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Datasheet for the decision of 8 June 2016

Case Number: T 2209/13 - 3.2.01

Application Number: 08020437.3

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IPC: B60R25/02

Language of the proceedings: EN

Title of invention:
Electric steering lock device

Patent Proprietor:
Alpha Corporation

Opponent:
VALEO SECURITE HABITACLE SAS

Headword:

Relevant legal provisions:
EPC Art. 123(2), 84, 56
RPBA Art. 13(1)

Keyword:
Added subject-matter (main request, aux. requests 1,2,3: yes)
Admissibility (aux. requests 4,5,6: no)
Inventive step (aux. request 7 : yes)
Admissibility of new line of argument on inventive step (no)

Decisions cited:

Catchword:

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Case Number: T 2209/13 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 8 June 2016

Appellant: (Patent Proprietor)	Alpha Corporation 6-8, Fukuura 1-chome Kanazawa-ku Yokohama-shi, Kanagawa 236-0004 (JP)
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Respondent: (Opponent)	VALEO SECURITE HABITACLE SAS 76, rue Auguste Perret - ZI Europarc 94046 Créteil Cedex (FR)
Representative:	Croonenbroek, Thomas Jakob Innovincia 11, avenue des Tilleuls 74200 Thonon-les-Bains (FR)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 13 August 2013 revoking European patent No. 2065266 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	C. Narcisi
	P. Guntz

Summary of Facts and Submissions

I. European patent No. 2 065 266 was revoked by the decision of the Opposition Division dated 13 August 2013. On 21 October 2013 an appeal was lodged by the Patentee against this decision and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 23 December 2013.

II. Oral proceedings were held on 8 June 2016. The Appellant (Patentee) requested that the impugned decision be set aside and that the patent be maintained as granted (main request) or, in the alternative, that the patent be maintained in amended form on the basis of auxiliary requests 1 to 3 (filed on 23 December 2013 with the statement of grounds of appeal), or on the basis of auxiliary request 4 (filed on 6 May 2016), or on the basis of auxiliary requests 5 to 7 (filed on 8 June 2016 during oral proceedings). The Respondent (Opponent) requested that the appeal be dismissed.

III. Claim 1 as granted (main request) reads as follows:

"An electric steering lock device (1A) comprising:
a rotating body (8) that is driven by a driving source (6) to rotate in an unlocking direction and a locking direction;
a first cam section (9) and a second cam section (10A) provided in the rotating body (8);
a lock member (11A) that follows the first cam section (9) to be displaced between a lock position at which the rotation of a steering shaft is blocked and an unlock position at which the rotation of the steering shaft is allowed;
a housing (3) and a cover (2) that form a part accommodation room for accommodating the rotating body

(8), the first cam section (9), the second cam section (10A) and the lock member (11A), and
a slide member (12) that slides, while following the second cam section (10A), so as to be able to be engaged with or disengaged from the lock member (11A), characterized in that
the lock member (11A) follows the first cam section to be displaced in a direction orthogonal to a rotation axis of the first cam section (9);
when the lock member (11A) is positioned at the lock position or the unlock position, the slide member (12) is structured to be positioned at a retention position at which the lock member (11A) is blocked from being moved to the unlocked position, and
when the lock member (11A) is located between the unlock position and the lock position the slide member (12) is structured to be positioned at a waiting position at which the lock member (11A) is allowed to move."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the wording "slide member" was everywhere replaced by "lever member", the wording "when the lock member (11A) is positioned at the lock position or the unlock position, the slide member (12) is structured to be positioned at a retention position at which the lock member (11A) is blocked from being moved to the unlocked position" was replaced by "when the lock member (11A) is positioned at the lock position, the lever member (12) is structured to be positioned at a retention position at which the lock member (11A) is blocked from being moved to the unlocked position, when the lock member (11A) is positioned at the unlock position, the lever member (12) is structured to be positioned at a retention position at which the lock member (11A) is blocked from

being moved", and the wording "characterized in that" was replaced by "wherein".

Claim 1 of auxiliary request 2 differs from claim 1 of auxiliary request 1 in that the wording "a lever member (12) that slides" was replaced by "a lever member (12) that slides in a linear direction".

Claim 1 of auxiliary request 3 differs from claim 1 of auxiliary request 2 in that the wording "a lock member (11A) that follows the first cam section (9) to be displaced" was replaced by "a lock member (11A) that follows the first cam section (9) to be displaced in a direction orthogonal to a rotation axis of the first cam section (9)", the wording "a lever member (12) that slides in a linear direction" was replaced by "a lever member (12) that slides in a linear direction orthogonal to a rotation axis of the second cam section (10A) and orthogonal to the direction in which the lock member (11A) is displaced", and the wording "wherein the lock member (11A) follows the first cam section to be displaced in a direction orthogonal to a rotation axis of the first cam section (9);" was replaced by "wherein".

Claim 1 of auxiliary request 4 differs from claim 1 of auxiliary request 3 in that the wording "to be displaced in a direction orthogonal to a rotation axis of the first cam section (9)" was replaced by "to be displaced in a vertical direction orthogonal to a rotation axis of the first cam section (9)", the wording "a lever member (12) that slides in a linear direction orthogonal to a rotation axis of the second cam section (10A)" was replaced by "a lever member (12) that slides in a linear, horizontal direction orthogonal to a rotation axis of the second cam section

(10A)", and the wording "wherein" was replaced by "wherein the lock member (11A) is composed of a flat rod section (13A) that has a flat plate-like shape and that has a cam engagement section (14) that is protruded in the horizontal direction from an upper side of the flat rod section (13A), and a shaft-locking protrusion (15) that is provided at a lower end of the flat rod section (13A),".

Claim 1 of auxiliary request 5 differs from claim 1 of auxiliary request 4 in that the wording "rotation axis of the first cam section (9)" and the wording "rotation axis of the second cam section (10A)" both were replaced by the wording "rotation axis of the rotating body", the wording "at a lower end of the flat rod section (13A)," was replaced by "at a lower end of the flat rod section (13A); at one side face of the flat rod section (13A), a lock retention engagement groove (16) and an unlock retention engagement groove (16A) which are extending in a direction orthogonal to a moving direction of the lock member (11A), are provided with a predetermined distance therebetween, the lever member (12) is composed of a flat plate section (18) that has one end engaged with the second cam section (10) and includes an engagement piece (19) at a right angle from one side of this flat plate section (18),", the wording "at the lock position, the lever member (12) is structured to be positioned at retention position at which" was replaced by "at the lock position, the engagement piece (19) of the lever member (12) is structured to be engaged with the lock retention engagement groove (16) such that", and the wording "at the unlock position, the lever member (12) is structured to be positioned at a retention position at which" was replaced by "at the unlock position, the engagement piece (19) of the lever member (12) is

structured to be engaged with the unlock retention engagement groove (16A) such that".

Claim 1 of auxiliary request 6 differs from claim 1 of auxiliary request 5 in that the the wording "rotating body (8)" was replaced by the wording "worm wheel (8)", the wording "driven by a driving source (6)" was replaced by "driven by a worm gear (7) fixed to a rotation axis (6a) of a motor (6)", the wording "a first cam section (9) and a second cam section (10A) provided in the rotating body (8);" was replaced by "a first cam section (9) that is integrated with the worm wheel (8) and a second cam section (10A) that is integrated with the worm wheel (8);", the wording "rotation axis of the rotating body" was replaced by the wording "rotation axis of the worm wheel", the wording "the first cam section (9), the second cam section (10A), and the lock member (11A), and" was replaced by "the first cam section (9), the second cam section (10A), and the lock member (11A), a drive housing unit (4) and a drive unit cover (5) that are accommodated in the part accommodation room and that further form a drive unit room at the interior thereof, the motor (6), the worm gear (7), the worm wheel (8), the first cam section (9) and the second cam section (10A) being provided in the drive unit room, and", the wording "a flat rod section (13A) that has a flat plate-like shape and that has a cam engagement section (14)" was replaced by "a flat rod section (13A) that has a flat plate-like shape and that has a spring-receiving face (13a) formed by a notch, a cam engagement section (14)", the wording "are provided with a predetermined distance therebetween," was replaced by "are provided with a predetermined distance therebetween, the shaft locking protrusion (15) provided in the lock member (11A) is protruded out of a

through hole (3a) provided in the housing (3) to the outside, and the spring-receiving face (13a) and the cover (2) have therebetween a first coil-spring (17) whose spring force urges the lock member (11A) in a direction so as to press the first cam section (9) in the locking direction;", and the wording "the lever member (12) is composed of a flat plate section (18) that has one end engaged with the second cam section (10) and includes an engagement piece (19) at a right angle from one side of this flat plate section (18)," was replaced by "the lever member (12) is composed of a flat plate section (18) that has one end engaged with the second cam section (10) and that is movably provided in the horizontal direction, and an engagement piece (19) at a right angle from one side of this flat plate section (18);".

Claim 1 of auxiliary request 7 differs from claim 1 of auxiliary request 6 in that the wording "a first cam section (9) that is integrated with the worm wheel (8) and a second cam section (10A) that is integrated with the worm wheel (8)" was replaced by the wording "a first cam section (9) that is integrated with one face of the worm wheel (8) and a second cam section (10A) that is integrated with the other face of the worm wheel (8)", and the wording "and an engagement piece (19) at a right angle from one side" was replaced by "and an engagement piece (19) that is bent with a right angle from one side".

IV. The Appellant's submissions may be summarized as follows:

The subject-matter of claim 1 as granted according to the main request, and to auxiliary requests 1 and 2, does not introduce added subject-matter (Article 100(c)

EPC and 123(2) EPC) since the feature reading "the lock member (11A) follows the first cam section (9) to be displaced in a direction orthogonal to a rotation axis of the first cam section (9)" (hereinafter designated as feature (i)) does not extend beyond the content of the application as filed (see published patent application, hereinafter designated as EP-A). In particular, said feature is directly and unambiguously derivable from figures 6A-6D, 9,10, 14A-14C of EP-A (or equivalently of the published patent specification, hereinafter designated as EP-B) such that no additional information (beyond that included in the application as filed) was introduced by feature (i) in claim 1 of any of the above requests.

In claim 1 of auxiliary request 3 an additional feature (inter alia) was introduced, which reads (ii) "a lever member (12) that slides in a linear direction orthogonal to a rotation axis of the second cam section (10A) and orthogonal to the direction in which the lock member (11A) is displaced". This amendment is clearly and unambiguously derivable from figures 6A-6D, 9, 10, 14A-14C and likewise from paragraph [0037] in EP-A, in which it is stated that the lock member moves "up and down" (vertically), whereas the lever member slides in a "horizontal" direction.

Auxiliary request 4 should be admitted to the appeal proceedings since it was timely filed in response to the summons to the oral proceedings, and in particular to the preliminary view of the Board expressed in the annex to the summons. Claim 1 of auxiliary request 4 (filed on 6 May 2016), as well as of former requests 5 and 6 (also filed on 6 May 2016, now withdrawn), merely resulted from splitting up features which were all included in claim 1 of former auxiliary request 4 filed

on 23 December 2013 with the statement of grounds of appeal. Thus, only a differently structured set of auxiliary requests was actually submitted in response to the Board's preliminary opinion, without any additional subject-matter being included in respective claim 1 of any of these requests. Moreover, as compared to claim 1 of former auxiliary request 4, no additional issues relating to possible intermediate generalizations do emerge, thus avoiding increased complexity and taking into account the requirement of procedural economy.

Auxiliary requests 5 and 6 should be admitted to the appeal proceedings since they are based on former auxiliary requests 5 and 6 filed in response to the Board's preliminary view (see above), apart from minor amendments made during oral proceedings. As compared to claim 1 of auxiliary request 4, claim 1 of these requests comprises several additional features, such that additional questions concerning possible intermediate generalizations (arising from the inclusion in claim 1 of features extracted from the description) do not arise. Consequently, in comparison with former auxiliary request 4, no additional complexity arises and the criterion of procedural economy is complied with. Admission of these requests to the appeal proceedings is therefore warranted.

Claim 1 of auxiliary request 7 is based on claim 1 of former auxiliary request 4, apart from minor amendments made in response to the objections of the Respondent raised during oral proceedings. This request is therefore admissible.
The subject-matter of claim 1 of this request likewise involves an inventive step in view of E3 (DE-A1-10 2004 053 438), E4 (EP-A1-1 637 415) and the skilled person's

general knowledge. In particular, both E3 and E4 disclose steering lock devices including a pivoting lever member for engagement of the lock member in a retention position, and the statement at paragraph [0029] of E3 (suggesting that a linear movement instead of a pivoting movement would be possible) is nothing more than a general statement giving no indications relating to actual construction and implementation of such a modified device. Hence even the combination of E3 and E4 would not lead the skilled person to the subject-matter of claim 1.
The line of argument based on E2 (EP-A1-1 955 913) and E6 (DE-A1-10356660) is late filed and should not be admitted to the appeal proceedings. Moreover E2 constitutes anyway prior art only pursuant to Article 54(3) EPC and cannot be considered for the assessment of inventive step.

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

The subject-matter of claim 1 of the main request contravenes Article 123(2) EPC (in conjunction with Article 100(c) EPC) since feature (i) was not disclosed in EP-A. Indeed, this feature is not derivable from the description of EP-A and extracting this feature arbitrarily from the figures amounts to a generalization of the subject-matter as filed, for it was only shown in these figures in conjunction with several other features. There is no valid reason to single out feature (i), given that the direction of movement of the lock member in relation to the rotation axis of the first cam section acquires a technical significance only in conjunction with the other features illustrated.

For the same reasons, claim 1 of auxiliary requests 1 and 2 (both comprising said feature (i)), contravene Article 123(2) EPC.

The subject-matter of claim 1 of auxiliary request 3 infringes Article 123(2) EPC. Feature (ii), also considered in conjunction with feature (i), was not originally disclosed in the description of EP-A. Extracting these features from the cited figures amounts to a generalization of the disclosure of EP-A, given that for instance features (i) and (ii) do not explain how the orthogonal movement of the lock member is produced, thus omitting essential features shown in the figures (see for instance figures 9 and 10).

Auxiliary request 4 was late filed and should not be admitted to the appeal proceedings. Apparently auxiliary request 4 was not filed in response to the preliminary opinion of the Board, which did not provide any reason for changing the requests on file. Further, it is evident from comparison with claim 1 of former auxiliary request 4 that in claim 1 of present request 4 various features were omitted. In view of the fact that the amendments in claim 1 of present (and former) request 4 are anyway essentially based on the figures and the description, these omissions give rise to further additional objections due to generalization of the disclosure of EP-A as filed. Therefore, the discussion of claim 1 of present auxiliary request 4 is considerably more complex than that of claim 1 of former auxiliary request 4, which is likewise contrary to procedural economy.

Claim 1 of auxiliary requests 5 and 6 is based on claim 1 of former auxiliary request 5 and 6 (filed at the same time as pending auxiliary request 4), hence

substantially the same applies as for pending auxiliary request 4. In effect, though additional features were introduced according to these requests (as compared to pending auxiliary request 4), nonetheless omissions are still noted in comparison to former auxiliary request 4. Specifically, it is noted for instance that in claim 1 of auxiliary request 5 the feature indicating that a first cam section "is integrated with one face of the worm wheel" and a second cam section "is integrated with the other face of the worm wheel" (hereinafter designated as feature (iii)) is missing and in claim 1 of auxiliary request 6 it has been omitted that said first and second cam sections are integrated with "one face of the worm wheel" and with "the other face of the worm wheel" respectively (hereinafter designated as feature (iv)). Consequently, similarly as for auxiliary request 4, the admission of these requests is not warranted, for additional discussions on further potential infringements of Article 123(2) EPC would be occasioned thereby.

Claim 1 of auxiliary request 7 should not be admitted to the appeal proceedings since it is substantially based on claim 1 of former auxiliary request 4 which had been withdrawn and since it is filed late. In addition objections still apply to the amendments made, for the terms "vertical" and "horizontal" lack clarity, whereas the omission of the term "retention position", as well as of a biasing "coil spring 20" for the lever member (as described in the description of EP-A), infringe Article 123(2) EPC.

The subject-matter of claim 1 of auxiliary request 7 is not inventive in view of E3 and E4. Indeed, the skilled person would combine E3 and E4 in an obvious manner, in order to attain the technical object of providing means

to secure the lock member in both its locked and its unlocked position, as disclosed in E4 (see E4, engagement grooves 5 and 6 for both said positions). Even though both E3 and E4 do not disclose in their main embodiments (as illustrated in the corresponding figures) a "lever member that slides in a linear, horizontal direction orthogonal to a rotation axis of the worm wheel" (see claim 1), nevertheless such a technical measure is explicitly suggested in E3 (see paragraph [0029]) and therefore the skilled person would obviously implement this feature in the device shown in figures 1 to 4 of E3, thus arriving at the claimed subject-matter.

The line of argument against inventive step based on E2 EP-A1-1 955 913) and E6 (DE10356660) should be admitted to the appeal proceedings, as these arguments were already presented during opposition proceedings.

Reasons for the Decision

1. The appeal is admissible.

2. The subject-matter of granted claim 1 (main request), as well as of claim 1 of auxiliary requests 1 and 2, extends beyond the content of the application as filed (Article 100(c) and 123(2) EPC). Feature (i) (i.e. "the lock member (11A) follows the first cam section (9) to be displaced in a direction orthogonal to a rotation axis of the first cam section (9)") is not (explicitly or implicitly) disclosed in the description of EP-A and no support is to be found in the figures justifying the isolation of this sole feature from the further technical context of the illustrated embodiment. Indeed, the skilled person would infer from figures 9 and 10 of EP-A that this feature is inextricably linked

(through the respective movement of the corresponding interacting constructional parts) inter alia to the orientation of the rotation axis of the first and second cam section, to the direction of movement of the sliding lever member and to the orientation and configuration of the cam engagement section 14 that protrudes from the lock member 11A. Thus, omission of these features leads to an unallowable generalization of the content of EP-A. Consequently, the main request and auxiliary requests 1 and 2 must fail, in accordance with Article 123(2) (in conjunction with Article 100(c) EPC).

3. The subject-matter of claim 1 of auxiliary request 3 contravenes the requirements of Article 123(2) EPC. The further inclusion of feature (ii), by which the claimed subject-matter substantially differs from that of claim 1 of auxiliary request 2, does not lead to a subject-matter which (in combination with the other features of the claim) is clearly and unambiguously derivable from EP-A. In effect, as already detailed hereinbefore (see point 2), features (i) and (ii) are at the very least directly linked to the the feature relating to the configuration and orientation of the cam engagement section 14 that protrudes from the lock member 11A. This is essential to produce the respective simultaneous movement of the different claimed constructional parts. Hence, omission of this feature leads to subject-matter extending beyond the content of EP-A.

4. Auxiliary request 4 was not admitted to the appeal proceedings pursuant to Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal). The Board decided to exercise its discretionary power not admitting this late filed request (filed one month before the date set

for oral proceedings), for it could not be considered as having been filed in response to the preliminary opinion of the Board and contravened the principle of procedural economy taking into account its complexity and the late stage of the proceedings. Indeed, in the annex to the summons to the oral proceedings the Board merely detailed the main points of discussion and referred to specific items to be discussed in relation thereto. In addition, as compared to claim 1 of former auxiliary request 4 (filed on 23 December 2013 with the statement of grounds of appeal), in claim 1 of this request a major portion of the formerly included features were deleted or replaced, such as for instance the term "worm wheel" (replaced by "rotating body"), part of the features relating to the first and second "cam sections" (see deleted features "integrated with one face of the worm wheel", "integrated with the other face of the worm wheel"), all the features relating to and including the "drive unit housing" (deleted), part of the features relating to the "lock member" (deleted: "that has a spring-receiving face formed by a notch", "at one side face of the flat rod section (13A), a lock retention engagement groove (16) and an unlock retention engagement groove (16A) which are extending in a direction orthogonal to a moving direction of the lock member (11A), are provided with a predetermined distance therebetween, the shaft locking protrusion (15) provided in the lock member (11A) is protruded out of a through hole (3a) provided in the housing (3) to the outside, and the spring-receiving face (13a) and the cover (2) have therebetween a first coil-spring (17) whose spring force urges the lock member (11A) in a direction so as to press the first cam section (9) in the locking direction;"), and also part of the features relating to the lever member (deleted: "the lever member (12) is composed of a flat plate section (18)

