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**Datasheet for the decision
of 19 January 2017**

Case Number: T 0459/15 - 3.2.01

Application Number: 05733329.6

Publication Number: 1735209

IPC: B64C1/20, B64D9/00

Language of the proceedings: EN

Title of invention:

ADAPTABLE PAYLOAD ENABLING ARCHITECTURE

Patent Proprietor:

The Boeing Company

Opponent:

Airbus Operations GmbH/Airbus Operations SAS (FR) /
Airbus Operations Limited (GB) /
Airbus Operations S.L. (ES)/Airbus SAS (FR)

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - added subject-matter (yes)

Decisions cited:

T 0190/99

Catchword:



Beschwerdekammern
Boards of Appeal
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Case Number: T 0459/15 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 19 January 2017

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 22 December
2014 revoking European patent No. 1735209
pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	W. Marx
	O. Loizou

Summary of Facts and Submissions

- I. The patent proprietor lodged an appeal against the decision of the opposition division revoking European patent No. 1 735 209.
- II. In its decision the opposition division held that the main request as well as the first to fourth auxiliary requests submitted during the oral proceedings did not comply with Article 123(2) EPC.
- III. Oral proceedings before the board took place on 19 January 2017.

The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained on the basis of the main request or, in the alternative, one of the first to seventh auxiliary requests, all requests filed with its statement of grounds of appeal by letter of 1 May 2015.

The respondent (opponent) requested that the appeal be dismissed.

- IV. Claim 1 according to the main request reads (amendments with respect to the granted version of claim 1 are marked in strike-through for deletions and in bold for additions; further additions with respect to claim 1 as originally filed are marked by underlining):

"An assembly, comprising:
a support structure;
a floor assembly including a plurality of elongated engagement members (102) coupled to the support structure, the engagement members (102) being spaced apart and mostly parallel, each engagement member (102)

including an upwardly facing engagement surface (104);
and
a payload assembly (120) including
a payload component (122) positioned proximate to the
floor assembly;
at least one payload support ~~(124)~~ coupled to the
payload component (122) and engaged with at least some
of the engagement surfaces of the engagement members
(102), the payload support ~~(124)~~ being adapted to
transfer loads from the payload component (122) to the
floor assembly and being moveable with the payload
component (122) relative to the floor assembly, and
~~characterised in that the payload support (124)~~
~~includes~~ **being an intercostal member (130) that**
attached to or resting under a payload floor panel
(124) such that the intercostal member (130) moves with
the payload floor panel (124) and protrudes down and
spans between a pair of the upwardly facing engagement
surfaces of adjacent engagement members (102)."

Claim 1 of the first auxiliary request differs from
that of the main request in that the expression "spans
between" is replaced by "attaches to".

Claim 1 according to the second to fourth auxiliary
requests comprises the feature in dispute with regard
to the main request ("spans between"), whereas claim 1
according to the fifth to seventh auxiliary requests
comprises the feature in dispute with regard to the
first auxiliary request ("attaches to").

- V. The appellant essentially argued as follows (in the
following, if not explicitly mentioned, reference is
made to the passages in the application as filed):

The opposition division's finding that the amendment in claim 1 whereby "[the intercostal member] spans between a pair of upwardly facing engagement surfaces of adjacent engagement members" did not comply with Article 123(2) EPC was predicated on there being an inconsistency between the teaching of the description and the teaching of Figure 3. The division concluded that the skilled person would ignore the textual teaching of the description and mentally correct Figure 3 (adding a horizontal line to Figure 3 to divide the trapezoidal portion of the intercostal from the remainder) in a manner that was inconsistent with the teaching of the patent as a whole. However, the "corrected" drawing was not part of the application as filed, and a patent had to be construed by a mind willing to understand, not a mind desirous of misunderstanding (see T 190/99). The description was consistent in saying that the purpose of the intercostals was to provide the payload panels with more load-carrying capability and that they were transversely disposed between, and attached to, pairs of adjacent floor supports to be able to transmit such loads to adjacent basic and stable structures. There was support for both alternative embodiments claimed ("attached to or resting under"), even if the drawings (Figure 3) only showed the first.

The background to the invention, in particular with regard to the intercostals, was that the floor in the aircraft had to be reinforced in portions of the aircraft cabin known as flex-zones which were reserved for payload assemblies (monuments such as galleys, lavatories, etc.) according to the requirements of different customers, which increased manufacturing costs and added unnecessary weight to the aircraft (see page 3, line 19 ff). As described in the summary of the

invention (page 4, line 11 ff), the payload assembly was specified in two ways, either including a payload component and a payload support being a structured floor panel or the outside edge of a partition (i.e. two pieces), or including a payload component and a payload support being an intercostal attached to or resting under a payload floor panel (i.e. three pieces). The wording of claim 1 excluded an intercostal integral with the payload floor panel (i.e. two pieces). The description of an embodiment of the invention also referred to a three-piece design (see page 8, lines 1-2, lines 10-11: primary component 122, payload panel 124, intercostal 130). An intercostal "transversely disposed between a pair of adjacent floor supports 102" meant that at least some part of the intercostal was at the same level as the floor support, i.e. below the payload panel and disclosing an "intercostal member protruding down" ("intercostal" already meant "between ribs"). Additional members (e.g. intercostal 130) were added when the payload panel was not strong enough and more load-carrying capability was required (page 8, lines 18-21), in order to transmit or beam loads to adjacent floor supports 102. This meant that the intercostal extended to the floor supports and "spanned between them", corresponding to what was shown in Figure 3. In operation (page 8, line 22 ff), the payload assembly could be picked up and moved within the passenger cabin of the aircraft. As an advantage over the prior art, the intercostal moved with the payload panel to the new location (page 9, lines 2-3; also page 10, line 3). The term "moved with" meant "at the same time", also in the second alternative claimed of an intercostal member "resting under a payload floor panel". The description then made clear (see page 9, lines 4-7) that the claimed invention should not be construed as being limited to the particular embodiment

shown in Figure 3, which related to the first alternative claimed of an intercostal member "attached to a payload floor panel". It was explicitly said (on page 9, line 18) that the payload intercostal attached to the floor supports, i.e. the intercostal reached the floor supports. Moreover, claim 2 as filed specified three alternatives of the payload support ("includes at least one of a structured payload floor panel, an intercostal, and a structural member") and an attachment point over a central load-carrying axis of one or more engagement members.

In summary, this led to the subject-matter of claim 1 of the main request, which was fully supported by the application as filed. In particular, the feature "the intercostal member ... spans between a pair of upwardly facing engagement surfaces of adjacent engagement members" (which meant that the intercostal member bridged and had to reach the locations to be connected, so that it was capable of being attached to them) was disclosed in original claim 2 and also through the function of transmitting loads to the floor supports. The second alternative of claim 1 ("resting under") was disclosed already because it required an intercostal resting on the upper surfaces of the floor supports, to prevent it from falling through. The first alternative in claim 1 ("attaches to") comprised embodiments where the intercostal member was either situated below or attached laterally to the payload floor panel.

Figure 3 did not relate to a payload floor panel integral with the intercostal member, i.e. an additional member when more load-carrying capability was required. Figure 3 did not show a dividing line between the intercostal and the payload floor panel (as argued by the opponent in opposition), because in this embodiment the intercostal - as seen with a mind

willing to understand - was attached laterally to the payload floor panel. This was not shown in Figure 4 because the intercostal might be very small. As regards an alleged conflict with Figure 3, the reader was specifically told (page 9) about a variety of alternative embodiments, not limited to the one shown in Figure 3. There was also a technical disclosure in claim 2, or on page 8 of the application as filed, where the function of the intercostal disposed between a pair of adjacent floor supports was described. In order to transmit loads to adjacent floor supports, there had to be a load path between the intercostal and the floor supports, which required intercostals extending to overlay the floor supports and sit on their upwardly facing surfaces. Page 8 (lines 11-13) described attachment assemblies coupling the payload panel (not the intercostal) to the floor supports, but page 9 then disclosed the intercostal attached to floor supports. Both passages related to isolated examples and might include an indirect attachment. The floor supports described on page 9 as being flush with the lower surfaces of the payload panels related to a separate invention.

In the first auxiliary request the expression "spans between" was replaced by "attaches to", as literally disclosed on page 9, line 18, or in Figure 3 showing the intercostal 130 extending from a left to a right lateral floor support 102 and attached to the upwardly facing engagement surfaces 104 of the floor supports by attachment assemblies 140. As regards an alleged conflict with Figure 3, reference was made to the arguments in the preceding paragraph. The passage on page 9, line 18, of the application as filed would naturally be understood to mean that the intercostal member attached to a pair of upwardly facing engagement

surfaces, which was also confirmed when looking at Figure 3 (line 130). Claim 1 already specified that the payload support engaged with the engagement surfaces, and now it was only specified to be "attached to".

As regards the second, third and fourth auxiliary requests that were already before the opposition division, it was recognised that these requests all included the same language that was objected to in the main request. The fifth, sixth and seventh auxiliary requests included the feature that was objected to in the first auxiliary request.

VI. The respondent's arguments relevant to the present decision may be summarised as follows:

Granted claim 1 ("the payload support (124) includes an intercostal (130) that protrudes down") referred to a payload panel (reference sign 124 in Figure 3) integral with the intercostal, which was therefore also included in the embodiment according to Figure 3. Details on the intercostal were disclosed only in relation to the embodiment according to Figure 3. The whole description of this embodiment was directed to a payload panel attached to the floor supports (page 8, line 10 ff), so - without contradicting the description - Figure 3 also showed a panel attached to the floor supports. An intercostal was added when more load-carrying capability was required, so it was represented by the thickened portion in Figure 3, which was indirectly attached to the floor supports via the payload panel. The contradicting passage on page 9 ("intercostal 130 attaches to ... floor supports 102") taken in isolation might comprise both a direct and an indirect coupling of the intercostal to the floor supports, but in connection with page 8 it could only refer to an

indirect coupling or attachment. Moreover, according to page 9 (lines 14-15) the floor supports were flush with the lower surfaces of the floor supports.

A lateral attachment of the intercostal member to the floor panel, as argued by the appellant, was not supported by the top elevational view of the support structure of Figure 3 in Figure 4, which only showed reference sign 124 indicating payload floor panels, so an intercostal was provided as a reinforcement at the bottom side. The second embodiment of claim 1 ("resting under") might also comprise an intercostal "attached under" a payload floor panel, as it was not disclosed that it had to be supported by the floor supports.

Since claim 1 of the first auxiliary request specified that the intercostal member (and not the payload floor panel) attached to a pair of the upwardly facing engagement surfaces of adjacent engagement members, to be construed as being a direct or indirect attachment, the same arguments as for the main request applied. It was neither literally nor implicitly disclosed that the intercostal member was attached to the upwardly facing engagement surfaces, and so a clear and unambiguous disclosure was lacking for the amendment. It might be attached to the floor supports in a different manner, e.g. laterally to the floor supports, or on the lower hook-like extensions shown in Figure 3, so that loads were also transmitted to the floor supports.

Reasons for the Decision

1. Claim 1 of the main request has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed, contrary to the requirements of Article 123(2) EPC.

1.1 It is established jurisprudence of the boards of appeal that amendments under Article 123(2) EPC are allowable only if they can be derived directly and unambiguously from the application as originally filed by a person skilled in the art using common general knowledge. A further principle established by the case law is that "the content of an application must not be considered to be a reservoir from which features pertaining to separate embodiments of the application could be combined in order to artificially create a particular embodiment" (see Case Law of the Boards of Appeal of the European Patent Office, 8th edition 2016, II.E. 1.4.1), the content of the application meaning the description, the claims and the drawings.

The appellant also referred to board of appeal case law (T 190/99) on how claims should be interpreted, according to which the skilled person - with a mind willing to understand - should rule out interpretations which are illogical or do not make technical sense. However, the issues in dispute do not relate to how the wording of claim 1 should be understood, but to whether the subject-matter of claim 1 is directly and unambiguously derivable from the application as filed. There is no disagreement between the appellant and the board about the interpretation of the subject-matter of claim 1. It is agreed that claim 1 is directed to a configuration of the payload assembly including three

pieces - a payload component, a payload support being an intercostal member, and a payload floor panel - and (due to the feature "attached to or resting under") to two alternative embodiments. The board also adopts an understanding of the feature "intercostal member ... spans between a pair of the upwardly facing engagement surfaces of adjacent engagement members" identical to that of the appellant, namely that the intercostal member bridges and must reach the locations to be connected or attached to, i.e. the "upwardly facing engagement surfaces". The question at stake is whether the application as filed provides a basis for the two alternative embodiments specified with regard to the extension of the intercostal in relation to the engagement members.

- 1.2 Since the wording of claim 1 ("the payload support being an intercostal member (130) attached to or resting under a payload floor panel (124)") requires the intercostal member and the payload floor panel to be separate parts, an embodiment in which the payload panel is integral with the intercostal member is excluded. The two alternatives claimed ("attached to or resting under") are literally disclosed in the description as originally filed (see summary of the invention, page 4, lines 20-21). However, no further details can be derived from the summary of the invention with regard to the amendment in dispute that "the intercostal member ... spans between a pair of the upwardly facing engagement surfaces of adjacent engagement members", which requires that the intercostal member reaches the upper surfaces of the engagement members (the engagement members correspond to the floor supports in the first embodiment described on page 8 in the application as filed). Claim 1 as originally filed and the summary of the invention on

page 4 disclose only a "payload support ... engaged with at least some of the engagement members", without further specifying where the engagement takes place, or even whether the payload support engages the engagement members directly or indirectly.

- 1.3 The appellant cites further passages in the application as filed (pages 8 and 9, claim 2), also relating to a three-piece design, which allegedly support the amendment in dispute. Page 8 of the original description relates to a first embodiment of the invention as disclosed in Figures 3 and 4, which show (see page 6, lines 1-4) different views of that embodiment. In this embodiment, an intercostal is transversely disposed **between** a pair of adjacent floor supports (page 8, line 11), which only means that the intercostal is, at least partly, situated at the same level as the floor supports, i.e. "protruding down" below the payload floor panel, as agreed by the appellant and also expressed by the word "intercostal" itself. No information about an intercostal being in contact with the upwardly facing engagement surfaces of adjacent engagement members can be derived therefrom. The intercostal is then characterised as an additional member that may be added (see lines 18-21) - which also supports a three-piece design of the payload assembly as stated above - when more load-carrying capability is required, so that loads may be transmitted to the floor supports.

However, the board cannot follow the appellant in that the function of transmitting loads to the floor supports implies that the intercostal member must necessarily extend to the floor supports and "spans between them" (within the meaning agreed upon as mentioned above, i.e. reaching the upwardly facing

engagement surfaces), or such an interpretation would be clearly supported when taking into account the additional teaching of Figure 3, page 9 or claim 2 of the application as filed, the reasons being as follows:

- 1.3.1 Following the appellant in that Figure 3, in particular in view of the description of this embodiment on page 8 (see above), shows a configuration in which the payload floor panel 124 and the intercostal 130 are formed as separate parts (i.e. falling within the ambit of claim 1), the board holds that no clear and unambiguous teaching can be derived from Figure 3 concerning the extension of the intercostal member. It would be purely speculative to either draw any separation line within the component showing two reference signs 124 and 130, or to assume that at least the lower portion of this component, i.e. the entire lower surface, must be part of the intercostal member so that it would extend or attach to the upper surfaces of the floor supports, simply because the reference sign 130 points to the lower surface of a thickened portion of this component.

Moreover, even with a mind willing to understand, it cannot be derived directly and unambiguously from the application as filed that Figure 3 would suggest an embodiment in which the intercostal member 130 is attached laterally to the payload floor panel 124, as argued by the appellant, i.e. that the lower surfaces of the intercostal member and the payload panel are on the same level and are both located side by side directly on the floor supports 102. This would mean that the intercostal 130 in Figure 3 referred to the entire panel, and reference sign 124 might indicate a floor panel lying behind the vertical cross-section visible in Figure 3. However, there is no support in Figure 4 for such an assumption, since Figure 4 does

not show an intercostal member (with reference sign 130) in a top view of the embodiment of Figure 3. No support can be found in the description either, which only mentions an "intercostal 130 transversely disposed between a pair of adjacent floor supports 102" (page 8, line 11). All that can be derived from this passage is that the intercostal is situated "between ribs", as already expressed by the word "intercostal" itself, i.e. there is no teaching about the intercostal extending further upwards in a vertical direction so that it might reach the upper surfaces of the floor supports. Assuming an intercostal member laterally attached to the payload floor panel would even be contradictory to the second alternative in claim 1, specifying an intercostal member "resting under a payload floor panel". Moreover, the amendment with regard to the first alternative in claim 1, which reads "an intercostal member (130) attached to a payload floor panel (124) such that the intercostal ... protrudes down", is at least ambiguous as regards the point of attachment, since it might either mean that the intercostal is "attached under" the payload floor panel, or that only part of the intercostal protrudes down.

From this it follows that Figure 3 does not provide a clear and unambiguous disclosure of an intercostal extending to the upper surfaces of the floor supports, simply because Figure 3 - except for a reference sign pointing to a thickened portion of a support structure - does not show any details regarding the intercostal 130.

- 1.3.2 Even taking into account the function of increasing a load-carrying capability and transmitting loads to the floor supports specified for the embodiment of Figure 3

(page 8, lines 18-21), the skilled person has no reason to conclude that the intercostal must extend to or over the floor supports, or reach their upwardly facing surfaces. In order to transmit loads to the floor supports, the payload panel may be reinforced only in its middle portion (carrying the load of the payload component) by attaching an intercostal member onto the lower side of a payload floor panel between adjacent floor supports, e.g. in the thickened area shown in Figure 3. It is not necessary for the intercostal to extend up to the floor supports, since a reinforcement must in particular be provided in the area of high bending moment, which is the middle area between two adjacent floor supports. The load would then be transmitted indirectly via the payload panel to the floor supports, so that a load path between the intercostal and the floor supports would exist. This would still be consistent with the drawing of Figure 3, in which the reference sign 130 points to a thickened portion between the floor supports. It would also be consistent with the description that payload attachment assemblies couple the payload panel to the floor support (page 8, lines 11-13).

- 1.3.3 The description of the embodiment of Figure 3 even suggests that only the payload panel 124 is in contact with the upper surfaces of the floor supports. As explicitly stated (page 8, lines 11-13), the payload panel 124 is coupled to the floor supports 102 via attachment assemblies 140. Although such coupling might be realised either directly or indirectly, it is also described (page 9, lines 14-15) that the floor supports are "flush" with the lower surfaces of the floor panels and with the lower surfaces of the payload panel. There is no mention of lower surfaces of additional members or intercostals being "flush" with the floor supports.

The appellant alleges that this passage on page 9 refers to a separate invention. However, on the one hand, this contradicts the appellant's allegation that passages on page 9 still relate to the description of the first embodiment as described on page 8. On the other hand, such characterisation is already mentioned on page 8 (lines 22-25: "the floor supports 102 that are "flush" with the lower surfaces of the floor panels 106 and with the lower surfaces of the payload panel 124") when describing how the architecture of the first embodiment allows the payload assembly 120 to be relocated within the passenger cabin of the aircraft to other positions. Therefore, the board finds that there is even a strong indication that only the payload panel couples directly to the floor supports, i.e. contrary to an intercostal member reaching the upper surfaces of the floor supports. This would also mean that the second alternative claimed ("resting under") cannot imply that the intercostal must rest on the upper surfaces of the floor supports. Either this alternative would not correspond to the first embodiment described on page 8 and in Figure 3, or it must be assumed that the intercostal in this embodiment might be supported e.g. by a drawer-like structure, such that it might rest under the payload panel without reaching the floor supports.

- 1.3.4 There is nothing in the passage describing the invention in operation (paragraph bridging pages 8 and 9), i.e. describing how a payload assembly can be relocated within the cabin of the aircraft, which could provide an indication about the extension and positioning of the intercostal member in relation to the floor supports. The fact that the intercostal moves with the payload panel to the new location might confirm only that there are two separate parts which

have to be relocated, and which will move either inevitably together because of being attached to each other (first alternative in claim 1), or at least at the same time (second alternative in claim 1).

- 1.3.5 Page 9 of the application as filed mentions that the payload assembly and components thereof might have a variety of alternate embodiments, which should not be construed as being limited to the embodiment shown in Figure 3. However, without further specifying features of such alternate embodiments, this passage does not provide a further basis for the amendment under discussion. In the board's judgement, it also cannot serve to modify the embodiment according to Figure 3 as described on page 8 by modifying or replacing features at will, e.g. by combining the disclosure of this first embodiment with features taken in isolation from other passages in the application as filed, such as later described on page 9, or from claim 2 as filed.

In fact, the feature the appellant refers to on page 9 of the application as filed (line 18: "the payload intercostal 130 attaches to basic and stable floor supports 102") neither refers to the upper surfaces of the floor supports, nor indicates whether a direct or indirect attachment to the floor supports has to be assumed. Therefore, even when reading this feature together with the description on page 8 or Figure 3, this cannot disclose the feature of an intercostal extending over or even attached to the upwardly facing engagement surfaces of the floor supports 102, so that it would "span between" them.

The appellant also points to claim 2 as originally filed, according to which "the payload support includes at least one of a structured payload floor panel, an

intercostal, and a structural member, and wherein the payload support spans from the payload component to at least one attachment point to and over a central load-carrying axis of one or more engagement members". The second alternative in claim 2 covers the more limited feature "the payload support being an intercostal member" as specified in claim 1 of the main request, but specifies only a payload support spanning from the payload component to at least one attachment point to and over a central load carrying axis of one ore more engagement members. It might be derivable therefrom that the intercostal extends from the payload component to the upwardly facing surface of one or more engagement members, but not whether it spans between a pair of such surfaces of adjacent engagement members, as required by the amendment in dispute. Moreover, claim 2 as originally filed (dependent on claim 1 and including those features) does not require the payload assembly to further include a payload panel (which is defined neither in claim 1 nor in claim 2) in addition to a payload component and an intercostal, i.e. claim 2 also includes a two-piece design of the payload assembly. The generic disclosure according to claim 2 as originally filed therefore cannot serve as a basis for supporting the specific amendment of claim 1 of the main request, which is directed to more specific embodiments.

- 1.3.6 In view of the above, there is no need to discuss in detail the appellant's argument with regard to the second alternative specified in claim 1 of the main request ("intercostal member resting under a payload floor panel"), that it implicitly requires an intercostal resting on the upper surface of the floor supports. It suffices to say that this argument contradicts passages in the disclosure of the first

embodiment according to Figure 3 as already discussed above (see 1.3.3), which suggest that only the payload panel is in contact with the upper surfaces of the floor supports. It might be assumed that the second alternative claimed is not related to the embodiment shown in Figure 3, but then the only disclosure would be the rather general passage on page 4 of the application as filed, which does not specify further details of the intercostal; so there would be no basis for further features of claim 1 as amended, e.g. "that the intercostal protrudes down", since the intercostal might simply be a flat panel resting on the upper surfaces of the floor supports and below the payload floor panel.

- 1.3.7 On these grounds, the board reaches the conclusion that the feature in dispute that "the intercostal member spans between a pair of the upwardly facing engagement surfaces of adjacent engagement members" is not directly and unambiguously derivable from the application as filed as a whole, taking into account the teaching of the drawings, the description and the claims.

2. *First auxiliary request*

In claim 1 of the first auxiliary request, the term "spans between" is replaced by "attaches to". The application as filed discloses literally (on page 9, line 18) that the "payload intercostal 130 attaches to basic and stable floor supports 102". However, as already argued with regard to the main request (see 1.3.5), this disclosure cannot provide a basis for the feature of an intercostal member extending over or even attached to the upwardly facing engagement surfaces of the floor supports 102. Since the application as filed

is silent on whether a direct attachment to the floor supports must be assumed, Figure 3 cannot lead directly and unambiguously to an understanding (simply because the reference sign 130 points to the lower surface of the intercostal) as alleged by the appellant, in particular because it would contradict further passages in the description of the embodiment of Figure 3 as argued above.

The appellant further refers to arguments already presented with regard to the main request, i.e. to what is disclosed in Figure 3, on pages 8 and 9, or in claim 2 as filed. Therefore, with the same reasoning as above for the main request, the board must come to the conclusion that the feature "the intercostal member attaches to a pair of the upwardly facing engagement surfaces of adjacent engagement members" is not directly and unambiguously derivable from the application as filed as a whole, taking into account the teaching of the drawings, the descriptions and the claims.

3. *Second to seventh auxiliary requests*

As admitted by the appellant, since these auxiliary requests contain the feature in dispute either with regard to the main request ("spans between ...") or with regard to the first auxiliary request ("attaches to ..."), they are not suitable to overcome the objection under Article 123(2) EPC on the grounds already mentioned with regard to the main request and the first auxiliary request.

4. Since none of the requests filed by the appellant are found allowable, the appeal is to be dismissed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated