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Datasheet for the decision of 15 January 2015

Case Number: T 1459/13 - 3.2.01

Application Number: 10180827.7

Publication Number: 2284045

IPC: B60R19/02, B60R19/03, B60R19/26, B60R19/34, B60R19/18

Language of the proceedings: EN

Title of invention:
Bumper beam with crush cans

Applicant:
SABIC Innovative Plastics IP B.V.

Headword:

Relevant legal provisions:
EPC 1973 Art. 54(1)
RPBA Art. 12(4)

Keyword:
Main request -Novelty (no)
Auxiliary request filed with statement of grounds of appeal - not admitted

Decisions cited:
G 0010/93

Catchword:

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Case Number: T 1459/13 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 15 January 2015

Appellant: (Applicant)	SABIC Innovative Plastics IP B.V. Plasticslaan 1 4612 PX Bergen op Zoom (NL)
Representative:	Patentanwälte Bauer Vorberg Kayser Partnerschaft mbB Goltsteinstraße 87 50968 Köln (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 28 January 2013 refusing European patent application No. 10180827.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	Y. Lemblé
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The present appeal is directed against the decision of the Examining Division posted 28 January 2013 to refuse the European patent application EP 10 180 827.7.

II. The decision was taken following the applicant's request to issue a decision according to the state of the file. The impugned decision refers to the communication of 7 November 2012 in which the Examining Division explained why, in its opinion, the subject-matter of claim 1 according to the main request on file was not new in view of the prior art document

D1: US-A-6 099 055.

III. With its statement setting out the grounds of appeal, the Appellant (Applicant) filed a main request, a first auxiliary request, and a second auxiliary request, the main request corresponding to the main request underlying the impugned decision and the first and second auxiliary requests including newly amended claims.

IV. The Board issued an annex to the summons to oral proceedings according to Article 15(1) RPBA in which it indicated its provisional opinion that it shared the view of the Examining Division that the subject-matter of claim 1 of the main request was not novel over D1 and that it was questionable whether the auxiliary requests should be admitted into the appeal proceedings (Article 12(4) RPBA). In the annex, the Board also referred to the prior art document

D2: GB-A-2 307 665.

V. Oral proceedings were held on 15 January 2015. The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the main request or, in the alternative, the second auxiliary request, all requests as filed with the statement of grounds of appeal. The first auxiliary request, filed with the statement setting out the grounds of appeal, was withdrawn.

VI. Claim 1 according to main request reads:

A bumper assembly comprising
a beam (10), said beam (10) comprising:
a frame (14);
a body (16) extending from said frame (14), said body (16) comprising
a first flange (18),
a second flange (20), and
a channel (22) extending between said first (18) and second (20) flanges,
at least one integrated crush can (12), wherein said crush can (12) comprises a plurality of spaced upright walls (50,52,54), and wherein at least one of said upright wall spacing, upright wall angels [sic] (A, B, C), upright wall thickness, and upright wall material is selectable; and
a fascia for covering at least a portion of said beam (10); wherein said beam (10) is one-piece unitary structure and a first crush can (12) is configured to align with a first vehicle rail, and a second crush can (12) is configured to align with a second vehicle rail.

Claim 1 according to the second auxiliary request reads (modifications with respect to the main request in bolt characters):

A bumper assembly comprising
a beam (10), said beam (10) comprising:
a frame (14);
a body (16) extending from said frame (14), said body (16) comprising
a first flange (18),
a second flange (20), and
a channel (22) extending between said first (18) and second (20) flanges,
at least one integrated crush can (12), wherein said crush can (12) comprises **at least three spaced upright walls** (50,52,54), and wherein at least one of said upright wall spacing, upright wall angels (A, B, C), upright wall thickness, and upright wall material is selectable **and wherein the spaced walls (50,52,54) are inclined to influence the stiffness and impact characteristics**; and
a fascia for covering at least a portion of said beam (10); wherein said beam (10) is one-piece unitary structure and a first crush can (12) is configured to align with a first vehicle rail, and a second crush can (12) is configured to align with a second vehicle rail.

VII. In support of his requests the Appellant argued essentially as follows:

The subject-matter of claim 1 was novel over the prior art shown in document D1. In the bumper of document D1 there was no "crush can". As the skilled person knew, a crush can was a particular kind of energy absorber mounted on a bumper. Crush cans had special energy absorbing characteristics and were mounted on the bumper at specific locations to align with first and second vehicle rails as claimed. They were provided to offer corner protection and addressed offset impact.

D1 did not disclose or teach a bumper assembly with crush cans fulfilling corner protection requirements. The bumper 10 of Dl had a structure based on horizontal ribs 12,14,20 connected by transverse plates 16 including two vertical partition plates 32 for dividing it into three spaces, a central space 26 and two end spaces 30. This structure provided for a light weight and was design to withstand frontal impact. The end spaces 30 of the bumper of D1 were not designed to form crush cans. In particular, the end spaces did not comprise "upright walls" as claimed, i.e. vertical walls at 90 with respect to a horizontal plane, and were not provided for corner protection. A person skilled in the art would not inevitably and unambiguously conclude that the end spaces 30 qualified as crush cans.

Furthermore, there was no disclosure in Dl of a first crush can being configured to align with a first vehicle rail and a second crush can configured to align with a second vehicle rail. In Dl, the left and right end spaces 30 covered a wide area into which two vehicle rails probably happen to fall, but these end spaces were not configured to align with these rails. Within the context of the present invention, the claimed alignment meant that the crush cans were specifically positioned in the area of the vehicle rails. Consequently, the subject-matter of claim 1 was new in view of Dl.

Claim 1 of the second auxiliary request included further limiting features which were not disclosed in D1. The term "inclined" referred to the spaced walls and meant that they were inclined with respect to the vertical.

Reasons for the Decision

1. The appeal is admissible.

2. Main request

2.1 The Board judges that the reason given by the Examining Division in the communication dated 7 November 2012, to which the contested decision refers, in support of the conclusion that the subject-matter of claim 1 of the main request is not novel over the disclosure of document D1, are correct.

2.2 The Appellant submits that the bumper of document D1 does not disclose crush cans. For the person skilled in the art, a crush can is a well known energy absorbing element which is mounted at the outer board location on the bumper beam and configured to address corner or offset impact.
In this respect, it is noted that the present application EP-A-2 284 045 (D0) does not include any definition of a crush (or crash) can. In paragraph [0006] of D0, it is merely disclosed that "the crash cans absorb energy during impact, e.g. an offset impact". An offset impact is not necessarily a corner impact; also a frontal impact which is not centered can be regarded as an offset impact. Nor is there any evidence in the file in support of the Appellant's allegation that crush cans are only designed for corner protection. In fact, it would appear that a crush can is a collapsible energy absorbing element used in bumpers, which is also well suited for frontal impacts (see e.g. D2, in particular page 1 and Fig. 2). The crush can 12 of the present application includes a plurality of spaced walls 50,52,54 (paragraph [0021] of

D0). They are shown in Fig. 4 to 6 of D0. These walls do not present the form a can and do not even approximately resemble a can.

The embodiment of Fig. 5 of document D1 shows a bumper which, in the end spaces 30 which are part of the chassis attachment section 22 of the bumper, comprises a plurality of spaced vertical ribs 38 in addition to the horizontal ribs 20 (see D1: col. 5, lines 34-37). Since these ribs 38, 20 form collapsible energy absorbing elements (see also the commented figure annexed to the examining division's communication dated 7 November 2012), the Board regards these elements as crush cans within the meaning of claim 1.

2.3 The appellant further submits that there is no disclosure in D1 of a first crush can being configured to align with a first vehicle rail and a second crush can being configured to align with a second vehicle rail.

The present patent application D0 simply mentions that "crush cans" are in alignment with rails from the frame of the vehicle (see paragraph [0020] of D0). The application D0 does not, however, describe the first and second vehicle rails with which the walls 50,52,54 shown in Fig. 4 to 6 of D0 (the "crush can" of claim 1) are aligned, neither does D0 specifically show how the walls 50,52,54 align with the hypothetical first and second rails of the vehicle. Considering that the claimed product is a bumper assembly on its own (i.e. the claim is not directed to a bumper assembly mounted on vehicle rails), the disputed features only imply that the crush cans are spaced from the center line of the bumper assembly and, as such, are suitable to be mounted in correspondence of vehicle rails.

This is certainly the fact for the bumper assembly of D1. Moreover, Fig. 2B, referred to by the examining division, clearly shows that the crush cans are aligned with support means for the bumper. Although Fig. 2B refers to a configuration for impact simulation tests, it is clear for the skilled person that the support are in positions corresponding to vehicle rails. In Fig. 5 of D1 the vertical and horizontal ribs 38,20 of the end spaces 30 are clearly arranged in the area 22 which is the "chassis attachment section" of the bumper (see column 4, line 14 of D1).

2.4 The Board concludes from the above considerations that the bumper assembly of claim 1 is known from the prior art disclosed in D1 (Article 54(1) EPC 1973).

Thus, the main request must fail.

3. Second auxiliary request

3.1 Admissibility

According to Article 12(1)(a) RPBA, ex parte appeal proceedings shall be based inter alia on the notice of appeal and statement of grounds of appeal. As an exception to this, Article 12(4) RPBA foresees that the board can hold inadmissible facts, evidence or requests which could have been presented in the first instance proceedings.

In the present case the Board stated in the annex to the summons to oral proceedings that it was questionable whether the auxiliary request should be admitted in the appeal proceedings and gave reasons i support of this view. The Appellant has not challenged this view nor submitted any counter-arguments.

Claim 1 of the second auxiliary request has been amended to include the feature coming from the description that "the spaced walls (50,52,54) are inclined to influence the stiffness and impact characteristics". This feature has not been searched and the word "inclined" has no explicit basis in the originally filed application documents. Moreover, the Appellant argued for the first time in oral proceedings before the Board that "inclined", when referring to the spaced walls, meant that these were inclined with respect to the vertical.
This interpretation of the word "inclined" is totally at odds with the content of paragraph [0021] of D0, which was cited as a basis for the amendment and which suggests to the reader that the spaced walls remain vertical when they define the angles A,B,C with respect to a direction corresponding approximately to the longitudinal extension of the bumper.

Hence the amendments and the new interpretation presented in the oral proceedings before the Board correspond to a new case in appeal. At this point the Board refers to the principles governing ex parte proceedings as set out in G 10/93 (OJ EPO 1995, 172). It is true that, since the judicial examination in ex parte proceedings concerns the stage prior to grant and lacks a contentious nature, the boards are restricted, in their review of the decision under appeal, neither to the examination of the grounds for the contested decision nor to the facts and evidence on which the decision is based. But this absence of restriction does not amount to a positive obligation for the boards to consider any request filed in appeal especially when the requests bring about a new case. In the present case, moreover, it was the appellant of its own

volition who, by requesting a decision on the state of the file, decided to interrupt the examination proceedings and thereby to deprive itself of any possibility of making such a new case before the department of first instance.

Under these circumstances, the Board decided to exercise its discretion not to admit the second auxiliary request filed with the statement of grounds of appeal into these appeal proceedings (Article 12(4) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated