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**Datasheet for the decision
of 26 January 2011**

Case Number: T 1887/10 - 3.2.06

Application Number: 07445033.9

Publication Number: 1897631

IPC: B21D 1/14

Language of the proceedings: EN

Title of invention:

Levelling bench arrangement, set of accessories for a levelling bench arrangement, and method for preparation of a levelling bench for a particular vehicle model

Applicant:

CAR-O-LINER AB

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 123(2)

RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):

-

Keyword:

"Sole request - not admitted into proceedings"

Decisions cited:

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Catchword:

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Case Number: T 1887/10 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 26 January 2011

Appellant: CAR-O-LINER AB
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 19 March 2010
refusing European patent application
No. 07445033.9 pursuant to Article 97(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appellant (applicant) filed an appeal against the decision of the examining division refusing European patent application No. 07445033.9.
- II. In its decision the examining division found that the subject matter of claim 1 of the applicant's main request lacked an inventive step and that the auxiliary requests I to VI were also not allowable.
- III. In its grounds of appeal, the appellant requested that the decision under appeal be set aside and that a patent be granted based on the claims of its main request, or alternatively one of its auxiliary requests I to VI as considered by the examining division.
- IV. The Board issued a summons to oral proceedings subsequently followed by a communication containing its provisional opinion and stating reasons for which none of the requests appeared allowable. In regard to the main request, the Board stated *inter alia* that no disclosure in the application as filed could be found for the feature "each of the columns (21) is releasably mountable at said structure only at a finite number of selectable fixed positions", and noted that the description only disclosed an attachment of the columns to beams in this regard by the provision of screw holes in the beams (5) which received screws (22).
- V. In its submission of 19 January 2011, the appellant filed three further auxiliary requests.

VI. Oral proceedings were held before the Board on 26 January 2011, during which the appellant replaced all its previous requests by a single main request.

The appellant thus requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 13 of the main request, dated 26 January 2011.

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

"A levelling bench arrangement comprising a levelling bench (1), a structure (3, 5) releasably fastenable to said levelling bench, and a plurality of fixture devices (7) releasably mountable to said structure, wherein said fixture devices define certain specific reference points of a vehicle, which is to be repaired or inspected, wherein

- each of the fixture devices comprises a column (21) releasably mountable to said structure, an adapter (24) releasably mountable to said column, and an exchangeable head (27) releasably mountable to said adapter, wherein

- said column and adapters are versatile such that they can be used for the preparation of the levelling bench for a plurality of vehicle models and said exchangeable heads are made to fit a particular vehicle model in order to define certain specific reference points of a vehicle of the particular vehicle model which is to be repaired or inspected, characterized in that

- each of the columns (21) is releasably mountable to a beam (5) of said structure only at a finite number of selectable fixed positions,
- the adapters (24) are provided in different heights,
- each of the columns and adapters comprises engagement means, the engagement means of each of the adapters being capable of being brought into engagement with the engagement means of a respective one of the columns, such that each of the adapters is releasably mountable to each of the columns only at a finite number of selectable vertical fixed positions, and
- the levelling bench arrangement comprises several sets of exchangeable heads wherein the heads in each set are made to fit a particular one of a plurality of vehicle models in order to define certain specific reference points of a vehicle of the particular vehicle model."

VIII. The arguments of the appellant may be summarised as follows:

The amendments made in the request overcame all the objections to the main request made by the Board in its communication sent prior to oral proceedings and the request should thus be admitted into proceedings.

In regard to Article 123(2) EPC, the feature in claim 1 "each of the columns (21) is releasably mountable to a beam (5) of said structure only at a finite number of selectable fixed positions," fully addressed the Board's objection because a beam 5 was now defined as

the part of the structure to which the column was releasably attached. The attachment of the column was disclosed in a general way on page 3, lines 4 to 14, whereby no specific type of mounting means for mounting the columns to the structure was required at all. Whilst page 6, line 23 to page 7, line 4 of the application disclosed an embodiment where beams were present and where the beams had screw holes which received screws of the fixture column, it was immediately evident to a skilled person that any suitable type of fixing means could be used to obtain a finite number of selectable fixed positions of the column with respect to the beam, such as a clamping device or even other types of device. Thus, although the Board had mentioned this objection in its provisional opinion and again during the oral proceedings, a limitation to screw holes and screws was not required when considering the content of the application as filed when read by a skilled person.

Reasons for the Decision

1. *Non-admittance of the request into proceedings - Article 13(1) RPBA*
- 1.1 The single main request filed during oral proceedings before the Board is an amendment of the appellant's case and thus may be admitted and considered at the discretion of the Board (see Article 12(2) and (4) and Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA)). In accordance with Article 13(1) RPBA, "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."

1.2 In exercising its discretion, the Board however decided not to admit the main request into proceedings, for the reasons given below.

1.2.1 One of the Board's objection's under Article 123(2) EPC, raised in its communication prior to oral proceedings in relation to claim 1 of the appellant's main request filed with its appeal grounds, concerned the feature

"each of the columns (21) is releasably mountable at said structure only at a finite number of selectable fixed positions,".

This objection was addressed in the appellant's single main request by the amendment of this feature to define the following:

"each of the columns (21) is releasably mountable to a beam (5) of said structure only at a finite number of selectable fixed positions,".

1.2.2 In the filed application on page 3, lines 4 to 14 as cited by the appellant, a general disclosure of "one aspect of the invention" is made. This states, in relation to the column, that each of the fixture devices comprises "a column releasably mountable at the structure". However, there is no disclosure in this section of the description of the more limited nature of the releasable mounting being "only at a finite number of selectable fixed positions" as now defined in the claim. Thus this portion of the description cannot

serve as a disclosure of the more limited feature defined in the claim.

On page 6, line 23 to page 7, line 4, the application describes how the beams 5 (which are themselves described as being releasably attachable to the levelling bench) are provided with screw holes 23 arranged along the beams at a desirable pitch and which receive screws 22 of the fixture device 7 (these being shown in Figure 2 as being on the column portion 21 of the fixture device 7). The following is stated on page 7, lines 2 to 4: "Hereby the fixture devices 7 are mountable along the beams 5 at a finite number of selectable fixed positions", this being the only portion of the application which was submitted by the appellant as disclosing a mounting only at a finite number of fixed positions, it being noted that the Board has also not found a further portion of the text which relates to mounting of the columns at a finite number of fixed positions. In this context, the word "hereby" however relates directly to the disclosed arrangement including screws interacting with screw holes on the beams, whereby the screw holes provide the only possible selectable fixed positions on the beams. Indeed, no possibility other than screws/screw holes is disclosed, and the claim notably defines that the column are mountable "only" at a finite number of selectable fixed positions, which is clearly achieved by the screw/screw hole feature.

The description also continues on page 7, lines 5 to 9, to explain a possible arrangement of the screw holes on the beams, by which further advantages can be achieved.

No suggestion of omitting the screw holes in the beams or replacing them in another way is disclosed.

1.2.3 Although the appellant argued that other devices could be used, such as a clamp device of some type, the application as filed does not disclose any other manner of achieving columns mounted only at a finite number of selectable fixed positions, nor does the application even suggest to a skilled person that other, albeit non-specified, ways of achieving the defined fixed positions on the beam are possible. Although a skilled person might in hindsight be able to derive further ways of achieving only a finite number of selectable fixed positions, possibly with a special type of clamp restricted in some way to certain positions, these are not part of the content of the application as filed.

1.2.4 The definition of the columns being releasably mountable to a beam of the structure only at a finite number of selectable fixed positions, without also defining at least the screw holes in the beams, would thus constitute an unallowable intermediate generalisation of the content of the application as filed, whereby the requirement of Article 123(2) EPC would not be fulfilled.

1.3 Since the objection in respect of Article 123(2) EPC, at least, was already mentioned in the Board's communication prior to oral proceedings and has evidently not been overcome by way of the appellant's main request, the Board exercised its discretion not to admit the request into proceedings since to do so would have been procedurally uneconomic because it is *prima*

facie apparent that it cannot form the basis for the grant of a European patent.

2. *No requests in the proceedings*

Since the sole request on which the appellant wishes to have a patent granted is not admitted into proceedings, there is no text in the proceedings on which the EPO can take a decision regarding granting of a patent.

The appeal must therefore be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

M. Patin

G. Kadner