that has one end engaged with the second cam section (10) and that is movably provided in the horizontal direction, and an engagement piece (19) at a right angle from one side of this flat plate section (18);). Thus, the extent of amendments made (in particular deletions of features) being extremely broad, the assessment of possible infringements of Article 123(2) EPC (by omission as well as by replacement of features taken from the description of EP-A) gets considerably more complex as compared with claim 1 of the former auxiliary request 4. Hence, taking into account the need for procedural economy and the current state of the proceedings, auxiliary request 4 was not admitted.

5. For similar reasons as for auxiliary request 4, auxiliary requests 5 and 6 (submitted during oral proceedings) were not admitted to the appeal proceedings pursuant to Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal). Apart from minor amendments, claim 1 of these requests is identical with claim 1 of former auxiliary requests 5 and 6, filed together with auxiliary request 4 (6 May 2016). Thus, claim 1 of auxiliary requests 5 and 6 (being based on former auxiliary requests 5 and 6) was derived from claim 1 of former auxiliary request 4 essentially by deletion (or replacement) of a number of features (as was the case for auxiliary request 4) included in claim 1 of former auxiliary request 4. In particular, it is noted that for instance in claim 1 of auxiliary request 5, features relating to the first and second cam sections were deleted (see the wording "that is integrated with one face of the worm wheel"; "that is integrated with the other face of the worm wheel"), and features relating to the lock member were likewise deleted (see the wording "and that has a spring receiving face formed by a notch"). In claim 1 of

auxiliary request 6, analogously, features relating to the first and second cam sections were deleted (see the wording "that is integrated with one face of the worm wheel"; "that is integrated with the other face of the worm wheel"), as well as features relating to the lock member (see the wording "an engagement piece that is bent with a right angle"). In conclusion, these omissions render the discussion of amendments (based almost exclusively on the description) more complex, giving possibly rise to generalizations (infringing Article 123(2) EPC), and were therefore considered as being not admissible taking into account procedural economy and the current state of the proceedings.

6. The Board decided to admit claim 1 of auxiliary request 7 pursuant to Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal) since it is identical with claim 1 of former auxiliary request 4, filed with the statement of grounds of appeal, except for the amendment replacing the features "rotation axis of the first cam section" and "rotation axis of the second cam section" by the feature "rotation axis of the worm wheel". This amendment was introduced only for reasons of clarity. The Board considered that the Respondent could not be taken by surprise since claim 1 of this request is based on the same paragraphs [0037], [0039], [0040] of EP-A as did claim 1 of auxiliary request 4 and of former requests 5 and 6 (all filed on 6 May 2016). Thus it had to be assumed that the Respondent was likewise prepared to discuss claim 1 of auxiliary request 7.

7. The subject-matter of claim 1 of auxiliary request 7 meets the requirements of Article 123(2) EPC and Article 84 EPC. Claim 1 is based on paragraphs [0037], [0039] and [0040] of EP-A and includes all technical

features disclosed in these paragraphs which are linked together such as to sufficiently clearly define the invention. The Appellant's objections relating to the omission of a "retention position" and of a biasing spring (20) for the "lever member that slides" are not convincing. In effect, a "retention position" is evidently already defined by the feature reading "at the lock position, the engagement piece (19) of the lever member (12) is structured to be engaged with the lock retention engagement groove (16) such that the lock member is blocked from being moved to the unlock position", with a similar feature being included in claim 1 relating to the "unlock position". Further, the inclusion of a biasing coil spring for the "lever member that slides" is not necessary, since the positions of the lever member (engaged or disengaged from the lock member) are already clearly defined in claim 1) and it is obvious that the skilled person could employ any appropriate means to move the lever member between said positions. Similarly, the feature stating that at the unlock position the lock member "is blocked from being moved" cannot represent a generalization of the content of the application as filed (EP-A), given that it is obvious from the technical context of claim 1 that the lock member may only be moved from the locked to the unlocked position, or vice versa. In conclusion, it is considered that the requirements of Article 123(2) EPC are met.

The terms "vertical" and "horizontal" do not lead to lack of clarity (Article 84 EPC) since it ensues from the subject-matter of claim 1 that these terms merely designate and have to be understood as being any two perpendicular directions of movement, as is unambiguously illustrated for instance in figure 13A by arrows a and b and is set out in paragraph [0037] of

EP-A. The movement along perpendicular directions a and b is produced by the lock member 11A and the lever member 12 following respectively the first cam section 9 and the second cam section 10A, these cam sections rotating with the worm wheel driven by the motor. Therefore, this bears no relation with the vertical direction of gravity force and with a corresponding horizontal direction, it being clear that the operation of the claimed device is independent from its orientation in space.

8. The subject-matter of claim 1 is not obvious in view of E3 and E4 (Article 56 EPC). The claimed subject-matter at the very least differs from the device of E3 in that there is provided "a lever member that slides in a linear, horizontal direction orthogonal to a rotation axis of the worm wheel and orthogonal to the direction in which the lock member is displaced, while following the second cam section, so as to be able to be engaged with or disengaged from the lock member", in that the "lever member is composed of a flat plate section (18) that has one end engaged with the second cam section and that is movably provided in a horizontal direction, and an engagement piece (19) that is bent with a right angle from one side of this flat section", and in that "when the lock member is positioned at the lock position, the engagement piece (19) of the lever member (12) is structured to be engaged with the lock retention engagement groove (16) such that the lock member (11A) is blocked from being moved to the unlock position". In effect, both embodiments illustrated in E3 (see figures 1 to 4 (first embodiment) and 5 to 6 (second embodiment)) only disclose a lever member performing a pivoting movement. Even if the possible implementation of "a linear member that slides in a linear, horizontal direction" is in principle suggested

in paragraph [0029] of E3, it is not even outlined or sketched how this should be done in practice. Moreover, it is not to be seen which incentive there would be for the skilled person to modify the device of E3 in this way, for there are no clear and obvious advantages. In addition, in order to arrive at the claimed subject-matter, the skilled person would also need to combine E3 with E4, which discloses a lock retention engagement groove for engaging the lever member in a locked position. However, E4 shows a device entirely similar to that of E3, i.e. again including a lever member performing a pivoting movement and thereby confirming that the known device is specifically conceived and adapted to be operated with such a pivoting lever member (no suggestions of possible use of a lever member with linear movement are made in E4). Thus, combination of E3 and E4 would rather lead the skilled person not to consider any modification of the known pivoting mechanism disclosed in E3 and E4. Finally, it is noted that even on the assumption that the skilled person would combine E3 and E4, this would not result in the claimed subject-matter being obtained. Indeed, the above mentioned features relating to the specific structure of the "lever member that slides in a linear horizontal direction" are not disclosed in E3 and E4. For these reasons it is considered that the subject-matter of claim 1 is not obvious.

9. The line of arguments based on E2 and E6 was not admitted to the appeal proceedings pursuant to Article 13(1) RPBA, given that document E6 had never been mentioned before during appeal proceedings and that these arguments, presented during oral proceedings, would have taken the Appellant by surprise. Therefore the Appellant could not be reasonably expected to deal with these arguments. In addition, document E2 only

represents prior art pursuant to Article 54(3) EPC, for the Respondent has never provided a translation of family member WO-A-2007/063743, which was published before the priority date of the patent in suit. Therefore, the alleged identity of the content of E2 and WO-A-2007/063743 was not proved, a line of argument based on E2 attacking inventive step being thus not permissible (Article 56 EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent in amended form on the basis of the single claim of auxiliary request 7 as filed today and the description columns 1, 2 and 7 to 13 of the patent as granted and columns 3 to 6 as filed today and the figures 1 to 17 of the patent as granted.

The Registrar: The Chairman:

Vottner G. Pricolo

Decision electronically authenticated