

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 17 November 2005

Case Number: T 1059/05 - 3.2.01

Application Number: 99105117.8

Publication Number: 0945316

IPC: B60R 21/32

Language of the proceedings: EN

Title of invention:

A seat weight measuring apparatus with failure detection

Applicant:

TAKATA CORPORATION

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 109

EPC R. 67

Keyword:

"Interlocutory revision - reimbursement of appeal fee (no)"

Decisions cited:

T 0939/95, G 0003/03

Catchword:

-



Case Number: T 1059/05 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 17 November 2005

Appellant:

TAKATA CORPORATION
658 Echigawa,
Echigawa-cho,
Echi-Gun
Shiga 529-1388 (JP)

Representative:

Banzer, Hans-Jörg
Kraus & Weisert
Patent- und Rechtsanwälte
Thomas-Wimmer-Ring 15
D-80539 München (DE)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 20 January 2005
refusing European application No. 99105117.8
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Crane
Members: P. L. P. Weber
G. Weiss

Summary of Facts and Submissions

- I. The present case concerns European patent application No 99105117.8 and deals with a request for reimbursement of the appeal fee after rectification of the decision to refuse the application according to Article 109(1) EPC.
- II. After a first communication and an annex to the summons dealing a.o. with the compliance of claim 1 with the requirements of clarity of Article 84 EPC oral proceedings were held on the 16th of November 2004 and the application was refused.

On the 20th of January 2005 the written decision and the minutes of the oral proceedings were posted. The decision explains that the application had to be refused because the subject-matter of claim 1 still did not fulfil the requirements of clarity of Article 84 EPC. In particular the Examining Division explained why it found that the terms "first polarity" and "second polarity" rendered the wording of the claim unclear.

Claim 1 forming the basis of the refusal reads as follows:

"1. An apparatus for measuring a weight of an automotive seat (5) including a weight of a passenger sitting on the automotive seat (5) by detecting loads at a plurality of corner portions of the automotive seat (5), said apparatus comprising:
a plurality of load sensors (1-4), arranged at said plurality of corner portions of the automotive seat (5), each load sensor (1-4) comprising a bridge

configuration of a first resistor and a second resistor having resistances changing according to the amount of strain and having an output terminal connected to a first potential through the first resistor and to a second potential through the second resistor for outputting an output signal of the respective load sensor (1-4);

and

a calculation means (9) for calculating the weight of the automotive seat (5), characterized in that

a detection means (8; 8a, 8b, 11; 8a, 16; 8a-8d, 11) is provided for detecting a difference between the output signal from one of said plurality of load sensors (1-4) corresponding to a first polarity and the output signal from another one of said plurality of load sensors (1-4) corresponding to a second polarity opposite to the first polarity; and

said calculation means (9) is provided for calculating the weight of the automotive seat (5) based on an output from said detection means (8; 8a, 8b, 11; 8a, 16; 8a-8d, 11)."

III. On the 17th of March 2005 the appellant lodged an appeal against the decision to refuse the application and paid the appeal fee.

On the 20th of May 2005 the appellant filed the statement setting out the grounds of appeal. At the same time it filed a new set of claims 1 to 9 as main request and maintained the former ones as auxiliary request.

Claim 1 according to the main request reads as follows:

"1. An apparatus for measuring a weight of an automotive seat (5) including a weight of a passenger sitting on the automotive seat (5) by detecting loads at a plurality of portions of the automotive seat (5), said apparatus comprising:
a plurality of load sensors (1-4) arranged at said plurality of portions of the automotive seat (5), each load sensor (1-4) comprising a bridge configuration of a first resistor and a second resistor having resistances changing according to the amount of strain and having an output terminal connected to a first potential through the first resistor and to a second potential through the second resistor for outputting an output signal of the respective load sensor (1-4); and
a calculation means (9) for calculating the weight of the automotive seat (5),
characterized in that
a detection means (8; 8a, 8b, 11; 8a, 16; 8a-8d, 11) is provided for detecting a difference between the output signal from one of said plurality of load sensors (1-4) and the output signal from another one of said plurality of load sensors (1-4); and
said calculation means (9) is provided for calculating the weight of the automotive seat (5) based on an output from said detection means (8; 8a, 8b, 11; 8a, 16; 8a-Bd, 11)."

