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**Datasheet for the decision  
of 30 May 2018**

**Case Number:** T 1056/15 - 3.2.01

**Application Number:** 04806903.3

**Publication Number:** 1831068

**IPC:** B62K23/06

**Language of the proceedings:** EN

**Title of invention:**

COLLAPSIBLE CONTROL LEVER DEVICE

**Patent Proprietor:**

Freni Brembo S.p.A.

**Opponent:**

Gustav Magenwirth GmbH & Co. KG

**Headword:**

**Relevant legal provisions:**

EPÜ Art. 54(1), 56, 84, 123(2)  
EPC Art. 100(b)

**Keyword:**

Novelty - (yes)

Inventive step - (yes)

Sufficiency of disclosure - (yes)

Undisclosed subject-matter - (no)

Clarity (claim 1) - (yes)

Claims - support in the description (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 1056/15 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 30 May 2018**

**Appellant:** Gustav Magenwirth GmbH & Co. KG  
(Opponent) Stuttgarter Strasse 48  
72574 Bad Urach (DE)

**Representative:** Friese Goeden Patentanwälte PartGmbH  
Widenmayerstraße 49  
80538 München (DE)

**Respondent:** Freni Brembo S.p.A.  
(Patent Proprietor) Via Brembo, 25  
24035 Curno (Bergamo) (IT)

**Representative:** Leihkauf, Steffen Falk  
Jacobacci & Partners S.p.A.  
Via Senato 8  
20121 Milano (IT)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
11 March 2015 concerning maintenance of the  
European Patent No. 1831068 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** H. Geuss  
O. Loizou

## **Summary of Facts and Submissions**

I. The appeal of the opponent (appellant) is directed against the interlocutory decision of the Opposition Division of the European Patent Office posted on 11 March 2015 concerning maintenance of the European Patent No. 1831068 in amended form on the basis of the first auxiliary request of the patent proprietor.

II. The opposition division held that the invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a skilled person, that claim 1 is clear and concise and supported by the description, and that its subject-matter is novel and inventive when taking into account document

EP 1325863 A1 (D1).

III. Oral proceedings were held on 30 May 2018.

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

The respondent (patent proprietor) requested that the patent be maintained in amended form on the basis of the set of claims of the main request previously auxiliary request 1A filed with letter dated 28 March 2018 and the amended description (filed during oral proceedings) and figures of the patent as granted.

IV. Claim 1 of this main request reads as follows:

A control lever device (1) for vehicles, comprising:

- a support structure (2) with means (3, 4) for connecting the device (1) to a handlebar:

- a cylinder-piston unit (5, 6) connected to the support structure (2);
- a lever being pivotally connected to the support structure (2) along an angular actuation stroke (A) extending from an angular rest position (R) of the lever (7) in a first direction of rotation and along an angular collapse stroke (C) extending from said angular rest position (R) in a second direction of rotation, opposite the first direction;
- a transmission portion (8) being associated to the device (1) such as to transmit the movement of the lever (7) along the angular actuation stroke (A) to the cylinder-piston unit (5, 6);

wherein the transmission portion (8) is arranged relative to the lever (7) such that, when the lever (7) is in the angular collapse stroke (C), the lever is separated from the transmission portion (8);

wherein the transmission portion (8) comprises a first end (9) in permanent contact with a piston (6) of the piston-cylinder unit (5,6) and a free second end (10) suitable to abut against a seat (11) of the lever (7) when the lever (7) is in the angular actuation stroke (A),

wherein guide means (11) are provided to facilitate the proper mutual positioning of the seat (11) of the lever (7) and the second end (10) of the transmission portion (8), when the lever (7) shifts from the angular collapse stroke (C) to the rest position (R), said guide means (11) comprising said seat (11) which is funnel-shaped.

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

The main request, filed as auxiliary request 1A, should not be admitted into the proceedings. This request is late filed and claim 1 is not clear and not in accordance with the disclosure in the application as originally filed; further the disclosure of the invention as a whole is insufficient.

The invention as defined by claim 1 is not novel over document D1. In particular figures 3 to 5 disclose feature 1.7, which is the last feature of claim 1: "guide means are provided to facilitate the proper mutual positioning of the seat of the lever and the second end of the transmission portion, when the lever shifts from the angular collapse stroke to the rest position, said guide means comprising said seat which is funnel-shaped".

In the angular rest position (cf. D1, figure 3), ball 90 is in contact with the socket insert 94 (cf. also figure 4). According to column 12, lines 23 et seq. the socket insert has a leading ball socket 96 receiving the ball 90. This, however, inevitably implies for the skilled person that the bottom of the socket insert must also be ball-shaped in the sense of a semicircular recess. Indeed, a semicircular recess is a seat which is funnel-shaped according to feature 1.7 of the contested claim, since it improves the mutual positioning of the seat of the lever and the free end of the transmission means (e.g. ball 90).

Even if it is assumed that no ball-shaped recess is explicitly disclosed in D1, it is at least obvious for the skilled person to provide it for an improved mutual positioning of the seat the of lever and the transmission means. Thus, at least the subject-matter of claim 1 lacks inventive step.

Additionally the invention is not disclosed in a sufficiently clear and complete manner; further, claim 1 is not clear and its subject-matter extends beyond the original disclosure. In particular it is not clear what is meant by the term "free second end" in feature 1.7, since the lever abuts against that free end, thus the end cannot be regarded as being free. Moreover the term "free second end" is not disclosed. The passage referring to this issue (cf. paragraph [0020]) only divulges a "second end 10 that is free". Finally, it is completely unclear for the skilled person how to carry out the invention with a lever, which abuts against a second end, which is at the same time "free".

The description has been amended during oral proceedings in a way that it is in contradiction with claim 1. In particular, the description does not sufficiently consider the closest prior art document D1, since it is not clear from the description which features of contested claim 1 are known from D1. Therefore, the description leaves the reader unclear about which features of the contested invention represent the inventive contribution over the prior art. In detail, it is not derivable from the description that the differing feature in view of D1 is the guiding means, comprising a funnel-shaped seat and further, which problem is to be solved by this feature.

VI. The respondent's rebuttal was essentially the following:

Auxiliary request 1A (which remained finally as the patent proprietor's sole and main request) was filed with letter dated 28 March 2018 as a reaction to the appellant's objection with respect to the disclosure of the funnel-shaped guide means. This objection was

overcome by amending the former auxiliary request 1, which was filed with the letter of reply to the statement of grounds of appeal. The further alleged objections of the appellant with respect to undisclosed subject-matter, clarity and insufficient disclosure of the invention, were also put forward regarding all former requests of the patent proprietor and were not caused by the submission of auxiliary request 1A.

Claim 1 is novel and based on inventive step with respect to document D1. At least, feature 1.7 ("guide means are provided to facilitate the proper mutual positioning of the seat of the lever and the second end of the transmission portion, when the shifts from the angular collapse stroke to the rest position, said guide means comprising said seat which is funnel-shaped") is not disclosed in D1.

In particular there is no explicit or implicit disclosure about the shape of the bottom of the leading ball socket 96. This part is only depicted in figure 5 and the drawing is not precise enough to divulge the shape of the ball socket. On the contrary, the area of contact between the ball of the transmission means with reference sign 86 and the lever seems to be planar. Further, even if the bottom of the ball socket were ball-shaped in the sense of a semicircular recess, the ball socket would not be a guide means in the sense of feature 1.7, since ball 90 in D1 is only connected to the ball socket 96 when the lever is already in its rest position. However, feature 1.7 defines that the guide means facilitates the mutual positioning during the movement of the lever between the collapse stroke position and the rest position.

For this reason, feature 1.7 contributes to inventive step. Even if the skilled person would provide a ball-



shaped recess in the ball socket, this measure would not facilitate the mutual positioning during movement of the lever from the collapse stroke position to its rest position.

The objections with respect to the feature "a free second end" are unfounded.

Paragraph [0020] of the description clearly describes "a second end 10 that is free". Therefore, the feature is disclosed. Furthermore, the second end (that is free) has to be seen in comparison to the first end, which is defined in paragraph [0020] as being into permanent contact to a seat (column 3, lines 40, 41). From this, a skilled person - willing to understand the technical teaching - would derive that there is a first end, which is always in contact with a seat, and a second end (a so-called free end), which is not in contact in the collapse stroke position but abuts against a lever seat (at least) in the actuation stroke position.

This is clear for a skilled person and it is not apparent why it should not be possible to carry out the invention defined in claim 1 and as explained in the description and the figures.

The amendments of the description as carried out during the oral proceedings before the Board of Appeal are clear and support the claims. According to the usual practice, document D1 is mentioned in the description as being a relevant state of the art document. There is no provision in the EPC for a requirement that the contribution of a specific feature to inventive step has to be discussed in the patent specification.

## **Reasons for the Decision**

1. The appeal is admissible.
2. The main request, filed as auxiliary request 1A with letter of 28 March 2018, is admitted into the proceedings, Article 13(1) RPBA.

The Board does not follow the appellant's arguments that the objections against the main request (claim 1 not clear, undisclosed subject-matter and invention not sufficiently disclosed) are such to prevent the Board from admitting the main request into the proceedings.

Indeed these objections were not submitted by the appellant as a reaction to the new request, but were already brought forward against the former requests filed by the respondent with the reply to the statement of grounds of appeal.

The amendments in claim 1 of the main request seek to overcome the objection with respect to undisclosed subject-matter of the feature defining the funnel-shaped guide means raised for the first time by the appellant with letter dated 11 April 2016 in respect of auxiliary request 1 filed by the respondent with the reply to the statement of grounds of appeal.

