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**Datasheet for the decision
of 7 February 2014**

Case Number: T 0962/12 - 3.2.05

Application Number: 05711144.5

Publication Number: 1721097

IPC: F16L11/12

Language of the proceedings: EN

Title of invention:

Electrically Heatable Cabling

Patent Proprietor:

Volvo Lastvagnar AB

Opponents:

Voss Automotive GmbH
ContiTech Techno-Chemie GmbH
Scania CV AB

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Added subject-matter (yes)
Late-filed auxiliary requests - amendments after arrangement
of oral proceedings (not admitted)



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Boards of Appeal
Chambres de recours**

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Case Number: T 0962/12 - 3.2.05

**D E C I S I O N
of Technical Board of Appeal 3.2.05
of 7 February 2014**

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 6 February 2012**

revoking European patent No. 1721097 pursuant to
Article 101(3)(b) EPC.

Composition of the Board:

Chairman: M. Poock
Members: S. Bridge
M. J. Vogel

Summary of Facts and Submissions

- I. An appeal was lodged against the decision of the opposition division revoking European patent No. 1 721 097 based on the ground of opposition of Article 100(c) EPC.

Oppositions had been filed against the patent as a whole based on Article 100(a) EPC (lack of novelty, Article 54 EPC 1973, and lack of inventive step, Article 56 EPC 1973) and Article 100(c) EPC (added subject-matter which extends beyond the content of the application as filed).

The opposition division found, *inter alia*, that the feature "*wherein the branching piece (13) is arranged between the first hose (11) and the second hose (14)*" of the respective claim 1 of each request adds subject-matter which extends beyond the content of the application as filed (decision points 2.1, 3.2.1, 4.2.2 and 4.3).

- II. Oral proceedings were held before the board of appeal on 7 February 2014.

The appellant (patent proprietor) requested that the decision under appeal be set aside and as main request that the patent be maintained as granted or that the patent be maintained in amended form on the basis of the claims filed as

- auxiliary request 1 in the oral proceedings,
- auxiliary request 2 filed with letter of 23 December 2013,
- auxiliary requests 4 to 10 filed as auxiliary requests 1 to 7 with letter of 15 June 2012,

- auxiliary request 11 filed as auxiliary request 9 with letter of 24 May 2013,
 - auxiliary request 12 filed as auxiliary request 8 with letter of 15 June 2012
- and, if any of the foregoing requests are allowable, that the case be remitted to the first instance for further prosecution.

The respondents I, II and III (opponents 01, 02 and 03) requested that the appeal be dismissed and that the case be remitted to the first instance for further prosecution should any of the appellant's main or auxiliary requests be allowable.

III. Claim 1 as granted (main request) reads as follows (the numbering of the features is the one used during the opposition proceedings):

- 1.1 "1. Cabling (1; 20) for a motor vehicle, comprising
- 1.2 a fluid hose (2),
- 1.3 a cable (3) for heating the fluid hose (2) and
- 1.4 at least one electrical connector (6,18) for connecting the cable (3) to an electrical supply,
- 1.5 wherein the fluid hose (2) and the cable (3) are completely enclosed by an external protective sheath (7; 21),
- 1.6 which protective sheath (7; 21) comprises a first hose (11) having an internal cross-section that exceeds the external cross-section of the fluid hose (2),
- 1.7 wherein at one or two end sections (4) of the cabling (1; 20) the cable (3) is separated from the fluid hose (2) within a branching piece (13) and
- 1.8 led through a second hose (14) to the at least one electrical connector (6, 18), and

- 1.9 wherein the external protective sheath (7; 21) comprises the first hose (11), said branching piece (13) and said second hose (14),
- 1.10 wherein the branching piece (13) is arranged between the first hose (11) and the second hose (14)."

IV. Claim 1 according to auxiliary request 1 differs from claim 1 according to the main request in that the following additional features are introduced after feature 1.5

"wherein the fluid hose (2) comprises at least one hose connector (8,9; 17) for connecting the fluid hose (2) to a matching hose connector; and wherein the hose connector (8,9; 17) and the electrical connector (6; 18) are separate from each other;

wherein the protective sheath (7; 21) comprises at least one corrugated hose (11, 14) such as a plastic hose, and at least one connector (12, 13, 16)",

the following text is added at the end of feature 1.7:
"so that the cable (3) can be taken to the respective electrical connectors (6; 18)"

and the following text is added at the end of feature 1.10: *"and between the first hose (11) and the hose connector (8, 9, 17), and between the second hose (14) and the hose connector (8, 9, 17), connecting the first and second hoses (11, 14), and connecting the first hose (11) and the hose connector (8, 9, 17), and connecting the second hose (14) and the hose connector (8, 9, 17)."*

V. Claim 1 according to auxiliary request 2 differs from claim 1 according to auxiliary request 1 in that

feature "*wherein the protective sheath (7; 21) comprises at least one corrugated hose (11, 14) such as a plastic hose, and at least one connector (12, 13, 16)*" has been deleted and feature 1.10 has been replaced by: "*wherein the branching piece (13) is arranged between the first hose (11) and the second hose (14) and the hose connector (8, 9, 17)*".

VI. An auxiliary request 3 filed with letter of 23 December 2013 was withdrawn during the oral proceedings.

VII. The subject-matter of claim 1 respectively according to auxiliary requests 4 to 12 always includes feature 1.10 of claim 1 according to the main request: "*wherein the branching piece (13) is arranged between the first hose (11) and the second hose (14)*".

In addition, the subject-matter of claim 1 according to auxiliary request 12 only differs from claim 1 according to auxiliary request 11 in that the following text has been added at the end of feature 1.10:

"wherein the first leg of the branching piece (13) and the second leg of the branching piece (13) include an angle of about 25°".

VIII. The arguments of the appellant in the written and oral proceedings can be summarised as follows:

It is implicit from the application as filed and especially claims 1 to 4 as filed, that the "*branching piece 13*" has the function of providing a branching in the claimed cabling. Therefore, the skilled person would necessarily only understand feature 1.10 of claim 1 according to the main request ("*the branching piece (13) is arranged between the first hose (11) and*

the second hose (14)") as a reference to this function of the *"branching piece 13"*. It is implicit that a *"piece 13"*, providing the function of a branching in a cabling, be located functionally *"between"* the branched hoses. Such an understanding is supported by the definition of *"between"* in the Oxford English Dictionary (definitions 1, 7 and 13), even though this is not a technical dictionary as such.

Alternatively, figure 1 of the application as filed discloses that part of the branching piece 13 is arranged between hoses 11 and 14. Feature 1.10 does not explicitly require that all of the branching piece 13 be arranged between hoses 11 and 14 and so the term *"between"* should not be interpreted in that way. *"A skilled person will recognize the limitations to an arbitrary interpretation of "between" and take into account such limitations"* (grounds of appeal of 15 June 2012, page 3/17, penultimate sentence). *"Still further, the word "between" must not be interpreted from the view of an observer looking at the plane of the drawings; it must be interpreted from the direction of the internal parts, i.e. from the direction of the electrical cable and leads (3; 3a, 3b). A first part of the electrical cables extend along the fluid hose inside the first hose and they continue through the branching piece and further towards the electrical connector inside the second hose. It is then clear that the branching piece is positioned between the first and second hose"* (grounds of appeal of 15 June 2012, page 6/17, third paragraph).

Therefore, the subject-matter of claim 1 (main request) does not extend beyond the content of the application as filed (Article 123(2) EPC).

Auxiliary request 1 was filed as a reaction to the discussion in the oral proceedings with respect to the main request and auxiliary request 2 was filed in reaction to the annex to the summons to oral proceedings. Auxiliary requests 1 and 2 should thus be admitted into the proceedings.

IX. The arguments of the respondents in the written and oral proceedings can be summarised as follows:

The claims define the matter for which protection is sought. Feature 1.10 of claim 1 (main request) "*the branching piece (13) is arranged between the first hose (11) and the second hose (14)*" has clear geometric implications as supported by the Oxford English Dictionary definitions of "*between*" which imply the presence of objects on opposite sides (Definitions 1 and 11). Thus, feature 1.10 of claim 1 (main request) also encompasses embodiments in which the first hose and second hose are on opposite sides of the branching piece, so that the all of the branching piece is arranged geometrically between these two hoses. However, the application as filed does not provide a basis for such a configuration: the description and claims as filed do not discuss or mention the arrangement of the branching piece in relation to the hoses and figures 1 and 2 as filed only disclose the two hoses entering the branching piece from the same side at an acute angle.

Therefore, the subject-matter of claim 1 (main request) extends beyond the content of the application as filed. (Article 123(2) EPC).

Auxiliary requests 1 and 2 are late filed, introduce additional features into the claims and do not prima

facie overcome the issue of added subject-matter, because embodiments in which the first hose and second hose are on opposite sides of the branching piece and which have no basis in the application as filed still fall under claim 1. Therefore, auxiliary requests 1 and 2 should not be admitted into the proceedings.

- X. During the oral proceedings, the chairman pointed out that the contested feature 1.10 appeared to be identically included in the respective claims 1 of auxiliary requests 4 to 12 so that the arguments presented in the context of the previously discussed main request would appear to apply equally to these requests. Neither the appellant nor any of the respondents wished to present any comments.

Reasons for the Decision

1. Main request - added subject-matter (Article 123(2) EPC)

1.1 Feature 1.10 of claim 1 according to the main request reads: "*wherein the branching piece (13) is arranged between the first hose (11) and the second hose (14)*".

As repeated most recently in decision G 2/10, Article 123(2) EPC is infringed by added subject-matter which is not directly and unambiguously disclosed, be it explicitly or implicitly, to the skilled person using common general knowledge, in the application as filed (see Headnote 1a).

1.2 Explicit disclosure in the application as filed

In the description of the application as filed the "branching piece 13" is mentioned explicitly on page 7, lines 22 to 25 ("*In addition, the cabling comprises an intermediate piece 12, a branching piece 13 and a hose 14 that takes the leads 3a, 3b to the electrical connector 6.*") and on page 9, lines 18 to 21 ("*The protective sheath 21 consists of a hose 11, two branching pieces 13 and two hoses 14 that lead the heating cable 3 to the electrical connectors 18.*").

The "*branching piece 13*" is also referred to as "*connector 13*" on page 7, lines 27 to 30 and page 9, lines 21 to 27 while stating that each end section comprises a "*sealing element 15*" for making a seal with the "*hose 2*".

However, none of these passages of the description discuss or mention the arrangement of the branching piece/connector 13 in relation to the hoses 11 and 14.

The claims of the application as filed, and claims 1 to 4 in particular, only indicate that the hose connector (8, 9, 17) and the electrical connector (6, 18) are separate. The terms "*branching piece*", "*first hose*" and "*second hose*" do not even occur in the wording of the claims of the application as filed. Thus, there are no statements in claims of the application as filed concerning the arrangement of a branching piece with respect to the first and second hoses.

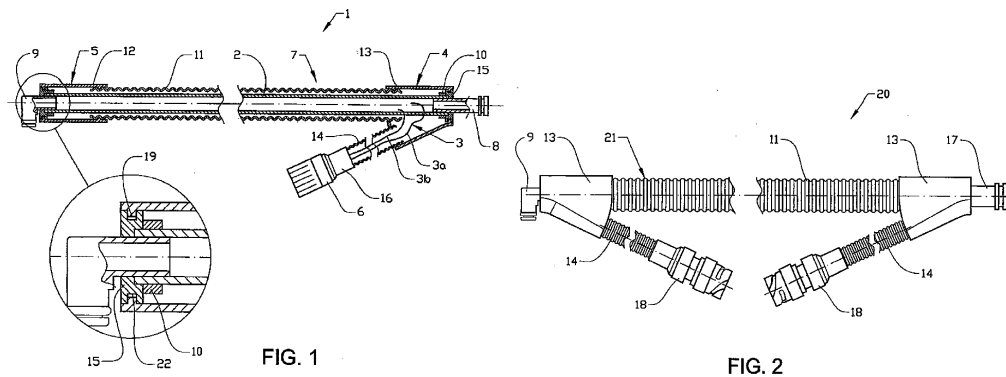
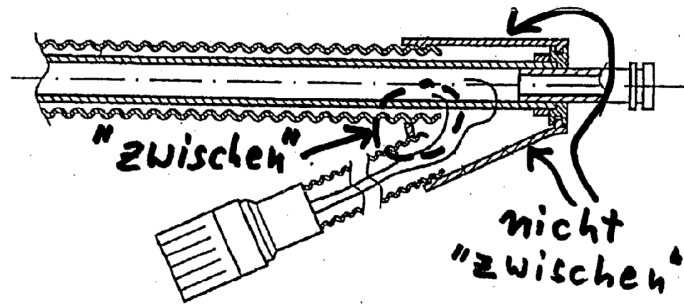


Figure 1 shows a first embodiment of cabling according to the invention in cross-section and figure 2 shows the second embodiment of cabling according to the invention (page 6, lines 9 to 12). Figures 1 and 2 as filed disclose the hoses 11 and 14 entering the branching piece 13 from the same side at a same, particular acute angle.

In the cross-sectional view of figure 1, the two opposing outer walls of the branching piece 13 are outside the respectively hose 11 and 14 so that the branching piece 13 extends beyond these two hoses (see also the following figure



from the bottom of page 4 of the letter of 27 December 2012 of respondent II). Thus, figure 1 does not disclose a branching piece 13 which is arranged between the first hose 11 and the second hose 14.

The cross-sectional view of figure 1 also shows that a small gusset-like part of the branching piece 13 is arranged between the first hose 11 and the second hose 14. However, this small part has been neither labelled, nor referred to, nor in any way otherwise identified in the application as filed and there are similarly no indications in feature 1.10 that only this small gusset-like part is being referred to.

Otherwise, there are no further explicit disclosures concerning the branching piece 13 in the application as filed.

Therefore, there is no explicit disclosure in the application as filed of feature 1.10 of claim 1 according to the main request "*wherein the branching piece (13) is arranged between the first hose (11) and the second hose (14)*".

1.3 Implicit disclosure in the application as filed

The term "*between*" in feature 1.10 of claim 1 according to the main request ("*the branching piece (13) is arranged between the first hose (11) and the second*

hose (14)") is not explicitly given a particular meaning in the application as filed.

It is therefore implicit, that the general common meaning of "between" applies. The Oxford English Dictionary provides the following definition:

"between, *prep., adv., and n.*

A. *prep.*

I. Of simple position.

* *Of a point.*

1. The proper word expressing the local relation of a point to two other points in opposite directions from it (i.e. if a point has two other points on opposite sides of it, it is said to be *between* them): In the space which separates two points; in the direct line which joins two points; hence, in any line of communication which passes from one point, place, or object, to another."

In addition the appellant referred to definitions 7 and 13 and the respondents to definition 11:

"**II.** Of intervening space.

* *As separating or connecting.*

7. Used in reference to any objective relation uniting two (or more) parties, and holding them in a certain connection."

"**III.** Of relation to things acting conjointly or participating in action.

11. Expressing the position of anything confined or enclosed by objects on opposite sides.

...

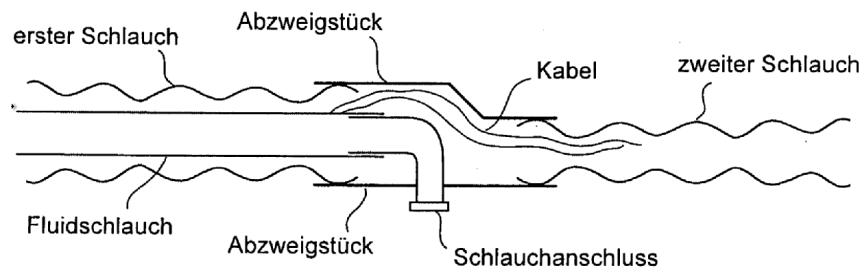
13. By the joint action of, done by, shared in by, belonging to (two parties) jointly."

Thus, the Oxford English Dictionary confirms that the term "*between*" has a geometric meaning in relation to two points or objects (definitions 1 and 11) as well as more abstract interpretations (definitions 1, 7 and 13).

It was argued on behalf of the appellant, that a general dictionary such as the Oxford English Dictionary was not necessarily definitive for the technical meanings of a term. However, the application as filed, as already considered above, does not provide a definition of "*between*" and no further technical definitions, in particular ones which might exclude the geometric interpretation of "*between*", have been advanced.

Since the claims define the matter for which protection is sought (Article 84 EPC), the geometric meanings of "*between*" form part of the subject-matter of feature 1.10 of claim 1 (main request).

In consequence, feature 1.10 of claim 1 (main request) explicitly encompasses embodiments in which, for example, the first hose and second hose are on opposite sides of the branching piece, such that the branching piece is entirely arranged between the first hose and the second hose (see the following illustrating figure



from on page 12 of the letter of 27 December 2012 of respondent II).

However, as already considered above, the application as filed does not provide a direct and unambiguous basis for such a configuration.

Therefore, the subject-matter of claim 1 (main request) extends beyond the content of the application as filed. (Article 123(2) EPC).

- 1.4 It was alternatively argued on behalf of the appellant that at least a part of the branching piece 13 is located between the hoses 11 and 14 and that, furthermore, feature 1.10 does not explicitly require all of the branching piece to be arranged between the hoses 11 and 14.

However, neither the wording of feature 1.10 nor the common meanings of "between" which follow from the Oxford English Dictionary definitions cited above imply the exclusion of configurations in which all of the branching piece is arranged between the hoses 11 and 14. Thus, feature 1.10 of claim 1 (main request) encompasses embodiments in which all of the branching piece is arranged between the hoses 11 and 14, but, as already noted above, the application as filed does not provide any basis for such configurations.

- 1.5 It was also argued on behalf of the appellant that "a skilled person will recognize the limitations to an arbitrary interpretation of "between" and take into account such limitations" (grounds of appeal of 15 June 2012, page 3/17, penultimate sentence) and that "the word "between" must [...] be interpreted from the direction of the internal parts ... " (grounds of appeal of 15 June 2012, page 3/17, penultimate sentence).

However, this approach is in contradiction with the principle that the claims define the matter for which protection is sought (Article 84 EPC 1973, first sentence). In the present case, the wording of feature 1.10 does not contain any limitations concerning the interpretation of the word "*between*". The term "*between*", as used in claim 1, thus has to be given all its usual meanings, including the geometric ones, and therefore includes situations not disclosed in the application as filed where, for example, the branching piece is in its entirety, i.e. completely, positioned between the first and second hoses.

- 1.6 It was also argued on behalf of the appellant that the meaning of "*between*" in the sense of "*in any line of communication which passes from one [...] object, to another*" (from above Oxford English Dictionary, definition 1) was much broader in the sense that no explicit geometric conditions are implied.

However, there are no indications in the the wording of feature 1.10 that only this particular meaning of "*between*" applies, and that the ordinary geometric meanings of the term "*between*" are not to be considered. Thus, the geometric meanings of "*between*" form part of the subject-matter of feature 1.10 of claim 1 (main request).

2. Admissibility of auxiliary request 1

Auxiliary request 1 was only filed during the oral proceedings before the board and is thus late filed. Auxiliary request 1 again addresses the issue of added subject-matter in feature 1.10 of claim 1 which issue was already under discussion before the opposition division. Furthermore, as the opposition division's

decision had already concluded that the term "*between*" is not disclosed in the application as filed and constitutes a generalisation of the disclosure of figures 1 and 2, auxiliary request 1 cannot be deemed to be a reaction to a new argument. Thus, in view of the advanced state of the proceedings and the need for procedural economy, it would not be fair to the respondents to provide the appellant with yet a further opportunity to overcome this extensively discussed issue. The board thus exercised its discretion under Article 13(1) RPBA (rules of procedure of the boards of appeal) not to admit auxiliary request 1 into the proceedings.

3. Admissibility of auxiliary request 2

Auxiliary request 2 was filed in response to the annex to the summons to oral proceedings before the board. As pointed out by respondent III in particular, embodiments which have no basis in the application as filed and in which, for example, the first hose and second hose are on opposite sides of the branching piece, such that the latter is arranged between the first hose and second hose, still fall under claim 1 according to auxiliary request 2. The subject-matter of claim 1 according to auxiliary request 2 thus does not prima facie overcome the objection of added subject-matter raised in the context of claim 1 according to the main request. Therefore, in view of the advanced state of the proceedings and the need for procedural economy, the board exercised its discretion under Article 13(1) RPBA not to admit auxiliary request 2 into the proceedings.

4. Auxiliary requests 4 to 12 - added subject-matter
(Article 123(2) EPC)

Each claim 1 respectively according to auxiliary requests 4 to 11 comprises feature 1.10 of claim 1 as granted. The arguments concerning subject-matter which extends beyond the content of the application as filed introduced by this feature, presented above in the context of the main request, thus apply identically to the subject-matter of the respective claims 1 according to auxiliary requests 4 to 11.

With respect to auxiliary request 12, the application as filed does not mention the angle between the legs of the branching piece and figures 1 and 2 were not disclosed as correctly depicting angular relationships (see written arguments of respondent II in his letter of 27 December 2012, section V.8, pages 29 to 31 and of respondent III in his letter of 19 November 2012, section 2.1. pages 16 and 17). In consequence, the feature "*wherein the first leg of the branching piece (13) and the second leg of the branching piece (13) include an angle of about 25°*" added at the end of claim 1 according to auxiliary request 12 also constitutes added subject-matter which was not originally disclosed.

Therefore, the subject-matter of claim 1 respectively according to auxiliary requests 4 to 12 extends beyond the content of the application as filed (Article 123(2) EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Meyfarth

M. Poock

Decision electronically authenticated