision arrived at for the auxiliary requests only the third one had to be dealt with as can be derived from the following.

3. *Admissibility of document D13*

Document D13 has been submitted by appellant 01 with its grounds of appeal in view of the grounds of the decision under appeal (No. 7.) according to which, starting from D6 as closest prior art, provision of a recess to accommodate at least a part of the cylinders was not suggested. The Board considers the filing of document D13 to be a direct response to the decision under appeal, and as such filed at the earliest possible time and consequently to be admissible.

4. *Alleged public prior use of loading floor CF 400*

Loading floor CF 400 has been referred to by the proprietor in the opposition proceedings (cf. letter of 27 July 2000, page 3, paragraph 6), stating "A unit similar to the unit according to D1 was already available and well known before 1994. This unit - the CF 400 (if necessary a drawing will be filed) - was offered for sale by the applicant of the present patent, Cargo Handling Systems B.V.". The proprietor further stated: "In this respect reference is made to D2, where a 1994 three cylinder unit of opponent I is shown, in which the cylinders are attached to the bridge beam in the same way as in D1 or in the CF 400.".

The loading floor according to CF 400 has again been referred to by the proprietor in the oral proceedings before the opposition division. In the minutes (page 7, paragraph 2) it is stated "The representative of the patent proprietor referred to the HYVA system and the similar CF 400 system in which the arrangement of the



cylinders were the same, namely attached to the lower end of the bridge beam."

- 4.1 In the decision under appeal the loading floor CF 400 has not been mentioned. Apparently the opposition division felt that there was no need to consider CF 400, for which it had been stated by the proprietor that the construction is similar to prior art already considered in the decision under appeal.
- 4.2 In the appeal proceedings appellant 02 filed D14 including drawings concerning a unit "CF-400 Cargo Floor CF-2" with letter of 17 August 2006 and argued that these drawings show the unit CF 400 referred to by the proprietor during the opposition proceedings. It further argued that since these drawings are highly relevant the opposition division made a substantial procedural violation by not requesting that the drawings concerning CF 400 be filed by the proprietor. This being even more the case since appellant 01 requested in its letter of 17 October 2000 (paragraph 6.) that the drawings concerning the unit CF 400 be filed.
  - 4.2.1 Referring to this alleged procedural violation appellant 02 requested reimbursement of the appeal fee and remittal of the case for the alleged public prior use to be considered.
  - 4.2.2 Referring to the relevance of the unit CF 400 Cargo Floor CF-2 as disclosed in D14 and D15 and the fact, that, although requested by appellant 01, the proprietor did not file drawings concerning the unit CF 400 referred to by it, appellant 02 requested

apportionment of the costs of the oral proceedings before the Board of Appeal to the detriment of the respondent. According to the appellant 02 the behaviour of the respondent amounts to an abuse of procedure in that highly relevant prior art, namely the unit CF 400, is referred to and thus introduced in the opposition proceedings, without the opposition division and the opponents actually having the possibility to study and consider this prior art.

- 4.2.3 Responding thereto the respondent filed two sets of drawings, referred to by the Board as D15, one, comprising drawing No. D1102 dated 10 June 1993 relating to a unit CF 400-I, and the other one, comprising drawing No. D1177 dated 14 February 1995 relating to a unit CF 400-II.

According to the respondent unit CF 400-I of D15, within which the cylinders are arranged below the two bridge beams, has been sold from 1993 until February 1995. Unit CF 400-II of D15, of which the drawing resembles a drawing comprised in D14, has been sold from February/April 1995 until 1996. Unit CF 400-II shown in the drawings according to D14 and D15 thus has been made public at a date lying after the priority date of the patent in suit (13 January 1995). According to the respondent D14 filed by appellant 02 should not be admitted since no indication is given as to when this document was made public.

- 4.3 The Board admitted all evidence concerning the unit CF 400, namely the information comprised in documents D14 and D15, into the proceedings since under this name prior art has already been referred to by the

proprietor in the opposition proceedings. Moreover only by considering this evidence could it be established which of the units referred to under the name CF 400, namely the unit CF 400-I and/or the unit CF 400-II have to be considered as prior art and which do not, and whether or not the request for apportionment of costs is justified.

- 4.4 Concerning the two sets of drawings of D15, it remains undisputed that the one relating to the first unit CF 400-I belongs to the prior art. Concerning the other drawing of D15 relating to the second unit CF 400-II as also shown in D14 it is disputed whether or not it likewise belongs to the prior art. In this case the Board has considered all the circumstances, including the dates given on the drawings D1102 and D1177 as well as the phone numbers given on some of the drawings, from which according to the respondent it can be concluded whether or not a drawing was publicly available before or after the priority date (the decisive evidence in this respect being a change of telephone numbers by the national telephone company, at that time PTT Telecom, for which it remained undisputed that it occurred on 10 October 1995). From these circumstances the Board has come to the conclusion that based on the available evidence it cannot be considered as being proven that the second unit CF 400-II according to documents D14 and D15 has been available to the public before the priority date.

5. *Request for reimbursement of appeal fee and remittal of the case*

According to appellant 02 the alleged substantial procedural violation committed by the opposition division (cf. above sections 4.2, 4.2.1) justifies reimbursement of the appeal fee and remittal of the case.

The Board is of the opinion that the opposition division did not commit a substantial procedural violation in not requesting filing of a drawing with respect to the unit CF 400 referred to by the proprietor. The reason being that this unit has been referred to as being similar to prior art which has already been under consideration.

Concerning the demand of appellant 01 for the drawing offered in connection with reference to unit CF 400 to be filed, the Board cannot recognise the right to be heard according to Article 113(1) EPC being violated. It is apparent that the opposition division did not respond to this demand of appellant 01 posed with letter of 17 October 2000 (section 6)). As can be derived from the minutes of the oral proceedings dated 27 November 2003 the unit CF 400 has however, in connection with prior art treated in the decision under appeal and considered as being similar, been referred to in the oral proceedings (No. 7). Furthermore it can be concluded from the minutes of the oral proceedings that the parties had the opportunity to state their requests at the beginning of the oral proceedings (cf. No. 1) as well as at the end thereof (cf. No. 8). Thus in the oral proceedings before the opposition division

the parties had an opportunity to request that a drawing be filed in connection with the unit CF 400 as offered by the proprietor.

Considering these circumstances the Board is of the opinion that the opposition division, in relying to the statement of the proprietor that CF 400 discloses similar prior art as one being considered already, did not commit a substantial procedural violation. Thus the requests for reimbursement of the appeal fee (Rule 67 EPC) and for remittal of the case (Article 111(1) EPC) due to a substantial procedural violation have to be refused.

6. *Request for apportionment of costs*

The request of appellant 02 for apportionment of costs (cf. section 4.2.2 above) has to be refused. The respondent's reference to prior art according to a unit CF 400 has to be understood as a reference to the first unit CF 400-I which indeed is similar to the prior art according to D1, since for the second unit CF 400-II it has not been proven that it was made available to the public before the priority date (cf. section 4.3 above). Hence the fact that a drawing with respect to the prior art according to unit CF 400-I has not been filed as offered, due to the offer not having been taken up by the opposition division, does not amount to a conduct based on which a deviation from the general principle outlined in Article 104(1) EPC, according to which each party to the proceedings shall meet the costs he has concurred, would be justified.

7. *Admissibility of the slide presentation of appellant 01*

The circumstances are that the slide (PowerPoint) presentation had been announced in advance and a copy of it had been filed with letter of 10 October 2006, the slides only show figures from the patent in suit as well as from documents considered in the appeal proceedings, the number of slides is relatively small (15 slides including an introductory one), and the respondent did not object to the slides being shown as long as they relate to the patent or the prior art. The Board therefore decided to allow the slide presentation to be given in the oral proceedings - with the exception of the slide relating to the unit CF 400-II (copy of slides, page 2, first slide) for which it has not been proven that it belongs to the prior art.

8. *Subject-matter of claim 1 according to the main request*

Claim 1 defines in its pre-characterising portion a loading floor for lorries or trailers, which comprises two main beams extending in the longitudinal direction of the loading space and a plurality of bearing beams, wherein the actual loading floor is formed by at least three groups of alternately arranged slats forming a loading surface.

The slats are supported by the bearing beams and are reciprocable back and forth over said bearing beams in the longitudinal direction of the loading space.

For this reason each group of slats is connected to a first side, preferably the upper side, of an associated driving foot or driving beam for back and forth

movement thereby. The at least three driving feet extend in the transverse direction and are arranged side by side in longitudinal direction and each extend above the movable component of an associated driving assembly formed by a cylinder/ piston/ piston rod assembly. Each foot is connected on a second side, preferably their lower side, to said movable component for the back and forth movement of the slats.

The driving assemblies have a stationary component which extends at least substantially parallel to the loading surface and are rigidly attached at one end at said stationary components by means of attaching means to a first bridge beam which extends substantially continuously in transverse direction. The said first bridge beam is attached to said main beams.

According to the characterising portion of claim 1

(a) said attaching means for the said ends of the driving assemblies are located at least in part within the vertical spaces defined by the bearing beams, wherein

(b) the cylinders of the driving assemblies are rigidly attached to the first bridge beam,

(c) wherein - viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space - the cylinders coincide at least in part with the average section of the first bridge beam, and

(d) wherein the first bridge beam is provided with a recess for accommodating at least a part of the cylinders of the driving assemblies.

According to appellants 01 and 02 feature (c) cannot be understood since it is not known how, in the determination of the average section, portions of the first bridge beam having different cross sections are accounted for.

Concerning the meaning of feature (c) the Board is of the opinion that in the decision under appeal (grounds No. 2.2) it is correctly stated that referring to an average section of the first bridge beam has the meaning that the cross section of this beam does not have a constant value along the length of the first bridge beam. Furthermore in the decision under appeal such portions of different cross section are correctly identified as the end portions having a U-shaped cross-section, as the central cut-out portion including welded plates, as well as the transition portions between each end portion of the first bridge beam and the central portion.

The Board follows the opinion of the respondent that, under such circumstances, it is evident for a person skilled in the art that the "average section of the first bridge beam" referred to in feature (c) is a cross section, "viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space", having a value being the result of summing up the values of the various cross sections of the first bridge beam, each value being weighted by multiplying it with the length of the portion having



such a cross section, the thus obtained sum being divided by the length of the first bridge beam.

It is furthermore disputed which elements are referred to by the term "cylinder" mentioned in various features of claim 1, starting with the feature of the pre-characterising portion in which "an associated driving assembly formed by a cylinder/ piston/ piston rod assembly" is referred to.

According to the respondent this expression has the meaning that only the cylindrical element housing a piston is referred to, whereas according to appellants 01 and 02 this expression needs to be understood in a more general sense as referring to a functional unit usually referred to as a cylinder, which *inter alia* comprises a cylindrical element housing a piston. The Board, following the argumentation of appellants 01 and 02, considers that the person skilled in the art will understand the term "cylinder", in the context of claim 1, to mean a functional unit which, *inter alia*, comprises a cylindrical element within which a piston moves and in addition further elements, such as ones related to sealing of such a cylindrical element at its ends as well as ones enabling the ingress and egress of fluid to actuate the piston.

9. *Sufficiency of disclosure*

Contrary to the opinions of appellants 01 and 02 the Board is, based on the above understanding of feature (c) (cf. section 8), unable to see in feature (c) an obstacle to carrying out the invention according to claim 1. The Board is furthermore of the

opinion that the patent in suit discloses the invention in a manner sufficiently clear and complete for it to be carried out (Articles 83, 100(b) EPC).

For completeness sake it is noted that the allegation concerning the broadness of the claim and the extent of protection conferred by claim 1 of the patent in suit, which shall be determined by the terms of the claims, relates to the question of the clarity and conciseness of the claim and whether it is supported by the description (Article 84 EPC). At present, since claim 1 according to the main request has not been amended with respect to claim 1 as granted the Board is not competent to consider such issues, which are not related to a ground of opposition. This applies correspondingly with respect to claim 8. With respect to claims 1 and 8 of the auxiliary request the respective amendments do not render these claims unclear.

10. *Novelty*

According to appellant 01 and appellant 02 the loading floor as defined by claim 1 lacks novelty with respect to document D6.

It is undisputed that document D6 discloses a loading floor for lorries as defined by the pre-characterising portion of claim 1; the Board concurs with this finding which can be arrived at for example by considering figures 1 and 6 of D6.

Following the arguments of appellants 01 and 02 the Board is, contrary to the arguments of the respondent, furthermore of the opinion that the characterising features of claim 1 are likewise disclosed in D6.

Corresponding to feature (a) document D6 discloses attaching means 44, 46, 48 for the ends of the driving assemblies 50, 52, 56, 58 located at least in part within the vertical spaces defined by the bearing beams 10 (cf. column 1, line 65 - column 2, line 21; figures 1, 6).

With respect to feature (b) and taking account of the way that the term "cylinder" is understood by the Board (cf. section 7 above) it is concluded that, for example (cf. for example figure 6 of the patent in suit and figure 6 of D6), a corresponding functional unit comprises means properly closing the cylindrical elements housing the piston and sealing at its ends, and connections for the ingress and egress of fluid, which allow the pistons within a cylinder to be actuated. According to document D6 among such additional elements are transverse connector beams 54, 56 (cf. column 3, lines 12 - 17; figure 6).

With respect to feature (b) within the loading floor according to D6 such cylinders are rigidly attached to the first bridge beam 10, 44 via connector beam 56 (column 3, lines 6 - 17; figure 6). The respondent has argued that the cylinders according to the embodiment of the patent in suit (cf. figure 6) are attached more rigidly than the ones according to figure 6 of D6 since in the latter case the cylinders are mounted in a cantilever-like fashion which is generally less rigid

and more flexible. The Board notes, however, that the definition according to claim 1 does not exclude the cylinders being mounted likewise in cantilever-like fashion and that furthermore in feature (b), without further qualification, only a rigid attachment is specified and not one of a specific rigidity which cannot be obtained by an attachment of the cylinders in cantilever-like fashion.

In the understanding of the expression "average section" as indicated above (section 8) the cylinders according to D6 are arranged as defined by feature (c) since, as can qualitatively be derived from figure 6 - viewed in a projection on a vertical plane extending parallel to the longitudinal direction of the loading space - the cylinders coincide at least in part with the average section of the first bridge beam.

Concerning feature (d) the respondent referred to the decision under appeal according to which the recess shown in the middle of the first bridge beam of figure 6 of D6 is one which does not accommodate at least a part of the cylinders but only the piston rods. Although this assessment of this particular U-shaped recess in a vertical side of portion 44 of the first bridge beam is correct, the Board concurs with the argument of appellant 02 according to which the first bridge beam is provided with a further recess which is, corresponding to feature (d), for accommodating at least a part of the cylinders of the driving assemblies. This recess of the first bridge beam is provided in that the lower lateral side of the U-shaped end sections 10 of the second bridge beam is missing in the middle portion 44 of that beam, which thus has a L

shaped cross section (column 2, lines 64 - 67; figure 6).

Consequently, since the loading floor according to document D6 comprises all features of claim 1 according to the main request the subject-matter of this claim lacks novelty (Article 54 EPC).

11. *Third auxiliary request*

Claim 1 according to the third auxiliary request differs from claim 1 as granted (main request) in that feature

(e) the cylinders are vertically clamped against the first bridge beam

has been added to further define the manner in which the cylinders are attached to the first bridge beam.

Vertical clamping of the cylinders is disclosed for the embodiment in the application as filed (page 10, line 34 to page 11, line 1; page 12, lines 24 - 36; figures 5B, 6). The Board moreover follows the opinion of the respondent that from this disclosure, in connection with the feature of claim 1 of the application as filed referring to "the driving assemblies being stiffly attached at one end of the stationary component thereof", it is objectively and unambiguously derivable for a person skilled in the art that for a stiff attachment vertical clamping of the cylinders is important. Going beyond this technical information concerning the direction of clamping the structural means, which lead to such vertical clamping,

are evident and need thus not be the particular ones disclosed for the embodiment. Claim 1 according to the third auxiliary request thus satisfies the requirement of Article 123(2) EPC and since the amendment limits the extent of protection the requirement of Article 123(3) EPC is likewise fulfilled. No objections have been raised with respect to the requirements of Articles 83 and 84 EPC. The Board considers the amendment as not rendering claim 1 unclear (Article 84 EPC) and is of the opinion that the added feature does not lead to the invention being insufficiently disclosed (Article 83 EPC). This applies, for corresponding reasons, likewise for amended claim 8 according to the third auxiliary request.

12. According to appellant 02 feature (e) does not lead to a distinction of the loading floor according to claim 1 with respect to the one according to D6. It is of the opinion that, as can be derived for example from figures 1 and 6, the cylinders need to be clamped also in the vertical direction. The Board does not share this opinion. Although it is admitted that in the loading floor according to D6 it is, corresponding to the one according to claim 1, necessary to constrain the cylinders in vertical - as well as in horizontal - direction it needs to be taken into consideration that constraining the cylinders in vertical direction does not amount to the cylinders being clamped in vertical direction as can be derived from figure 6 of D6. As shown bolts 68 are arranged horizontally to clamp the cylinders in horizontal direction (column 3, lines 22 - 28). The cylinders may be limited in their movement in the vertical direction, but this is due to the form fitting and friction produced by the horizontal

clamping action and not by a vertically directed clamping action.

The loading floor according to claim 1 is thus distinguished from the one according to document D6 by feature (e) and consequently is novel (Article 54 EPC).

13. According to the respondent the feature distinguishing the loading floor according to claim 1 from the one according to D6 leads to an improvement with respect to the rigidity of the attachment of the cylinders on the first bridge beam.

The problem to be solved in view of D6 can thus be seen in line with the problem referred to in the patent in suit of obtaining a driving apparatus as stiff as possible (column 3, lines 27 - 42).

This problem is solved by the loading floor as defined in claim 1 according to which the effect defined by feature (b) is obtained by the arrangement of the cylinders with respect to the first bridge beam as defined by features (a), (c) and (d).

14. *Inventive step*

Document D6 discloses a very specific structure for the clamping of the cylinders in horizontal direction comprising horizontally extending bolts 68 as attachment means, apertures 66 for these bolts in the transverse beam 56 on the side of the cylinders and tubular beams 46 and spacer plates 48 on the side of the first bridge beam (column 2, line 58 - column 3, line 28; figures 1, 6).

Starting from D6 and attempting to solve the problem in making the driving apparatus as stiff as possible no hint is given to abandon the manner in which the cylinders are attached and to clamp the cylinders in the vertical, instead of the known horizontal, direction.

This applies correspondingly taking into account documents D4 or D13 referred to specifically by appellant 02 or any other of the documents cited and admitted into these proceedings since none of them gives, either when considered by itself or in combination with D6, an indication leading to the subject-matter of claim 1.

This applies, for corresponding reasons, for the modular built-in unit for incorporation in a loading floor for lorries or trailers according to claim 8.

The subject-matters of claims 1 and 8 of the third auxiliary request thus involve an inventive step (Article 56 EPC).



## Order

### For these reasons it is decided that:

1. The appeals of appellant 01 and of appellant 02 are admissible.
2. The decision under appeal is set aside.
3. The case is remitted to the department of first instance with the order to maintain the patent in the following version:

**Description:** columns 1 to 10 of the patent specification

**Claims:** 1 to 8 of the auxiliary request 3 filed with letter of 25 August 2006

**Drawings:** 1 to 6 of the patent specification

4. The request for reimbursement of the appeal fee is refused.
5. The request for apportionment of costs is refused.

The Registrar:

The Chairman:

G. Nachtigall

P. O'Reilly