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**Datasheet for the decision
of 14 March 2007**

Case Number: T 1669/06 - 3.2.01

Application Number: 03250381.5

Publication Number: 1354760

IPC: B60P 3/42

Language of the proceedings: EN

Title of invention:

A movable bulkhead for a van

Applicant:

Primera Consultancy and Design Limited

Opponent:

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Headword:

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Relevant legal provisions:

EPC R. 67

Keyword:

"Reimbursement of appeal fee (no)"

Decisions cited:

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Catchword:

-



Case Number: T 1669/06 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 14 March 2007

Appellant: Primera Consultancy and Design Limited
Broadwater Road
Framlingham
Woodbridge IP13 9LL (GB)

Representative: Copp, David Christopher
Dummett Copp
25 The Square
Martlesham Heath
Ipswich IP5 3SL (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 21 June 2006
refusing European application No. 03250381.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Crane
Members: C. Narcisi
G. Weiss

Summary of Facts and Submissions

- I. The European patent application No. 03 250 381.5 was refused by the examining division with a decision posted on 21 June 2006. Against this decision an appeal was filed by the applicant on 21 August 2006 and the appeal fee was paid at the same time of filing the notice of appeal. The statement of grounds of appeal was filed with the notice of appeal. The appellant requested that the decision be set aside, that the prosecution of the application be continued and that the appeal fee be refunded.

- II. With a communication dated 9 November 2006 the appellant was informed that the decision had been rectified under Article 109(1) EPC but that the request for reimbursement of the appeal fee could not be allowed and had been forwarded to the board of appeal for decision.

- III. The board informed the appellant with a communication of 11 January 2007 that in its view no procedural violation justifying a reimbursement of the appeal fee could be recognized.

- IV. The appellant stated with letter dated 17 January 2007 that it did not intend to maintain its request for oral proceedings.

- V. The appellant's arguments may be summarized as follows:

The examining division has issued a decision to refuse the application without making any substantive report under Article 52 EPC. Article 96(2) EPC requires the

examining division to invite the applicant, in accordance with the implementing regulations and as often as necessary, to file observations within a period to be fixed by the examining division.

Article 113(1) EPC requires decisions of the EPO to be based only on grounds or evidence on which the parties have had an opportunity to present their comments. The applicants responded in full to the itemised objections raised by the examining division in the report dated 27 March 2006. Following the applicant's full response, the examining division refused the application based on some other previously unspecified instances, such as the use of the terms "series of discrete points", "right angles", "position of use" in claims 1 and 11, where the examiner considered that matter had been added. Hence, the refusal was made without giving the applicants an opportunity to present their comments on those previously unspecified instances, contrary to Article 113(1) EPC.

Reasons for the Decision

1. The appeal is allowable since it meets the requirements of Articles 106 to 108 EPC in conjunction with Rules 1(1) and 64 EPC.
2. The first point raised by the appellant is that the examining division issued a decision to refuse the application without making any substantive report under Article 52 EPC. In this respect it is noted that no substantive examination under Article 52 EPC could

possibly have been carried out by the examining division, given that the objections under Article 123(2) EPC relating to the independent claims 1, 11, 12 were still outstanding and had not been overcome with the last applicant's submission dated 13 April 2006 preceding the contested decision. In this respect it is also remarked that according to Rule 51(3) EPC a reasoned statement should cover only "where appropriate" all the grounds against the grant of the European patent.

3. As to the second point raised by the appellant, the alleged violation of Article 113(1) EPC, it is noted that as far as claims 1 and 11 are concerned, the additional reasons given in the contested decision relating to specific terms ("series of discrete points", "right angles", "position of use") which were considered to contravene the requirements of Article 123(2) EPC were not made known to the applicant before the contested decision. To that extent therefore it could be argued that a violation of Article 113(1) EPC has occurred. However, the reasons given in the decision as to why the subject-matter of independent claim 12 infringes Article 123(2) EPC are well founded and the appellant had been informed thereof in the communication dated 27 March 2006. In particular the terms "movable screen" or "cross members" in independent claim 12 do not have any equivalent technical counterpart among the technical terms originally used in the application. Nevertheless the applicant chose to leave the wording of claim 12 unchanged, apart from "minor modifications" (see letter 13 April 2006). Under these circumstances the refusal of the application was justified since the overall

application did not meet the requirements of the Convention (Article 97(1) EPC). Thus the violation of Article 113(1) EPC noted above does not constitute a substantial procedural error within the meaning of Rule 67 EPC which could justify refund of the appeal fee.

Order

For these reasons it is decided that:

The request for refund of the appeal fee is refused.

The Registrar:

The Chairman:

A. Vottner

S. Crane