

Internal distribution code:

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

**Datasheet for the decision
of 23 July 2010**

Case Number: T 0168/08 - 3.2.06

Application Number: 02022974.6

Publication Number: 1302436

IPC: B66C 23/80

Language of the proceedings: EN

Title of invention:

Outrigger mounting structure of loading and unloading vehicle

Patentee:

MITSUBISHI HEAVY INDUSTRIES, LTD.

Opponent:

Gottwald Port Technology GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)(3)

RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):

EPC Art. 84, 56

Keyword:

"Main Request - Art. 123(2) EPC requirements fulfilled (no)"

"1st auxiliary request - inventive step (yes); Art. 123(2) and (3) (yes)"

"Illegible document"

Decisions cited:

T 0565/89, T 0792/95

Catchword:

-



Case Number: T 0168/08 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 23 July 2010

Appellant: Gottwald Port Technology GmbH
(Opponent) Forststrasse 16
D-40597 Düsseldorf (DE)

Representative: Moser, Jörg Michael
Moser & Götze
Patentanwälte
Paul-Klinger-Strasse 9
D-45127 Essen (DE)

Respondent: MITSUBISHI HEAVY INDUSTRIES, LTD.
(Patent Proprietor) 5-1, Marunouchi 2-chome
Chiyoda-ku
Tokyo 100-8315 (JP)

Representative: HOFFMANN EITLE
Patent- und Rechtsanwälte
Arabellastraße 4
D-81925 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
29 November 2007 concerning maintenance of
European patent No. 1302436 in amended form.

Composition of the Board:

Chairman: G. Kadner
Members: M. Harrison
W. Sekretaruk

Summary of Facts and Submissions

- I. In its interlocutory decision dated 29 November 2007, the opposition division found that European patent number 1 302 436 in an amended form met the requirements of the European Patent Convention (EPC).
- II. The appellant (opponent) filed an appeal against this decision and requested revocation of the patent, making reference *inter alia* to the following documents:
- D1: EP-B1-0 661 196,
D2: Gottwald HMK 260 EG, drawing No. 2.1487.0085-0;
offer Nos. 826 526 and 826 527,
D5: DE-U-297 19 953,
D6: DE-A-43 11 662.
- III. The respondent (proprietor) requested dismissal of the appeal.
- IV. In a further submission dated 16 December 2008, the appellant submitted the following further documents:
- D7: "Liebherr" internet printout, 4 pages, dated 27 November 2008.
D8: Gottwald "100 Jahre Bagger - Krane - Rahmen ...", volume 1, 2006, pages 5 and 224, and volume 2, 2006, pages 5, 246, 266, 267, 289, 290, 293, 294 and 332.
- V. Following the issue of a summons to oral proceedings, the Board sent a communication indicting its provisional opinion, in which *inter alia* the matter of Article 123(2) EPC was mentioned with reference to features of claim 1 which did not appear in the

originally filed claims contrary to the findings of the opposition division. Additionally, the Board indicated that the subject matter of claim 1 appeared to lack an inventive step when starting from D2. It was also stated that, since D7 was not prior art and since particular details of D8 were virtually illegible, it appeared that D7 and D8 would not be admitted into proceedings.

VI. With its submission of 23 June 2010, the respondent filed amended claims in the form of a new main request and two auxiliary requests.

VII. During the oral proceedings held before the Board on 23 July 2010, the appellant confirmed its request for revocation of the patent. It also filed a further copy of page 332 of E8 and an enlarged version of a portion of that page.

The respondent requested that the European patent be maintained on the basis of the main request filed on 23 June 2010 or on the basis of auxiliary request 1 filed during the oral proceedings.

VIII. Claim 1 of the main request reads as follows:

"1. A loading and unloading vehicle provided with a plurality of axle supporters (10) having a plurality of axles (10A) supporting car wheels (7, 7a) and steering means thereof under a body frame (1) of the vehicle, mounting a crane proper on the body frame (1) of the vehicle and equipped with outriggers (21) at least at the front and rear parts of the body frame (1) for anchoring the vehicle to the ground, wherein outrigger

housing parts (20) for accommodating said outriggers (21) are provided in the body frame (1) and the outriggers (21) are inserted in the outrigger housing parts (20) so that they can be slid into and out of the outrigger housing parts (20), said outrigger housing parts (20) are provided so that each of front and rear outrigger housing parts (20) is located inside toward the center of the body frame (1) from each of the vertical lines tangential to the perimeter of the forefront car wheel (7a) and rearmost car wheel (7a) at the front end side and rear end side thereof, respectively, characterized in that each of said outrigger housing parts (20) has an outrigger inserting hole (24) in the direction perpendicular to the longitudinal direction of the body frame (1), and each of the outrigger beams (22) of said outriggers is inserted for a sliding movement in said outrigger inserting hole, wherein said outrigger housing parts (20) are formed above said axle supportters."

IX. Claim 1, the only claim, of auxiliary request 1 reads as follows:

"1. A loading and unloading vehicle provided with a plurality of axle supportters (10) having a plurality of axles (10A) supporting car wheels (7, 7a) and steering means thereof under a body frame (1) of the vehicle, mounting a crane proper on a supporter (2) provided on the center part of the body frame (1) of the vehicle and equipped with outriggers (21) at least at the front and rear parts of the body frame (1) for anchoring the vehicle to the ground, wherein outrigger housing parts (20) for accommodating said outriggers (21) are provided in the body frame (1) and the outriggers (21)

are inserted in the outrigger housing parts (20) so that they can be slid into and out of the outrigger housing parts (20), wherein each of said outrigger housing parts (20) has an outrigger inserting hole (24) in the direction perpendicular to the longitudinal direction of the body frame (1), and each of the outrigger beams (22) of said outriggers is inserted for a sliding movement in said outrigger inserting hole; and wherein the vehicle is a mobile harbor crane, and the outriggers are so arranged and constructed as to serve for anchoring the vehicle to the ground; characterized in that said outrigger housing parts (20) are provided so that each of front and rear outrigger housing parts (20) is located inside toward the center of the body frame (1) from each of the vertical lines tangential to the perimeter of the forefront car wheel (7a) and rearmost car wheel (7a) at the front end side and rear end side thereof, respectively; and said outrigger housing parts (20) are formed at the front and rear end of the body frame (1) integral to the body frame (1) and above said axle supportors (10)."

X. The appellant's arguments may be summarised as follows:

Contrary to Article 123(2) EPC, claim 1 of the main request did not define that the crane proper was mounted on a supporter, even though this was the only disclosure of the mounting of the crane proper in the application as filed.

In regard to the first auxiliary request, the request was late-filed and should therefore not be admitted. Also, the requirements of Article 123(3) EPC were not met because the feature "the vertical center line of"

had been removed. This meant that certain embodiments might no longer be excluded. For example, the claim as granted protected only outrigger housings having a centreline, whereas housings without centrelines were now within the scope of the claim.

Contrary to Article 123(2) EPC, the introduced terminology from paragraph [0027] was an unallowable generalisation of the original disclosure, since e.g. the disclosure in paragraphs [0021] to [0023] of the published application all related to the same embodiment and could not be omitted.

The subject matter of claim 1 was not clear (Article 84 EPC 1973). Due to the fact that the claims had been amended, unclear wording from the granted claims was also open to attack. In respect of the new amendments introduced, the terminology defining that the outrigger housing parts were "at the front and rear end of the body frame" was not different to the terminology "at the front and rear parts of the body frame", since the ends had a certain unknown extension towards the centreline of the frame, as did the housings.

The subject matter of the claim lacked inventive step when starting from D2. The only difference of claim 1 over D2 was the feature:

"said outrigger housing parts (20) are provided so that each of front and rear outrigger housing parts (20) is located inside toward the center of the body frame (1) from each of the vertical lines tangential to the perimeter of the forefront car wheel (7a) and rearmost car wheel (7a) at the front end side and rear end side

thereof, respectively". The term "above" in the claim could mean solely vertically above; no overlapping relationship of the axle supporters and the housings was implied.

The only objective problem solved by this feature was to provide an alternative to the arrangement in Fig. 3 (in the patent). This involved merely moving the wheels in D2 further toward the ends; this did not involve an inventive step because the wheel position was unimportant. The relative positions of the wheels and outriggers on a mobile harbour crane was known from D8. Whilst the pictures in D8 were not very high quality, it was still possible to discern the location of the outriggers on the frame, and the text on page 332 disclosed in more detail the way in which the outriggers were arranged with respect thereto. Since the crane only carried loads when anchored on outriggers, the position of the wheels was irrelevant; the mobile crane only rarely moved and anyway not with loads. Placement of the outriggers inwardly from the wheels was known from e.g. D1, D5 or D6 and a skilled person could select the position of the wheels and outriggers from the known combinations without inventive skill.

XI. The respondent's (proprietor's) arguments may be summarised as follows:

Claim 1 corresponded to claim 1 found allowable by the opposition division under Article 123(2) EPC, apart from the words "the vertical center line of" having been removed.

In regard to auxiliary request 1, the requirements of Article 123(2) EPC were also met. The "crane proper" defined the crane as disclosed e.g. in col. 4, line 1 of the published application. The introduced terminology regarding the position of the outriggers, namely at the front and rear end of the frame, was disclosed in paragraph [0027]; the other features of the axles disclosed in preceding paragraphs were irrelevant to the positioning of the outrigger housings relative to the wheels and axle supporters.

The requirement of Article 123(3) EPC was also met. Even though the wording "the vertical center line of" was removed compared to the granted claim, this limited the scope of protection to arrangements where the entire outrigger housing parts were behind the lines tangential to the wheel perimeters.

Most of the appellant's objections to lack of clarity under Article 84 EPC 1973 did not relate to the amendments, but to the wording of the claims as granted; clarity was not a ground of opposition. In respect of the introduced terminology "at the front and rear end of the body frame integral to the body frame", this defined where the outrigger housings were positioned with respect to the axle supporters, in particular when seen in addition to features already in the claim.

D8 was late-filed. It was also published after the priority date and the relevant details of the alleged public prior use therein were not clearly visible. Also, no importance of any particular arrangement of parts was given in the text. D8 should thus not be admitted into proceedings.

Claim 1 defined a mobile harbour crane with an overlapping relationship of outer wheel perimeter to outrigger housing and thus also the housings were positioned directly above the axle supporters and not merely at a greater height. This arrangement solved the problem of optimising frame compactness whilst giving maximum stability to the vehicle both when travelling and when anchored on outriggers. D1, D5 and D6 did not mention this problem, nor a solution thereto, let alone in the manner claimed.

Reasons for the Decision

1. *Main request - Article 123(2) EPC*

1.1 In claim 1, the following is defined:

"mounting a crane proper on the body frame (1) of the vehicle ...".

1.2 This expression cannot be found in the application as filed. Instead, in paragraph [0020] of the published application, the following is stated "... 2 is a supporter provided on the center part of the body frame 1 for mounting a crane ...". These features are also shown in the drawings. Contrary to the finding of the opposition division in item 3 of the decision under appeal, this subject matter cannot be found in the claims of the application as originally filed.

1.3 No other disclosure can be found of the crane (i.e. the "crane proper" of claim 1) being mounted on the body

frame. Thus, a definition (as in claim 1) of the crane proper mounted on the body frame, without also specifying that there is a supporter provided on the center part of the body frame, is an unallowable intermediate generalisation of the content of the application as originally filed.

1.4 The requirements of Article 123(2) EPC are consequently not met and the main request is therefore not allowable.

2. *Auxiliary request 1*

2.1 *Admittance into proceedings*

2.1 This request was filed for the first time during oral proceedings. In accordance with Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), the Board has discretion in admitting and considering such a request. For the following reasons, the Board decided to admit the request into proceedings.

2.2 The sole claim (claim 1) of this request is essentially a combination of claims 1 and 2 of the text found allowable by the opposition division, whereby the wording "the vertical center line of" was removed, the absence of the feature in claim 1 of the main request was overcome by introducing it in the wording "mounting a crane proper on a supporter (2) provided on the center part of the body frame (1) of the vehicle", and a feature taken from the description (see paragraph [0027] of the published application) was introduced. This claim also limits the subject matter to a "mobile harbor crane", upon which many of the appellant's written arguments were already based, while the removal

of the wording "the vertical center line of" was in response to an objection under Article 123(2) EPC made by the Board in its communication. The further amendment to include wording from paragraph [0027] was made in response to discussions in oral proceedings concerning the meaning of the terminology "above" in claim 1, which had also been the subject of the written proceedings.

2.3 The amendments related to an interpretation of the claim which, in essence, had already been the subject of written proceedings and which sought to overcome objections made by the Board and by the appellant. The subject matter of the request was thus considered not to be complex in view of the proceedings to date and was also procedurally economic in overcoming the objections made. Although the appellant also raised objections to the claims with regard to Article 84 EPC 1973 and Article 123 EPC (see below), the Board found these unjustified.

2.4 Further, although the appellant argued that the request was late-filed and as such should not be admitted, this alone is not a reason for refusing admittance of the request in light of Article 13(1) RPBA.

2.5 In exercising its discretion, the Board thus admitted the request into proceedings.

3. *Article 123(3) EPC*

3.1 The wording "the vertical center line of" was removed from the expression in granted claim 1 which reads:
"said outrigger housing parts (20) are provided so that

the vertical center line of each of front and rear outrigger housing parts (20) is located inside toward the center of the body frame (1) from each of the vertical lines tangential to the perimeter of the forefront car wheel (7a) and rearmost car wheel (7a) at the front end side and rear end side thereof, respectively."

- 3.2 By way of this amendment, the claim is however limited to arrangements where the entire outrigger housing parts (20) (i.e. the parts which constitute the outrigger housings) are located inwardly toward the centre of the body frame from the tangential vertical lines. In the granted claim, arrangements were additionally covered which did not require the entire housing part, but only part of it, to be located inwardly toward the centre of the body frame from the tangential vertical lines. Thus the claim limits the protection conferred.
- 3.3 The appellant argued that the removal of a feature might result in embodiments, which were not covered by the claim previously, now being covered. The only example given by the appellant in support of this allegation was the case in which an outrigger housing has no vertical centreline, it being alleged that only outrigger housings with vertical centrelines were covered, whereas this was no longer a requirement. However, the Board does not find this argument convincing, since a centreline is not limited in the patent to being that of a symmetrically shaped housing. Indeed, the housings shown in the Figures of the patent are not symmetrical. Thus, for any shape, it is always possible to define a geometrical centre and thus a

centreline passing through this. Consequently, there is no extension of protection conferred in this regard. Similarly, the appellant's general allegation that embodiments might be included within the amended claim which were previously excluded cannot be followed, nor was the appellant able to give any particular example (apart from the foregoing) where this would allegedly be the case.

3.4 No contravention of Article 123(3) EPC has thus occurred.

4. *Article 123(2) EPC*

4.1 The amendment "are formed at the front and rear end of said body frame 1 integral to the body frame (1) and" introduced into claim 1, defines the position of the outrigger housing parts (20) on the body frame. This amendment is taken from paragraph [0027] (see the published application). The remaining subject matter of that paragraph is already defined in the claim.

4.2 Although this feature relates to an embodiment of the invention shown in Figure 2, it is evident to a skilled person that this feature is not functionally or structurally interrelated with the wheel and axle arrangements described in further paragraphs relevant to Figure 2. The arrangements given in paragraphs [0021] to [0024] disclose details of the axle supporter arrangements, which appear not to have a specific functional relationship with the relative positions of the outrigger housings and forefront and rearmost wheels, as contained in paragraph [0027]. Indeed, the structure of the axles, axle supporters and the wheels

appears to lack relevance in that regard, and indeed the structure is acknowledged as being well known in paragraph [0025]. Also, no specific arguments were made as to why a skilled person would understand that a structural and/or functional interrelationship would exist between the detailed axle structures and the relative position of the outrigger housing parts on the frame with respect to the tangential lines to the general wheel and axle structures as defined in the claim.

- 4.3 The appellant also argued that the term "crane proper" had been introduced into claim 1 and that this had no basis in the application as filed. However, the Board does not agree, since whilst the terminology "crane proper" was not used in the filed application, it is evident that this relates to the crane which is mounted on the supporter in the mobile harbor crane and thus the wording "crane proper" serves to distinguish the crane unit itself from the entire vehicle which is also defined as a crane. In paragraph [0007] of the published application, the following is disclosed:

"the load capacity of the crane of said tire-wheeled mobile harbour crane...".

It is thus clear that both a mobile harbor crane and the crane itself thereof (i.e. the "crane proper") are disclosed.

- 4.4 In regard to the objections made by the appellant and dealt with above, the Board concludes that the requirements of Article 123(2) EPC are fulfilled. No further objections were made with regard to

Article 123(2) EPC and the Board itself finds no objections in this regard.

5. *Article 84 EPC 1973*

- 5.1 The appellant made various objections against the clarity of features in the granted claims which features are also present in claim 1 of this request. However, raising such clarity objections against the wording of the present claim would be tantamount to raising a clarity objection against the granted claim itself, it being noted that lack of clarity is not a ground of opposition under Article 100 EPC. Only where the wording of any amendment itself is unclear, or where its introduction causes a lack of clarity, may such an objection be entertained. This is also established case law of the Boards of Appeal (see e.g. T 565/89 or T 792/95).
- 5.2 The appellant did not provide arguments as to why a lack of clarity in the features already in the granted claims was caused by amendments made in claim 1 of this request, and the Board itself can find no reason as to why this should be the case.
- 5.3 In regard to the amendments introduced, the appellant however argued that the terminology "said outrigger housing parts (20) are formed at the front and rear end of the body frame (1) integral to the frame and above said axle supporters" was not clear, since the extent of the end of a frame and the outrigger housing parts was not defined.

However, the Board does not find this argument convincing. The claim as granted defined that outriggers were located at the "front and rear parts of the body frame", but did not specify where on these parts of the frame the outriggers were located. With the amendment, it is clarified that this location is at the front and rear end, whereby the front and rear ends of the frame are precise locations. Merely because the location "at the end" may include a minimal distance along the frame as well, would not render the terminology unclear when read by a skilled person.

5.4 The Board thus concludes that the requirements of Article 84 EPC 1973 are met.

6. *Inventive step*

6.1 *D8 - non-admittance into proceedings*

6.1.1 D8 was not filed with the statement of grounds of appeal (Article 12(2) RPBA) and thus its filing represented a change of case, which had to be dealt with under Article 13(1) RPBA.

6.1.2 As already mentioned in the Board's communication subsequent to sending the summons, page 332 of D8 (upon which the appellant relied when addressing the issue of inventive step in regard to this request during oral proceedings) contained illegible information in the pictures. Despite the fact that the appellant filed a marginally better copy and an enlargement of same during oral proceedings, the Board was unable to identify the relevant features of claim 1 argued by the appellant as allegedly present. These features were,

for example, outriggers allegedly arranged on the frame at the front and rear end thereof above the axle supporters. Outriggers cannot however clearly be identified in the picture at all, let alone where they are located precisely in respect of the frame; in fact even the boundaries of the frame itself are not discernible. From the text in the left hand column of page 332, it is clear that an H-support is present, and that the outriggers are attached to the lower chassis ("Unterswagenrahmen"), which according to the text has a length of 23 m and width of 13,5 m. Since the length and width of the outrigger support base measured 13 x 12 m it was however not possible for the Board to understand how an integral fixation would be feasible with the outrigger housings being at the front and rear end of the frame, since the frame was 12 m longer than the support base length.

The Board was thus unable to find the alleged features in E8, and thus E8 appears to be of no particular relevance to the question of inventive step. The Board thus decided not to admit D8 into proceedings.

6.2 As also agreed by the parties, the closest prior art is represented by the HMK 260 mobile harbour crane in D2. This document discloses the features in the preamble of claim 1.

6.3 The difference of claim 1 compared to D2 lies in the positioning of the outriggers with respect to the wheels and the axle supporters. Claim 1 defines that each of the outrigger housing parts 20 is located at the front and rear end of the body frame respectively. It also defines that the housing parts are located

inside toward the center of the body frame from each of the vertical lines tangential to the perimeter of the forefront and rearmost car wheel at the front end side and rear end side thereof. This means that the forefront and rearmost wheels extend beyond the outrigger housing parts. Because there is also a plurality of axle supportors having a plurality of axles supporting car wheels (in which the forefront wheel and rearmost wheels are thus included) and these are arranged under the body frame, it is implicit that the outrigger housing parts must be located above the axle supportors in both the sense of vertical height and the sense of horizontal location along the longitudinal axis of the body frame. An "overlapping" relationship of the outrigger housing parts (20) and the axle supportors (10) is thus present.

6.4 In this context, it is noted that the feature "said outrigger housing parts (20) are formed at the front and rear end of the body frame (1) integral to the body frame (1) and above said axle supportors (10)", at the end of claim 1, is to be read together with the further positional definition of the outrigger housing parts defining the "overlapping" relationship referred to above. Thus, whilst in D2 the outrigger housings are formed at the ends of the body frame vertically above the location of the axle supportors, they are not "above" in both senses of the word "above" in claim 1; the two-part form of claim is also regarded as correct with respect to D2, having this in mind.

6.5 The appellant refuted the implicit presence of an overlapping relationship of outrigger housing parts and axle supportors in claim 1, but provided no additional

argument as to why this was the case. The Board however finds no reason which would allow a different interpretation of the claim.

- 6.6 The objective problem to be solved, when starting from D2 as the closest prior art, is to provide a mobile harbour crane in which the compactness of the vehicle is optimised whilst giving maximum stability both when travelling and when anchored on outriggers. This problem is also in line with the patent in paragraphs [0011] and [0035].
- 6.7 The appellant argued that the claim merely solved the problem of providing an alternative arrangement to that in D2, since such mobile harbour cranes hardly ever moved on wheels apart from e.g. servicing operations which were anyway at long intervals, whereby stability considerations concerning the time when the crane was moving on its wheels was not an issue. However, the Board is not convinced by these arguments since, whether or not a mobile crane only moves very rarely, it does have wheels which are specifically for the purpose of moving it, and the wheels must provide the required stability when in motion (e.g. due to ground unevenness, etc.), in particular in view of the large size of the vehicles such as those in D2. Thus, the problem advanced by the appellant is not found by the Board to be objective in light of the prior art.
- 6.8 Considering the objective problem to be solved when starting from D2, the skilled person finds no lead towards this solution in the cited prior art. The appellant cited D1, D5 and D6 as examples of various arrangements of outrigger housings and axle locations,

and argued that the skilled person would choose, without inventive skill, suitable locations as appropriate. However, the Board finds these arguments unconvincing, since there appears to be no incentive when considering D1, D5 or D6 to combine their teaching with the disclosure of D2 as explained further below.

6.8.1 D1 relates to a crane supporting vehicle, in which several embodiments are disclosed, primarily in which the outriggers are arranged to slide in an arc basically in line with the longitudinal axis of the vehicle (see e.g. the Figures), and not perpendicular thereto as defined. Also, in D1, the outrigger housings are not arranged at the front and rear end of the body frame, as defined in claim 1; instead they lie along the central section of the frame in most embodiments. In the only embodiment disclosing outrigger housings close to the rear end of the vehicle (see e.g. Fig. 9 and column 7, lines 19 to 27) and slidable perpendicularly to the longitudinal axis, the outrigger housings are arranged entirely rearward of the wheels and thus not as defined in claim 1. Therefore, when starting from D2, there is no teaching in D1 which would lead a skilled person to the subject matter of claim 1 without the exercise of inventive skill.

6.8.2 D5 teaches a vehicle without axle supporters of the type claimed, where the outrigger housings are arranged below the axle supports in height terms (see Fig. 1). In embodiments of D5 having outriggers extending perpendicularly to the vehicle longitudinal axis (see the end outriggers in e.g. Fig. 2 and Fig. 3), the outrigger housings are not arranged above the wheels or the axle mountings, at least not in an overlapping

sense, but instead are positioned entirely longitudinally outside of the axle locations. In the embodiments of Figs. 3 and 6, the outriggers are also arranged close to the centre of the vehicle and somewhat angled from the perpendicular. No teaching can therefore be found in this document which would allow a skilled person starting from D2 to solve the stated problem in the way defined in claim 1.

6.8.3 D6 discloses (see the Figure and col. 1, lines 3 to 6 and line 59 to column 2, line 19) a vehicle on which a crane proper can be mounted, having a body frame with outriggers slidable in housings 11, 11', 13, 13'. The outrigger housings are arranged however at an angle to a direction perpendicular to the longitudinal direction of the frame. Whilst D6 column 2, lines 13 to 19 mentions that the included angle of the outriggers on different sides of the vehicle may be different, there is no teaching that either set of outrigger housings should ever lie perpendicular to the vehicle longitudinal axis, let alone both of them as defined in claim 1. Further, the front end of the body frame is not even discernible in the Figure, so it cannot be established whether the housings 11, 11' are at the end of the body frame, as defined in claim 1, or not; in particular the body frame appears to extend below the driver's cab 7 and thus the front end of the body frame is forward of the housings. Also, whilst the front outrigger housings 11, 11' are arranged above a set of wheels behind the front wheels, the rear outrigger housings are arranged not at the end, but in the centre of the body frame at a position remote from the position of the rear wheels. Thus, a skilled person starting from the mobile harbour crane of D2 and faced

with the objective problem to be solved, is not taught to solve this problem by D6, since this neither mentions the problem to be solved, nor does it disclose or otherwise teach the solution as claimed.

6.8.4 The appellant also argued that when looking at the entire prior art, the solution in claim 1 was obvious. However, such an approach is entirely subjective since, whilst various positions of outrigger housings and of wheels and axles may be known, the relative positions of the wheels and axle supportors with respect to the outrigger housings as defined in claim 1 is not disclosed anywhere in the prior art cited against this claim, let alone with respect to a harbour crane of the type defined in claim 1.

6.9 The requirement of Article 56 EPC 1973 is therefore fulfilled in regard to the available prior art.

7. The description was adapted to the sole claim of the auxiliary request. No objections were raised by the appellant to the amendments made; nor could the Board see any reason for objection to these amendments.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division with the order to maintain the European patent on the basis of the following documents:

claim 1 and
description pages 2, 3, 3a, 4 - 6 of 23 July 2010,
drawings Figures 1 - 3 as granted.

The Registrar:

The Chairman:

M. Patin

G. Kadner