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**Datasheet for the decision
of 3 May 2016**

Case Number: T 0882/14 - 3.2.01
Application Number: 09784916.0
Publication Number: 2313297
IPC: B60T7/04, B60T13/26, B60T17/18,
B60T7/08, B60P1/04
Language of the proceedings: EN

Title of invention:
VEHICLE FOR LAYING ROAD SURFACING MATERIAL

Patent Proprietor:
Haldex Brake Products Limited

Opponent:
WABCO GmbH

Headword:

Relevant legal provisions:
EPC Art. 54(1), 54(3), 56, 100(b)

Keyword:
Novelty - main request (no)
Sufficiency of disclosure - auxiliary request (yes)
Inventive step - auxiliary request (yes)

Decisions cited:

G 0003/14

Catchword:



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Boards of Appeal
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Case Number: T 0882/14 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 3 May 2016

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 12 February
2014 rejecting the opposition filed against
European patent No. 2313297 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: W. Marx
 S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The appeal of the opponent is directed against the decision of the opposition division to reject the opposition against European patent No. 2 313 297.

In its decision the opposition division considered that the invention was disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art and that the subject-matter of claim 1 of the patent was new and involved an inventive step, with reference to the following documents:

D1: WO 2010/00412 A2 (under Article 54(3) EPC);
D4: DE 197 37 051 A1;
D8: EP 1 698 535 A2;
D9: EP 0 860 337 A2.

- II. Together with its reply to the appeal dated 4 November 2014, the respondent (patent proprietor) re-filed, *inter alia*, auxiliary request 1 as filed during the oral proceedings before the opposition division.

In response to the summons to oral proceedings, a corrected version 1 of auxiliary request 1 was filed by the respondent with letter dated 8 April 2016.

- III. Oral proceedings took place before the board on 3 May 2016.

- IV. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed, or in the alternative, that the patent be maintained in amended form according to the

sole auxiliary request [labelled auxiliary request 1 (corrected version 1)] filed with the letter of 8 April 2016.

- V. Claim 1 according to the main request corresponds to claim 1 as granted and reads (broken into a feature analysis adopted by the parties):

A vehicle (10) having a braking system comprising

- (a) a braking demand input device (30) which is operable by a driver to generate a braking demand signal indicative of the level of vehicle braking required,
- (b) an electronic braking control unit (32)
- (c) which receives an electrical input signal representative of the level of vehicle braking indicated by the braking demand signal and
- (d) which generates an appropriate brake operation output signal for transmission to at least one brake actuator assembly (34,38),
- (e) transmission of a brake operation output signal to a brake actuator assembly (34,38) causing a brake to operate to apply a braking force to the vehicle (10),
- (f) wherein the vehicle (10) also comprises a switch (40)
- (g) which is connected to the electronic braking control unit (32) and
- (h) which is operable to transmit a signal to the electronic braking control unit which causes the electronic braking control unit to transmit a brake operation output signal to the brake actuator assembly (34,38),
- (i) the brake operation signal causing the brake actuator assembly (34,38) to apply a low level braking force to the vehicle (10),

characterised in that

- (j) the braking system is further configured such that during application of the low level braking force, operation of the braking demand input device (30) causes the electronic braking control unit (32) to modify the brake operation signal so as to increase the low level braking force by a predetermined amount.

Claim 1 according to the auxiliary request was amended, in comparison to granted claim 1, by addition of the following feature to feature (j):

"..., the braking demand input device (30) being a brake pedal which is mounted in a driver's cab of the vehicle."

VI. The appellant essentially argued as follows:

D1 showed all the features of claim 1 as granted. The wording of claim 1 did not require the braking demand input device to be one single unit with only one operating option. D1 disclosed an electronic braking control unit, integrated in the modulator, sensing a braking demand and controlling a brake cylinder pressure. Moreover, D1 showed a switch for activating a braking function of a road-laying machine, which applied a low level braking force to the vehicle. In one embodiment (see pages 3 and 4), an operating panel comprising switches was provided, allowing the operator to input a brake pressure manually via number keys and/or to increase a brake pressure controlled by the control unit sequentially using arrow keys, i.e. by a predetermined amount.

The invention was not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art:

- According to feature (d), an "appropriate" brake operation output signal was generated, without specifying what this brake operation output signal was suitable for. Due to the lack of any reference, it was left open "for what" or "in relation to what" the signal was "appropriate" and which signal (of input device or switch) was meant. Therefore, the skilled person would not be able to design the braking control unit appropriately. The ground for opposition under Article 100(b) EPC concerned the teaching according to claim 1 of the contested patent and its disclosure.
- Feature (h) recited - with indefinite article - "a brake operation output signal" in response to the operation of the switch, so it was not the same brake operation output signal as previously defined in feature (d), generated in response to the braking demand input device. Feature (i) now recited - with definite article - for the first time "the brake operation signal", which could either be a third signal or one of the signals previously specified in features (d), (h). According to feature (i) transmission of the brake operation signal caused application of a braking force, so the wording of claim 1 included the brake operation output signals according to features (d) and (h) being identical and according to feature (i) any brake operation output signal being responsible for a low level braking force. However, in such case no emergency braking as described in paragraph [0021] was possible any more. Due to this contradiction, the teaching of claim 1 was not sufficiently disclosed to be carried out.

- As regards feature (j) and modification of "the brake operation signal", the skilled person would not know which signal (according to feature (d) or (h) or both or any other signal) should be modified. No teaching in this respect was to be found in the contested patent, so the skilled person would not know which embodiment would fall under the subject-matter of claim 1.
- No interpretation of the relative term "low level braking force" (dependent e.g. on the vehicle and its mass) was to be found in the description of the contested patent.
- The object of the invention was to maintain the speed of the vehicle at a constant level. This problem was not solved by the teaching of the claimed invention and its disclosure, which only showed how to increase a low level braking force. When running up a slope, or with head wind, it was necessary to decrease the low level braking force. Moreover, the thrust on the vehicle due to the opposite reaction force of asphalt forced onto the road surface decreased when the load of the vehicle was reduced, so the low level braking force had to be decreased. However, no appropriate means for achieving this effect was disclosed.

In particular, sufficiency of disclosure required that the invention could be carried out over the whole range claimed and that the skilled person would be able to obtain all embodiments falling within the ambit of the claims.

The subject-matter of claim 1 according to the auxiliary request did not involve an inventive step. Starting from document D8, which disclosed features (a) to (i) according to the preamble of claim 1, as accepted by the respondent, the problem to be solved

could be regarded as providing a vehicle with improved comfort of operating the braking system which maintained a constant speed (not necessarily relating to road finishing). The skilled person would find document D9 and, since D9 was concerned with the same problem, would be prompted to combine D8 with D9. D9 showed a service brake and a sustained action brake which were operated via the brake pedal. The sustained action brake provided a low level braking force for maintaining a constant vehicle speed when running down a slope, which could be increased in steps by operating the brake pedal, as required by the characterising feature, so the combination of D8 and D9 led in an obvious manner to the claimed subject-matter. Claim 1 related to a stepwise increase in the braking force by operating the brake pedal, and it was irrelevant whether the vehicle comprised one or two braking systems. Moreover, the subject-matter of claim 1 was not limited to one single braking system.

Similar reasoning applied to the combination of D8 with D4. D4 disclosed that an existing deceleration could be increased by providing an additional deceleration (i.e. an additional braking force) - in particular when other systems for controlling vehicle speed (such as retarders) reached their limits - in response to an operation of the brake pedal. The amount of additional braking force was determined by the number of added consuming circuits (not primarily by the filling status of the reservoirs), specifying the predetermined amount of increase in the braking force. The number of input devices was not specified in claim 1 and was therefore irrelevant.

Starting from document D4 as the closest prior art, all the features of claim 1 except for feature (i) were

known. D4 disclosed a brake pedal as a braking demand input device and also a switching function (i.e. also a switch) in order to provide an additional deceleration. The low level braking force was provided by switching on the compressor, i.e. an additional consumer, and the increase by a predetermined amount was realised by the number of consuming circuits. The problem to be solved was therefore to provide an alternative mechanism for applying a low level braking force. An obvious solution was to be found in D8, showing that a low level braking force was applied by accepting a driver braking demand via the brake pedal in order to prevent a road finisher departing from the vehicle.

VII. The arguments of the respondent may be summarised as follows:

The operating panel in D1 had two sets of keys, number keys and arrow keys, that were on the same panel, but this did not make them part of a single device. The separation of functions in D1 made them two different devices, whereas the essence of the invention was that the same device had two functions. An arrow key on an operating panel modifying the braking level in D1 did not correspond to the braking demand input device defined in claim 1.

As regards sufficiency of disclosure, the skilled person had a certain level of knowledge of braking systems relating to a road finisher brake, as described in the prior art in the contested patent, and would have no difficulty in implementing the braking system described. The pre-characterising portion of claim 1 was known e.g. from D8, and it was sufficiently disclosed in the description how the invention worked. The appellant's objections mainly related to clarity

arguments. A signal (in contrast to a device) was a transient thing, so different signals generated at different points in time were claimed according to features (d) and (h), as indicated by using the indefinite article "a". The signal according to feature (h) was transmitted in response to operation of a switch, which according to feature (i) caused the application of a low level braking force. As derivable from paragraph [0018] of the patent, a clear link existed between features (h) and (i), whereas feature (d) related to a driver demanded braking level. The skilled person would have no difficulties in implementing the modification of the brake operation signal according to feature (j). Emergency braking did not relate to the claimed invention. The low level braking force was provided to counteract the reaction force of the road-laying machine, the magnitude of which varied dependent on the vehicle, and the skilled person would understand how to realise this feature. The invention also did not require reducing a low level braking force, and a possibly imprecise formulation of the problem (in light of the prior art) did not amount to an insufficient disclosure.

D8 did not disclose the characterising feature (j). The braking systems of D8 and D9 were quite different from each other. D9 disclosed a braking system for a truck in which the brake pedal first caused an engine or transmission retarder to act as a "sustained action brake", and then, later in the braking event, caused the normal pneumatic brake to act, thereby blending the retarder (which previously had a separate control) with the main brakes, i.e. blending two different systems for braking. The object of the invention disclosed in D9 ("to reduce the wear on a motor vehicle brake without introducing additional technical complications,

as well as to increase handling comfort and safety in traffic") was different from the problem solved by the claimed invention. The person skilled in the art would not look at D9, since D9 showed one input device and the use of two different braking systems (e.g. an extra retarder), whereas D8 had two input devices for one single braking system. The system disclosed in D9 had no additional switch, and it was not obvious to dispense with the essential feature of a sustained action brake in D9 and simply pick isolated features, as alleged by the appellant.

As regards the combination of D8 with D4, D4 also related to different braking systems. Adding consuming units as taught by D4 did not result in an increase of the braking force by a predetermined amount, as required by feature (j), because the work done by the compressor varied depending on the filling status of the air reservoirs. Moreover, switching of the consuming units was done when the retarder had achieved its maximum braking power, so what was needed was only some extra - not necessarily precise - amount of braking force. The claimed invention was limited to two different operating members acting on the same brake actuator, whereas D4 dealt with using a single operating element to operate two different sorts of braking device. Therefore, no obvious development of the braking system of D8 was derivable from D4.

Starting from D4 as the closest prior art, apart from not disclosing feature (i), D4 also did not disclose a switch as required in the claimed invention, connected to the electronic control unit and causing a low level braking force. When looking to improve the system known from D4, the skilled person would not have recourse to

D8, a system which had no compressor and which only applied a low level braking force.

Reasons for the Decision

Claim 1 as granted

1. *Novelty (Article 100(a) EPC, Article 54(3) EPC)*

1.1 Document D1 constitutes state of the art under Article 54(3) EPC and is prejudicial to the novelty of the subject-matter of claim 1.

1.2 D1 shows a vehicle having a braking system (Figure 1, description page 9) comprising a braking demand input device ("Bedienelement 2") as further specified in two embodiments. In the first embodiment, the input device is realised by an operating panel ("Bedientafel", see description page 3, second paragraph, to page 4, fifth paragraph; also defined in claims 2 to 9), whereas the second embodiment relates to a hand brake handle for inputting a driver braking demand (description page 4, last paragraph onwards; also claims 10 to 15).

As regards the embodiment with an operating panel, the opposition division held that the amount of extra braking force was not predetermined but rather set by the operator in accordance with circumstances, and that the operating panel did not correspond to the braking demand input device but to a further input device. The board does not share this view.

1.3 The vehicle according to D1 (page 1, first paragraph; also claim 1) comprises an electronic braking control

unit (integrated in the modulator 1 in Figure 1) and a switch implicitly connected to the electronic braking control unit, in order to activate a so-called "Fertiger-Bremsfunktion", which causes the brake actuator assembly to apply a low level braking force, i.e. corresponding to the contested patent in which the switch is defined by the same function. Therefore, features (f) to (i) are known from D1. According to a first embodiment in D1 (see pages 3, 4; also claims 2 to 9), an operating panel allows the driver to enter - via number keys - a desired braking pressure (i.e. a driver's braking demand deviating from the standard brake pressure which would be otherwise applied), which is received by the electronic braking control unit controlling the brake actuator assembly, as required by features (a) to (e). The operating panel also comprises arrow keys which allow the driver to increase sequentially the braking pressure controlled by the electronic control unit as described above, i.e. to increase the low level braking force. The term "sequentially" used in combination with the arrow keys implies that the brake pressure might be increased "in steps", i.e. by a predetermined amount as required by feature (j).

- 1.4 The board therefore finds that the operating panel in D1 represents a braking demand input device within the meaning of claim 1. Claim 1 does not contain any limitation to only one single operating option, since it specifies a braking demand input device which is at the same time operable by a driver to generate a braking demand signal and also to modify the brake operation signal so as to increase the low level braking force by a predetermined amount. Both the number and arrow keys in D1 formed part of the same device, so the board does not agree with the respondent

that separation of functions in D1 made the two sets of keys two different devices. Moreover, due to the braking demand input device of feature (a) and the associated function according to features (b) to (e) remaining rather unspecific, the wording of granted claim 1 does not rule out that the braking demand input device performs the same function as specified later by features (f) to (i), i.e. the "Fertiger-Bremsfunktion" providing a low level braking force, and also the function of modifying the low level braking force as required by feature (j).

Auxiliary request

2. Admissibility

Independent claim 1 of the auxiliary request results from a combination of claims 1 and 2 as granted, which is not open to an objection under Article 84 EPC, and no ground for opposition under Article 100(c) EPC was raised against the granted patent. Moreover, an adapted version of the description was filed during the oral proceedings. The board therefore considers the auxiliary request admissible. This was, in fact, not disputed.

3. Sufficiency of disclosure

The appellant raised several objections under Article 100(b) EPC against claim 1 as granted, which were maintained with regard to claim 1 according to the auxiliary request.

- 3.1 A first objection relates to feature (d) ("which generates an appropriate brake operation output signal..."), in particular with regard to the term

"appropriate". According to paragraph [0016] of the patent specification (page 5 of the application as filed), the braking demand signal is transmitted to the ECUs of the electronic brake system "which use the information stored in their memory to generate an appropriate electrical brake operation output signal", i.e. the skilled reader would understand that the braking demand signal represents an input to the ECUs which generate, according to an algorithm, a command value or output signal for actuating the brakes. The term "appropriate" merely expresses that the brake operation output depends on or takes into account the braking demand signal, which corresponds to how conventional, prior art, electronic braking systems operate. Accordingly, it is not left open "in relation to what" the signal is "appropriate", as alleged by the appellant. Moreover, feature (d) also recites "for what" the signal is "appropriate" or "suitable for", namely "for transmission to at least one brake actuator".

3.2 In the board's judgment, the use of the indefinite article for the "brake operation output signal" in features (d) and (h) is justified already by the fact that both signals are generated in response to different inputs to the electronic braking control unit, i.e. either in response to the brake pedal forming the braking demand input device (feature (a) viewed together with the characterising feature) or in response to operation of the switch (feature (f)). Even assuming that the brake operation output signal was transmitted via a single output port of the control unit, the board agrees with the respondent that "signals" are - in contrast to a device - of transient character varying in time, so that the indefinite article "a" is correctly used in features (d) and (h)

to denote the transmission of two different signals or information values to the brake actuator assembly.

As regards the term "the brake operation signal" in feature (i), which deviates from the term "a brake operation output signal" mentioned previously, and use of the definite article, the board cannot see that the skilled person would not be able to implement the invention on the basis of the disclosure of the specification as a whole. Paragraph [0018] of the patent specification describes that the operation of the switch causes a brake operation output signal to apply a low level braking force, so a clear link exists between features (h) and (i). Therefore, on a reasonable interpretation of claim 1 in light of the disclosure of the specification, it can be excluded that "the brake operation signal" of feature (i) might represent a third signal different from the signals defined in features (d) and (h). Moreover, as already set out above, the brake operation output signals according to features (d) and (h) are not identical, transmitted either in response to operation of the brake pedal or operation of the switch. Therefore, the board cannot identify any reason to assume that no emergency braking as described in paragraph [0021] would be possible, as alleged by the appellant, in particular because operation of the brake pedal still allows the driver to override application of a low level braking force.

An objection to omission of the term "output" in the term "the brake operation signal" of feature (i) amounts to a clarity objection to a granted feature, which is not admissible (cf. decision G 3/14).

3.3 Contrary to the assertion of the appellant, it is clear from the patent specification as a whole, and also from the wording of feature (j) itself, that it must be possible to modify the low level braking force. As set out above, the low level braking force according to feature (i) is disclosed as being linked to the brake operation output signal of feature (h).

3.4 The term "low level" in claim 1 represents a relative term characterising the braking force which was already present in claim 1 as granted, so an objection with regard to clarity is not admissible (G 3/14).

Moreover, on the basis of the disclosure in the patent specification (see paragraph [0004]), the skilled person would know how to carry out the invention. The low level braking force is provided to counteract the reaction force of the road-laying machine, i.e. to prevent speeding up of the vehicle when the road-laying machine is in operation. Such definition of the low level braking force by its result to be achieved takes into account that the actual value of the low level braking force has to be determined dependent on the type of vehicle and its mass. The board does not see any reason to doubt that the claimed invention is sufficiently disclosed to enable a skilled person to put it into practice without undue burden or experimentation.

3.5 The appellant alleges that the objective to be achieved by the invention to maintain vehicle speed at a constant level would not be reached by increasing the low level braking force under certain driving conditions, in particular when running up a slope, under head wind conditions, or when the vehicle load decreased during the asphalt-laying operation, where

the braking force had to be reduced to maintain a constant vehicle speed. However, since the claimed invention is only concerned with the problem of speeding up (see paragraph [0004] of the patent specification), the board finds that driving situations which would lead to a vehicle slowing down, i.e. relating to a different problem, are irrelevant when it comes to the assessment of sufficiency of disclosure.

- 3.6 Since the wording of claim 1 does not recite any parameters or ranges, the board finds that there is no issue with carrying out the invention over the whole range claimed, as alleged by the appellant. The skilled person has at least one embodiment available in the description of the patent specification, and the board has no doubt that on this basis the subject-matter of claim 1 is disclosed in a manner sufficiently clear and complete for it to be carried out. Moreover, the invention is not simply specified by the problem to be solved, i.e. maintaining the vehicle speed at a constant level. The mere fact that the invention as defined by the wording of claim 1 might not work satisfactorily under all driving conditions, as discussed above, is not a matter of sufficiency of disclosure. It simply means that further improvements of the claimed invention might be conceivable.

4. *Inventive step*

- 4.1 Starting from document D8 as the closest prior art, the features of the pre-characterising portion of claim 1 are known from D8. This was not disputed.
- 4.1.1 The problem to be solved can be regarded as providing a vehicle with improved comfort of operating the braking system in order to maintain a constant vehicle speed.

Even if the board were to follow the appellant's argument that the skilled person would have considered D9 or D4, since these documents also mention the problem of improving the operating comfort, it would not be convinced that starting from D8 the skilled person would have arrived at the claimed subject-matter in an obvious manner.

4.1.2 As a matter of fact, both D9 and D4 show a service brake and a separate sustained action brake, e.g. in form of a retarder or an engine brake, which are controlled - in common - by operating the brake pedal, whereas D8 shows that the service brake, controlled via the brake pedal, might be used to implement the function of a road finisher brake, which requires a separate switch to be operated in advance.

4.1.3 According to D9, the sustained action brake is activated by slightly tipping the brake pedal, and a retarder braking force can be increased by a predetermined amount by operating the brake pedal for a longer time. The board has serious doubts whether the skilled person would combine this teaching with the road finisher brake disclosed in D8, which does not rely on a separate retarder but on the vehicle's service brake.

Even assuming that the skilled person were to have taken the teaching of D9 into account, the board finds that the skilled person would then have applied the control of a low level braking force as taught by D9, i.e. the brake pedal would be used for activating and also for modifying the low level braking force. However, this would result in a braking system which does not require an additional switch to initiate transmission of a brake operation output signal to the

brake actuator assembly, as required by features (f) to (h) of claim 1. Irrespective of whether the skilled person would also dispense with the additional sustained action brake used in D9 for providing a low level braking force, the skilled person therefore would not arrive at the subject-matter of claim 1 according to the auxiliary request, which clearly distinguishes between two input devices, namely a brake pedal (feature (a) and characterising feature) and a switch (feature (f)).

4.1.4 For the same reasons as set out above, a combination of D8 with D4 would not lead to the subject-matter of claim 1, and it can be left open whether D4 discloses that a low level braking force is increased by "a predetermined amount". According to D4, an additional deceleration - determined by the number of consumer circuits ("Verbraucherkreis") to be added - could also be provided by tipping the brake pedal, without requiring a separate switch which causes the electronic braking control unit to transmit a brake operation output signal to the brake actuator assembly.

4.1.5 The board therefore concludes that, even assuming that the person skilled in the art would consider taking into account the teaching of D9 or D4 when starting from D8 as the closest prior art, he would not arrive in an obvious manner at the subject-matter according to claim 1.

4.2 Starting from document D4 as the closest prior art, the parties agreed that D4 does not show a low level braking force applied by the brake actuator assembly as specified in feature (i). Moreover, as argued by the respondent, D4 does not disclose a switch as required by features (f) to (h), i.e. a switch which is operable

to transmit a signal to the electronic braking control unit which causes the electronic braking control unit to transmit a brake operation signal to the brake actuator assembly.

Since the low level braking force in D4 is not provided by the brake actuator assembly, but by switching on the compressor, i.e. an additional consumer circuit, the problem to be solved by the distinguishing feature is considered to be to provide an alternative mechanism for applying a low level braking force.

D8 shows a low level braking force applied by the service brake in order to prevent a road finisher from departing from the vehicle. However, the board is not convinced that the skilled person would be tempted to apply this very specific operation of the service brakes with low braking forces, which is only permitted for low speed conditions and which has to be authorised by operating a switch, to a system controlling and limiting vehicle speed as known from D4. The speed limitation in D4 is not restricted to low vehicle speeds, so it cannot be guaranteed that the service brake could be operated with minimal wear of the friction linings.

Therefore, the board concludes that the subject-matter of claim 1 according to the auxiliary request is also inventive over a combination of D4 with D8.

- 4.3 Dependent claims 2 to 5 concern particular embodiments of claim 1 and are therefore likewise allowable.
5. The board comes to the conclusion that the claims according to the sole auxiliary request are found to meet the criteria of patentability. Moreover, the

description has been brought into conformity with the amended claims.

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 as amended in the following version:
 - Claims 1 to 5 according to the sole auxiliary request [labelled auxiliary request 1 (corrected version 1)] filed with letter dated 8 April 2016;
 - Description: columns 1 to 5 as filed during the oral proceedings;
 - Figures 1 to 3 of the patent specification.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated