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Datasheet for the decision of 27 February 2015

Case Number: T 0618/12 - 3.2.01

Application Number: 01914456.7

Publication Number: 1280658

IPC: B62D29/00, B60R13/08, B62D25/04

Language of the proceedings: EN

Title of invention:
BAFFLE AND REINFORCEMENT ASSEMBLY

Patent Proprietor:
Sika Corporation

Opponents:
L & L Products Europe S.A.S.
Henkel AG & Co. KGaA

Headword:

Relevant legal provisions:
EPC Art. 123(2)
EPC 1973 Art. 56, 111(1)

Keyword:
Amendments - added subject-matter -
Main Request, Auxiliary Requests 1 and 3 (yes)
Reformatio in peius - (no)
Remittal to the department of first instance - (no)
Inventive step - Auxiliary Requests 2 and 2a (no)

Decisions cited:
G 0001/99

Catchword:

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Beschwerdekammern
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Chambres de recours

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0618/12 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 27 February 2015

Appellant 01: (Opponent 01)	L & L Products Europe S.A.S. 1 Rue Lindberg ZA Activeum, Altorf 67129 Molsheim, cedex (FR)
Representative:	Bawden, Peter Charles Bawden & Associates 4 The Gatehouse 2 High Street Harpenden, Hertfordshire AL5 2TH (GB)
Appellant 02: (Opponent 02)	Henkel AG & Co. KGaA Henkelstrasse 67 40589 Düsseldorf (DE)
Representative:	Henkel AG & Co. KGaA FJI Patente 40191 Düsseldorf (DE)
Respondent: (Patent Proprietor)	Sika Corporation 201 Polito Avenue Lyndhurst, NJ 07071 (US)
Representative:	Isler, Jörg c/o Sika Technology AG Intellectual Property Department Tüffenwies 16-22 Postfach 8048 Zürich (CH)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 19 January 2012 concerning maintenance of the European Patent No. 1280658 in amended form.**

Composition of the Board:

Chairman	G. Pricolo
Members:	W. Marx
	D. T. Keeling

Summary of Facts and Submissions

I. The appeals by opponent 01 (appellant 01) and opponent 02 (appellant 02) are directed against the interlocutory decision of the Opposition Division posted on 19 January 2012 to maintain European patent No. 1 280 658 in amended form on the basis of the Main Request filed during the oral proceedings.

II. In its decision the Opposition Division held, *inter alia*, that claim 1 according to the Main Request met the requirements of Article 123(2) EPC and that its subject-matter was inventive, starting from the following document as closest prior art:
D2: WO 00/03894.

III. Together with its reply to the appeal dated 27 December 2012 the respondent (patent proprietor) filed Auxiliary Requests 1 to 3, which had already been filed before, and admitted by, the Opposition Division during oral proceedings (see decision, paragraph 18).

In response to the summons to oral proceedings, a further Auxiliary Request 2a was filed by the respondent with letter dated 27 January 2015.

IV. Oral proceedings before the Board took place on 27 February 2015.

The appellants 01 and 02 (opponents 01 and 02) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeals be dismissed (Main Request) or, in the alternative, that the patent be maintained on the basis

of the claims of one of the auxiliary requests, namely Auxiliary Requests 1 to 3 as filed by letter of 27 December 2012 and Auxiliary Request 2a as filed by letter of 27 January 2015.

V. Claim 1 according to the Main Request, identical to claim 1 of Auxiliary Request 1, reads as follows:

"A baffle and reinforcement assembly (16) adapted for positioning in a cavity within a structural member (12, 14),
wherein the carrier is made of synthetic material, the attachment member (32) includes a clip (44) extending radially outwardly from said marginal rim (30) and the expansible material (18) is molded in place around the marginal rim (30),
characterised in that
a carrier (20) including an interior area (28), a marginal rim (30, 72, 82, 110, 128, 148, 166, 188, 190, 198, 226, 260, 272, 282, 296) positioned outwardly of the interior area, and an attachment member (32) integral with the interior area and marginal rim adapted for coupling to the structural member;
a continuous and circumscribing band of thermally expansible material (18) mounted to said marginal rim in surrounding but not overlying relationship to said interior area,
wherein said marginal rim (30) includes a base wall (38) extending substantially perpendicular to said interior area (28), said expansible material (18) being received thereon, said marginal rim includes a first support flange (40) extending from said base wall (38) away from said interior area (28) and said first support flange has a post (154) extending there from substantially parallel to said base wall."

Claim 1 according to Auxiliary Request 2 reads as follows (additions to claim 1 of the Main Request are underlined, deletions are marked by strike-through):

"A baffle and reinforcement assembly (16) adapted for positioning in a cavity within a structural member (12, 14),
wherein the carrier is made of synthetic material, the attachment member (32) includes a clip (44) extending radially outwardly from said marginal rim (30) and the expansible material (18) is molded in place around the marginal rim (30),
characterised in that
a carrier (20) including an interior area (28), a marginal rim (30, 72, 82, 110, 128, 148, 166, 188, 190, 198, 226, 260, 272, 282, 296) positioned outwardly of the interior area, and an attachment member (32) integral with the interior area and marginal rim adapted for coupling to the structural member;
a continuous and circumscribing band of thermally expansible material (18) mounted to said marginal rim in surrounding but not overlying relationship to said interior area,
~~wherein~~ whereby said marginal rim (30) includes a base wall (38) extending substantially perpendicular to said interior area (28), said expansible material (18) being received thereon, and wherein said marginal rim (30) includes a first support flange (40) extending from said base wall (38) away from said interior area (28), and wherein said first support flange (40) ~~has a post (154) extending there from substantially parallel to said base wall~~ is substantially continuous about said base wall (38) and has a width in cross-section, wherein said marginal rim includes a peripheral bead having a width in cross-section which is greater that

the cross-sectional width of said first support flange.”

Claim 1 according to Auxiliary Request 2a was amended, in comparison to Auxiliary Request 2, by adding the following feature at the end:

"..., and wherein the attachment member (32) includes at least one retainer wall (50, 52) proximate said clip and oriented substantially perpendicular to said interior area."

As for Auxiliary Request 3, the preamble of claim 1 remains unmodified, and dependent claim 4 reads:

"A baffle and reinforcement assembly (16) as set forth in claim 1, wherein said first support flange has a post extending there from substantially parallel to said base wall."

VI. The arguments of appellant 01 relevant to the present decision can be summarized as follows:

The combination of the expansible material being "molded in place", along with the post extending from a support flange substantially parallel to the base wall, was not taught in the application as filed and introduced new technical information. The specific post-containing embodiments or configurations of Figures 14e/14f involved the formation of a band of expansible material, as opposed to being molded in place, which was then attached to the marginal rim.

Claim 1 as filed merely called for expansible material to be "mounted to said marginal rim", which indicated that the patentee contemplated mounting expansible

material to the carrier in multiple alternative ways, only one of them being "molded in place". The teachings included no generalized teaching by which expansible material necessarily was molded in place for each embodiment.

Page 9, lines 7 to 9 of the application as filed contained the only arguable passage with the "molded in place" clause, relating specifically to the first embodiment according to Figures 2 to 7 of the application (see page 5, lines 16 ff), which excluded a post. There was no indication how these teachings would be applicable to the specific teachings of Figures 14e and 14f. Page 14 of the application as filed referred to the embodiment of Figure 22, which contemplated that expansible material would pass through a hole during molding. The text at page 2, lines 14 to 20 of the application as filed did not provide a suitable generalised teaching either, but only indicated a preference ("preferably") that the recited molding process was used.

Specific embodiments in the description called for, *inter alia*, expansible material provided as a continuous band and provided with a bore in registry with a post (page 11, lines 21 to 24). The only passages relating to a post were the passages on page 11, lines 18 to 31, relating to the embodiments of Figures 14e and 14f. An additional requirement of these teachings was that the post 154 "passes through the bore 158" for retention. The teachings made clear that a separately preformed band was envisioned, which was aligned with and then mounted to the carrier and held mounted to the carrier by the posts. In addition, further passages in the application as filed supported a "preformed" band (page 7, line 26: "form the desired

shape of the portion to be attached to the carrier 20"; page 11, lines 8 and 9: a band to be attached adhesively to a carrier; page 13, lines 1 and 2).

In conclusion, the only teachings in the application as filed including the presently claimed "post" omitted that the expansible material was molded in place onto the posts and called for a preformed band fitted onto posts. Accordingly, the combination of expansible material "molded in place" onto a carrier with "a post" represented a combination of two features which was not envisaged in the application as filed.

This combination of features was also present in Auxiliary Requests 1 and 3 (claim 1 according to Auxiliary Request 1 being the same as claim 1 of the Main Request and claim 4 of Auxiliary Request 3 reciting the feature concerning the "post"), and therefore these requests failed for the same reasons of the Main Request.

Auxiliary Request 2 should not be admitted into the proceedings on the ground that it entailed a *reformatio in peius*. The new feature "a peripheral bead" was not in the claims of the patent as granted and had not been considered by the department of first instance. Therefore, admitting this request would disadvantage the appellant. Although the request fitted the second exception mentioned in decision G 1/99, G 1/99 only said that requests may be filed. In the event that Auxiliary Request 2 was considered, remittal to the Opposition Division was requested.

As regards inventive step, it was well known in the art of injection overmolding that overmolding dissimilar materials could result in retention difficulties, and

that a well-known and predictable solution to assure retention was to use mechanical interlocks.

Amended claim 1 according to Auxiliary Request 2 contravened the requirements of Article 123(2) EPC and lacked clarity.

Auxiliary Request 2a should be excluded as late filed. It raised new issues, contravened Article 123(2) EPC and still had problems as mentioned with respect to Auxiliary Request 2.

VII. Appellant 02 agreed with the submissions of appellant 01 and essentially submitted the following:

The embodiments according to Figures 14e and 14f containing a post showed, unlike e.g. Figure 14b, expansible material not in direct contact with the carrier, which also indicated that the expansible material was not molded in place.

If Auxiliary Request 2 was considered by the Board, which would involve a different discussion, remittal to the department of first instance was requested.

The subject-matter of claim 1 of Auxiliary Request 2 lacked an inventive step in view of document D2 (see in particular Figures 2, 3 and 6; pages 6, 7 and 9) in combination with the knowledge of the skilled person. The only feature not known from D2 was that the marginal rim included a peripheral bead having a width in cross-section which was greater than the cross-sectional width of the first support flange. The objective problem to be solved was to provide an improved attachment of the expansible material. D2 disclosed already several possibilities for improving

the attachment of expansible material (Figures 5 and 6; page 9). Starting from Figure 6 in D2 and looking for further improvement, the skilled person would - by recourse to his knowledge - provide further interlocking connection for the molded material. Since the baffle and reinforcement assembly of D2 had to be placed in a specific cavity, the outer dimensions of the assembly - in particular the length of the support flange - were already limited. In order to avoid problem during demolding, the only meaningful arrangement would be an arrangement parallel to the base wall. Therefore, the skilled person would arrive in an obvious manner at the claimed subject-matter.

The additional feature of claim 1 according to Auxiliary Request 2a was already known from D2 (see Figure 3), showing a clip 46 and a retainer wall 44.

VIII. The respondent's arguments regarding the present decision can be summarised as follows:

When judging on the admissibility of amendments, the disclosure of the application as filed as a whole had to be taken into account. Original claim 1, specifying an expandable sealing material "mounted to said marginal rim", also comprised such material "molded in place" (see D2, page 3, line 14: "mounted" refers to "molded in place").

The general part of the WO-publication (page 2, lines 14 ff) referred to expansible material which was preferably injection molded around the carrier. The carrier had different projections which provided a mechanical interconnection between the expansible material and the carrier. The use of different projections at the margin of the carrier presented a

plurality of different possibilities for mechanically connecting the expansible material to the carrier. Such mechanical connection was only disclosed together with injection molding. It was not disclosed in the description, or derivable from the following text of the specification, although only the term "molded" was used, that the expansible material was produced separately and then attached to the carrier. In particular, the passages on page 2 (line 27: relating to a continuous T-shaped projection; or lines 29 ff: "... spaced projections around which the material is molded to present a woven connection ...", relating to the second embodiment) made clear, that "molded" always meant "molded in place" around the carrier. According to the first embodiment (Figures 2 to 7) the expansible material was "molded in place" (see page 9, lines 5 to 15), and according to the third embodiment (Figures 11 to 13) the expansible material was "molded ... onto the carrier" (page 10, lines 26, 27), i.e. in the first to third embodiments the expansible material was molded onto the carrier.

Figures 14a to 14m showed alternative configurations of these embodiments (see page 10, lines 31 to 33), where the expansible material was as described above and molded onto the carrier (see lines 33 to 35). This applied also to the posts 154 disclosed in Figures 14e and 14f. As to Figure 14f, it was explicitly mentioned on page 11 that the "expansible material is molded in a continuous band" (as on page 2, line 36), and to assume a separately formed band was contradictory to the disclosure as a whole. This band was molded directly onto the carrier (see page 2, lines 29 ff), as was also clear to the skilled person from a technical and economic point of view (tooling and process steps).

Moreover, subsequent attachment of the band was not expedient due to the stiffness of the expansible material. The description mentioning an interaction between a bore and the post just described the interaction between the expansible material and the post, without allowing to conclude - in the light of the whole disclosure and the size of the bore - that a boring was actually provided.

Auxiliary Request 2 claimed one of the different embodiments which had always been in the proceedings, so the appellants' request for remittal should not be allowed.

In addition to the distinguishing feature identified by appellant 02 with respect to claim 1 of Auxiliary Request 2, D2 did not show in Figure 6 a base wall extending substantially perpendicular, and the clip was not provided on the marginal rim but on an additional element. Moreover, there was no indication for the skilled person to provide, specifically, a peripheral bead. The teaching of D2 rather proposed to provide grooves to achieve superior bond.

Since D2 did not show a clip extending radially from the rim, the additional feature of claim 1 according to Auxiliary Request 2a was not known from D2 either.

Reasons for the Decision

1. Amendments (Article 123(2) EPC) - Main Request and Auxiliary Requests 1 and 3

1.1 The generally accepted standard for assessing amendments for their compliance with Article 123(2) EPC is the "gold standard", according to which amendments are permitted within the limits of what the skilled person would derive directly and unambiguously, using common general knowledge, from the application as filed. In particular, the skilled person may not be presented with new technical information.

In the present case, claim 1 according to the Main Request, which is identical to claim 1 of Auxiliary Request 1, was amended in opposition proceedings by combining original claims 1, 2, 11 and 12 with original claim 15 containing the "post"-feature. Moreover, a further feature ("expansible material (18) is molded in place around the marginal rim (30)") stemming from the description of the application as filed was introduced in claim 1. Claim 4 according to Auxiliary Request 3 also combines these features (claim 4 includes the "post"-feature and is dependent on claim 1, which includes the "molded in place" feature) so that the following considerations apply equally.

1.2 In the application as filed, claim 1 is directed to expansible material which is "mounted to said marginal rim". Such general wording leaves open how mounting of the expansible material is performed, encompassing all embodiments as described in the dependent claims and the description as filed. This would comprise, as

argued by the respondent, expansible material which is molded in place as described explicitly on page 9, lines 7 to 9 of the application as filed in relation to the first embodiment according to Figures 2 to 7. However, the Board finds that, on the basis of claim 1 as filed, the term "mounted" cannot be equated with "molded in place", because such generic disclosure does not implicitly include all specific disclosures which might fall under the generic term. Therefore, the combination of original claims 1, 2, 11, 12 and 15 specifies an embodiment containing the "post"-feature but not yet an assembly where the expansible material is "molded in place", i.e. cannot form the basis for the feature combination which is objected to under Article 123(2) EPC.

1.3 Taking into account the teaching in the general part of the application as filed on page 2 (lines 14 ff) according to which the "expansible material is preferably injection molded in surrounding relationship around the carrier ..., or alternatively insert molded ...", it is acknowledged that this passage refers to a process of "molding in place". However, as indicated by the term "preferably", a preferred - i.e. specific - embodiment is meant at least in relation to injection molding. Assuming that the term "preferably" only refers to "injection molded" and not equally to "insert molded", it would be disclosed that alternatively the process of insert molding is applied. But the introductory portion then goes on to recite the use of different projections at the margin of the carrier (page 2, lines 25 ff), mechanically connecting the expansible material to the carrier, without mentioning a post as specific embodiment for such kind of projections. Only three configurations are explicitly listed (page 2, lines 27 to 31) which relate

to the first, second and third embodiment, as described later in relation to Figures 2 to 7 ("substantially continuous T-shaped projection around which the expansible material may be molded"), Figures 8 to 10 ("a plurality of intermittently positioned, circumferentially spaced projections around which the material is molded to present a woven connection") and Figures 11 to 13 ("circumferentially intermittent, alternately axially spaced projections which contain the expandable material therebetween").
Therefore, it might be derivable from page 2 of the application as filed that the expansible material is molded onto the carrier for configurations as described later in relation to the first to third embodiments, i.e. the term "molded" might always mean "molded in place" when used in connection with these embodiments.

In the Board's judgement, page 2 of the application as filed again relates to specific embodiments and cannot be considered to contain a general teaching - i.e. that the expansible material is always molded in place by injection or insert molding - which shall apply to all alternative embodiments of the claimed assembly as discussed afterwards (see pages 3 and 4 as filed, in particular in respect of Figures 14a to 14f: "alternative embodiment of the assembly thereof").

1.4 The description as filed states (see page 10, lines 31 to 33) that "Figs. 14a through 14m show alternative configurations of the baffle and reinforcing assembly 16 having an interior area 28 and attachment member 32 as shown and described in reference to assemblies 16a, 16b, and 16c", i.e. in relation to assemblies relating to the first to third embodiments. However, this passage only makes reference to the interior area and attachment member, without specifying how to mount the

expansible material. Then (page 10, lines 33 to 35) the expansible material is said to be "as described above", which only relates to the material specification, and "may be routed through or over the insets as described with reference to any of the assemblies 16a, 16b or 16c". The respondent apparently takes this passage as comprising a general teaching which has to apply to all embodiments, meaning that the "post"-embodiments according to Figures 14e and 14f would comprise an expansible material which is molded in place. However, the term "may be routed" already suggests the optional character of this passage, in the sense that the previous teaching might be applied where appropriate. Moreover, as convincingly argued in particular by appellant 01, there are several passages in the description as filed which indicate that the expansible material might also be provided separately as a preformed band which is mounted to the carrier. In particular, according to page 11, lines 21 to 29 of the description as filed, the "expansible material 18 is provided as a continuous band 156 ... and is provided with a bore 158 in registry with the post 154 which passes through the bore 158 to retain the band 156 thereon" (which relates to the embodiment according to Figure 14e), and "the expansible material 18 is molded in a continuous band with a hole 164 extending only partway therethrough" (which relates to the embodiment according to Figure 14f). These passages at least cast doubts on whether embodiments having a post are disclosed in combination with expansible material molded in place.

Moreover, comparison of Figure 14f (which shows openings 160, 162) with the embodiment according to Figure 22 (showing opening 304) provides further indication that the embodiment according to Figure 14f

is not "molded in place". As mentioned in relation to Figure 22, "during molding in place, expansible material 18 flows through the openings 304 to provide nibs 306 extending inwardly through the openings 304 to mechanically hold the wedge 302 in place" (see page 14 of the application as filed). Although openings are also present in the embodiment of Figure 14f, no nibs are formed.

1.5 As follows from the foregoing, the Board concludes that the combination of expansible material "molded in place" and the "post"-feature is not clearly and unambiguously disclosed in the application as filed. Therefore, the criterion for judging allowability of amendments is not met with regard to claim 1 according to the Main Request, which is identical to claim 1 according to Auxiliary Request 1. This also applies to claim 4 according to Auxiliary Request 3, which includes this combination of features.

1.6 It might be, as argued by the respondent, that the skilled person would consider that the step of directly molding the expansible material onto the carrier is more economic than providing the two separate steps of first molding and then mounting the molded expansible material. This, however, is a consideration relevant to obviousness and not to the criterion of clear and unambiguous disclosure. The respondent further referred to a high stiffness of the expansible material preventing its mounting once it was molded. However, no convincing evidence was provided by the respondent in support of the fact that any expansible material would not be suitable for mounting after molding.

1.7 Therefore, the Board comes to the conclusion that the Main Request, Auxiliary Request 1 and also Auxiliary

Request 3 are not allowable since the claims contain a combination of features which is not directly and unambiguously disclosed in the application as filed, contrary to the requirements of Article 123(2) EPC.

2. *Admittance of Auxiliary Request 2*

According to the appellants, Auxiliary Request 2 should not be admitted into the proceedings on the ground that it entails a *reformatio in peius*. The feature added, concerning "a peripheral bead", was not in the claims of the patent as granted and was not considered by the department of first instance. Therefore, admitting this request would disadvantage the appellants.

The Board considers that these grounds do not justify disregarding Auxiliary Request 2, which was already filed and admitted (see point 18 of the contested decision) in the first-instance proceedings. It is however not necessary to discuss the issue of admissibility in detail, as this request fails on other grounds.

3. *Issue of remittal to the Opposition Division*

Appellants 01 and 02 requested remittal to the department of first instance in the event that Auxiliary Request 2 was to be considered. The respondent requested during oral proceedings that the case not be remitted.

In accordance with Article 111(1) EPC 1973, second sentence, the Board decided to exercise its discretion not to remit the case and thus allowed the respondent's request. Since Auxiliary Request 2 fails on other grounds, further details are unnecessary.

4. Inventive step (Article 56 EPC 1973) - Auxiliary Requests 2 and 2a

4.1 Document D2 is considered to represent the closest prior art and shows a baffle and reinforcement assembly adapted for positioning in a cavity within a structural member (page 1, lines 4 to 7 and Figure 2), which was not disputed. A carrier (Figure 3: support plate 50; Figure 6: support plate 104) is made of synthetic material (page 7, lines 12 to 14: support plate made of nylon). Contrary to the submission of the respondent, the attachment member shown in D2 (Figure 3) includes a clip (fastener 46) extending radially outwardly from the marginal rim of the carrier, since the wording of claim 1 leaves open the specific shape of the carrier's marginal rim and also of the clip. Hence, flange 44 shown in Figure 3 represents part of the marginal rim of the carrier and bears fastener/clip 46 which extends radially outwardly.

In D2, the expansible material (page 6, line 15: sealing material 52; page 9, lines 25 to 26: sealing material 102; claim 1: heat expandable sealing material) is molded in place around the marginal rim (page 7, lines 19 to 21). The carrier (50; 104) of D2 includes (see Figure 3 or Figure 6 showing a specific embodiment of Figure 3) an interior area (58), a marginal rim (56; also flange 44, see above) positioned outwardly of the interior area (page 6, lines 17 to 18), and an attachment member (46) integral with the interior area and marginal rim adapted for coupling to the structural member (page 6, lines 6 to 9). In D2, a continuous and circumscribing band (page 6, lines 14 to 16) of thermally expansible material (52; 102) is mounted to said marginal rim in surrounding but not

overlying relationship to said interior area (Figures 3 and 6; claim 1).

The respondent contested that D2 discloses a marginal rim which includes a base wall extending substantially perpendicular to said interior area. However, when looking at Figure 6 in D2, the marginal rim of the carrier is made of a flange portion (106) of reduced thickness, as compared to the interior area, which extends radially outwardly, and a wall connecting said flange portion with the interior area of the carrier, which extends in axial direction and therefore perpendicular to the interior area. The Board judges that this wall represents a "base wall" within the meaning of claim 1, because the wording of claim 1, aside from specifying its orientation ("perpendicular to said interior area"), leaves open whether the base wall protrudes above the interior area (as depicted e.g. in Figure 3 of the contested patent) or not (as in Figure 6 in D2).

According to Figure 6 in D2, the expansible material (102) is received on the base wall, and the marginal rim includes a first support flange (106) extending from said base wall away from said interior area, and the first support flange (106) is substantially continuous about said base wall and has a width in cross-section (see Figure 6; page 9, lines 27 to 29), which was not contested.

The Board follows appellant 02 in that the additional feature of claim 1 of Auxiliary Request 2a ("attachment member includes at least one retainer wall proximate said clip and oriented substantially perpendicularly to said interior area") is also known from D2. The attachment member in D2 (see Figure 3) is composed of

fastener/clip 46 and a flange 44 proximate to the clip and oriented perpendicularly to the interior area, the latter corresponding to a retainer wall as claimed. This still concurs with the attachment member as defined previously in claim 1 ("includes a clip extending radially outwardly from said marginal rim", "integral with the interior area and marginal rim adapted for coupling to the structural member"). In particular, flange 44 forming part of the attachment member can also be regarded as forming part of the marginal rim of the carrier as argued already above, since according to the wording of claim 1 attachment member and marginal rim are integrally formed.

4.2 In summary, except for the marginal rim including a peripheral bead having a width in cross-section which is greater than the cross-sectional width of the first support flange, D2 discloses all features of claim 1 according to Auxiliary Request 2 and also of claim 1 according to Auxiliary Request 2a.

Such a peripheral bead provides an interlocking connection between expansible material and marginal rim. Therefore, the distinguishing feature has the technical effect of providing a superior attachment or bonding of the expansible material on the marginal rim.

Starting from D2, the objective technical problem to be solved was therefore to improve the bonding or fixation between the expansible material and the marginal rim.

4.3 As argued in the contested decision (see point 24.1.2) and also by the respondent, the skilled person, considering that adhesive bonding by molding in place would not provide a sufficiently strong connection, had different possibilities at his disposal to solve the

problem of improving the connection. In particular, he might either use different options of form closure, or increase the contact surface as already taught by D2.

In the Board's view, providing the marginal rim with a peripheral bead having a width in cross-section which is greater than the cross-section width of the first support flange is to be regarded as being merely one of several straightforward ways of modifying the marginal rim known from D2, among which the skilled person would choose without exercising any inventive skill when trying to solve the above-mentioned problem.

Since the baffle and reinforcement assembly of D2 had to be placed in a specific cavity (e.g. a vehicle pillar), outer dimensions - in particular the length the support flange extended in radial direction - were already limited. Knowing that a better bonding could be realised by increasing the contact surface between the expansible material and the carrier and/or by means of form closure, the skilled person would e.g. conceive recesses inwardly in radial direction, as known already from document D2 (Figure 5), or provide an additional structure in a direction perpendicular to the interior area (i.e. parallel to the base wall in D2), such as an enlarged end portion of the first flange portion or an additional flange or fin provided on the first support flange. This would even be advantageous in order to avoid problems during demolding and would inevitably lead to a peripheral bead having a width in cross-section which is greater than the cross-section width of the first support flange. In the Board's view, selecting one of these obvious alternatives does not involve an inventive step.

4.4 Irrespective of whether claim 1 according to Auxiliary Request 2 or Auxiliary Request 2a contains further deficiencies with regard to Article 123(2) EPC or Article 84 EPC 1973, both requests must be refused for lack of inventive step (Article 56 EPC 1973).

5. Since there is no allowable request, the European patent has to be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated