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**Datasheet for the decision
of 11 January 2008**

Case Number: T 0154/06 - 3.2.01

Application Number: 00914308.2

Publication Number: 1165359

IPC: B62D 31/02

Language of the proceedings: EN

Title of invention:
Vehicle pillar system

Patentee:
Expotech Limited

Opponent:
Alcan Technology and Management Limited

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter (no)"

"An originally disclosed feature defined in negative terms is not a "disclaimer" in the sense of G 1/03"

Decisions cited:

-

Catchword:

-



Case Number: T 0154/06 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 11 January 2008

Appellant: Expotech Limited
(Patent Proprietor) Galgorm Industrial Estate
Fenaghy Road
Ballymena BT42 1PY (GB)

Representative: Earnshaw, Geoffrey Mark
Murgitroyd & Company
165-169 Scotland Street
Glasgow G5 8PL (GB)

Respondent: Alcan Technology and Management Limited
(Opponent) Badische Bahnhofstrasse 16
CH-8212 Neuhausen am Rheinfall (CH)

Representative: -

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 29 November 2005
revoking European patent No. 1165359 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: S. Crane
Members: P. L. P. Weber
T. Karamanli

Summary of Facts and Submissions

- I. The appeal by the proprietor is against the decision of the opposition division posted on 29 November 2005 to revoke the patent because neither the proprietor's main nor auxiliary request fulfilled the requirements of Article 123(2) EPC.

The notice of appeal was filed on 20 January 2006 and the appeal fee paid on the same day.

The statement of the grounds of appeal was filed on 13 March 2006.

- II. The appellant requests the setting aside of the impugned decision and that the patent be maintained in the form submitted as the main request at the oral proceedings before the opposition division dated 16 November 2005.

The respondent requests the dismissal of the appeal.

- III. Claim 1 reads as follows:

A low floor bus frame structure having one or more wholly or substantially vertical pillars (4,10), and one or more wholly or substantially horizontal interconnected struts (6,8),
- the bottom section (10) of at least one of the vertical pillars being separable from the remaining section (4) of that pillar,
- the or each separable bottom section (10) being securable to the lowest horizontal strut (6) of the remaining part of the frame structure through intermediate securing means comprising one or more

angle brackets (14) attachable to both the separable bottom section and the lowest horizontal strut (6),

characterized in that

- the intermediate securing means further comprises one or more reinforcement plates (12), not forming part of the vehicle cladding, and attachable to both the separable bottom section and the lowest horizontal strut.

IV. The following document played a role in the appeal proceedings:

D1: US-A-4230361

V. The arguments of the appellant can be summarized as follows:

The application as filed contains clear support for the phrase "not forming part of the cladding" relating to the reinforcement plate. In particular it becomes clear for the skilled man reading the application that the frame structure of the passenger service vehicles as claimed is formed from the welding of a series of vertical pillars with intermediate struts or stringers on which outer panels are attached, in other words the outer panels do not form part of the frame structure and they thus cannot be considered to be reinforcement plates in the sense of the application. Just because the outer panels in D1 are part of the structure does not mean that the skilled man would read the same into the disclosure of the present application.

The use of a negative term in a feature of a claim does not in itself make the feature a disclaimer. The amendment was not made, without basis in the application as originally filed, "to restore novelty by delimiting a claim against the state of the art under Article 54(3) and (4) EPC, as required by G 1/03 (OJ EPO 2004, 413). The phrase in question is merely a functional feature.

VI. The arguments of the respondent can be summarized as follows:

The term "not forming part of the cladding" relating to the reinforcement plate was originally not disclosed. One condition for disclaimers to be allowable is that it allows the claimed subject-matter to be distinguished from an accidental anticipation. In the present case it is used to distinguish the claimed subject-matter from the state of the art according to D1, and this document relates to the same technical field of passenger service vehicles as the patent in suit and has been cited in it as state of the art. It further is likely to be used to assess inventive step of the subject-matter according to Claim 1. Hence, the above mentioned disclaimer does not fulfil the requirements of G 1/03 to be allowable.

Reasons for the Decision

1. The appeal is admissible.
2. *Article 123(2) EPC*

The sole issue to be dealt with in this appeal is whether the term "not forming part of the vehicle cladding" which has been added to claim 1 during the examination phase and which relates to the reinforcement plates can be considered to be an allowable amendment having a basis in the application as filed and if not whether it fulfils the requirements for it to be considered an allowable disclaimer which is not disclosed in the application as filed according to G 1/03.

3. *Basis in the application as filed*
 - 3.1 The paragraph on page 1, lines 7 to 12 of the published international application WO-A-00/59768 leading to the patent in suit concerns the state of the art. It is described how passenger service vehicles such as buses are conventionally manufactured. It is explained that vertical pillars and horizontal struts are welded together to form a structure and in lines 11 and 12 it is mentioned that "*the outer panels are then attached to this frame structure*".

The paragraph on page 3, lines 27 to 30 talking about the frame structure of the present invention reads:
"The frame structure of the present invention is applicable to any vehicle having one or more frame

structures, upon which outer facings or panels are then attached."

Already these are clear indications in the introductory part of the original description that the invention is concerned with such structures on which the outer facings or panels are to be mounted.

- 3.2 On page 6, lines 8 to 12, it is further explained how the lower part of the side of the bus between its wheels is to be repaired when damaged in an accident with a normal car. *"To repair this, the outer bus panel is removed in a known manner, and the or each damaged bottom pillar section (10) can be easily and quickly unbolted from the lowest horizontal strut (6), by removal of the plates and lower angle brackets."*

This is an additional indication that the outer bus panel (which is removed in a known manner) is not the same element as the plates and the brackets which are removed after the panels have been removed.

Furthermore none of the two drawings shows an outer panel or facing and fig. 2 clearly shows a reinforcement plate 12 which is not an outer panel.

- 3.3 Hence a skilled man reading the originally filed application documents would clearly understand that the reinforcement plates 12 are not a part of the outer panels or facings.

- 3.4 Since the word "cladding" does not appear in the description it remains to be determined whether cladding can be considered equivalent to outer facing or outer panel.

The word "cladding" is used several times in the state of the art document D1 which also deals with passenger service vehicles such as buses as does the patent in suit. In this document, see col. 2, line 36 (*In the vehicle body construction 1 according to FIGS. 1-22 there are connected together, by bolting and/or welding, sectional bars 2, roof longitudinals 3, central longitudinals 4 serving as wall cladding...*), col. 4, lines 6-10 (*The side wall is constituted essentially of a high, longitudinally extending, central longitudinal or side wall cladding section 4 open to the interior...*), col. 4, line 32 (*The cladding section 28...*), the word "cladding" clearly designates the outer panels 4 and 28 shown in figures 1 and 2.

In the opinion of the board this shows that in the field of passenger service vehicle construction the word "cladding" and the words "outer panel or facing" are equivalent terms for designating the same elements which are fixed on the frame structure.

This has not been questioned by the respondent.

- 3.5 It is therefore directly and unambiguously derivable from the application as originally filed that the reinforcement plates do not form part of the vehicle cladding, so that the requirements of Article 123(2) EPC are fulfilled in respect of this feature.

4. The question of the allowability of this amendment in view of decision G 1/03 is thus irrelevant, only originally undisclosed disclaimers being concerned by it.

5. The other features of claim 1 as granted have originally been disclosed, see claims 1, 3, 5, 6 of WO-A-00/59768.

The additional feature of the main request "low floor bus frame structure" was originally disclosed in claim 13 or page 4, lines 1, 2.

Claim 1 according to the main request thus fulfils the requirements of Article 123(2) EPC.

6. The subject-matter of Claim 1 according to the main request being more restricted than the one according to Claim 1 as granted, Claim 1 according to the main request also satisfies Article 123(3) EPC.

7. The board considers it appropriate to remit the case to the first instance for further prosecution pursuant to Article 111(1) EPC to give the parties the possibility of defending their case as to the substance in front of two instances which would not be so if the board considered the other requirements for maintenance of the patent in amended form at this stage.

Both parties agreed with this way of proceeding.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:

A. Vottner

S. Crane