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**Datasheet for the decision
of 12 January 2010**

Case Number: T 1233/08 - 3.2.01

Application Number: 04100998.6

Publication Number: 1470995

IPC: B62J 7/00

Language of the proceedings: EN

Title of invention:

Load-carrying frame structure for a vehicle

Applicant:

HONDA MOTOR CO., LTD.

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

EPC Art. 84, 111(1)

Keyword:

"Claims - clarity - (yes) - after amendment"

"Amendments - added subject-matter - (no) - after amendment"

"Decision re. appeals - remittal (yes)"

Decisions cited:

-

Catchword:

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Case Number: T 1233/08 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 12 January 2010

Appellant:

HONDA MOTOR CO., LTD.
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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 6 February 2008
refusing European application No. 04100998.6
pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: S. Crane
Members: J. Osborne
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is directed against the decision posted 6 February 2008 refusing European patent application No. 04 10 0998.6.
- II. The examining division found that claim 1 then on file was unclear and had been amended in such a way that it contained subject-matter which extended beyond the content of the application as filed. In particular, it held the claim 1 to be unclear in that it was directed to a load-carrying device for a vehicle but attempted to define the device in part with respect to the vehicle. It furthermore found that there had been an intermediate generalisation of the original disclosure in as far as the claim specified that the load-carrying frame member allowed insertion of the first and second locking members without specifying the role of retaining portions in this function.
- III. With its statement setting out its grounds for appeal the appellant filed amended claims. The board indicated in a communication of 16 October 2009 annexed to a summons to oral proceedings that it considered that the claims were still unclear and that they had been amended in such a way that they still contained subject-matter which extended beyond the content of the application as filed.
- IV. At oral proceedings held on 12 January 2010 the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to a single request filed during the oral proceedings.

V. Claim 1 according to the appellant's request reads:

"A vehicle comprising a vehicle body and a load-carrying frame structure in which a load-carrying frame (24A, 24B) comprising a load-receiving portion (26A, 26B) disposed above the vehicle body (11) at a distance apart therefrom is mounted to the vehicle body (11) so as to be capable of retaining a theftproof locking device (41), said locking device including a first locking member (42) having a pair of portions (42a, 42a) extending in parallel with each other and a second locking member (43) which can be attached to and detached from the portions (42a, 42a) of the first locking member (42), wherein the load-carrying frame (24A, 24B) comprises the load-receiving portion (26A, 26B) and supporting portions (25A, 36a; 25B) for supporting the load-receiving portion (26A, 26B) on the vehicle body (11), and retaining portions (38, 39, 40; 54, 55, 56) that can retain the locking device (41) disposed between the load-receiving portion (26A, 26B) and the vehicle body (11) are formed by bending some of a plurality of members (27, 28, 34, 35, 36, 37; 27, 28, 50, 51, 52, 53) constituting the load-receiving portion (26A, 26B) and the supporting portions (25A, 36a; 25B), characterized in that the load-receiving portion (26A, 26B) is connected to the supporting portions (25A, 36a; 25B), and the retaining portions (38-40, 54-56) are formed by bending at least some of a plurality of load-receiving members (34, 35, 36, 37; 51, 52, 53) constituting the load-receiving portion (26A, 26B) so as to protrude downward and wherein a first retaining portion (38, 54) capable of allowing insertion of the first locking member (42) constituting part of the

locking device (41) in the lateral direction of the vehicle body (11) and retaining the same, and a second retaining portion (39,55) adapted for allowing insertion of the second locking member (43) constituting part of the locking device (41) and being attachable to and detachable from the first locking member (42) at right angles in the fore-and-aft direction of the vehicle body (11) and retaining the same are formed on two load-receiving members (34, 36; 52, 53) out of the plurality of load-receiving members (34-37, 51-53) of the load-receiving portion (26A, 26B)."

Claim 1 is followed by claims 2 to 6 which specify features additional to the subject-matter of claim 1.

Reasons for the Decision

1. The application relates to a load-carrying frame structure mounted on a vehicle such as on the rear of a motor scooter. The structure comprises a series of members which are shaped and serve to form supporting portions for mounting to the vehicle, load-receiving portions for supporting a load and retaining portions for carrying a U-type lock. It particularly relates to the provision of the retaining portions which are bent to protrude below the load-receiving portion. Two embodiments are disclosed. In the first four load-receiving members are provided, of which two form retaining portions and one forms both a retaining portion and a supporting portion. In the second three load-receiving members are provided of which two form retaining portions.

2. The subject-matter of claim 1 is essentially a combination of original claims 1, 2 and 5. However, whereas the claims originally were directed to a load carrying frame for a vehicle they now are directed to a vehicle comprising a load-carrying frame. That combination was clearly disclosed in the application as originally filed and, indeed, was implicit from the formulation of the original claims.

2.1 In claim 5 as originally filed the direction of attachment of the two locking members was defined with reference to the fore-and-aft direction of the vehicle. Since the vehicle was not part of the subject-matter of the claim this led to the objection in the contested decision that the claim was unclear. Present claim 1 is directed to a vehicle comprising a load-carrying frame so that the clarity objection has been overcome.

2.2 In claim 5 as originally filed first and second retaining portions were specified as being capable of allowing insertion of the respective locking members. In claim 1 on which the contested decision was based the load-carrying structure was specified as being capable of allowing insertion without this function being allocated to the retaining portions, resulting in the objection of extension of subject-matter. Present claim 1, on the other hand, once again specifies that the first and second retaining portions are capable of allowing insertion of the respective locking members. The objection of extension of subject-matter in the contested decision is thereby overcome.

3. Claims 2 and 3 and 4 to 6 differ from original claims 3 and 4 and 6 to 8 respectively essentially only in the designation of the subject-matter as a vehicle. It follows that claims 2 to 6 also have not been amended in such a way that the subject-matter would extend beyond that of the application as originally filed.
4. During the prosecution of the appeal the board raised additional objections of lack of clarity in the claims.
 - 4.1 In the characterising portion of the claim 1 the first occurrence of the feature of load-receiving members employed the definite article although no obvious antecedent existed in the claim. It appeared to the board that an earlier feature of "members constituting the load-receiving portion" might be an incorrectly designated antecedent. The appellant satisfied the board that the designation of "members" is correct because they encompass not only load-receiving members which include supporting portions but also supporting members, albeit ones which in the embodiments are not bent to form retaining portions. As a result, the indefinite article has been correctly assigned to the load-receiving members.
 - 4.2 The board also considered that the wording "partly bending ... part of the plurality" relating to the creation of the retaining portions was unclear because it seemed that whilst part of a member could be bent it would not be possible to "partly" bend it. Moreover, it was unclear whether "part of the plurality" should mean 'a portion of each' or 'some of all'. The wording has been rendered clear by amendment to "bending at least some of a plurality". This is clearly in conformity

with the original disclosure in which in both embodiments retaining portions are formed by locally bending not all of the load-receiving members.

- 4.3 Finally, whilst claims 1 to 5 as filed with the statement setting out the grounds of appeal were directed to a vehicle comprising a load-carrying frame structure, claim 6 specified "a load-carrying frame structure for a vehicle according to claim 4" but included reference to the orientation of the structure on the vehicle. The designation of the subject-matter of the claim has been amended to now be directed to "A vehicle ..." in conformity with claims 1 to 5.
5. On the basis of the foregoing the board finds that the claims are clear (Article 84 EPC 1973) and have not been amended in such a way as to contain subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC). The grounds on which the application was refused therefore have been overcome. The appellant's request for the grant of a patent presupposes that examination of novelty and inventive step has been completed. The decision contains no indication of the examining division's opinion in this respect and it is apparent from studying the file that examination of at least inventive step of the subject-matter of claim 1 had not been made. The board therefore considers it appropriate that the prosecution of the file be continued by the department which was responsible for the decision and exercises its discretion under Article 111(1), second sentence EPC 1973 accordingly.

Order

For these reasons it is decided that:

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

The Registrar:

The Chairman:

A. Vottner

S. Crane