

Internal distribution code:

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

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

Case Number: T 1675/08 - 3.2.06

Application Number: 95302029.4

Publication Number: 0711627

IPC: B23K 26/00

Language of the proceedings: EN

Title of invention:

Process for preweakening an automotive trim cover for an air bag deployment opening

Patentee:

TIP ENGINEERING GROUP, INC.

Opponent:

JENOPTIK AG
FAURECIA INNENRAUM SYSTEME GMBH
Johnson Controls GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 84, 114, 123(2), 123(3)
RPBA Art. 13

Relevant legal provisions (EPC 1973):

-

Keyword:

"Admittance of new requests - no"

Decisions cited:

-

Catchword:

-



Case Number: T 1675/08 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 12 October 2010

Appellants:
(Opponent 01)

JENOPTIK AG
Carl-Zeiss-Strasse 1
D-07743 Jena (DE)

Representative:

Geyer, Werner
Patentanwälte
Geyer, Fehners & Partner
Perhamerstrasse 31
D-80687 München (DE)

(Opponent 02)

FAURECIA INNENRAUM SYSTEME GMBH
Faureciastrasse 1
D-76767 Hagenbach (DE)

Representative:

Richardt, Markus Albert
Richardt Patents Trademarks
Wilhelmstraße 7
D-65185 Wiesbaden (DE)

Respondent:
(Patent Proprietor)

TIP ENGINEERING GROUP, INC.
33045 Hamilton Court
Suite 103
Farmington Hills
Michigan 48334 (US)

Representative:

Schaumburg, Thoenes, Thurn, Landskron, Eckert
Patentanwälte
Postfach 86 07 48
D-81634 München (DE)

Further Party:
(Opponent 03)

Johnson Controls GmbH
Industriestr. 20-30
D-51399 Burscheid (DE)

Representative:

Wolff, Felix
Kutzenberger & Wolff
Anwaltssozietät
Theodor-Heuss-Ring 23
D-50668 Köln (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
11 July 2008 concerning maintenance of European
patent No. 0711627 in amended form.

Composition of the Board:

Chairman: P. Alting van Geusau
Members: G. Kadner
R. Menapace

Summary of Facts and Submissions

- I. The mention of grant of European patent No. 0 711 627 with 22 claims on the basis of European patent application No. 95302029.4 filed on 27 March 1995 and claiming a US-priority from 31 March 1994 was published on 15 May 1996.
- II. Three notices of opposition, in which revocation of the patent on the grounds of Articles 100(a), 100(b), 100(c) EPC 1973 was requested, were filed against the granted patent.
- By interlocutory decision posted on 11 July 2008, the opposition division maintained the European patent in amended form. The opposition division held that the amendments to the process according to the main and auxiliary requests H1, H1a and H2 introduced subject-matter which extended beyond the content of the application as filed, contrary to Article 123(2) EPC. The patent and the invention to which it related according to auxiliary request H2a was found to meet the requirements of the EPC.
- III. Notices of appeal were filed against this decision by appellant I (opponent 01) and appellant II (opponent 02) on 28 August 2008 and by appellant III (patentee) on 3 September 2008, and the respective appeal fees were paid on the same days. The grounds of appeal were filed on 7 November 2008 (appellant II), on 10 November 2008 (appellant I) and on 19 November 2008 (appellant III) respectively.

IV. In a communication accompanying the summons to oral proceedings the board expressed its preliminary view that a substantial procedural violation had not occurred during the opposition proceedings, contrary to the allegation by appellant II. The opposition division's decision not to admit the main and auxiliary requests H1 and H1a on the grounds of Article 123(2) EPC appeared correct. The independent claims 1 and 3 as maintained in opposition as well as the patent specification appeared to violate Article 123(2) EPC and to some extent also Article 84 EPC 1973. Discussion of novelty and inventive step was dependent on the presentation of documents fulfilling the formal requirements of the EPC.

V. Oral proceedings were held on 12 October 2010 during which the appellant filed a new main and auxiliary request.

Claim 1 of the main request reads as follows (features numbered as inserted by the patentee):

- "1) A process for preweakening an automotive interior trim piece (70), which is used to overlie an air bag installation,
- 2) said airbag installation (72) including a folded air bag adapted to be inflated and deployed upon detection of a collision, said preweakening (74) enabling formation of an airbag deployment opening extending through said trim piece (70) by said inflating air bag pushing through said trim piece (70),
- 3) said trim piece (70) having a smooth, uninterrupted cover layer (66) overlying a substrate panel (98A, 108) with air bag deployment door panels,

- 3a) said cover layer (66) is vacuum formed from smooth calendered sheet vinyl,
- 4) said cover layer (66) and substrate panel (98A, 108) being formed separately and thereafter joined together,
- 5) and a laser beam (14, 14A, 14B) being used to score a portion of said trim piece (70) in preweakening said trim piece (70);
characterised by the steps of:
 - 6) scoring an inside surface of said cover layer (66) prior to joining said separately formed cover layer (66) to said substrate panel (98A, 108) by directing a laser beam (14, 14A, 14B) of a predetermined intensity at said inside surface of said cover layer (66) and moving said laser beam (14, 14A, 14B) over said cover layer (66) in a predetermined scoring pattern (74)
 - 7) while controlling said laser beam (14, 14A, 14B) so as to produce scoring of said inside surface of said cover layer (66) to a significant depth into said cover layer (66),
 - 8) wherein a sensor provides a feedback signal to precisely control the groove depth to achieve a constant thickness of the remaining material,
 - 9) wherein the cover (66) is assembled in a mold after scoring with an instrument panel substrate, foam injected into an intervening space to bond together the substrate and cover, as well as deployment door panels and a frame, into a unitary trim piece."

In claim 1 of the auxiliary request containing features 1) to 7) and 9) of claim 1 according to the main request feature 8) was changed to:

"8) ... and by the step of controlling the thickness (t) of the remaining material above the scoring groove by gaging the remaining thickness (t) of said cover layer, as with an ultrasonic gage, and varying the depth of the scoring groove to maintain the remaining thickness (t), ..."

Appellant III (patentee) requested that the decision under appeal be set aside and that the European patent be maintained on the basis of the main or auxiliary requests filed during the oral proceedings.

The appellants I and II (opponents 01 and 02) requested that the decision under appeal be set aside and that the European patent No. 0 711 627 be revoked.

VI. In support of its requests appellant III (patentee) argued that the process claimed had been restricted to the embodiments shown in Figures 5 and 6. The cover layer was formed from a calendered vinyl sheet having a constant thickness. Therefore, if the sensor provided a signal indicating the groove depth as a result of the control, a constant thickness of the remaining material was achieved. To the skilled person it was clear that in an air bag installation a deployment door overlaid the air bag receptacle, and that this deployment door had to be formed in the substrate panel bearing the cover. It was further clear that the scoring pattern of the cover had to be related to the shape of the deployment door in order to let the inflating airbag pass through. Thus the expression "associated" was replaced by the related term "with", which amendment did not change the scope of the claim.

VII. The arguments of appellants I and II can be summarized as follows:

The amendments to the claim 1 of the main and auxiliary requests respectively, such as the deletion of "associated" in feature 3) clearly violated Articles 123(2), 123(3) and 84 EPC. The wording of feature 9) was not compatible with that of feature 3) leading to a lack of clarity. Feature 3) related to a "cover layer overlying a substrate panel with air bag deployment door" whereas feature 9) required the bonding together of "the substrate and cover, as well as deployment door panels and a frame". The latter feature was not originally disclosed and was unclear.

The surfaces of the covers shown in Figures 5 and 6 differed in that by "a dry powder slush molding operation" a "grained" surface on one side and a non-uniform surface on the other side were produced. In the other alternative, a cover was "vacuum formed from smooth calendered sheet vinyl" having smooth surfaces. Combining both alternatives while abandoning these features contravened Article 123(2) EPC.

The combination of the embodiments of Figures 5 and 6 was inconsistent and led to a lack of clarity. On the one hand the depth of the groove 64 was varied in order to maintain the thickness t of the remaining material, whilst on the other hand the depth t_2 of the groove 68 was constant. Feature 8) was contradictory and lacked a clear teaching for carrying out the invention.

Reasons for the Decision

1. The appeal is admissible.
2. *Admittance of new requests*
 - 2.1 According to Article 114(2) EPC the European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.
Furthermore, Article 13 of the Rules of Procedure of the Boards of Appeal (RPBA) provides that any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject matter submitted, the current state of the proceedings and the need for procedural economy.
 - 2.2 In the present case, new requests were presented during the oral proceedings, thus at a very late stage of the proceedings. In accordance with the case law of the Boards of Appeal such late requests are only admitted into the proceedings if they overcome the deficiencies of prior requests, are formally admissible and are clearly allowable.
3. *Main request (Article 123(2), 123(3), 84 EPC 1973)*
 - 3.1 Claim 1 according to the main request was reformulated on the basis of granted claim 1 (features 1) to 7)), feature 3) being amended and feature 3a) being inserted. Features 8) and 9) are taken from the patent specification.

3.2 The amendment of feature 3) "... substrate panel associated with an air bag deployment door ..." to "... substrate panel with air bag deployment door ..." causes a violation of Article 123(3) EPC because the omission of the term "associated" alters the meaning. The wording "with air bag deployment door" implies that the door is part of the substrate panel whereas "associated with" can stand for any connection between the substrate panel and the air bag deployment door. This amendment does not lead to a restriction of the claim, rather it represents an *aliud* in that it defines an alternative relation between the two parts. Thus, claim 1 of the European patent was amended in such a way as to extend the protection it confers (Article 123(3) EPC).

3.3 The insertion of feature 8) is based on the description (A2-document; column 3, lines 51 to 55; column 8, lines 38 to 41 and lines 48 to 52). According to the embodiment of Figure 5 a varying groove depth is necessary to leave a constant thickness t of the remaining material. In contrast thereto in Figure 6 a constant groove depth is required since both surfaces are smooth and the combined depths t_1 and t_2 of the remaining material should be constant. The omission of these features which are disclosed in particular combinations with the two differing embodiments constitutes an intermediate generalization with the consequence that the European patent has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. Thus it contravenes Article 123(2) EPC.

3.4 Feature 3) indicates a "... cover layer overlying a substrate panel with air bag deployment door ..." which

means that the two elements form one part. In contrast thereto feature 9), the wording of which is taken from the description (A2-document; column 8, lines 53 to 57) reads: "... the substrate and cover, as well as deployment door panels and a frame ..." are bonded together. This results in a contradiction in that the two elements forming one part according to feature 3) of the claim are according to claim 9) again assembled by bonding together with two further parts, one of them - the frame - being per se not clearly defined.

It is neither disclosed nor derivable for a skilled person, how the individual components are actually related or assembled. It follows that the claim does not clearly define the subject-matter for which protection is sought in the sense of Article 84 EPC 1973.

In this context a frame is defined, for which however no structural interrelationship with other elements is given, nor is such derivable from the description or the Figures. Since its form and function is completely indefinite, the claim is at least in this respect neither clear nor supported by the description within the meaning of Article 84 EPC 1973.

4. *Auxiliary request (Article 123(2), 123(3), 84 EPC 1973)*

4.1 Apart from feature 8), claim 1 of the auxiliary request is identical with that of the main request. Therefore the deficiencies in respect of features 3) and 9) as stated above apply equally.

4.2 In addition, amended feature 8) does not overcome the lack of disclosure in respect of the embodiments of

Figure 5, where a varying groove depth is necessary to achieve a constant thickness t of the remaining material, in contrast to the embodiment of Figure 6 whereas varying depth of the scoring groove is excluded because both surfaces are smooth, whereby the combined depths t_1 and t_2 of the remaining material are constant. A process having this combination of features is not disclosed in the application as filed, contrary to Article 123(2) EPC.

5. The main request and the auxiliary request consequently do not comply with the requirements of the EPC and are therefore not admitted into the proceedings.

Since appellant III made no further requests, there are no documents agreed by the proprietor of the patent on the basis of which the European patent could be maintained (Article 113(2) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent is revoked.

The Registrar:

The Chairman:

M. Patin

P. Alting van Geusau