IV. With letter of the 9th of June 2005 the appellant was notified that rectification was ordered and that the decision to refuse the application was set aside.

V. With letter of the 14th of June 2005 the appellant requested reimbursement of the appeal fee and with letter of 19th of October 2005 filed a statement of the reasons why reimbursement of the appeal fee was considered appropriate.

The reasons brought forward can be summarized as follows:

When comparing the wording of claim 1 of the set of claims finally allowed by the Examining Division with the wording of claim 1 as refused during the oral proceedings of the 16th of November 2004 it was obvious that the Examining Division decided to grant a patent on the basis of substantially the same claims. It was also obvious from the decision to refuse the application that the Examining Division had based its decision on a completely incorrect understanding of the claimed invention as had been made clear in the statement setting out the grounds of appeal.

Furthermore incomplete and incorrect examination of the application and of the appellant's argumentation as put forward in several responses during the examining procedure had lead to the refusal which thus could have been avoided by proper consideration of these arguments.

As a consequence of this attitude of the Examining Division, the appellant was forced to file an appeal resulting in extra costs.

Hence the refusal of the application was the result of a procedural violation and since in the meantime the

Examining Division has ordered rectification, all the requirements of Rule 67 EPC are fulfilled for reimbursement of the appeal fee.

Reasons for the Decision

1. The request of the appellant is a request for reimbursement of the appeal fee following interlocutory revision according to Article 109(1) EPC. According to G 3/03 (OJ EPO 2005, page 344) the present board is competent to deal with this request.
2. The appeal complies with the requirements of Articles 106 to 108 and Rule 64 EPC, it is therefore admissible.
3. Rule 67 EPC concerning the reimbursement of the appeal fee states in its first sentence that "reimbursement of the appeal fee shall be ordered in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation."

The second part of the sentence starting with "if such reimbursement" refers both to interlocutory revisions and appeals, see in particular T 939/95(OJ EPO 1998, page 481, reasons 2.1), and not only to appeals.

Thus, reimbursement of the appeal fee is not an automatic consequence of the rectification of the decision.

On the contrary Rule 67 requires two further conditions to be fulfilled before the reimbursement of the appeal fee can be allowed, namely that a substantial procedural violation has occurred and that reimbursement is held to be equitable.

4. In the present case the appellant seems to consider that the procedural violation lies in the fact that the Examining Division properly considered neither the content of the application nor the appellant's argumentation presented in several responses and during the oral proceedings.

Evidence for this behaviour can allegedly be seen in the fact that the Examining Division proposed the grant of the patent on the basis of a claim 1 substantially identical to the one forming the basis for the refusal.

5. In the Board's view this clearly cannot amount to a substantial procedural violation.

The Examining Division has to assess the content of the application and the arguments presented by the appellant in a *bona fide* manner in accordance with the circumstances of the case. The fact that by examining the technical and procedural aspects of the case and the conformity with the EPC the Examining Division may make possible errors of judgment does not constitute a substantial procedural violation as is established jurisprudence of the Boards of Appeal. Furthermore the appellant has not presented any convincing evidence for the Examining Division having exercised its duty of examining the case in an abusive way.

In addition, in the present case it is to be noted that by amending the wording of claim 1 so as not to comprise anymore the word "polarity", the appellant

specifically addressed the objection raised by the Examining Division so that claim 1 according to the main request cannot be said to be substantially identical to the one refused.

The Examining Division thus was fully within its rights to decide the grant of a patent on the basis of this amended claim 1 if after consideration of the amendments made and of the arguments developed in the statement of the ground of appeal it considered that the former objections no longer apply or were no longer convincing.

6. No procedural violation being established, the main condition stated in Rule 67 EPC for the reimbursement of the appeal fee is not fulfilled so that there is no need to examine whether it would have been equitable to reimburse the appeal fee.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

A. Vottner

S. Crane