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**Datasheet for the decision
of 5 November 2014**

Case Number: T 1204/11 - 3.2.01

Application Number: 05825947.4

Publication Number: 1836063

IPC: B60D1/54

Language of the proceedings: EN

Title of invention:
RETRACTABLE TOW HITCH

Patent Proprietor:
Thule Towing Systems B.V.

Opponent:
Westfalia-Automotive GmbH

Headword:

Relevant legal provisions:
EPC Art. 123(2), 56

Keyword:
Inventive step (yes)
Extended subject-matter (no)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 1204/11 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 5 November 2014

Appellant: Westfalia-Automotive GmbH
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Respondent: Thule Towing Systems B.V.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 April 2011 concerning maintenance of the
European Patent No. 1836063 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: C. Narcisi
D. T. Keeling

Summary of Facts and Submissions

- I. European patent No. 1 836 063 was maintained in amended form by the decision of the Opposition Division posted on 21 April 2011. An appeal was filed by the Opponent against this decision on 31 May 2011 and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 22 August 2011.
- II. Oral proceedings were held on 5 November 2014. The Appellant (Opponent) requested that the impugned decision be set aside and that the patent be revoked. The Respondent (Patentee) requested that the patent be maintained in amended form according to the main and sole request filed during the oral proceedings consisting of claims 1 to 20 (claims 1 to 20 of the former alternative fourth auxiliary request filed on 19 September 2014; description, columns 1 and 2 as filed during the oral proceedings and columns 3 to 12 as in the granted patent, drawings 1A to 13 as in the granted patent). The Respondent withdrew all further requests which had been previously submitted.

Claim 1 of the main request reads as follows:

"Tow hitch assembly (1) comprising a tow hitch member (2) having a tow hitch rod with a proximal end and a tow hitch ball (3) at a distal end, and a holder device for the tow hitch member, wherein the holder device is to be directly or indirectly mounted to a vehicle, such as a passenger car, wherein the tow hitch member (2) is movable between an extended position of use, substantially parallel to the main or driving axis of the vehicle, and a retracted position of non-use, at an angle to the position of use, transverse as seen in a horizontal plane to the position of use,

characterized in that the tow hitch member (2) is movably suspended to the holder device at a location between the proximal end and the distal end to form a tow hitch rod connection which is linearly movable with respect to the holder device, wherein the proximal end of the tow hitch rod and the holder device are provided with first and second coupling members designed for locking cooperation with each other in the position of use, wherein the first coupling member includes a first coupling part that is movable with respect to the tow hitch rod between a retracted, non-coupling position and an extended, coupling position, wherein the tow hitch rod at the tow hitch connection is rotatably connected to the holder device so as to establish the coupling engagement between the first and second coupling members by a canting movement of the tow hitch rod, preferably by exerting a downward force on the ball."

III. The Appellant's arguments may be summarized as follows:

The subject-matter of claim 1 lacks an inventive step in view of documents D4 (DE-C2-195 21 896) and D8 (EP-A1-934 838). D4 discloses all of the features of claim 1, the only difference being that it is not shown in D4 that the "first coupling part (6) is movable within the tow hitch rod between a retracted, non-coupling position and an extended, coupling position" (hereinafter designated as feature 1h). The other features of claim 1 (such as for instance features 1d and 1e, i.e. "the tow hitch member is movably suspended to the holder device at a location between the proximal end and the distal end"), aimed at implementing or implying a generally known combined linear and rotational or pivoting ("Schwenken") movement of the tow hitch assembly, are already known

from D4. However, feature 1h representing the sole difference to prior art D4 cannot involve an inventive step, for it constitutes a well-known technical measure, which is often employed by the skilled person in order to secure and lock the tow hitch rod in its position of use. This is exemplified and illustrated in detail in document D8, where a coupling rod 17 (D8, figures 1A, 1B) is shown in its extended position securing and locking the tow hitch rod in the position of use to the holder device, attached to the vehicle frame. The coupling rod is located within the tow hitch rod 3 (D8, figures 1A, 1B) and movable therein from its extended to its retracted position. In an attempt to separate the respective functions of locking and securing the tow hitch rod from the function of moving the same (which functions according to D4 are all performed with the aid of a screw or spindle drive) the skilled person would apply in an obvious manner said known technical measure to the tow hitch assembly of D4. This would provide a more robust and reliable mechanism for locking and securing the tow hitch rod, which avoids exerting excessive forces on the spindle drive when performing said functions. Thereby the skilled person would arrive at the subject-matter of claim 1 without having recourse to technical measures involving an inventive step.

The adapted version of the description as proposed by the Respondent does not comply with Article 123(2) EPC. Specifically, the deletion in paragraph [0012] of the published patent specification (hereinafter designated as EP-B) of the wording "the first coupling part is movable within the tow hitch rod between a retracted, non-coupling position and an extended, coupling position" leads to a generalization of the disclosure of the application as filed. The resulting wording

reading "in one embodiment, the first coupling part includes a coupling rod which ..." conveys the meaning that embodiments are likewise encompassed by claim 1, in which the first coupling part consists of constructional elements other than a coupling rod, e.g. an element having a spherical or like configuration.

