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**Datasheet for the decision
of 13 May 2013**

Case Number: T 2306/09 - 3.2.01

Application Number: 04380195.0

Publication Number: 1520742

IPC: B60J 5/04

Language of the proceedings: EN

Title of invention:

Device for lateral regulation of a window power device for motor vehicles

Patent Proprietor:

Daumal Castellon, Melchor

Opponent:

Brose Fahrzeugteile GmbH & Co. KG, Coburg

Headword:

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Relevant legal provisions (EPC 1973):

EPC Art. 54(1)

Keyword:

"Novelty: no"

Decisions cited:

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Catchword:

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Case Number: T 2306/09 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 13 May 2013

Appellant: Daumal Castellon, Melchor
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Representative: Morgades y Manonelles, Juan Antonio
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Respondent: Brose Fahrzeugteile GmbH & Co. KG, Coburg
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted 14 October 2009
revoking European patent No. 1520742 pursuant
to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman: G. Pricolo
Members: H. Geuss
T. Karamanli

Summary of Facts and Submissions

I. The appeal of the patent proprietor is directed against the decision of the opposition division to revoke the European patent No. 1520742 posted on 14 October 2009.

II. The opposition division held that the invention as defined in claim 1 does not meet the requirements of Article 54(1) EPC since the claimed subject-matter lacks novelty with respect to

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(D2).

III. The appellant (patent proprietor) requests that the decision under appeal be set aside and the patent be maintained as granted.

The respondent (opponent) requests that the appeal be held inadmissible or in the alternative the appeal be dismissed.

Only the respondent requests oral proceedings as an auxiliary measure.

IV. Claim 1 as granted reads as follows:

Device for lateral regulation of a window power device for motor vehicles including a plate (36) comprising at least a vertical plane (37) attached to the rail (4) of the power window device and a horizontal plane (38) which may slide relative to the door (5) of the vehicle and which includes a longitudinal groove (41) inside of which a cylindrical piece (42), characterized in that said piece (42) runs meshed with a tothing (45)

provided on the inner lateral surface (39, 40) of the groove (41), extending said piece (42) into a lower portion (45a), rotation of said piece (42) resulting in the displacement of the plate (36) and the lateral movement of the power window device (1), provided said lower portion (45a) of the piece (42) by an outer threaded portion (48) adapted for receiving a fastening nut (49) intended for fixing the relative position of said plate (36) regarding the vehicle door (5) once the lateral position of the power window device (1) has been adjusted.

V. The appellant's submissions in so far as relevant to the present decision, may be summarized as follows:

The main difference between the invention in suit and the window power device according to D2 is in the shape of the horizontal plane and the function it performs. In particular, the shape of the horizontal plane of the contested invention differs from the plate in document D2 in that the horizontal segment (80) presents its lateral ends bended perpendicular to said segment (80) forming wings (81). Additionally the horizontal segment is provided with a groove (30) which in its inner edges is toothed (32) to engage with the cylindrical piece (2), thus allowing the adjustment of the window.

The power window according to D2 needs more pieces in order to achieve a lateral regulation of the window.

Another important technical feature of the invention is the presence of a hole that is included in the cylindrical part (42), which is adapted for the introduction of a tool drive. Said hole can rotate the

cylinder (42), thus causing the horizontal sliding of the plate (36) through an attached meshed tothing formed by the union of two tothing areas, allowing the horizontal sliding of the plate relative to the door and therefore the lateral regulation of the window power device to the desired position.

VI. The respondent replied to the arguments as follows:

The appeal is not admissible since the appellant's submissions do not make clear what is the difference between the contested invention according to claim 1 and the window power device according to D2. The arguments of the appellant relate to a specific embodiment of the invention but do not render apparent the reasons for which the decision under appeal would be incorrect.

The invention as defined in claim 1 is disclosed in document D2. Consequently the invention is not new. The fact that the horizontal plane according to the figures and the description differs from document D2 is not reflected by features in the claim. Claim 1 of the invention in suit only defines a longitudinal groove (41) inside of which runs a cylindrical piece (42). Such a groove is shown in D2.

VII. In a communication dated 2 July 2012 the Board explained why, in its preliminary opinion, the appeal appeared to be admissible and the subject-matter of claim 1 appeared to be not novel over the disclosure of D2. No reply to the communication was filed by the parties.

Reasons for the decision

1. The appeal is admissible.
 - 1.1 According to Article 108, third sentence, and Rule 99(2) EPC in the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based.
 - 1.2 The board does not agree with the respondent's argument that the appeal should be held inadmissible because the statement of grounds of appeal did not point out the reasons for which the contested decision was incorrect.

Specifically, the respondent objects that the appellant impugned the decision, establishing a lack of novelty with respect to document D2, without clearly indicating in the statement of grounds of appeal which feature of the contested claim 1 is not known from document D2.
 - 1.3 In the statement of grounds of appeal (see page 2), the appellant *inter alia* submits that D2 does not disclose the feature of claim 1 relating to the shape of the horizontal plane (38) and the function it performs. Thus, considering that the horizontal plane (38) is a feature of claim 1, it is clear that the appellant reads claim 1 as implying further limitations of this feature, in terms of its shape and function that are not disclosed by D2. This argument is to be regarded as an attempt to explain why the decision was wrong in its analysis of the prior art D2 and why the perceived

difference would confer novelty over this prior art. Whether or not this argument does so successfully is immaterial for the question of admissibility; this question rather reflects on the case's merits and whether the appeal is well-founded.

2. The subject-matter of independent claim 1 as granted lacks novelty.

2.1 Document D2 discloses (reference is made in particular to Fig. 1):

Device for lateral regulation of a window power device for motor vehicles including a plate (Haltewinkel 8) comprising at least a vertical plane (abgewinkelter Abschnitt) attached to the rail of the power window device (column 4, lines 26 et seq.: "mit Befestigungsschellen 89 zur Befestigung der einzustellenden Führungsschiene") and a horizontal plane which may slide relative to the door of the vehicle (80, horizontaler "Abschnitt des Haltewinkels", col. 4, lines 48 et seq.) and which includes a longitudinal groove (ditto, Langloch 30) inside of which a cylindrical piece (ditto, Betätigungselement 2) runs meshed (col. 4, lines 53 and 54) with a tothing provided on the inner lateral surface of the groove (ditto, Längsverzahnung 32), extending said piece into a lower portion ("Mehrkant 27, der an dem dem Betätigungsabschnitt 21

abgewandten Ende des Schafts 20", col. 4, lines 32 to 34),
rotation of said piece resulting in the displacement of the plate and the lateral movement of the power window device (col. 6, lines 53 et seq.), provided said lower portion of the piece by an outer threaded portion (Außengewinde 25, col. 6, lines 17 et seq.) adapted for receiving a fastening nut (ditto, Feststellmutter 7)
intended for fixing the relative position of said plate regarding the vehicle door once the lateral position of the power window device has been adjusted (ditto, col. 6, lines 48 et seq.).

2.2 The appellant states that the horizontal plane of the plate in the device according to the invention bends its lateral ends (39,40) inwardly and defines a downward C-cross section which forms the longitudinal groove, one of the ends being provided with a tothing, whereas the horizontal plane according to document D2 presents its lateral ends bent at a right angle forming wings and the groove is realized by an longitudinal opening, provided with a longitudinal tothing. This difference results in a simpler and more efficient configuration since less pieces are necessary to achieve a lateral adjustment of a window power device. Furthermore, the cylindrical part (42) according to the device of the invention is adapted for the introduction of a tool drive which is not the case in the state of the art according to D2.

2.3 According to Article 84 EPC 1973, the invention for which protection is sought should be defined by the features of the claims. Further, according to

Article 54(1) EPC 1973, an invention shall be considered to be new if it does not form part of the state of the art.

- 2.4 As already explained in the communication dated 2 July 2012, the board recognizes that - comparing the figures of D2 and the invention in dispute - differences might be found in the number of pieces needed and the efficiency of the design. However these differences are not reflected by the wording of claim 1, e.g. the tool drive option of the cylindrical part 42. In other words, since the features of the invention as defined by the wording of claim 1 can be found in the device of D2, the subject-matter of claim 1 lacks novelty, even if there might be details defined only in the description or in the drawings of the present patent specification which are different compared with the device of D2. In any case, the drawings and description in themselves are not suited for the limitation of the subject-matter of a claim vis-à-vis a novelty destroying prior art.

Consequently the board is of the opinion that the subject-matter of the invention as defined in claim 1 is fully disclosed in document D2 and therefore forms part of the state of the art.

- 2.5 As a result, the invention as defined in claim 1 is not new under Article 54(1) EPC 1973.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Vottner

G. Pricolo