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**Datasheet for the decision  
of 15 June 2016**

**Case Number:** T 0483/15 - 3.2.01

**Application Number:** 07013280.8

**Publication Number:** 1932701

**IPC:** B60J5/04

**Language of the proceedings:** EN

**Title of invention:**

Automotive door

**Patent Proprietor:**

Mitsui Mining and Smelting Co., Ltd.

**Opponent:**

Brose Fahrzeugteile GmbH & Co. KG, Hallstadt

**Headword:**

**Relevant legal provisions:**

EPC Art. 54(1), 123(2), 56

**Keyword:**

Novelty - main request (no) - auxiliary request 1 (yes)  
Amendments - added subject-matter - auxiliary request 1 (no)  
Inventive step - auxiliary request 1 (yes)

**Decisions cited:**

T 2049/07

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0483/15 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 15 June 2016**

**Appellant:** Brose Fahrzeugteile GmbH & Co. KG, Hallstadt  
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**Representative:** Grünecker Patent- und Rechtsanwälte  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 9 January 2015  
rejecting the opposition filed against European  
patent No. 1932701 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** H. Geuss  
O. Loizou  
W. Marx  
P. Guntz

## Summary of Facts and Submissions

- I. The appeal is directed against the decision of the opposition division of the European Patent Office posted on 9 January 2015 rejecting the opposition filed against European patent No. 1932701 pursuant to Article 101(2) EPC.
  
- II. The opposition division held that the subject-matter of claim 1 as granted is novel and involves an inventive step, having regard to the cited prior art, including in particular:

DE 196 50 531 A1 (**D4**), and

Prior use (**MAZDA2**) according to the figures of **D6**.
  
- III. During oral proceedings held on 15 June 2016, after having heard the arguments of the parties and after deliberation, the Board decided to take evidence in accordance with Rule 117 EPC by inspecting the model of a module base of an automotive door, MAZDA2 (2003, according to the figures of D6), provided by the appellant in order to prove that the model of a module base has a general overall curvature with a vertex at a generally center portion thereof.
  
- IV. Following the inspection of the model the Board ascertained that the module base when placed horizontally comprises individual portions that are substantially planar and are inclined in different directions in the horizontal plane. A general overall curvature with a vertex at a generally center portion thereof cannot be recognized. The parties had no comments to said finding of the Board (see the minutes of the oral proceedings).

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

The respondent (patent proprietor) requested during oral proceedings that the appeal be dismissed (main request) or in the alternative, the patent be maintained in amended form on the basis of the set of claims 1-15 of the auxiliary request 1 and the description as filed during oral proceedings as well as figures 1-9 of the granted patent, or on the basis of the set of claims of one of the auxiliary requests 2 to 5, as filed with letter dated 12 May 2016.

- VI. Claim 1 of the patent as granted reads as follows:

An automotive door (30) comprising:

an outer metal panel (32);  
an inner metal panel (31) that is coupled with the outer metal panel (32) to constitute a base construction of the door (30), the base construction having therein a clearance between the outer and inner metal panels; and  
a module base (1) incorporated with the inner metal panel (31) and having a swelled portion (3) that is projected into the clearance and has a vertex at a generally center portion thereof,  
characterized by  
a first boss portion (9) integral with the swelled portion (3) and projected in a direction away from the swelled portion (3) and  
a grip handle (20) secured to the first boss portion (9).

VII. Claim 1 of the first auxiliary request as filed during the oral proceedings reads as follows:

An automotive door (30) comprising:  
an outer metal panel (32); an inner metal panel (31) that is coupled with the outer metal panel (32) to constitute a base construction of the door (30), the base construction having therein a clearance between the outer and inner metal panels; and a module base (1) incorporated with the inner metal panel (31) and having a swelled portion (3) that is projected into the clearance, a first boss portion (9) integral with the swelled portion (3) and projected in a direction away from the swelled portion (3); a grip handle (20) secured to the first boss portion (9); and the swelled portion having a vertex at a generally center portion thereof, characterized by the first boss portion being formed on a depressed inner surface of the swelled portion.

VIII. The appellant's submissions as relevant to the present decision may be summarized as follows:

The subject-matter of claim 1 as granted lacked novelty over D4. The feature in dispute defined that a boss portion was integral with the swelled portion. The term *integral* meant that the boss portion was made with the swelled portion in a single piece technology, as supported by the use of the term *integral* in the contested patent itself (see paragraph [0029]). The module base in D4 was produced by injection moulding and therefore made as a one-piece part. Further, figure 6 of D4 disclosed a swelled portion (part 18, Befestigungsvorrichtung) and the boss portion (21, Ziehgriffkonsole) in the same unitary part.

Claim 1 of the first auxiliary request contained

amendments which contravened Article 123(2) EPC. The added feature ("the first boss portion being formed on a depressed inner surface of the swelled portion") was taken in isolation from a specific embodiment of the module base (cf. paragraph [0035] of the description), which comprised further features being in functional and structural relationship with the added feature (e.g. the feature that the boss portion was largely projected towards the inside of the vehicle) and which were not included in claim 1.

The invention as claimed in claim 1 of the first auxiliary request lacked novelty.

The boss portion 21 in D4 was formed on a depressed inner surface defined by the swelled portion 19. MAZDA2 disclosed a boss portion on the depressed inner surface of a swelled portion of the module base. As could be seen in D6, figures 2 and 3, the boss portion was next to the swelled portion 3d. In fact, the boss portion was in direct contact with this swelled portion 3d. The definition "on the inner surface" however included a direct contact in the neighborhood.

In any case, the feature of the characterizing portion of the claim, according to which a boss portion was formed on a depressed inner surface of the swelled portion, could not establish an inventive step. This feature did not solve the problem as stated in the description (cf. paragraphs [0007] and [0009]), namely improving the mechanical strength of the module base, since this problem was already solved in the prior use MAZDA2. The objective problem solved by the differing feature could only be regarded as providing more constructed space in the automotive door.

IX. The respondent's (patent proprietor) rebuttal was essentially the following:

D4 did not disclose a first boss portion integral with the swelled portion. D4 only disclosed a boss portion beside a depressed surface of a swelled portion (cf. figure 6 in D4). The term integral did not only mean a unitary one-piece part, but as consistently derivable from the description and the wording of claim 1 the first boss portion had to be on the swelled portion, that means that the boss portion had to be somewhere in the swelled portion area (cf. paragraph [0035]). This was the general inventive idea of the patent in dispute. In this respect the feature in suit was absolutely clear, since claim 1 defined the boss portion in relation to the swelled portion ("integral with the swelled portion") but not in relation to the module base. Moreover, it had to be read in connection with the subsequent feature defining that the first boss portion projected in a direction away from the swelled portion, which defined a concrete starting point for the boss portion. Therefore, the skilled person understood that the swelled portion and the boss portion were made in one piece and that the boss portion had a starting point on the swelled portion.

The additional feature of claim 1 of the first auxiliary request came from paragraph [0035] and paragraph [0012] of the description. It was admitted that paragraph [0035] described a specific embodiment of the invention. However, the further features mentioned in this passage were neither in connection with the inventive idea nor did they serve to solve the given problem.

The subject-matter of claim 1 of the first auxiliary request was new. The prior use MAZDA2 disclosed the same



configuration as in D4, in fact the boss portion was not formed on the surface of the swelled portion but next to it. According to the definition of the contested claim the boss portion had to be somewhere within the area of the surface of the swelled portion.

As explained in the description of the patent (cf. paragraphs [0007] and [0009]) the differing feature ("the first boss portion being formed on a depressed inner surface of the swelled portion") improved the mechanical strength of the module base without increasing weight.

### **Reasons for the Decision**

1. The appeal is admissible.
2. The subject-matter of claim 1 as granted is not novel over document D4.
  - 2.1 The respondent argued that D4 disclosed a boss portion beside a depressed surface of a swelled portion (cf. figure 6 in D4) and thus did not disclose a boss portion *integral* with the swelled portion.
  - 2.2 The Board does not follow the respondent's argument with respect to the narrow interpretation of the term *integral* (see point IX above) and judges that the feature "first boss portion integral with the swelled portion" is open to the interpretation according to which the boss portion forms a single one-piece part with the swelled portion. As a matter of fact, the term *integral* generally means *formed as a unit with another part*. A specific geometrical setting between the parts is not implied by the term "integral".

2.2.1 Even the passage in paragraph [0029] of the description of the patent in suit, which explains the relationship between the front and rear glass pane holders 19A and 19B and the respective front and rear sliders 17A and 17B by using the term *integral*, confirms that this term should be given its general, broad meaning as set out above. In fact, the glass pane holders are simply formed as a one-piece unit with the respective sliders and are arranged side-by-side.

The term *integral* is also found in paragraph [0012], describing that „a first boss portion“ is „integral with a depressed back surface of the swelled portion“. This paragraph, however, does not support a different interpretation of the claim, because it refers to "another example" and uses a different wording from that of the claim.

2.2.2 The respondent argued that it was clear from the description and the figures what the inventive idea was. It was clearly disclosed therein that the feature „integral with the swelled portion“ had to be interpreted as „on the swelled portion“, for it to be in accordance with the inventive idea.

As already discussed above, the general meaning of *integral* is *formed as a unit with another part*. It is admitted that the subject-matter of claim 1 as granted is broader than the example according to the description and figures. However, in accordance with established case law (see e.g. T 2049/07, point 6.1), it is not admissible to read limitations derived from the example of the description (which would lead, in the present case, to a narrower interpretation of the term *integral*) into claim 1, in order to avoid objections based on lack

of novelty or inventive step.

2.2.3 As the other features of claim 1 of the main request are undisputedly known from D4, the subject-matter thereof is not novel (Article 52(1) and 54(2) EPC).

3. Claim 1 of the first auxiliary request has not been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).

3.1 Claim 1 of auxiliary request 1 has been amended, as compared to granted claim 1, by adding the feature "the first boss portion being formed on a depressed inner surface of the swelled portion". The appellant argued that this feature was taken in isolation from the combination of features disclosed in paragraph [0035] (unallowable intermediate generalisation).

3.2 However, the Board cannot identify a functional or structural relationship between the added feature in claim 1 and the further features specified in paragraph [0035], namely that the cup-shaped boss portion formed on the depressed inner surface of the swelled portion of the module base is largely projected toward the inside of the vehicle beyond the flange portion.

In fact, the feature that the first boss portion is formed on a depressed inner surface of the swelled portion defines the location of the boss portion on the module whilst said further features define the shape and extension of the boss portion. It is clear, however, that the location of the boss portion can be selected irrespective of the shape and extension thereof. Moreover, the added feature can also be found in the general disclosure of paragraph [0012], where only the

location of the first boss portion is specified and no details on shape or extension are given.

4. The invention as defined in claim 1 of the first auxiliary request is new in view of D4 and the prior use MAZDA2, and also involves an inventive step (Article 56 EPC).
- 4.1 The appellant submitted that D4 and the prior use MAZDA2 disclosed a boss portion on the depressed inner surface of the swelled portion. As could be seen in D6, figure 2 and 3, the boss portion was next to the swelled portion 3d. In fact, the boss portion was in direct contact with this swelled portion 3d. The definition "on the inner surface" however included the direct contact in the neighborhood. Similarly, in D4 (Fig. 6), the boss portion 21 was very close to the inner surface 18 of the swelled portion.
- 4.2 However, the wording "on the inner surface" clearly requires the boss portion to be located on the surface of the swelled portion, not merely somewhere in the neighborhood of the swelled portion. That means that the boss portion must be at least partly inside the area which is defined by the inner surface of the swelled portion, and this is not the case either in D4 or in the prior use.
- 4.3 The distinguishing feature solves the problem of increasing the mechanical strength without an increase in cost and weight (cf. paragraphs [0007] and [0009] of the description).
- 4.3.1 Contrary to the appellant's view the distinguishing feature effectively solves this problem. Indeed, as compared to the boss portion of D4 or the prior use,

where a force applied to the boss portion produces stresses on the module base that are concentrated at the base of the boss portion, according to the invention a force applied to the boss portion results in a better stress distribution, as stresses are distributed along the entire surface of the swelled portion and thus are better transmitted to the structure of the module base, thereby increasing the mechanical strength of the swelled portion without requiring an increase of the wall thickness.

- 4.4 Since none of the cited documents is concerned with the problem of mechanical strength in connection with a hand grip for a vehicle door, or by any means suggests the feature of the boss portion for a hand grip being formed on a depressed inner surface of the swelled portion, the person skilled in the art would not arrive at the claimed solution to the above-mentioned problem in an obvious manner.
  
5. It follows that claim 1 according to auxiliary request 1, together with dependent claims 2 to 15, filed at the oral proceedings, the description as modified during the oral proceedings to acknowledge the state of the art according to D4, and the figures as granted, form a suitable basis for the maintenance of the patent in amended form.

## Order

### For these reasons it is decided that:

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

#### Description:

Columns 1-7, as filed during oral proceedings.

#### Claims:

No 1-15 of the auxiliary request 1 as filed during oral proceedings.

#### Drawings:

Fig. 1-9 of the patent as granted.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated