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Datasheet for the decision of 11 March 2010

Case Number: T 0878/08 - 3.2.01

Application Number: 99953484.5

Publication Number: 1126993

IPC: B60N 2/12

Language of the proceedings: EN

Title of invention:
Easy entry mid-position memory seat

Patentee:
Magna Seating Systems Inc.

Opponent:
Brose Fahrzeugteile GmbH & Co. KG

Headword:
-

Relevant legal provisions:
EPC Art. 123(2),(3)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Amendments - added subject-matter (yes) - main and first auxiliary request"
"Amendments - opposition proceedings - second auxiliary request"

Decisions cited:
-

Catchword:
-

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Case Number: T 0878/08 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 11 March 2010

Appellant: (Patent Proprietor)	Magna Seating Systems Inc. 337 Magna Drive Aurora Ontario L4G 7K1 (CA)
Representative:	Hössle Kudlek & Partner Patentanwälte Bolzstrasse 3 D-70173 Stuttgart (DE)
Respondent: (Opponent)	Brose Fahrzeugteile GmbH & Co. KG Ketschendorfer Strasse 38 - 50 D-96450 Coburg (DE)
Representative:	Baumgärtel, Gunnar Patentanwälte Maikowski & Ninnemann Postfach 15 09 20 D-10671 Berlin (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted 29 February 2008 revoking European patent No. 1126993.**

Composition of the Board:

Chairman: S. Crane
Members: J. Osborne
S. Hoffmann

Summary of Facts and Submissions

I. The appeal is directed against the decision posted 29 February 2008 revoking European patent No. 1 126 993.

II. The opposition division found that the subject-matter of claim 1 according to all of the patent proprietor's requests had been amended in such a away as to extend beyond the content of the application as filed. In particular, it found in respect of the main request that there was no original disclosure of the subject-matter resulting from the term "until". In view of that finding further grounds for opposition cited in the file were not considered.

III. With a letter dated 20 June 2008 the appellant requested that the decision under appeal be set aside and the case remitted to the first instance for further processing on the basis of amended claims according to a main request or first or second auxiliary requests, all filed therewith.

IV. The board summoned the parties to oral proceedings to be held 11 March 2010. With a letter dated 25 January 2010 the appellant informed the board that it would neither be represented nor participate in the oral proceedings. At the oral proceedings the respondent requested that the appeal be dismissed.

V. In the form as granted the patent specification contains two independent claims:

"1. A seat track assembly (16) for use with an automotive seat assembly (10) comprising a seat cushion

(12), a seat back (14) pivotally mounted to said seat cushion (12) and movable between an operation position and a forwardly dumped position, said seat track assembly (16) comprising:
a lower track member (18),
an upper track member (20) mounted to said seat cushion (12) and movably supported by said lower track member (18) for fore and aft movement between forward and rearward positions, said upper track member biased to the forward position,
a locking mechanism (24) mounted between said upper (20) and lower (18) track members for selectively locking and unlocking said track members (18, 20) to selectively allow said fore and aft movement,
a slide actuator (30) operatively connected to said seat back (14) and said locking mechanism (24) for effecting said unlocking of said track members (18,20) in response to said seat back (14) moving to said forwardly dumped position, and
a stop (50) fixed relative to said lower track member (18),
said seat track assembly (16) characterized by a locator (46) mounted to said upper track member (20), said locator (46) movable to a blocking position in response to said seat back (14) moving to said forwardly dumped position, said locator (46) engaging said stop (50) when said upper track member (20) moves aft from said forward position toward said rearward position, said locator (46) remaining in said blocking position abutting said stop (50) until said locking mechanism (24) locks said upper track member (20) to said lower track member (18) such that said locator (46) prevents further aft movement of said upper track member (20) beyond said stop (50) and locates said

upper track member (20) at a predetermined stop position."

"12. An automotive seat assembly (10) comprising:
a seat cushion (12),
a seat back (14) pivotally mounted to said seat cushion (12) and movable between an operation position and a forwardly dumped position, a lower track member (18),
an upper track member (20) mounted to said seat cushion (12) and movably supported by said lower track member (18) for fore and aft movement between forward and rearward positions, said upper track member (20) biased to said forward position,
a locking mechanism (24) mounted between said upper (20) and lower (18) track members for selectively locking and unlocking said track members (18, 20) to selectively allow said fore and aft movement,
a slide actuator (30) operatively engaging said seat back (14), said slide actuator (30) engaging said locking mechanism (24) and effecting said unlocking of said track members (18, 20) in response to said seat back (14) moving to said forwardly dumped position, and
a stop (50) fixed relative to said lower track member (18),
said assembly (10) characterized by a locator (46) mounted to said upper track member (20), said locator (46) movable to a blocking position in response to said seat back (14) moving to said forwardly dumped position, said locator (46) engaging said stop (50) when said upper track member (20) moves aft from said forward position toward said rearward position, said locator (46) remaining in said blocking position abutting said stop (50) until said locking mechanism (24) locks said

upper track member (20) to said lower track member (18) such that said locator (46) prevents further aft movement of said upper track member (20) beyond said stop (50) and locates said upper track member (20) at a predetermined stop position."

VI. Claims 1 according to the appellant's requests read as follows:

Main request

A seat track assembly (16) for use with an automotive seat assembly (10) comprising a seat cushion (12), a seat back (14) pivotally mounted to said seat cushion (12) and movable between an operation position and a forwardly dumped position, said seat track assembly (16) comprising:

a lower track member (18),

an upper track member (20) mounted to said seat cushion (12) and movably supported by said lower track member (18) for fore and aft movement between forward and rearward positions, said upper track member biased to the forward position,

a locking mechanism (24) mounted between said upper (20) and lower (18) track members for selectively locking and unlocking said track members (18, 20) to selectively allow said fore and aft movement,

a slide actuator (30) operatively connected to said seat back (14) and said locking mechanism (24) for effecting said unlocking of said track members (18,20) in response to said seat back (14) moving to said forwardly dumped position,

a stop (50) fixed relative to said lower track member (18), said seat track assembly (16) further comprising a locator (46) mounted to said upper track member (20),

said locator (46) movable to a blocking position in response to said seat back (14) moving to said forwardly dumped position,
said locator (46) engaging said stop (50) when said upper track member (20) moves aft from said forward position toward said rearward position, said locator (46) remaining in said blocking position abutting said stop (50) until said locking mechanism (24) locks said upper track member (20) to said lower track member (18) such that said locator (46) prevents further aft movement of said upper track member (20) beyond said stop (50) and locates said upper track member (20) at a predetermined stop position,
said seat track assembly (16) characterized in that said slide actuator (30) includes a cam (32) having first (34) and second (36) ends with said first end (34) engaging said locking mechanism (24) and said second end (36) interconnected to said locator (46), wherein said locator (46) is connected to said second end (36) of said cam (32) by a push-pull connector biasing the locator (46) to permit fore movement of said upper track member (20) while said locator (46) is in said blocking position."

First auxiliary request

A seat track assembly (16) for use with an automotive seat assembly (10) comprising a seat cushion (12), a seat back (14) pivotally mounted to said seat cushion (12) and movable between an operation position and a forwardly dumped position, said seat track assembly (16) comprising:
a lower track member (18),
an upper track member (20) mounted to said seat cushion (12) and movably supported by said lower track member

(18) for fore and aft movement between forward and rearward positions, said upper track member biased to the forward position,
a locking mechanism (24) mounted between said upper (20) and lower (18) track members for selectively locking and unlocking said track members (18, 20) to selectively allow said fore and aft movement,
a slide actuator (30) operatively connected to said seat back (14) and said locking mechanism (24) for effecting said unlocking of said track members (18,20) in response to said seat back (14) moving to said forwardly dumped position,
a stop (50) fixed relative to said lower track member (18), said seat track assembly (16) further comprising a locator (46) mounted to said upper track member (20), said locator (46) movable to a blocking position in response to said seat back (14) moving to said forwardly dumped position, said locator (46) engaging said stop (50) when said upper track member (20) moves aft from said forward position toward said rearward position, said locator (46) remaining in said blocking position abutting said stop (50) until said seat back (14) will pivot from said forwardly dumped to the operational position releasing the locking mechanism (24) and said locking mechanism (24) locks said upper track member (20) to said lower track member (18) such that said locator (46) prevents further aft movement of said upper track member (20) beyond said stop (50) and locates said upper track member (20) at a predetermined stop position and said locking mechanism (24) remaining in a unlocked position to unlock the track members (18,20) enabling sliding relative movement therebetween when said seat back (14) being in said operation position,

said seat track assembly (16) characterized in that said slide actuator (30) includes a cam (32) having first (34) and second (36) ends with said first end (34) engaging said locking mechanism (24) and said second end (36) interconnected to said locator (46), wherein said locator (46) is connected to said second end (36) of said cam (32) by a push-pull connector biasing the locator (46) to permit fore movement of said upper track member (20) while said locator (46) is in said blocking position."

Second auxiliary request

"A seat track assembly (16) for use with an automotive seat assembly (10) comprising a seat cushion (12), a seat back (14) pivotally mounted to said seat cushion (12) and movable between an operation position and a forwardly dumped position, said seat track assembly (16) comprising:

a lower track member (18),

an upper track member (20) mounted to said seat cushion (12) and movably supported by said lower track member (18) for fore and aft movement between forward and rearward positions, said upper track member biased to the forward position,

a locking mechanism (24) mounted between said upper (20) and lower (18) track members for selectively locking and unlocking said track members (18, 20) to selectively allow said fore and aft movement,

a slide actuator (30) operatively connected to said seat back (14) and said locking mechanism (24) for effecting said unlocking of said track members (18,20) in response to said seat back (14) moving to said forwardly dumped position,

a stop (50) fixed relative to said lower track member

(18), said seat track assembly (16) further comprising a locator (46) mounted to said upper track member (20), said locator (46) movable from a release position when said seat back (14) being in said operation position, said locator (46) allowing the upper track member (20) to freely move relative to the lower track member (18), to a blocking position in response to said seat back (14) moving to said forwardly dumped position, said locator (46) engaging said stop (50)
when said upper track member (20) moves aft from said forward position toward said rearward position, said locator (46) remaining in said blocking position abutting said stop (50) such that said locator (46) prevents further aft movement of said upper track member (20) beyond said stop (50) and locates said upper track member (20) at a predetermined stop position and said locking mechanism (24) remaining in an unlocked position to unlock the track members (18,20) enabling sliding relative movement therebetween when said seat back (14) being in said operation position, said seat track assembly (16) characterized in that said slide actuator (30) includes a cam (32) having first (34) and second (36) ends with said first end (34) engaging said locking mechanism (24) and said second end (36) interconnected to said locator (46), wherein said locator (46) is connected to said second end (36) of said cam (32) by a push-pull connector biasing the locator (46) to permit fore movement of said upper track member (20) while said locator (46) is in said blocking position."

VII. The submissions of the appellant may be summarised as follows:

The opposition division interpreted the term "until" as signifying chronology in the locator abutting the stop and the locking mechanism locking the track members and that meaning was derivable from the application as originally filed. Page 8, first full paragraph disclosed that first the seat is moved aft with the locator in its blocking position, second the cam return spring rotates the cam to release the locking mechanism and relock the track members and third the locator moves to the release position. A further disclosure could be found on page 7, lines 14 to 20 and in the paragraph bridging pages 7 and 8. Those sections disclosed a push-pull operation of the locator which necessarily introduces a delay.

However, in the view of the appellant the opposition division was wrong in its interpretation of "until". In the light of page 8, first full paragraph of the application as originally filed the skilled person would understand that the locator abuts the stop until the seat back pivots from the dump position to the operational position, thereby releasing the locking mechanism which locks the upper and lower track members and prevents further movement of the upper track member beyond the stop. This is reflected in claim 1 according to the first auxiliary request. The skilled person understands that the objected wording in the claim describes the state when the seat back has reached its operational position, the locking mechanism is locked and the locator is in its release position. In accordance with established case law the skilled person

will rule out interpretations which do not make technical sense. This is all reflected in claim 1 according to the first auxiliary request.

In claim 1 according to the second auxiliary request the objected wording has been replaced by another feature without violating the requirement of Article 123(3) EPC. The amendment is therefore allowable pursuant to decision G 1/93.

VIII. The reply of the respondent was essentially that:

The wording "said locator … predetermined stop position" in claim 1 according to the main request was included in claim 1 as granted, having been added during examination. Neither the wording itself nor its technical content was included in the application as originally filed. The term "until" requires that the locator remains in its blocking position up to a point in time at which the seat tracks have been locked. However, neither the problem of engaging the locking mechanism to prevent movement when the locator releases was addressed in the application as originally filed nor was any solution for it disclosed. According to page 8, lines 4 to 18 of the application as originally filed the seat with tilted back rest slides rearwards until the locator engages the stop. When the seat back is then moved into its upright position a cam brings about two simultaneous operations, namely locking the tracks and rotating the locator from its blocked position. The descriptions of these two operations were linked by the term "also" and the application was silent as regards any sequence. Since the same wording occurs in claim 1 according to the first auxiliary

request the same objection applies. In claim 1 according to the second auxiliary request the deletion of the objected wording contravenes the requirement of Article 123(3) EPC.

Reasons for the Decision

1. It is conventional that the front seats of cars are adjustable fore/aft in order to enable occupants of the seats to reach a convenient position. In two door cars the front seats additionally are slidable to a fully forward position with the back rest tilted forwards ("dump position") to ease entry to and egress from the rear. After entry or egress the seat is slid back along the tracks and the back rest is returned to its upright ("operational") position. The patent relates to one type of such a mechanism which returns the seat each time to the same pre-determined position. That position is determined by a stop member which is engaged by a rotatable locator element. When the seat back is pivoted forwards the seat tracks are unlocked so that the seat may be slid forwards and the locator is rotated so that when the seat is slid back again the locator abuts the stop and arrests the rearward movement of the seat. When the seat back subsequently is returned to its upright position the seat tracks are locked and the locator rotates out of engagement with the stop to once again permit normal longitudinal adjustment of the seat.

Main request

2. Claim 1 according to this request has been amended from the version as granted but nevertheless still contains the following wording which was added to the claim before grant of the patent:

"said locator remaining in said blocking position abutting said stop until said locking mechanism locks said upper track member to said lower track member such that said locator prevents further aft movement of said upper track member beyond said stop".

The first three lines of this wording deliver a clear teaching that when the upper track member is moved aft it is blocked by the locator pending the track members being locked. That teaching is reinforced by the subsequent wording "such that said locator prevents further aft movement of said upper track member beyond said stop". The matter at issue is whether there was any such teaching in the application as originally filed.

2.1 The most relevant part of the application as originally filed is the first full paragraph on page 8 which stated *inter alia* the following:

"The aft movement will slide the upper track member 20 and the seat assembly 10 along the lower track member 18 until the first arm 52 of the locator 46 abuts the fixed stop 50 at the predetermined stop position. The user will not be able to slide the seat any further. The seat back 14 will then pivot from the forward dump to the operational position which releases the tension

on the control cable 40. The cam return spring 44 then pulls the first end 34 of the cam 32 to rotate the cam 32 to the disengaged position which releases the locking mechanism 24 and relocks the track members 18,20. Specifically, the cam 32 no longer engages the adjustment bar 28 which in turn no longer engages the locking plate 26. The rotation of the cam 32 also pushes on the locator spring 56 which rotates the first arm 52 of the locator 46 to the release position as discussed above and as shown in Figure 3. The locator 46 is pivoted out of the way such that the front seat assembly 10 may now be freely adjusted as desired."

2.2 From the above extract the skilled person would have learnt that the locator abuts the stop whilst the seat back is returned to the upright position. The return of the seat back rotates the cam which both releases the locator from its blocking position and re-engages the locking mechanism of the track members. There was no teaching that the locator will be released only if the locking mechanism of the track members has re-engaged. As explained by the respondent, the problem of ensuring that the upper track is blocked in position until the tracks are locked whereby the seat will not move beyond the stop position is one which was not specifically addressed by the application and for which there was no solution disclosed. On the contrary, the teaching of the application as originally filed was merely that the rotation of the cam "also" rotates the locator to the release position.

3. The appellant argues that the locking of the track members no later than the release of the locator was derivable from the application as originally filed on

page 7, lines 14 to 20 and in the paragraph bridging pages 7 and 8. Essentially, the appellant's reasoning relates to the presence of a spring ("locator spring 56" in the text cited in 2.1 above) in the connection between the cam and the locator which acts as a lost-motion device in as far as it is both compressible and expandable from its nominal installed length. Under certain conditions that spring connection could conceivably result in a delay between the rotational movements of the cam and the locator. However, there remained no disclosure that the timing was "such that said locator prevents further aft movement of said upper track member beyond said stop" which necessarily requires the locking mechanism to engage no later than the locator rotates. The appellant further argues that the skilled person would rule out illogical interpretations of the claim. The board is in principle in agreement with that statement but the appellant has not explained how it is relevant to the present case.

4. On the basis of the foregoing the board finds that claim 1 according to the present request contains subject-matter which extends beyond the content of the application as originally filed.

First auxiliary request

5. Claim 1 according to this request differs from that of the main request by *inter alia* the addition of the following wording indicated in italics:

"said locator remaining in said blocking position abutting said stop until *said seat back will pivot from said forwardly dumped to the operational position*

releasing the locking mechanism and said locking mechanism locks said upper track member to said lower track member such that said locator prevents further aft movement of said upper track member beyond said stop and locates said upper track member at a predetermined stop position".

The appellant argues that the wording as amended correctly represents the skilled person's understanding of the disclosure of the application as originally filed that the locator abuts the stop until the seat back returns to the upright position, thereby releasing the locking mechanism. However, the wording of claim 1 according to the main request which the board has found not to have been originally disclosed remains. In particular, the claim still specifies that the locator remains in the blocking position abutting the stop "until … said locking mechanism locks said upper track member to said lower track member such that said locator prevents further aft movement of said upper track member beyond said stop and locates said upper track member at a predetermined stop position". Claim 1 according to this request therefore results in the same objection as for the main request.

Second auxiliary request

6. One amendment to claim 1 in accordance with this request is the deletion of the wording "until said locking mechanism (24) locks said upper track member (20) to said lower track member (18)". The appellant states that this amendment overcomes the objection upon which the previous requests foundered whilst avoiding extending the scope of protection afforded by the

patent. It concludes that in accordance with decision G 1/93 (OJ EPO 1994, 541) the claim would now be in order for consideration of the further grounds for opposition cited in the file.

6.1 Both of the independent claims 1 and 12 as granted contain the wording which now has been deleted. Claim 1 is the broader of those two claims in as far as it specifies a seat track assembly for use with an automotive seat assembly whilst claim 12 effectively specifies an automotive seat assembly comprising a seat track assembly as specified in claim 1. The feature "until said locking mechanism locks said upper track member to said lower track member" is an essential component of the subject-matter of those claims and therefore necessarily limits the scope of protection afforded by them. By comparison, present claim 1 contains neither that feature nor another which would limit the subject-matter in the same manner. It follows that the scope of protection which afforded by the patent would be extended. Although the appellant stated this not to be so it provided no reasoning in support of its case.

6.2 In the board's view the deletion of the above-indicated wording therefore does result in an extension of the protection afforded by the patent (Article 123(3) EPC).

On the basis of the foregoing none of the appellant's requests can be allowed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner S. Crane