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**Datasheet for the decision
of 11 July 2018**

Case Number: T 1162/15 - 3.2.01

Application Number: 08158598.6

Publication Number: 2006190

IPC: B62D25/04

Language of the proceedings: EN

Title of invention:

Reinforcing member for vehicle center pillar

Patent Proprietor:

Toyoda Iron Works Co., Ltd.

Opponent:

WISCO Tailored Blanks GmbH

Headword:

Relevant legal provisions:

EPC Art. 56, 104(1), 113

EPC R. 111(2)

Keyword:

Substantial procedural violation - (no)
Remittal to the department of first instance - (no)
Reimbursement of appeal fee - (no)
Late-filed documents - admitted (no)
Inventive step - (yes)
Apportionment of costs - not equitable

Decisions cited:

Catchword:



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Case Number: T 1162/15 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 11 July 2018

Appellant: WISCO Tailored Blanks GmbH
(Opponent) Mannesmannstr. 101
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Representative: Cohausz & Florack
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Respondent: Toyota Iron Works Co., Ltd.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 31 March 2015
rejecting the opposition filed against European
patent No. 2006190 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman W. Marx
Members: H. Geuss
P. de Heij

Summary of Facts and Submissions

- I. The appeal is directed against the decision of the opposition division of the European Patent Office posted on 31 March 2015 rejecting the opposition filed against European patent No. 2006190 pursuant to Article 101(2) EPC.
- II. The opposition division held that the subject-matter of claim 1 as granted is based on inventive step, taking into account

(D1) EP 1 172 454 A1

(D2) EP 1 655 207 A2

(D3) KR 10 2004 0001152 A

(Abstract and machine translation)

The opposition division further decided not to admit the following late-filed documents into the proceedings:

(D7) "Optimization Side Crash Performance Using a Hot-Stamped B-Pillar, Bryan Macek, Benteler Automotive, 8 March 2006, Conference "Great Designs in Steel", 2006 in Livonia, Michigan USA

(D8) "Advanced High Strength Steel Applications using Tailored Products", Frank Mei, Mike Skilliter, TWB Company L.L.C., 8 March 2006, Conference "Great Designs in Steel", 2006 in Livonia, Michigan USA

(D9) "The Application of Multiphase Steel in the Body-in-White", Dr. Ing. Markus Pfestorf, BMW AG, 9 March 2005, Conference "Great Designs in Steel", 2005 in Livonia, Michigan USA

(D10) "Dual Phase Steel Applications in Tailored-welded Blank Technology", Alex A. Konieczny, United States Steel Corporation, 18 February 2004, Conference "Great Designs in Steel", 2004 in Livonia, Michigan USA

(D11) "Great Designs in Steel 2007 Opening Remarks", John Ferriola, Executive Vice President, Nucor Corporation, 7 March 2007, "Great Designs in Steel", 2007 in Livonia, Michigan USA

(D11a) detail of agenda of seminar Great Designs in Steel, 7 March 2007

(D12) list of presentations of Great Designs in Steel 2007

(D13) list of presentations of Great Designs in Steel 2006

(D14) list of presentations of Great Designs in Steel 2005

(D15) list of presentations of Great Designs in Steel 2004

(D16) "Very and Ultra High Strength Steels Based Tailored Welded Blanks: A Step Further Towards Crashworthiness Improvement" Daniel Duque Múnera, Fabrice Pinard, Lionel Lacassin, Automotive Applications Research Center, Arcelor Group of 2006

(D17) DE 10 2004 054 795 A1

III. Oral proceedings were held on 11 July 2018.

The opponent (appellant) requested:

-that the decision under appeal be set aside and that the case be remitted to the opposition division;

-that documents D7-D15 and D17 be admitted into the proceedings;

-that appellant's appeal fee be reimbursed because of a substantial procedural violation of the proceedings before the opposition division.

The patent proprietor (respondent) requested:

-that documents D7-D15 and D17 not be admitted into the proceedings;

-that the appeal be dismissed and the patent be maintained as granted;

-that the board order a different apportionment of costs at the expense of the appellant.

IV. Claim 1 as granted reads as follows:

A reinforcing member for vehicle center pillar, wherein the reinforcing member (12) is integrally fixed to a vehicle center pillar (10) to reinforce the vehicle center pillar; and a substantially T-shaped upper member (20) is connected to a roof side rail (60), a lower member (22) is connected to a side sill (62), and a central member (24) is disposed between the upper member and the lower member

characterized in that

the central member is bonded integrally by welding with the upper member and the lower member, wherein the upper member (20), the lower member (22) and the

central member (24) are respectively constructed by separate steel plates mutually different in tensile strength, with the tensile strength of the steel plate of the upper member being lower than the tensile strength of the steel plate of the central member and being higher than the tensile strength of the steel plate of the lower member.

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

With the filing of D7 to D17 specific lines of argument challenging inventive step had been put forward and the documents were prima facie highly relevant. The decision of the opposition division not to admit documents D7 to D17 into the proceedings was not correct as it did not explain why these lines did not lead to the conclusion that the claimed subject-matter was obvious to the skilled person. In particular, it had not been pointed out why the combination of documents D8 and D7 and the combination D17 and D7 would not lead to a lack of inventive step, i.e. the relevance of these combinations had not been examined. These documents had only been superficially regarded with respect to novelty, as was clear from paragraph 1.23 which concentrated on just one feature. The actual content of document D8 or D17 had not been discussed at all, although these documents showed more than those already on file. Document D8 disclosed all features of the claimed subject-matter, in particular the use of three separate steel plates, except for the feature concerning the different tensile strengths (which was suggested by D7). D17 disclosed a B-pillar constructed by three steel plates welded together and taught that the tensile strength of the plates was adapted to the

pillar's function. Therefore the decision lacked a founded reasoning as required by Rule 111 (2) EPC and involved a substantial procedural violation. The reimbursement of the appeal fee was requested, as well as to remit the case to the first instance. In view of their prima facie relevance, it was requested to admit documents D7 to D15 and D17 (D9 and D10 in particular to prove the knowledge of th person skilled in the art) into the appeal proceedings.

The lines of argument starting with D1 resp. D3, each in combination with D2, were to be admitted into the proceedings since they were based on the submissions as put forward in the proceedings before the opposition division and did not contain new issues. Therefore, the lines of argument did not form a new case in appeal proceedings and the other party and the Board could not be surprised by challenging this aspect of the opposition division's decision.

The subject-matter of claim 1 of the patent in suit was not based on inventive step (starting with D1 or D3, each in combination with D2) since D2 (cf. paragraph [0020] and figures 3 and 4) disclosed the feature that three areas of the B-pillar were provided with different materials, each having a specific tensile strength (i.e. a specific characteristic of the material), with a distribution as claimed by claim 1 of the opposed patent. The hardness of the steel described in D2 for different areas of the B-pillar correlated to the tensile strength of the steel. Moreover, starting from D1, it was already suggested in D1 (cf. figure 9B and paragraph [0150]) to provide a lower member having a lower tensile strength.

There was no reason for a different apportionment of

costs. The appeal was necessitated by the negative decision of the opposition division but not by the late-filing of documents D7 to D17 during the proceedings before the opposition division. Documents D7 to D17 were also not late filed in the appeal proceedings. They had already been mentioned in the statement of grounds of appeal, so that they were part of the appellant's case from the very beginning of the appeal proceedings.

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

There was no procedural violation which would justify to remit the case to the first instance. Documents D7 to D17 had been late filed beyond dispute. Thus the opposition division had correctly exercised its discretion not to admit these documents into the proceedings since D7 to D17 were not more relevant than the documents on file, D1 to D3. None of these documents disclosed the specific distribution of the tensile strengths of the steel plates in the three different areas of the B-pillar as specified in claim 1 as granted.

Document D2 did not disclose this feature either. The opponent interpreted the passage in paragraph [0020] as disclosing the teaching of the present invention. However, there was no hint in D2 about three areas of a different tensile strength, but two areas only, cf. figures 3 and 4, areas B and H. Paragraph [0020] did only discuss the thickness of the upper and the lower area of the B-pillar. However, the tensile strength was a specific characteristic of the material which did not depend on the geometrical form of the pillar. For this reason, D2 was also not able to challenge inventive

step of the contested invention in combination with D1 or D3, respectively.

The lines of argument based on D1 or D3, each combined with D2, were put forward during the appeal proceedings at a late stage and were not to be admitted into the proceedings. The statement of grounds of appeal solely objected to the opposition division's exercise of discretion with respect to the admission of documents D7 to D17. The former objections based on D1 to D3 had only been mentioned for the first time after the summons to oral proceedings before the Board of Appeal.

A different apportionment of costs was justified in this case. The appeal had only been caused by the late-filing of D7 to D17 and the decision of the opposition division not to admit these late-filed documents. Thus the appeal would have been superfluous if the opponent would have filed D7 to D17 in due time.

Reasons for the Decision

1. The appeal is admissible.
2. The decision of the opposition division does not involve a procedural violation, as alleged by the appellant on the basis of a lack of reasoning contrary to Rule 111 (2) EPC, Article 113 EPC.
 - 2.1 The opponent/appellant had filed documents D7 to D17 during the proceedings before the opposition division after the expiry of the period given by Article 99 (1) EPC.

The opposition division stated that these documents

were late-filed. After examining the prima facie relevance of D7 to D17, the division exercised its discretion according to Article 114 (2) EPC not to admit D7 to D17 into the proceedings.

The opponent/appellant did not contest the opposition division's finding that D7 to D17 are late-filed.

2.2 The appellant argues that the decision of the opposition division was not sufficiently reasoned with respect to the relevance of the late-filed documents D7 to D17 by the opposition division. In particular, it was not clear from the decision why the lines of argument based on documents D7, D8 and D17 did not lead to a lack of inventive step.

2.3 Firstly, it has to be noted that the opposition division discussed the relevance of late-filed documents D7 to D17 in its decision over 4 pages, with each document being mentioned to different degrees.

In point 1.23 the decision comes to the conclusion that "none of the late-filed documents D7 to D17 discloses the specific design feature to use different materials with different tensile strength in the three different zones of the B-pillar reinforcement with a distribution as specified in claim 1".

2.4 Thus, the decision makes clear that this feature of the invention is not disclosed in any of the documents D7 to D17, namely the specific distribution of tensile strength over three zones of the B-pillar.

2.5 On being asked during the oral proceedings before the Board of Appeal, the appellant confirmed that none of

the late-filed documents disclosed the feature in suit. But the feature was disclosed in D2 (cf. point 3.3, below). Thus, the technical assessment of documents D7 to D17 as evaluated by the opposition division is admitted by the appellant. In the Board's view, this finding alone is sufficient to justify the conclusion that the late-filed documents are not prima facie relevant.

- 2.6 Moreover, the use of three steel plates welded together to form a B-pillar is already known from D3, and D2 discloses a lower member having a lower tensile strength. As a result, the Board confirms the findings of the opposition division that documents D7 to D17 are prima facie not more relevant than the documents already cited in the proceedings.

None of these documents would be able to challenge the inventive step of the subject-matter of claim 1 as contested. Consequently, the opposition division exercised its discretion in a proper manner.

- 2.7 Moreover, on the same ground, the board sees no reason why documents D7 to D15 and D17 should be admitted into the appeal proceedings, irrespective of whether they are cited as documents of prior art (as argued with respect to D7, D8, D17), or in order to prove the knowledge of the skilled person that the lower member of a vehicle's pillar has a lower tensile strength (cf. D9) and different steel grades might be used for tailor-welded blanks of B-pillars (cf. D10).

3. Since the Board cannot identify any procedural violation, remittal of the case to the opposition division and reimbursement of the appeal fee is not appropriate.

4. The subject-matter of claim 1 is based on inventive step, cf. Article 56 EPC.
- 4.1 The alleged lack of inventive step based on documents D7 to D17 cannot be considered as these documents were not admitted for the reasons set out under 2.
- 4.2 The appellant in addition argued that the subject-matter of claim 1 is rendered obvious, starting with document D1 in combination with document D2, or in the alternative, document D3 in combination with D2.
- 4.3 The Board however fully agrees with the line of arguments as pointed out in the decision of the opposition division. In this respect the Board refers to the decision, point 2.
- 4.4 In particular, it is emphasised that D2 does not disclose three areas of tensile strength of the B-pillar material (as asserted by the appellant) but only two:
areas B and H, cf. figures 3, 4 and paragraph [0019].

The Board agrees with the appellant's view that figure 4 and paragraph [0020] disclose three areas of thickness of the B-pillar. However, "tensile strength" according to claim 1 is a specific characteristic of the material (of the steel plate, cf. the wording of claim 1), independent of its shape or thickness, cf. decision of the opposition division, page 10, point 2.9.

There is further no hint that the thickness of the areas in figures 3 and 4 has any influence on the material specific tensile strength. If it has to be

assumed that the hardness of the steel correlates to the tensile strength of the steel, as the appellant has argued, it can only be concluded from paragraph [0020] that the tensile strength of the central member is higher than that of the lower member ('..Der dem Schweller 15 zugewandte untere Bereich...Hieran schließt sich ein mittlerer härterer Bereich H an...') and that the tensile strength of the upper member is also higher than that of the lower member ('...den Dachrahmenbereich...welcher...im Unterschied zum Fußbereich...mit größerer Härte ausgeführt ist'). How the tensile strength of the upper member relates to that of the central member is not disclosed.

Thus, document D2 is not able to disclose the claimed feature that the tensile strength of the steel plate of the upper member is lower than the tensile strength of the steel plate of the central member.

- 4.5 As a consequence the combination of the teachings of D1 and D2 resp. D3 and D2 would not lead the skilled person to the subject-matter of claim 1 in suit.
- 4.6 Document D1 showing a B-pillar partitioned in three regions (see figure 13 and paragraph [191]) might also suggest to provide a lower member having a lower tensile strength (figure 9B and paragraph [0150]). However, there is no hint on how to combine this teaching with a B-pillar having three areas of tensile strength. Therefore, the subject-matter of claim 1 as granted is inventive in view of D1 and the knowledge of the skilled person.
5. The above objection of the appellant with regard to lack of inventive step of the subject-matter of claim 1 based on documents D1 to D3 was contested by the

respondent as late filed and it requested that it should not be admitted into the appeal proceedings. In view of the above findings of the Board there is however no need to discuss this issue further.

6. The respondent requests a different apportionment of costs according to Article 104 (1) EPC.

6.1 According to Article 104 (1) EPC, each party to the opposition proceedings shall bear the costs it has incurred, unless the opposition division, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs. This provision also applies to the appeal proceedings (Rule 100 (1) EPC).

6.2 The respondent submitted that the late-filed documents D7 to D17 should have been filed in due time for the grounds of opposition and that the present appeal was only caused by the late-filing of these documents, leading to additional time and costs at the expense of the respondent.

The Board does not agree that the late-filing of documents would justify a different apportionment of costs. The appellant has stated that the documents had been filed in reaction to the comments of the patent proprietor, that they had only been retrieved at a late stage and that they had been introduced into the proceedings without delay (appellant's letter dated 13 February 2015 pages 1 and 3). The respondent has not contested this reason for late-filing other than with the argument that the reason is 'not convincing'. However, no facts are presented that lead to the conclusion that the appellant has deliberately filed the documents at a late stage or other circumstances

that would require, for reasons of equity, the appellant to (partly) bear the costs incurred by the respondent.

Order

For these reasons it is decided that:

1. The appeal is dismissed.
2. The request for reimbursement of the appeal fee is refused.
3. The request for apportionment of costs is refused.

The Registrar:

The Chairman:



A. Vottner

W. Marx

Decision electronically authenticated