3. The subject-matter of claim 1 is novel over document D1 and based on inventive step, starting from D1, Articles 54 and 56 EPC.
- 3.1 The subject-matter of claim 1 differs from the control lever device according to D1 at least by feature 1.7:

guide means are provided to facilitate the proper

mutual positioning of the seat of the lever and the second end of the transmission portion, when the lever shifts from the angular collapse stroke to the rest position, said guide means comprising said seat which is funnel-shaped.

3.2 The Board does not follow the appellant in its line of argument that the bottom of the ball socket 96 for receiving the ball 90 is ball-shaped and therefore funnel-shaped in the sense of the invention for the following reasons:

(a) The description of D1 does not contain any hint that the seat is ball shaped. The figures (in particular figures 3, 4 and 5) do not disclose any shape for the ball socket 96.

Actually, according to figure 3, the contact surface between ball 90 and the socket insert 94 seems rather planar, cf. reference sign 86, which would be in contradiction to the appellant's assertion.

(b) According to feature 1.7 guide means are provided to support the positioning when the lever shifts from the collapse stroke position to the rest position, e.g. during the movement between these two positions of the lever. However, according to D1 col. 12, lines 23 et seq. the socket insert and the ball head are fixed together by snap-fit. Consequently, the ball-shaped bottom surface of the ball socket would only have an effect if the lever is already snapped-in and thus in its rest position.

Thus, the socket-insert and in particular the bottom of the ball socket therein is not a guide

means in the sense of claim 1.

- 3.3 The above-mentioned differing feature renders claim 1 not obvious for a skilled person when starting from document D1.

The skilled person would not have any motivation to change the design of D1.

The appellant's line of argument that a ball-shaped contact surface (instead of a planar) would be obvious for skilled person in order to optimize the contact region is not convincing for the reasons as pointed out under section (b), above.

Even if a ball-shaped contact surface at the bottom of the socket insert would facilitate the proper mutual positioning during actuation of the lever, it does not matter for the movement from the collapse stroke position to the rest position of the lever according to feature 1.7 of claim 1. This means that even if the skilled person would provide a ball-shaped contact surface, the resulting combination of features would not reflect the features of the invention according to claim 1.

4. The patent 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. Further, the invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, Article 83 EPC, and claim 1 is clear and concise and supported by the description, Article 84 EPC.

- 4.1 The appellant argues that the free second end (10) feature (in feature 1.6) is
- not clear, since it is not clear, what is meant by a "free end". In the case that the lever is in the rest position, the second end is not free, since the lever contacts the second end;
  - not originally disclosed, since the original wording in paragraph [0020] refers to a "second end 10 that is free".
  - The invention is not disclosed in a way that a skilled person would be able to carry out the invention. It is not apparent for the skilled person how to design a lever, which abuts against a second end, which is - at the same time - a free end.

4.2 The Board holds that a skilled person willing to understand the invention, interprets the term "free second end" as being an end which is not fixed, in comparison to the first end 9, which is in permanent contact with the seat of a piston. Paragraph [0020] of the patent explains that the second end has no contact with the lever seat in the collapse stroke position (e.g. it is free), but is "suitable to abut against a seat (11) of the lever(7), when the lever (7) is in the angular actuation stroke (A)", cf. decision of the opposition division, page 7, section 5.

Thus, the claims and the description are clear and well supported and the Board has no doubt that the skilled person would be able to put the invention as shown in the figures into practice.

4.3 With respect to the objection that claim 1 contains undisclosed subject-matter introduced by the feature

"free second end", the Board cannot identify any undisclosed and supplementary technical information given to the skilled person. The appellant failed to specify any.

5. The description as amended during the appeal proceedings supports the claims, (Article 84 EPC).
- 5.1 The appellant objects that the amended description does not consider sufficiently the closest prior art document D1. In particular, it is not clear from the amendment which features from claim 1 are disclosed in D1. Thus the description leaves it open which features contribute to inventive step and which problem has to be solved with the differing features.
- 5.2 First, the Board notes that there is no legal basis for the appellant's argument that the description must contain an accurate analysis of the state of the art, including all features of the invention as disclosed in the state of the art. Nor is there any legal basis for requiring the description to contain a reasoning as regards the presence of inventive step.
- 5.3 Further, the amendments of the description as filed by the patent proprietor during the oral proceedings before the Board of Appeal are not in contradiction with the wording of the claim. The differing feature, namely the funnel shaped guiding means in the seat of the lever part is explained in detail in the embodiment of the invention. Thus, the wording of claim 1 is properly supported by the description as required by Article 84 EPC.

## Order

### For these reasons it is decided that:

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

#### Description:

Columns 1-5, filed during oral proceedings  
(Annex 3 of the minutes);

#### Claims:

No. 1-11 of the main request filed during oral proceedings (Annex 3 of minutes),  
previously filed with letter dated 28 March 2018 as auxiliary request 1A;

#### Drawings:

Fig. 1-7 of the patent as granted.

The Registrar:

The Chairman:



K. Boelicke

G. Pricolo

Decision electronically authenticated