IV. The Respondent's arguments may be summarized as follows:

The subject-matter of claim 1 is inventive over the prior art disclosed by D4 and D8. For one thing, it can be doubted whether D4 is suitable as a document reflecting the closest prior art, given that in the Appellant's own words the tow hitch assembly of D4 never went into mass production, due to an inherent structural fragility. Even on the assumption that D4 appropriately represents the closest prior art, the skilled person would lack any incentive or motivation to modify the tow hitch assembly of D4 as proposed by the Appellant. Indeed, the declared aim of D4 (see column 1, lines 44-49) consists in providing an assembly which allows by simply pushing a button to bring the tow hitch assembly from an operating or use to a non-use or rest position or configuration, and this without even having to contact or touch any parts of the assembly. In addition, it is emphasized that the spindle drive of D4 not only provides said function of locking and securing the tow hitch rod, by exerting a force on the coupling member 16 (D4, figure 1), which acts on the tow hitch rod to hold its proximal end in engagement with an opening 21 in the holder device. Indeed, the spindle drive likewise causes the coupling member (or wedge nut) 16 to act on the studs 22 in order that these be forced into the recess 23 formed in

the holder device and moreover also provides downward displacement of the tow hitch rod and swinging of the same around the pin 11 in order to bring it to a rest or non-use position. No incentive exists for the skilled person for replacing the coupling member (or wedge nut) 16 of D4 with a coupling rod according to D8, thus separating the aforesaid intertwined and integrated set of functions into multiple distinct functions performed by distinct constructional parts. No gain or advantage would thereby result, it is not apparent how the entire operation could still be performed by the push of a button and a considerable redesign of the entire mode of operation of D4 would be required. Consequently, the combination of D4 and D8 would not be obvious for the skilled person.

As to the objections related to the adapted version of the description it is observed that these amendments were made according to the customary and usual practice of the EPO and that no questions concerning compliance with Article 123(2) EPC could possibly arise.

Reasons for the Decision

1. The appeal is admissible.
2. Claim 1 according to the main and sole request of the Respondent essentially results from the combination of granted claims 1, 2, 6 and 11, apart from minor amendments, which include for instance the deletion of "in particular" (in granted claim 1), and some editorial amendments. Consequently, the subject-matter of claim 1 of the main request meets the requirements of Article 123(2) and (3) EPC.

3. Since the Appellant withdrew at the oral proceedings its objections presented in its written submissions based on Article 100(b) EPC in conjunction with Article 83 EPC, there is no need to discuss this issue in the decision. In fact, the Appellant solely relied, against claim 1, on the objection of lack of inventive step based on a combination of D4 with D8.

4. The subject-matter of claim 1 is not rendered obvious by the disclosures of prior art documents D4 and D8. Claim 1 differs from the tow hitch assembly of D4 by at least said feature 1h stating that "the first coupling part is movable within the tow hitch rod between a retracted, non-coupling position and an extended, coupling position". Whilst it is true, as alleged by the Appellant, that this feature is known from D8, nonetheless the skilled person would not be prompted to combine D4 and D8. Indeed, the tow hitch assembly disclosed in D4 is aimed at having the entire operation of the tow hitch assembly performed by the push of a button (D4, column 1, lines 45-49), which entails a number of functions integrated and included into a sequence of steps automatically performed by the electrical spindle drive 6 with the aid of the coupling mechanism (or wedge nut) 16. These functions specifically include, in the position of use, pressing the proximal end 20 of the tow hitch rod into recess 21 of the holder device 2, exerting a wedging force on studs 22 to hold these in recess 23 (D4, column 2, lines 27-34); during transition from the position of use to the rest or non-use position, these functions further include releasing said proximal end of the tow hitch rod and said studs from their respective engagement positions, starting the lowering and swinging movement of the neck portion (or distal end portion) of the tow hitch rod (see position depicted in

dotted lines in figure 1) and starting the rotational movement (by 90°) of said neck portion to bring it to a position underneath or below the bumper or frame of the vehicle (D4, column 2, lines 37-62). Since the coupling member is constantly involved and performs a major role in the accomplishment of each of these operations, the skilled person would not be prompted to dispense with the coupling member 16 of D4 and replace it with a coupling rod as disclosed in D8, given that this would require substantial redesign of the entire assembly. The skilled person likewise would not adopt a coupling rod according to D8 in the assembly of D4 as an additional constructional part, for this would lead to unnecessary redundancies and again it would not be evident or obvious how this ought to be done without a substantial redesign of the assembly. In effect, it is noteworthy that the Appellant did not give any examples to illustrate in any detail how the combination of D4 and D8 should be put into effect and work. In view of the above reasons the Board considers that the requirements of Article 56 EPC are met.

5. The Appellant's objections against the adapted version of the description, based on Article 123(2) EPC, are unfounded in the Board's view. In particular, the mentioned wording reading "in one embodiment, the first coupling part includes a coupling rod which ..." is not seen as implying features extending beyond the content of the application as filed. No implicit or explicit hint or suggestion can be derived from this wording pointing at other possible constructional forms of the first coupling part other than a coupling rod. Said wording merely reflects the fact that in its most general definition according to claim 1 the invention does not necessarily include a coupling rod, and that

this is only the case for the specific embodiments of the invention according to the dependent claims.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with instructions to maintain the patent on the basis of the following documents:
 - Claims 1 to 20 of the main request (formerly the alternative fourth auxiliary request filed with letter of 19 September 2014);
 - Description, columns 1 and 2 as amended during the oral proceedings and columns 3 to 12 as in the granted patent;
 - Drawings 1A to 13 as in the granted patent.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated