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**Datasheet for the decision
of 22 March 2017**

Case Number: T 0258/15 - 3.2.08

Application Number: 99121669.8

Publication Number: 0999325

IPC: E05B7/00, E05B17/22, E05B47/00,
E05B65/20

Language of the proceedings: EN

Title of invention:
Vehicle door handle

Patent Proprietor:
U-Shin Italia S.p.A.

Opponent:
Huf Hülsbeck & Fürst GmbH & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 123(2), 54, 56
EPC R. 103(1)(a)
RPBA Art. 13(1)

Keyword:

Amendments

Novelty

Inventive step

Reimbursement of appeal fee - (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 0258/15 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 22 March 2017

Appellant: Huf Hülsbeck & Fürst GmbH & Co. KG
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Respondent: U-Shin Italia S.p.A.
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 12 December 2014 rejecting the opposition filed against European patent No. 0999325 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairwoman P. Acton
Members: M. Alvazzi Delfrate
I. Beckedorf

Summary of Facts and Submissions

- I. By its decision posted on 12 December 2014 the opposition division rejected the opposition against European patent No. 0 999 325.
- II. The appellant (opponent) lodged an appeal against this decision in the prescribed form and within the prescribed time limits.
- III. Oral proceedings before the Board were held on 22 March 2017. For further details reference is made to the minutes of the oral proceedings.
- IV. At the end of the oral proceedings the requests were the following:

The appellant requested that the decision under appeal be set aside and that the patent be revoked. It also requested reimbursement of the appeal fee.

The respondent (patent proprietor) requested that the appeal be dismissed or that, in setting aside the decision under appeal, the patent be maintained in amended form on the basis of the auxiliary request filed during the oral proceedings.

- V. Claim 1 of the main request reads as follows:

"A handle (1) for controlling a lock (2) of a vehicle door (3), comprising:

■ a connecting structure (4) for connection to a supporting body of the vehicle;

■ a movable control member (5) connected to said connecting structure (4) and activated, in use, by the hand of a user;

■ first control means (7, 10) for setting said lock (2) to a safety-off mode; and

■ detecting means (12) for reading a user identification code and emitting a consent signal; said first control means (7, 10) being connected to said detecting means (12) to set said lock (2) to said safety-off mode upon a consent signal being received from said detecting means (12) and said first control means (7, 10) comprising a detecting device (7) for detecting the presence of the user's hand between the connecting structure (4) and the movable control member (5), characterized by also comprising second control means (18, 22) in parallel with said first control means (7, 10), said second control means (18, 22) comprising switch means (18) activated by the movable control member (5) to set said lock to the safety-off mode in the event of fault on the detecting device (7)."

Claim 1 of the auxiliary request reads as follows (features differing from those of the main request underlined):

"A handle (1) for controlling a lock (2) of a vehicle door (3), comprising:

- a connecting structure (4) for connection to a supporting body of the vehicle;

- a movable control member (5) connected to said connecting structure (4) and activated, in use, by the hand of a user;
- first control means (7, 10) for setting said lock (2) to a safety-off mode; and
- detecting means (12) for reading a user identification code and emitting a consent signal;

said first control means (7, 10) being connected to said detecting means (12) to set said lock (2) to said safety-off mode upon a consent signal being received from said detecting means (12) and said first control means (7, 10) comprising a detecting device (7) for detecting the presence of the user's hand between the connecting structure (4) and the movable control member (5), and also comprising second control means (18, 22) activated by said detecting means (12) to set said lock (2) to a safety-off mode, said second control means (18; 22) being in parallel with said first control means (7, 10), said second control means (18, 22) comprising switch means (18) activated by the movable control member (5) to set said lock to the safety-off mode in the event of fault on the detecting device (7), and a mechanical transmission (22) interposed between the movable control member (5) and said switch means (18) to activate said switch means (18)."

VI. The following documents played a role in the present decision:

- D1: EP -A- 0 831 194;
- D2: US -A- 5,682,135;
- D4: DE -U- 296 23 461;
- D6: WO -A- 97/41322;

D7: JP -A- 9-60368 (and translations D7a and D7c).

VII. The arguments of the appellant can be summarised as follows:

Main request - Article 100(c) EPC

The second control means were disclosed in the application as originally filed as being "activated by the detecting means" to set the lock to a safety-off mode. This was the case both for claim 5 and for the description. However, this feature was omitted in granted claim 1. There was no basis for this omission. Thus, the patent as granted comprised subject-matter which extended beyond the content of the application as filed.

Auxiliary request - admission into the proceedings

Auxiliary request 6, which corresponded to the present auxiliary request, had been filed late for no reason and was not *prima facie* allowable. Hence, the auxiliary request should not be admitted into the proceedings.

Auxiliary request - Article 123(2) EPC

Although each single feature of claim 1 of the auxiliary request could be found in the application as originally filed, their combination as in present claim 1 was not originally disclosed. The feature that the first control means comprised a detecting device for detecting the presence of the user's hand between the connecting structure and the movable control member was found only in a specific embodiment of the description, disclosed in paragraphs [0012] and [0016] and in Figure 1. In said embodiment the first and

second control means had a control unit 10 in common. Thus, the term "parallel" used in claim 6 and paragraph [0012] had to be understood in the sense that the first and second control means were functionally parallel but not constructionally parallel. Since the claim failed to stipulate the presence of the common control unit, claim 1 comprised an unallowable intermediate generalisation, contrary to Article 123(2) EPC.

Auxiliary request - novelty

D7 disclosed a handle in accordance with claim 1. The handle was provided with first control means comprising a detecting device, represented by diodes 31 and 32, for detecting the presence of the user's hand between the connecting structure and the movable control member.

According to paragraph [0009], in one possible configuration pressure-sensitive electroconductive rubbers 34, 35 were attached to the movable member, and the pressure of the hand was detected. The rubbers were to be used not only as a replacement for the diodes but also, according to the more precise translation of D7 submitted at the oral proceedings, "in addition to them". Thus, D7 clearly disclosed that the rubbers and the diodes could be arranged in parallel, so that the rubbers could set the lock to the safety-off mode in the event of fault in the diodes. This was clear also from paragraph [0008], according to which "access of the door handle was determined by testing whether or not a hand was approaching or touching the door handle".

Moreover, since the pressure-sensitive electro-conductive rubbers had to be compressed against the handle to switch them, they were "activated by the movable control member", represented by the handle. Finally, the layer of the rubbers in contact with the handle could be regarded as a mechanical transmission interposed between the movable control member and the switch means represented by the rubbers to activate said switch means.

Thus, the subject-matter of claim 1 lacked novelty in view of D7.

Auxiliary request - inventive step

In any event, the subject-matter of claim 1 lacked inventive step starting from D1 or D7.

D1 disclosed a handle for controlling a lock of a vehicle door. The movement of blade 22 together with flap (volet) 86 activated switch 42, which in turn activated antenna 40, acting as detecting means for reading a user identification code and emitting a consent signal. The handle could further comprise another switch, called "second commutateur", in parallel with switch 42 and also capable, after being switched on by blade 22, of activating the antenna. This further switch could be seen as part of the first control means, while switch 42, activated by blade 22 via a mechanical transmission, could be seen as part of the second control means in accordance with claim 1.

The claimed handle differed from that of D1 only by the use, instead of a switch activated by the movement of the handle, of a detecting device for detecting the

presence of the user's hand between the connecting structure and the movable control member.

The problem solved by the claimed invention by means of this feature was the provision of a system whose response was faster, or of an alternative to the system of D1.

Detecting devices for detecting the presence of the user's hand between a connecting structure and a movable control member were well known in the art, as shown by D7, D2, D4 and D6. Since it was clear that said known devices were faster than the mechanically activated device of D1, it was obvious to use one of them in D1, arriving at the claimed subject-matter. Thus, the claimed handle did not involve an inventive step starting from D1.

Nor did the claimed invention involve an inventive step starting from D7, because the use of parallel control means and of mechanically activated control means were known from D1.

Request for reimbursement of the appeal fee

A substantial procedural violation had occurred because the decision in respect of novelty was based on grounds on which there had been no opportunity to comment, as evidenced by the fact that the distinguishing features according to the minutes did not correspond to the distinguishing features according to the decision. Moreover, the written decision had been delivered thirteen months after being announced at the oral proceedings. Hence, the appeal fee should be refunded.

VIII. The arguments of the respondent can be summarised as follows:

Main request - Article 100(c) EPC

Second control means comprising a switch were disclosed in the application as originally filed. Although this was not explicitly mentioned in the claim, it was clear to the person skilled in the art that the second control means had to be activated by the detecting means, otherwise the handle would be able to work but would have no commercial value. Thus, there was no need to recite the feature relating to the detecting means explicitly in claim 1, which complied with the requirements of Article 123(2) EPC.

Auxiliary request - admission into the proceedings

The auxiliary request corresponded to auxiliary request 6, filed with letter of 22 February 2017 in response to the objections of the appellant and the observations of the Board in its communication. Moreover, it was formally *prima facie* allowable. Thus, it should be admitted into the proceedings.

Auxiliary request - Article 123(2) EPC

Claim 1 of the auxiliary request was based on the original claims and the description. The feature taken from the description, relating to the detecting device, was unrelated to the common control unit. Thus, there was no need to also incorporate said common control unit into the claim. As a consequence, the auxiliary request satisfied the requirements of Article 123(2) EPC.

Auxiliary request - novelty

D7 did not clearly and unambiguously disclose that the rubbers and the diodes were arranged in parallel, since it did not specify whether a series or a parallel arrangement was chosen. As a consequence, it also did not disclose that the second control means comprising the rubbers were to set the lock to the safety-off mode in the event of fault in the detecting device represented by the diodes.

Moreover, the rubbers of D7 were merely carried by the handle, so that they were not "activated by the movable control member" as required for the switch of claim 1, and no mechanical transmission was interposed between them and the movable member.

Therefore, the subject-matter of claim 1 was novel.

Auxiliary request - inventive step

Starting from D1 it was not obvious to arrive at the claimed subject-matter. The person skilled in the art would not have combined its teaching with that of documents relating to non-mechanical detecting devices, like D7, D2, D4 and D6. Moreover, even if he had considered the teaching of these documents, he would not have chosen a mixed mechanical/non-mechanical configuration, as in the claim, but at most a completely non-mechanical arrangement as shown by D7.

Nor was there an obvious teaching to the claimed invention starting from D7. Starting from this document, the person skilled in the art would have had no reason to combine the completely different concepts represented by D7 and D1.

Thus, the subject-matter of claim 1 involved an inventive step.

Request for reimbursement of the appeal fee

From the minutes of the oral proceedings before the opposition division, which had been attended by a different representative from the present one, there was no evidence of a substantial procedural violation.

Reasons for the Decision

1. Main request - Article 100(c) EPC

According to granted claim 1 the second control means comprise switch means activated by the movable control member to set the lock to the safety-off mode in the event of fault in the detecting device.

The application as originally filed discloses means comprising a switch activated by turning the handle (paragraphs [0013] and [0017]), which means can be considered to represent second control means. The "second control means" as a more general term are introduced in original claim 5, which, however, stipulates that they are activated by the detecting means to set the lock to a safety-off mode. This feature, which is not mentioned in present claim 1, is also present in the embodiment to which paragraphs

[0013] and [0017] relate (see paragraphs [0011] to [0012] and [0016]).

No basis is found in the application as originally filed for omitting the feature relating to the activation by the detecting means because, in the described handle, a consent signal resulting from the user's identification is always necessary in order to set the lock to the safety-off mode.

The respondent argued that the person skilled in the art would read said feature as implicit in the claim. However, as acknowledged by the respondent itself, a handle without said feature would be able to work, albeit possibly lacking commercial value. Such a handle would thus make technical sense and would be considered by the person skilled in the art as part of the claim. Therefore, the respondent's argument is not convincing.

Hence, the patent as granted comprises subject-matter which extends beyond the content of the application as filed (Articles 100(c) and 123(2) EPC).

2. Auxiliary request - admission into the proceedings

The auxiliary request corresponds, save for the use of the one-part form instead of the two-part form in claim 1, to auxiliary request 6 filed with letter of 22 February 2017.

Auxiliary request 6 departed from the granted claims by the addition in claim 1 of two features, whose omission had been objected to by the appellant under Article 123(2) EPC and addressed by the Board in the communication annexed to the summons. Hence, its submission is considered as a reaction to the course of

the proceedings which could not have taken the appellant by surprise. Moreover, it does not give rise *prima facie* to any issues additional to those already raised for the main request.

Under these circumstances the Board decided to admit the auxiliary request into the proceedings.

3. Auxiliary request - Article 123(2) EPC

It is undisputed that the features of claim 1 of the auxiliary request are all to be found in the application as originally filed. In particular:

- Claims 5, 6 and 8 disclose second control means activated by the detecting means to set the lock to a safety-off mode, said second control means being in parallel with the first control means and comprising switch means activated by the movable control member to set said lock to the safety-off mode in the event of fault in the detecting device, and a mechanical transmission interposed between the movable control member and said switch means to activate said switch means.

- Paragraph [0010] discloses that the first control means comprise a detecting device for detecting the presence of the user's hand between the connecting structure and the movable control member.

It is true that paragraph [0010] refers to a preferred embodiment in which the first and second control means have a control unit 10 in common. However, there is no link between the fact that the first control means comprise a detecting device for detecting the presence of the user's hand between the connecting structure and

the movable control member and the arrangement of the two control means with a common control unit rather than with separate control units. Hence, the omission of the common control unit in claim 1 does not represent an unallowable intermediate generalisation. Therefore, claim 1 complies with the requirements of Article 123(2) EPC.

4. Auxiliary request - novelty

4.1 D7 (reference is made to the translation D7c) discloses a handle for controlling a lock (2) of a vehicle door (see Figure 3 and paragraph [0001]). The handle comprises a connecting structure for connection to a supporting body of the vehicle and a movable control member ("Door Handle" in Figure 3) connected to said connecting structure and activated, in use, by the hand of a user. The handle further comprises first control means for setting said lock to a safety-off mode (see claim 1) and detecting means (CPU 11, transceiver 12, antenna 13) for reading a user identification code and emitting a consent signal, said first control means being connected to said detecting means to set said lock to said safety-off mode when a consent signal is received from said detecting means, and said first control means comprising a detecting device (diodes 31, 32) for detecting the presence of the user's hand between the connecting structure and the movable control member.

According to paragraph [0009], another possible configuration is one in which pressure-sensitive electroconductive rubbers 34, 35 are attached to the handle, as a replacement for or supplement to the diodes, and the pressure of the hand is detected by said rubbers (see also Figure 3). Accordingly, in the

alternative wherein the rubbers are a supplement to the diodes, the handle further comprises switch means (represented by said rubbers) situated on the movable control member.

- 4.2 Although pressure-sensitive electroconductive rubbers are carried by the handle, against which they are compressed to switch them, there is no action of the the movable control member represented by the handle involved in said switching. Hence, the switch means are not "activated by the movable control member" as required for the switch of claim 1.
- 4.3 The appellant argued that the layer of the rubbers in contact with the handle could be regarded as a mechanical transmission interposed between the movable control member (the handle) and the switch means represented by the rubbers to activate said switch means. However, said layer is merely a part of the rubbers which has no other function than to support the remaining part. Hence, said layer would not be considered by the person skilled in the art to be a mechanical transmission, let alone a mechanical transmission interposed between the movable control member and the switch means.
- 4.4 Lastly, according to paragraph [0009] of D7c the pressure-sensitive rubbers are used "as a replacement for or a supplement to" the optical detection device. The wording "a supplement to", like the wording "in addition to" used in the alternative translation of an extract from D7 submitted by the appellant at the oral proceedings, does not specify whether the signal that the door is accessed is generated by the rubbers alone or by the rubbers together with the optical detection device. In other words, it does not specify whether the

rubbers and the optical detection device are in parallel or in series. Nor is this uncertainty resolved in the preceding paragraph [0008], according to which access of the door handle is determined by testing whether or not a hand is approaching or touching the door handle, since these conditions can be detected by using the optical detection device or, as "a replacement for" it (as in the first possibility of paragraph [0009]), the rubbers. Thus, D7 does not clearly and unambiguously disclose that the second control means are in parallel with the first control means either.

As a consequence, the second control means of D7 are not disclosed to set the lock to the safety-off mode in the event of fault in the detecting device.

Therefore, the subject-matter of claim 1 is novel in view of D7.

5. Auxiliary request - inventive step

Inventive step was questioned starting from D1 or D7.

5.1 Starting from D1

D1 discloses a handle for controlling a lock (24) of a vehicle door (20), comprising a connecting structure for connection to a supporting body of the vehicle and a blade (palette) 22, to be considered a movable control member, connected to said connecting structure and activated, in use, by the hand of a user. The movement of blade 22 together with flap (volet) 86 activates switch 42, which in turn activates antenna 40, acting as detecting means for reading a user

identification code and emitting a consent signal (column 8, lines 24-30 and column 5, lines 50-55).

In an embodiment described in column 9, lines 37-43, but not shown in the drawings, the handle is provided with a further switch (second commutateur) in parallel with switch 42 and also capable, after being switched on by blade 22, of activating the antenna. This further switch is provided in order to improve the reliability of the system in the event that the user manages to pivot blade 22 without acting on flap 86. Since claim 1 of the auxiliary request does not make a distinction between the first and the second control means, said further switch can, although called a "second commutateur" and having only a back-up function in D1, be regarded as the detecting device of the first control means of claim 1. Therefore, the handle disclosed in D1 further comprises first control means for setting said lock to a safety-off mode and detecting means for reading a user identification code and emitting a consent signal, said first control means being connected to the detecting means to set the lock to said safety-off mode upon a consent signal being received from the detecting means and said first control means.

Switch 42 in turn can be regarded as part of the second control means in parallel with said first control means. Said second control means comprise switch means (42) activated by the movable control member to set said lock to the safety-off mode in case where no "second commutateur" is present and thus, *a fortiori*, in the event of fault in the detecting device represented by said "second commutateur".

Starting from the handle of D1, the problem solved by the claimed invention is regarded - as submitted by the appellant - to be the provision of a system whose response is faster or which represents an alternative to the system of D1.

Detecting devices for detecting the presence of the user's hand between a connecting structure and a movable control member were known in the field of vehicle handles, as shown by D7 (paragraphs [0008] and [0009]), D2 (abstract), D4 (page 9, last paragraph) and D6 (page 3, last paragraph). It was obvious, in view of their apparent fast reaction time, to use this type of "non-mechanical" device for solving the problem above. However, starting from D1 the obvious solutions would involve the use of this fast device either in both the control means or in the control means which are mainly to be used, i.e. those comprising switch 42 (the "second control means" in the language of present claim 1). The person skilled in the art would have no obvious reason to use the "non mechanical" devices shown in D7, D2, D4 or D6 only in the optional control means comprising the "second commutateur", i.e. the "first control means" in the language of present claim 1. Therefore, it was thus not obvious, starting from D1, to arrive at the subject-matter of claim 1, which requires "first control means" comprising a detecting device for detecting the presence of the user's hand between the connecting structure and the movable control member in combination with second control means comprising switch means activated by the movable control member.

5.2 Starting from D7

It was not obvious to arrive at the claimed invention starting from D7 either.

Although it is undisputed that control means using a mechanically activated switch were known from D1, the person skilled in the art had no obvious reason to replace only one of the detecting devices of D7 in the way stipulated by present claim 1.

5.3 Therefore, the subject-matter of claim 1 of the auxiliary request involves an inventive step.

6. Request for reimbursement of the appeal fee

According to the minutes, at the the oral proceedings before the opposition division the chairman stated after the debate about novelty that in the division's opinion D7 disclosed neither a second control means moved by the movable control member nor that the second control means set the lock to a safety-off mode (pages 5 and 6). In contrast, according to the decision (page 6) novelty was acknowledged because D7 disclosed neither that the first control means set the lock to a safety-off mode upon a consent signal being received from the detecting means nor that the second control means set the lock to a safety-off mode. The appellant is thus correct in pointing out that there is an inconsistency between the statement of the chairman and the written decision.

However, from the minutes whose correctness has not been contested it is clear that both distinguishing features listed in the written decision were abundantly discussed (see page 3 to 6 of the minutes). Therefore,

since the grounds on which the decision on novelty is based are ultimately those given in the written decision, whereas the statement of the chairman at the oral proceedings merely represents the opinion of the division at that moment in the debate, there is no evidence that the appellant's right to be heard was infringed.

The appellant also criticised the delay (thirteen months) between the oral proceedings and the notification of the written decision. However, the EPC does not contain any provision in respect of this procedural delay. Moreover, in the present case, the substantial delay between the oral proceedings and the notification of the decision had no further effect which in itself could represent a substantial procedural violation. The same applies to the overall delay in dealing with this case (more than seven and a half years expired between the mention of the grant and the delivery of the opposition decision). Therefore, although these delays in dealing with an opposition case cannot be conducive to legal certainty, they do not represent a substantial procedural violation either.

Since no substantial procedural violation was committed in opposition proceedings, the appeal fee cannot be refunded.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent in amended form on the basis of the following documents:

claims

1 to 8 filed as auxiliary request
 during the oral proceedings

description

columns 1 to 4 of the patent specification

figures

1 and 2 of the patent specification

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated