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Datasheet for the decision of 4 April 2019

Case Number: T 1105/16 - 3.2.01

Application Number: 09760582.8

Publication Number: 2483116

IPC: B60T13/38, B60T15/04, B60T15/14, B60T13/68

Language of the proceedings: EN

Title of invention:
METHOD FOR ACTIVATING AN ELECTRONIC PARK BRAKE SYSTEM

Patent Proprietor:
Renault Trucks

Opponents:
WABCO GmbH
KNORR-BREMSE AG

Headword:

Relevant legal provisions:
EPC Art. 54(1), 56, 100(a), 134(1), 134(5)
EPC R. 106, 152(1), 152(11)

Keyword:
Representation
Novelty - (yes)
Inventive step - (yes)
Objection under Rule 106 EPC - dismissed

Decisions cited:
G 0006/88, G 0008/88, G 0002/94, G 0004/95, T 0121/89, T 0544/89, T 0848/93, T 0860/93, T 0481/95, T 0681/01, T 0881/01, T 0556/02, T 1105/04, T 0223/05, T 0304/08, T 0620/08, T 0299/09, T 1039/09

Catchword:

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Case Number: T 1105/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 4 April 2019

Appellant: (Opponent 1)	WABCO GmbH Am Lindener Hafen 21 30453 Hannover (DE)
Representative:	Wasiljeff, Johannes M.B. Jabbusch Siekmann & Wasiljeff Patentanwälte Otto-Lilienthal-Strasse 25 28199 Bremen (DE)
Respondent: (Patent Proprietor)	Renault Trucks 99 Route de Lyon 69800 Saint Priest (FR)
Representative:	Lavoix 62, rue de Bonnel 69448 Lyon Cedex 03 (FR)
Party as of right: (Opponent 2)	KNORR-BREMSE AG Moosacher Strasse 80 80809 München (DE)
Representative:	Wiedemann, Markus Patentanwalt Ludwigstrasse 1 86150 Augsburg (DE)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 29 March 2016 rejecting the opposition filed against European patent No. 2483116 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	W. Marx
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The appeal of the opponent 1 is directed against the decision rejecting the oppositions of opponents 1 and 2 against European patent No. 2 483 116.

II. In its decision the opposition division held that the subject-matter of claim 1 as granted was novel and involved an inventive step.

III. The appellant relied on the following evidence filed within the opposition period:

D1: DE 10 2005 043 607 A1 (identical to E5.1);
D4: EP 1 997 700 A2;
D5: EP 1 806 266 A1;
D6: WO 2004/043752 A2;
D7: DE 101 36 425 A1;
D8: JP 2001 106057 A (including translation);
D9: JPH 08 40226 A;
D10: WO 2005/086758 A2;
D11: US 2003/0221922 A1;
D12: US 4 629 043;
D13: US 2004/0055832 A1;
D14: DE 198 26 687 A1;
D15: DE 198 38 886 A1;
D16: Bosch, Kraftfahrtechnisches Taschenbuch, 2007, Seite 820, 822, 863, 864, 884 und 886;

E1: DE 198 36 687 A1;
E2: EP 1 188 631 B1 (E2.1: DE 601 28 989 T2);
E4: DE 196 25 919 A1;
E5: US 2009/099746 A1 (family of E5.1/D1);
E8: EP 0 478 642 B1.

IV. The opponent 2 as party as of right replied in its letter dated 4 March 2019 to the submissions of the patent proprietor and the preliminary opinion of the board, arguing lack of novelty and lack of inventive step with regard to documents E1, E2/E2.1, E4 and E8.

V. Oral proceedings before the board took place on 4 April 2019.

The appellant (opponent 1) requested that the decision under appeal be set aside and that the European patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed or, in the alternative, that the patent be maintained according to one of the first to fourth and sixth auxiliary requests filed by letter of 19 December 2016, or the fifth or seventh auxiliary request filed with letter of 29 January 2019.

The party as of right (opponent 2) requested that the decision under appeal be set aside and that the European patent be revoked.

VI. During the oral proceedings, the appellant requested to disregard the respondent's presentation given by Mr Kassem in respect of novelty of the subject-matter of claim 1 of the main request since, as Mr Kassem had not been appointed as representative for this case, he was to be considered as an accompanying person and the conditions of G 4/95 were not fulfilled. After deliberation, the board decided that Mr Kassem was, as a professional representative, entitled to represent the patentee. The appellant requested then not to admit further submissions of Mr Kassem.

After the appellant had presented its case on inventive step, and as Mr Kassem was starting his presentation for replying to the issue of inventive step, the appellant requested again not to admit further submissions of Mr Kassem. In response to the chairman's remark that the board had given a decision on this issue, the appellant submitted an objection under Rule 106 EPC in writing.

This objection reads as follows:

"*Hiermit wird gerügt, dass Herrn Kassem's Ausführungen in der mündlichen Verhandlung zugelassen werden trotz des diesseitigen Antrags seine Ausführungen nicht zuzulassen, da er solange als Begleitperson anzusehen ist, bis geklärt ist in welcher Eigenschaft er vorträgt, da davon auszugehen ist, dass er weder gesetzlicher Vertreter der Patentinhaberin noch bestellter Vertreter der Patentinhaber ist, insbesondere da es an einer Vertreterbestellung fehlt ebenso wie an einer etwaigen Angestelltenvollmacht*".

VII. Claim 1 as granted (main request) reads as follows (according to the appellant's feature analysis):

a) Method for controlling a vehicle park brake system, wherein the park brake system is electronically controlled
b) to achieve a proportional braking effect according to signals received from a park brake input device (10) through which a user of the vehicle can control the degree of activation of the park brake,
characterized in that
c1) when the user has initiated a park brake activation sequence using the park brake input device (10),

c2) and has terminated the park brake activation sequence by releasing the input device (10),
d) the park brake is locked in an applied status upon termination of the sequence
e1) if the vehicle speed was below a first threshold speed (V1) at park brake activation sequence initiation or
e2) below a second threshold speed (V2) at park brake activation sequence termination.

VIII. The submissions of the appellant (opponent 1) may be summarised as follows:

Interpretation of claimed features

The contested decision was based on a subject-matter which was unjustifiably too specific. An interpretation of claimed features was adopted on the basis of the description which was significantly narrower than what the person skilled in the art would have understood.

Feature a) was directed to a "*method for controlling a vehicle park brake system, wherein the park brake system is electronically controlled*", i.e. only to a method "suitable for" the control specified thereafter and not restricted by specific means (see T 304/08; Guidelines for Examination, F-IV, 4.13). Therefore, the opposition division erred in acknowledging novelty over E4 which showed a method for controlling a braking system. Novelty was only established by functional technical features when a new use of a known product had a new technical effect as described in the patent (T 848/93; also T 1039/09). The technical effect achieved in the contested patent was not distinguishable from the braking effect shown in E4.

Feature b) merely specified a purpose ("*to achieve*"), which did not limit the claimed subject-matter to a method step that actually realised a proportional braking effect. Moreover, the wording of claim 1 left open whether the braking effect was proportional to the signals or even to the position of the park brake input device, so the contested decision in this regard (in view of D1 or D10) was based on an excessively narrow interpretation of the term "proportional braking effect". The problem was not that a claimed feature was given a definition which was different from the definition normally attributed to this feature.

According to the case law of the Boards of Appeal (see T 121/89), only features recited in or deducible from the claims distinguished the invention from the state of the art. The examples cited in the description did not limit the scope of the claims unless they were explicitly mentioned in them (see also T 544/89). Article 69 EPC and its Protocol did not provide a basis for excluding what was literally covered by the terms of the claims, and it was inconsistent with proper claim interpretation to read into a claim a particular meaning which only appeared in the description and to rely on this feature to provide a distinction over the prior art (see T 881/01; also T 681/01, T 1105/04, T 299/09 and a series of further decisions as cited during oral proceedings).

Moreover, as recited in the contested patent itself in paragraph [0004], features a) and b) of the preamble of claim 1 were known from the prior art, such as E5 (claiming priority of D1 or E5.1) and WO-03/097423. In particular, feature b) was no limitation of the claimed subject-matter to a specific position of the park brake input device or to a specific park brake input device,

as found by the opposition division with regard to nearly all prior art documents.

As regards the characterising portion of claim 1, features c1) and c2) were fulfilled by a user having initiated and terminated a park brake activation sequence. The ambiguous term "is locked" in feature d) referred to a locked condition of the park brake, or to the step of locking the park brake. Feature d) implied two clear meanings, so Article 69 EPC did not apply. Feature d) did not limit the claimed subject-matter by any technical means. Moreover, there was no special effect of features c1), c2) and d) in combination with the preamble of claim 1, in particular the proportional braking effect according to feature b).

The wording of claim 1 further required two alternative speed conditions according to features e1) and e2) for the activities specified in features c1), c2) and d). However, a method according to features a) to d) did not require as necessary prerequisites features e1) and e2), as features e1) and e2) were introduced using the term "if" (not: "only if") and thus left open what happened in the complementary situations in which the "if"-conditions were not fulfilled. Therefore, any method known in the prior art showing features a) to d) in which the park brake was locked, even if not explicitly referring to features e1) and e2), realised and comprised the cases according to features e1), e2). In summary, features e1) and e2) only excluded those methods in which a locked state according to feature d) was explicitly excluded in case of speed conditions e1) and e2). Moreover, features e1) and e2) did not further specify how a vehicle speed below a threshold value was determined, e.g. whether it was determined via sensors

or in an electronic control unit, so it was sufficient that such a speed condition was present.

Novelty

As correctly found by the opposition division in their preliminary opinion, features e1) and e2) were already fulfilled when the user activated the park brake activation sequence for a stopped vehicle and the park brake input device was again in neutral position afterwards. Claim 1 did neither specify a park brake system executing the claimed method, nor determination of speed conditions, e.g. by automatically comparing the vehicle speed with a predetermined value, in order to automatically lock the park brake. According to their wording, features e1) and e2) could be executed as a mental act of the driver, looking out of the window and estimating the vehicle's speed, not being determined by the system. The subject-matter of claim 1 was not limited to a method which was not controlled by a driver. Therefore, features e1) and e2) were always fulfilled. According to the case law of the Boards of Appeal, non-technical features which did not provide any technical contribution were not to be considered when evaluating novelty and inventive step.

The opposition division was wrong in acknowledging novelty over D4 on the ground that the method of D4 did not show a vehicle speed signal and that the contested patent required comparing of vehicle speed with two threshold values linked to the step of locking the park brake in applied status. The claimed invention was not limited by a speed signal or a comparison step. The method disclosed in D4 showed two modes of operation (see paragraph [0023]), one of which was a proportional mode, and thus features a) to d), as found by the

opposition division, and also features e1) and e2) when the driver activated the park brake at vehicle stop. Checking alternative speed conditions as specified in features e1) and e2) made sense, as the park brake of D4 could be locked at any speed.

The subject-matter of claim 1 did not require a braking effect proportional to signals or to a position of the park brake input device. A proportional braking effect according to feature b), as identified in the contested decision as distinguishing the claimed invention over D15, D1, D10, E2, E1 or E8, was therefore known from either of these documents and even explicitly recited in the contested patent with respect to D1. Since the contested decision was silent on further distinguishing features, novelty had to be denied. Moreover, with same reasoning as argued with respect to D4, features e1) and e2) were disclosed in D15, D1 and D10.

The method known from E4 was suitable for controlling a vehicle park brake system. The purpose specified in feature a) was not limiting the method to a park brake system, so this sole distinguishing feature identified by the opposition division could not establish novelty. The patent specification even stated explicitly (paragraph [0012]) that the actuators of the park brake and service brake could act on the same brake device.

As regards E2, E1, E8 and E4, it was further referred to the arguments of the opponent 2.

Inventive step

Contrary to the decision of the opposition division, the subject-matter of claim 1 of the contested patent did not involve an inventive step.

Starting from D4 as the closest prior art showing features a), b), c1), c2) and d) (assuming features e1) and e2) were not known from D4), the known park brake could be locked at any speed, so the problem to be solved was to modify the method of D4 in order to provide more comfort and safety. This problem was known according to the common general knowledge, as supported by D16, which related to a park brake system (EMP) detecting (see page 864) an upper and a lower speed threshold to avoid critical driving situations. The skilled person was prompted to combine D4 and D16 in order to provide a safer park brake, and D16 already taught that the park brake was locked when reaching a lower speed threshold. Applying this teaching to D4 provided a solution falling under the wording of claim 1. The distinguishing feature of a threshold speed as known to the skilled person was not in contradiction to the remaining method steps of D4. In particular, there was no technical relationship with the proportional braking effect according to feature b) which prevented the skilled person from arriving at features e1) and e2).

With similar reasoning, there was nothing which could have prevented the skilled person from taking into consideration the teaching of any of documents D5, D6, D7, D8, D9, D11, D12, D13 or D14 in order to supplement the missing features e1) and e2) when starting from D4. These documents also taught to avoid activation of the parking brake if the vehicle was still moving, or to allow such activation if vehicle speed was either below a predetermined value (during the oral proceedings, the appellant cited D5, paragraphs [0014] and [0017]; D6, pages 6 and 10, Figs. 2 and 3; D7, paragraphs [0009] and [0023]; D9, page 1, penultimate paragraph; D11, paragraphs [0011], [0053] and [0059]; D12, column 4,

line 66 ff, column 5, second paragraph, column 7, line 25 ff, claims 6 and 8, Figs. 3A, 3B, 10A, 10B; D14, column 2, lines 51 and 64, column 4) or nearly zero (translation of D8, page 5, paragraphs 5 and 6). When solving the problem of safely controlling the park brake system, and in particular to prevent unstable driving conditions when activating the park brake, the skilled person would also consult the teaching of E8 and arrive at the subject-matter of claim 1. According to E8, an unstable driving situation was prevented by activating the park brake at vehicle stop (see page 4, line 10 ff and claim 5), i.e. below a threshold speed.

Document D5 showed features a), b), d), e1) and e2). When determining (by comparing vehicle speed with a threshold value) a stopped vehicle, the parking brake was allowed to transition into the braking state (paragraph [0014]). Erroneous activation of the parking brake before the vehicle had stopped was thus prevented (paragraph [0017]). D5 failed to show activation of a park brake input device, which was obvious in view of the common general knowledge (see D16), or in view of the park brake operating element shown in D14.

Features a), c), d), e1) and e2) were known from either document D11, D12 or D13, which showed that the park brake was only locked if the speed of the vehicle was below a threshold value. In D13, vehicle speed was even determined and compared two times (paragraph [0065]). The distinguishing feature b) to achieve a proportional braking effect solved the problem of providing dynamic braking using the park brake. The skilled person would take this teaching from either document D4 (claim 10; paragraph [0047], [0050] or [0090], or [0010], [0021], [0151]), D10 (page 6) or D14 (column 3, line 66 ff).

Documents E2/E2.1 and E1 showed feature b) and thus also constituted a promising starting point for the consideration of inventive step (see paragraph [0004] of the contested patent, starting from E5 or D1). In particular, the subject-matter of claim 1 was not inventive over E1 in combination with E2/E2.1 or E8.

IX. The opponent 2 as party as of right essentially submitted the following:

Interpretation of claimed features

Feature a) only required a method "suitable for" controlling a vehicle park brake system, such as a brake system maintaining a stopped state of the vehicle without actuating an operating member as known from E4.

Feature b) was no method feature, but specified merely the purpose "to achieve" a proportional braking effect according to signals received from a park brake input device. Its wording extended beyond the embodiments of the contested patent and included a proportional relationship between the time the park brake input device was activated in a specific position and the achieved braking effect, thereby controlling the degree of activation of the park brake. Feature b) did not require a braking force proportional to input signals, but a braking effect proportional according to signals received from a park brake input device. The longer a braking force was applied, i.e. the longer a brake switch was activated, the higher was the braking effect. If not explicitly stated, the scope of the claims was not limited by examples of the description. It was inconsistent with proper claim interpretation to read into a claim a particular meaning which only appeared in the description (see T 121/89, T223/05,

T 681/01). The definition of "proportional" in paragraph [0020] of the patent specification concerned the interpretation of the embodiments as described in paragraph [0009] onwards, but not the general inventive idea as described in paragraph [0008]. Excluding an on/off control with a progressive transition mode in paragraph [0020] was contradictory to paragraph [0034], according to which (column 9, line 10 ff) proportional meant an applied braking force varying progressively with the position of the operating member, so a skilled person would adopt a broad interpretation of the term "proportional" accordingly. Consequently, feature b) was known from E2, E1 and E8.

Feature d) did not specify the point in time when locking the park brake. Features e1) and e2) were necessary but not sufficient, leaving open what happened when these conditions were not fulfilled. Moreover, the parking brake was locked if either condition e1) or condition e2) was fulfilled, i.e. two alternatives were proposed which had to be considered separately (see paragraph [0043]; left portion of flow chart in Fig. 5). Therefore, prior art disclosing one of the alternatives was already prejudicial to novelty.

Novelty

E2.1 disclosed a method for electronically controlling a vehicle park brake system (paragraph [0025]: park brake control unit 8) and thus feature a). The braking effect or deceleration increased with the time the brake control lever was actuated (paragraph [0035]), i.e. proportional to the activation time of the park brake input device (feature b)). When pulling the brake control lever (as detected via two sensors), the park brake was locked if the vehicle was moving at a speed

lower than a predetermined value P1, and the park brake remained locked when releasing the brake control lever if the vehicle speed was lower than predetermined value P2 (see claims 1, 2). Thus, features c1), c2), d), e1) and e2) were also known from E2/E2.1.

Feature a) was known from E1 (column 4, lines 27-34; Fig. 1: actuator 11 of park brake, controlled by electronic control unit 4 dependent on signals from push button 1) and also feature b), as the braking effect was proportional to the time the push button was activated (see column 2, line 62 ff; Fig. 3, center column for $v_{KFZ} > \varepsilon$: linear increase of braking force when activating the push button at t_1). After releasing the push button at t_2, the braking force was maintained during a speed-dependent holding time T_H, which was non-zero below 30 km/h (column 7, line 12 ff). The vehicle speed was determined in Figure 2 in step 70 before the parking brake was activated. Thus, features c1), c2), d), e1), e2) were known. In particular, feature d) and both speed conditions e1) and e2) were fulfilled for a vehicle speed lower than 30 km/h, as the state of the park brake was maintained for time T_H.

In the electronically controlled park brake system of E8 (page 2, lines 29-31), a desired parking brake force or degree of activation of the park brake was achieved by actuating a switch for a certain time period (see page 2, lines 46-58), as required by features a), b). Moreover, a function "*automatic actuation of the park brake at vehicle stop*" was realised when activating a push button "Auto" (page 3, lines 50-59). By pushing and releasing the push button, features c1), c2) were realised. Vehicle stop was determined for a vehicle speed below a threshold value, and the applied status

of the park brake was maintained. Thus, features d), e1), e2) were also known from E8.

Document E4 disclosed a method for controlling a vehicle park brake system realised in a system for suppressing vehicle creep, which maintained the actual braking force when releasing the brake pedal (column 7, lines 2-28; Fig. 2b, Fig. 4a/4b). The service brake in combination with creep suppression (keeping the vehicle stopped) acted as a park brake and was electronically controlled (feature a)). The patent itself recited a park brake function realised by the service brake actuators. The braking effect was proportional to the degree of activation of the brake pedal (feature b)). A stopped vehicle at time t_1 was determined by the control unit on the basis of vehicle speed (column 6, lines 43-47; column 7, line 2 ff) and clearly by comparing with a speed threshold. When the driver released the brake pedal, wheel pressures were kept until time t_4. Thus, features c1), c2), d), e1), e2) were known from E4.

Inventive step

E1 disclosed at least features a), b). Assuming that E1 did not show the characterising features of claim 1, these features provided the technical effect that, when using the park brake as an auxiliary brake while driving, the park brake was automatically locked if permitted in view of the vehicle's driving state. Solving the problem of providing a method for operating a park brake so that this effect was achieved, the skilled person would consider either E2/E2.1 or E8.

- E2/E2.1 also related to an electronic park brake system used as an auxiliary brake. According to E2.1 (paragraph [0018]), braking via the park brake

was adapted to the actual driving situation. Negative effects on the driving behaviour were avoided and the vehicle was locked at standstill. When operating the park brake input device, the vehicle was braked via the park brake if the vehicle speed was lower than a value P1. After releasing the input device, it remained braked if the vehicle speed was lower than a value P2.

- In E8, the degree of activation of the park brake was determined by the time a two-way switch was activated. Moreover, the function "*automatic actuation of the park brake at vehicle stop*" was realised in E8 when actuating a push button "Auto". A park brake activation sequence was realised by pushing and releasing the push button, and the park brake was locked in an applied status if the vehicle speed was lower than a first threshold value at initiation of this sequence or lower than a second threshold speed at termination of this sequence.

By merely modifying software routines in the electronic control unit of E1, a variable auxiliary braking force could also be provided through the push button of E1.

On the assumption that E1 did not show feature b), using a park brake lever instead of a push button provided feedback to the driver through the position of the brake lever. Solving the problem of improving operation of the park brake, it was within the common general knowledge of the skilled person to replace the push button of E1 by a lever (see e.g. D16 or D4; also paragraph [0004] of the contested patent).

X. The respondent countered essentially as follows:

Interpretation of claimed features

The invention was directed to a park brake which was not only electronically controlled to immobilise a vehicle at standstill by locking the park brake, but also to apply the park brake dynamically (feature b)), i.e. to control the degree of activation of the park brake (fast with high braking force, or soft) and thus vehicle deceleration. An algorithm which determined the driver's wish to park the vehicle was provided to control locking of the park brake, as it was difficult for the driver of a truck to sense the actual speed.

Feature a) should not be understood as meaning that the method was merely suitable for controlling a vehicle park brake system, but rather as a functional feature concerning the control of the vehicle park brake system (not: control of the service brake) and defining one of the method steps (see T 848/93).

Similarly, the proportional braking effect according to feature b) was necessary for carrying out the claimed method. Interpreting the terms of the claims in the light of the description was not contrary to the practice of the Boards of Appeal (see e.g. T 620/08). Paragraph [0020] of the patent determined how a skilled person had to understand the term "proportional". In particular, it meant that intermediate braking efforts could be maintained depending on driver input, i.e. on the position of the park brake input device (see also paragraph [0034]) and not on the time the input device was activated. Proportional control was also opposed to a simple on/off control, and to an on/off control with a given transition mode between the on and off modes,

including if said transition was progressive according to predefined effort versus time curves.

As regards the alleged ambiguity in feature d), the description and drawings had to be used to interpret the claims (see T 481/95; T 556/02). In the present case, the term "*locked in an applied status*" was clearly defined in the patent (column 4, lines 1-9) and related to a complete brake application. Further, on reading paragraph [0043] of the patent, one understood without effort that there were at least three modes: a first proportional mode, a second mode wherein the park brake was locked in applied status, and a third deactivated mode. Consequently, locking the park brake in applied status was a step consisting in switching between the first and second mode (see also T 860/93).

The claimed method defined method steps requiring the driver to pull and release the park brake input device (features c1) and c2)) and determining whether the park brake should be locked. Features e1), e2) contributed directly to the resolution of the technical problem at the origin of the invention, to prevent the driver from locking the parking brake in applied status at any speed. The driver did not have to operate the manual operating device many times to lock the parking brake in applied status, since vehicle speed was checked not only at initiation but also at termination of the park brake activation sequence. This double check of the vehicle speed was not found in any prior art. One reading the claim understood that the park brake was not locked if none of the two speed conditions were fulfilled. Consequently, any method according to features a) to d) did not anticipate the invention.

Novelty

Features a) and b) were known from D4, but the parking brake could be locked in applied status regardless of the vehicle speed. It was not automatically locked under speed conditions as specified in features e1) and e2), since these features specified a double check of the vehicle speed (not through a mental act of the driver, but via subroutines performing steps e1), e2), see paragraph [0043] of the patent) in order to safely detect the driver's intention to park the vehicle. Moreover, D4 did not disclose feature d), as the park brake could be locked in applied status while the sequence was not terminated, i.e. while the user had not released the input device.

In agreement with the analysis of the opposition division, feature b) was not disclosed in D15, D1, D10, E2/E2.1, E1, E8, D5 to D9 and D11 to D14. Although the patent allegedly recited that feature b) was known from US 2009/0099746 (E5), the electric parking brake in E5 was closed according to a predefined time/pressure curve (paragraph [0103]), so feature b) was not shown.

In addition, neither feature d) nor a double check of the vehicle speed according to features e1) and e2) was known from any of documents D15, D1, D10, E2/E2.1, E1 and E8. In documents E2/E2.1 and E1, vehicle speed was measured and compared to a threshold value only when initiating braking, so measuring vehicle speed at park brake activation sequence termination as required by feature e2) was not disclosed.

According to the respondent's understanding of feature a), E4 did not concern a method for controlling

a park brake system. Moreover, E4 failed to disclose at least features d), e1) and e2).

Inventive step

As regards the combination of D4 with D16, D16 taught to prevent any operation of the parking brake above a certain speed and to use the service brake instead, so D16 did not concern an electronically controlled parking brake with a proportional mode while the vehicle was moving. D16 was not compatible with the teaching of D4, which used the park brake as an auxiliary brake in support of the service brake. Moreover, D16 did not disclose to impose speed conditions to enable parking brake locking within the meaning of claim 1. A similar reasoning applied for a combination of D15, D1 or D10 with D16, which even failed to show feature b).

As regards the appellant's attack combining D4 with one of documents D5 to D9 and D11 to D14, the appellant did not say why the contested decision was wrong, i.e. why the skilled person would be tempted to consider the teaching of these documents. In accordance with the contested decision, D4 did not show features d), e1) and e2). None of the documents referred to by the appellant showed feature e2). Combining D4 with an automatic park brake as known from D5 or D11 (automatic braking) or D6 (Hillholder; see also E4) would even teach to abandon a manual actuation of the parking brake as known from D4 and was therefore incompatible with D4. The skilled person would not combine D4 with D8, in which malfunction of a parking brake due to abnormality of an operating switch was prevented.

The patented method was also inventive over D4 in combination with E8. The driver had the possibility in E8 (page 3, lines 50-51) to operate a switch achieving an "*automatic actuation of locking brake when vehicle stationary*". In the automatic mode, the park brake was automatically controlled according to speed conditions, and the braking effect was not controlled according to the driver's intention and signals received from a park brake input device as currently claimed, so features c1), c2), d), e1) and e2) were not realised.

As regards combinations starting from E2/E2.1 or E1 as closest prior art, the contested decision was to be followed. E1 e.g. did not show feature b), feature d) (park brake was released in E1 after holding time T_H) and feature e2). These features were not obvious.

In D5, the parking brake was locked when detecting a precise stop condition (paragraphs [0009], [0015]). Vehicle speed was only checked in an automatic mode. D5 did not show a proportional braking effect and did not consider whether a brake sequence was initiated or terminated at a given speed threshold, so D5 failed to disclose features b), c1), c2), d), e1) and e2). It was already difficult to understand what was the objective technical problem and why the skilled person would have adopted the claimed solution. The combination with D14 (not allowing the driver to exert a proportional braking effect; measuring vehicle speed only at park brake activation sequence initiation) did not lead to a method with features b) and e2). Similar considerations applied to a combination with D16.

In case of choosing one of documents D11 to D13 as the closest prior art, D11 (automatic parking brake) and D12 (operating a manual switch did not provide a

proportional braking effect) failed to disclose features b) to e2), and D13 (dynamic parking brake as long as a switch was applied, checking vehicle speed only at the beginning) failed to show at least features b) and e2). Accordingly, the combination of D11, D12 or D13 with D4, D10 or D14 did not lead to the claimed method. D4 failed to show at least feature e2).

Reasons for the Decision

1. The appeal is admissible.

2. Representation by Mr Kassem

2.1 The board finds that Mr Kassem is a professional representative entitled to represent the patentee. Therefore, there was no reason to disregard the submissions made by Mr Kassem during the oral proceedings, as requested by the appellant for the first time during the oral proceedings after Mr Kassem had finished presenting the patentee's case with respect to novelty of claim 1 of the main request.

2.2 According to Article 134(1) and (5) EPC a professional representative entered on the list of professional representatives maintained for this purpose by the EPO is entitled to act in all proceedings established by the EPC. Mr Kassem has identified himself prior to the oral proceedings as professional representative and his name appears on the list of professional representatives of the EPO.

2.3 According to the Decision of the President of the EPO dated 12 July 2007 on the filing of authorisations (see OJ EPO 2007, Special edition No. 3, 128 in connection with Rule 152(1) EPC), a professional representative whose name appears on the list maintained by the European Patent Office and identifies himself as such shall only be required to file a signed authorisation

- if the European Patent Office is informed of a change of representative involving professional representatives who are not members of the same association, or
- if the circumstances of the case necessitate this, particularly in case of doubt as to the professional representative's entitlement to act.

None of these specific circumstances which would require to file an authorisation apply in the present case.

The appellant questioned Mr Kassem's entitlement to act and maintained that he had not been appointed as representative of the patentee and, if he were acting as an employee of the patentee, no authorisation had been filed.

In the present case, as indicated in the list of professional representatives before the EPO, Mr Kassem is a member of Lavoix. Lavoix was appointed as association of representatives of the patentee with letter dated 30 June 2016 (see also communication of the EPO of amended entries concerning representative dated 13 July 2016). Moreover, the letter in reply to the statement of grounds of appeal dated 19 December 2016 referred to the association of representatives Lavoix no. 735 and indicated Mr Kassem as person in charge of the case. Thus, there cannot be any doubt that Mr Kassem is a representative practising within the association Lavoix.

According to Rule 152(11) EPC the authorisation of an association of representatives is deemed to be an authorisation of any representative practising within that association.

Further, even if Mr Kassem were acting as an employee of the patentee, which seems not to be the case here, a signed authorisation would not be required since an employee has to file a signed authorisation only if the employee is not a professional representative (see Article 3 of the above mentioned Decision of the President).

The appellant considered Mr Kassem as an accompanying person and referred to decisions G 2/94 and in particular G 4/95, according to which oral submissions by an accompanying person before a board of appeal should not be admitted or considered, unless he had been announced as an accompanying person in advance of the oral proceedings and the subject-matter on which he should speak had been specified.

As the board had no doubts on Mr Kassem's identity and that he was acting as a professional representative, he was not to be regarded as an accompanying person within the meaning of the jurisprudence of the Boards of Appeal. Therefore, the conditions as set out in G 4/95 for oral submissions by an accompanying person during oral proceedings in *inter partes* proceedings do not apply in the present case (decision G 2/94 relates to *ex parte* proceedings only).

2.4 The board further notes that the respondent had announced Mr Kassem as being the person in charge of the case right from the beginning of the appeal proceedings (see letter in reply to the appeal dated

19 December 2016). With its letter of 29 January 2019 the respondent had announced Mr Kassem as European patent attorney of RENAULT TRUCKS participating in the oral proceedings. Moreover, while opening the oral proceedings and presenting the parties, the chairman even indicated that Mr Kassem had been identified as professional representative. Therefore, by raising its objection only after Mr Kassem had been given the floor and had made its presentation on the issue of novelty, the appellant acted at a very late stage of the appeal proceedings, which might even amount to an abuse of procedure. However, the board has abstained from further investigating this issue.

2.5 The appellant requested at a later stage of the oral proceedings not to admit submissions of Mr Kassem in reply to the appellant's objections, in particular on the issue of inventive step, again questioning that Mr Kassem was authorised to present the respondent's case. This request was rejected at the oral proceedings. As explained by the chairman during the oral proceedings, the board had already announced a decision (see points 2.2 and 2.3 above; see the minutes of oral proceedings) according to which Mr Kassem was rightfully representing the respondent. Accordingly, Mr Kassem could take the floor on any issue to be discussed at the oral proceedings. The appellant's argument that the decision of the board only applied to the submissions already made by Mr Kassem and not to the submissions still to be made by Mr Kassem, in particular those in respect of inventive step, is patently wrong, as under the EPC there is no legal basis for allowing a professional representative to speak on specific issues only. It would be absurd for a board to decide on whether a representative is allowed to speak every time that the discussion turns to a new issue. In fact, the

board takes the view that the appellant's request is tantamount to finding a technicality for presenting again the same request that was already rejected by the board and thus unduly attempts to re-open the discussion on an issue which was already closed by the announcement of an unmistakable decision.

3. Interpretation of claimed features

3.1 As the board's finding with respect to novelty and inventive step (see further below) relies primarily on features d), e1) and e2), the board's understanding of these features will be set out in the following in advance. Moreover, since the board has to review the finding in the contested decision of feature a) establishing novelty over E4, the interpretation of this feature by the board will also be given.

3.2 Feature a):

3.2.1 Claim 1 is directed to a method, not to an apparatus or product. The case law of the Boards of Appeal distinguishes between method claims that define method steps by means of functional features (see T 848/93), and method claims that indicate an intended use of this method (see T 304/08, also cited in the Guidelines for Examination, F-IV, 4.13). In the case underlying decision T 848/93, novelty of a method claim was established on the basis of a functional feature in the method claim, which was considered as a functional method feature, i.e. a feature of same category as the remaining features (steps) of the claimed method (see point 3.2 of the Reasons).

3.2.2 In the present case, the subject-matter of claim 1 relates to a method specifying method steps such as

features d) and e2) defining a step of locking a park brake when detecting a specific speed condition upon termination of a park brake activation sequence. The board finds that the part "*for controlling a vehicle park brake system*" in feature a) represents a feature of same category as the remaining steps, i.e. not expressing an intended use but in fact a method step of the claimed method by means of a functional feature (as found in T 848/93). Although the control function is not specified in more detail than defining the object to be controlled ("*a vehicle park brake system*") and might be rather general, it represents a more general formulation of feature d) ("*the park brake is locked*") and requires implicitly at least that a control input is provided to a vehicle park brake system affecting operation of the park brake.

Therefore, the board does not follow the opponents' view that the claimed method according to feature a) was only "suitable for" controlling a vehicle park brake system.

3.2.3 As regards the decisions cited by the appellant, the board observes the following:

The mention in T 848/93 that a new technical effect represented by a functional feature could establish novelty (see point 3.3 of the Reasons) relates to former case law (as confirmed in G 6/88 and G 8/88) and to claims directed to the new use of a known product, which could establish novelty if a new technical effect described in the patent was achieved.

In T 1039/09 (see point 8 of the Reasons), the feature in question concerned a known method for a particular purpose, namely the production of a product, wherein

the product was indistinguishable from the product obtained in the prior art, and for this reason alone decision T 848/93 was considered not relevant.

T 304/08 related to a process claim which included a physical step ("*applying a surface-active agent to an absorbent material*") resulting in the production of a product, i.e. not to a "use" claim as dealt with in decisions G 6/88 and G 8/88 which related exclusively to claims directed to the use of a substance for achieving an effect (see point 3.3.3 of the Reasons), and which further indicated the intended purpose of the method ("*for reducting malodour*"). Thus, it related to a purpose or effect associated with a product produced by the claimed process. T 304/08 then found that "*the indication of the intended purpose of the method may at the most be seen as limiting to the extent that the method has to be suitable for that use*" (point 3.3.4).

Even if feature a) specifies a vehicle park brake system as the object or "product" to be controlled, claim 1 does not specify a process resulting in the production of a product. Therefore, the respective case law cited by the appellant relating to the use of a product or the production of a product does not apply in the present case.

3.3 Features d), e1) and e2):

Claim 1 further defines a method comprising steps relating to a locking function (feature d)) which is performed - by virtue of the claimed "if... or" condition - depending on whether a speed comparison is met at different points in time (features e1), e2)), namely at initiation or at termination of a park brake activation sequence (specified in features c1), c2)).

3.3.1 Feature d) ("*the park brake is locked in an applied status upon termination of the sequence*") specifies a point in time ("upon termination") when the user has released the park brake input device (as defined previously by feature c2)), and at this point in time the park brake is locked in an applied status.
Feature d) on its own might not specify the point in time when locking the park brake and the term "is locked" might be ambiguous, as argued by the opponent 2 and by the appellant, as feature d) might describe either a condition which was already established earlier, or a step of bringing the park brake in its locked state. However, feature d) cannot be read in isolation, but together with the following features e1) and e2) which specify two conditions which have to be fulfilled in order to realise feature d).

Reading feature d) in combination with feature e1), which defines a speed condition determined at an earlier point in time ("*at park brake activation sequence initiation*") than specified in feature d) for locking the park brake, the term "is locked" in fact might refer to the condition of the parking brake. However, when reading feature d) in combination with feature e2), which defines a speed condition at the same point in time ("*park brake activation sequence termination*") as specified in feature d) when defining that "*the park brake is locked in an applied status*", the board finds that it is clear that the combination of features d) and e2) relates to the step of locking the park brake in an applied status at the point in time when the user releases the park brake input device.
Claim 1 therefore clearly requires, at least by virtue of the combination of features d) and e2), a step of

locking the park brake in an applied status if a speed condition "*vehicle speed below a second threshold speed*" is satisfied at park brake activation sequence termination.

3.3.2 In view of the close relationship between features d) and e2), the board disagrees with the appellant's assertion that, if not explicitly excluding such speed conditions, any method known in the prior art showing features a) to d) in which the park brake was locked already realised features e1) and e2) without having explicitly to refer to these features. The wording of claim 1 leaves open what happens in the complementary situations if conditions e1) and e2) are not fulfilled, as argued by the appellant and also by opponent 2. However, these situations are addressed in dependent claim 5 as granted, so it might be an indication of the broadness of the subject-matter of claim 1. However, a broad definition given in granted claim 1, which does not yet cover all possible situations or conditions related to the locking of the park brake, is no reason to disregard those conditions which are explicitly specified in claim 1.

Similarly, the board does not follow the appellant's view that features e1) and e2) were always fulfilled and allegedly not required as necessary prerequisites for features a) to d), or that features e1) and d2) might be executed merely as a mental act of the driver. As argued above, claim 1 requires a step of comparing vehicle speed with a threshold speed at a given point in time ("*park brake activation sequence termination*"), as defined in feature e2), to trigger the step of locking the park brake upon termination of the park brake activation sequence (features c2), d)).

Method claim 1 does not require that hardware means (such as a system, electronic control unit or sensors) are further defined in features e1) and e2). However, contrary to the appellant's allegation, it cannot be concluded therefrom that a speed condition according to e.g. feature e2) is already fulfilled when such a speed condition is merely present. Claim 1 requires steps of determining whether such a speed condition is fulfilled at a predetermined point in time (e.g. feature e2): "*at park brake activation sequence termination*") in order to bring the park brake into its locked status, as required by feature d).

3.3.3 The board finds that the two conditions e1) and e2) do not exclude each other and do not have to be considered separately, as argued by the opponent 2. In contrast to an apparatus claim directed to two alternatives, which might relate to conflicting embodiments excluding each other, present method claim 1 specifies - by virtue of the "if...or"-combination of features e1), e2) - that respective speed conditions are determined at two different points in time as a prerequisite for locking the park brake. Therefore, the board agrees with the respondent that claim 1 requires a double check of vehicle speed at initiation and at termination of the park brake activation sequence (features e1) and e2)) in order to lock the park brake in an applied status upon termination of the sequence (feature d)), as represented in a flow chart by two branches (as shown in Figure 5 of the patent specification). The claimed method thus takes into account two different situations in its decision making process resulting in the park brake being locked in applied status, so it is more specific and not anticipated by a method which takes into account only one situation.

4. Novelty (Article 54(1) EPC)

4.1 The subject-matter of claim 1 as granted is new within the meaning of Article 54(1) EPC, having regard to the documents cited by the appellant and the opponent 2 as party as of right.

4.2 In view of the board's understanding set out above of features d), e2) (see 3.3.2), the board considers that in particular feature e2) is not yet fulfilled when the user activates the park brake activation sequence for a stopped vehicle, or that feature e2) might be executed merely as a mental act of the driver, as argued by the appellant. Feature e2) specifies a step of determining a speed condition at a given point in time as a prerequisite for the step of locking the parking brake in an applied status according to feature d). Moreover (see above 3.3.3), the claimed subject-matter requires a double check of vehicle speed at different points in time according to feature e1) and e2).

4.3 Having said that, the lines of argument presented by the appellant (opponent 1) and by the opponent 2 in respect of lack of novelty - as summarised above in the facts and submissions - could not convince the board.

4.3.1 Document D4 might show features a) to d). However, the mere fact that the park brake of D4 might be activated by the driver at vehicle stop does not disclose a step of locking the parking brake under the condition that a vehicle speed below a threshold value was determined at termination of a park brake activation sequence, as specified by features d) and e2), which according to the board's understanding are linked to each other. There is no teaching to be found in D4 that a specific speed condition has to be fulfilled in order to lock

the park brake. The mere fact that checking vehicle speed before locking the park brake would theoretically make sense for the driver does not imply that a corresponding check at a given point in time (in particular when releasing the input device) is provided in a method for controlling electronically a vehicle park brake system.

4.3.2 The appellant's novelty objections with regard to documents D15, D1 and D10, which relied on the same reasoning as argued with respect to D4, have to fail accordingly.

4.3.3 As regards document E4, feature a) does not merely require (see above 3.2.2) a method suitable for controlling a vehicle park brake system. Whether E4 shows a step of controlling a vehicle park brake system, as required by feature a), depends on how this feature is understood. In the board's understanding, it means that a control input is provided to a vehicle park brake system affecting park brake operation.

In E4, a service brake system - actuated by the driver depressing the brake pedal - is used to suppress unintended movement of a vehicle such as creeping. It might act as a park brake, as argued by the opponent 2, keeping the vehicle stationary when the diver releases the brake pedal. As the contested patent explicitly states that the park brake function could be realised by the service brake actuators, on the sole reading of feature a), the vehicle park brake system to be controlled according to feature a) might not be distinguished from the service brake system of E4. However, the following features (e.g. feature b)) establish a clear link between the control of the park brake system and a park brake input device, i.e. the

means providing the controlling input to the park brake system. In this regard, the board finds that the brake pedal identified by the opponent 2 as the means controlling the degree of brake activation in E4 cannot be considered as a park brake input device. Such understanding goes far beyond what a skilled reader would take from document E4. For safety reasons, a service brake system cannot take over completely the park brake system's functionality.

As a consequence, the board agrees with the finding in the contested decision that E4 does not disclose the features a) and b) of the preamble of claim 1.

4.3.4 Document E2/E2.1 might teach that the park brake is locked at park brake activation sequence initiation under a first speed condition (see claim 1: vehicle speed lower than predetermined value P1), as required by the combination of features d) and e1). Similarly, E1 only shows (see Figures 2, 3) that a push button is operated at time t1 and vehicle speed is compared with a threshold value (step 70) before activating the park brake. However, neither E2/E2.1 nor E1 show a step of locking the park brake in an applied status if a speed condition "*vehicle speed below a second threshold speed*" is satisfied at park brake activation sequence termination, as required (see above 3.3.1) by the combination of features d) and e2). In E2/E2.1 and also in E1, the park brake only remains locked after releasing the brake control lever if a second speed condition is satisfied (E2/E2.1, see claim 2: vehicle speed lower than predetermined value P2; E1: center part Figure 3, for a vehicle speed lower than 30 km/h, see column 7, lines 29-39), but no locking step is performed under the condition that a low vehicle speed at park brake activation sequence termination was

determined. Therefore, the arguments of the opponent 2 in this respect could not convince the board, and novelty of the subject-matter of claim 1 over E2/E2.1 and E1 is acknowledged.

4.3.5 E8 discloses (page 3, lines 50-59) a function of automatically locking the park brake if vehicle stop is detected, e.g. at a vehicle speed below a threshold value, which might only be provided when the driver activated a push button "Auto". Assuming that a park brake activation sequence is initiated and terminated by pushing and releasing the "Auto" button, as argued by the opponent 2 regarding features c1) and c2), the board cannot see that E8 discloses that the park brake is locked e.g. upon termination of this sequence. In the automatic mode, the park brake of E8 is controlled automatically according to speed conditions, but not linked to the point in time the park brake input device is operated or released, so features d), e1) and e2) are missing. Even assuming that the driver activates the automatic mode at standstill, a step of locking the parking brake which depends on determining a vehicle speed below a threshold value at termination of a park brake activation sequence, as required by features d) and e2), would not be known from E8, as argued already with respect to D4.

4.4 In view of the foregoing, it can be left open whether the subject-matter of granted claim 1 is distinguished from the known prior art by further features as disputed between the parties (see above under Facts and Submissions), such as the proportional braking effect according to feature b).

5. Inventive step (Article 56 EPC)

5.1 The subject-matter of claim 1 as granted involves an inventive step within the meaning of Article 56 EPC.

5.2 D4 does not show that the park brake is locked under speed conditions as specified in features e1) and e2). For safety reasons, it might be known to the skilled person that a park brake is only locked when reaching a lower speed threshold, as taught in D16. However, even considering this teaching when starting from D4 as the closest prior art, the board cannot see that the skilled person would arrive at the subject-matter of claim 1, in particular at a speed condition to be fulfilled at a given point in time as required by feature e2), i.e. upon releasing the park brake input device and terminating a park brake activation sequence, to enable locking of the park brake.

The board also agrees with the respondent that a similar reasoning applies for a combination of D15, D1 or D10 with D16 (not put forward by the appellant).

5.3 Starting from D4, the board holds that also none of prior art documents D5 to D9, D11 to D14, E4 or E8 suggests that the park brake is locked in an applied status upon termination of the park brake activation sequence, i.e. (see feature c2)) when releasing the park brake input device, if the vehicle speed is below a second threshold at park brake activation sequence termination, as required by the combination of features d) and e2).

- According to D5 (see paragraphs [0014], [0017]), the parking brake is allowed to transition into the braking state if a vehicle stop is determined. However, as acknowledged by the appellant, D5 does

not show activation of a park brake input device. Therefore, D5 does neither consider initiation or termination of a park brake activation sequence nor whether specific speed conditions are fulfilled (or whether vehicle stop is detected) at initiation or termination of the sequence.

- D6 shows (page 6, paragraph 4 ff; page 10; Figs. 2 and 3) that current brake pressure is automatically maintained when vehicle standstill was detected in order to assist driving off on an incline. Brake pressure might also be maintained in D6 when releasing the brake pedal (see abstract). However, as argued already further above in respect of novelty (see 4.3.4), no locking step is performed under the condition that a low vehicle speed at park brake activation sequence termination was determined. Moreover, the brake pedal is not to be regarded as a park brake input device (see 4.3.3).
- Similar teaching as in D6 is provided by E4, as indicated by the respondent.
- D7 teaches (paragraphs [0009], [0023]) that a driver request for locking a parking brake is allowed at low vehicle speed, without being linked to a release of the park brake input device.
- The method of D9 is merely arranged (see page 1, penultimate paragraph) to hold the brake fluid pressure when the stop of the vehicle is detected.
- D11 relates to an automatic park brake actuation system (abstract) in which (see paragraphs [0011], [0053] and [0059]) a brake actuation signal is only transmitted if the vehicle speed is below a predetermined speed, without being linked to a release of the park brake input device.
- D12 only shows (Figs. 3A, 3B and corresponding passages in columns 4 and 5; Figs. 10A, 10B and corresponding passage in column 7; claims 6 and 8)

that a park brake is applied if the vehicle speed is less than a preset level and in response to an input signal stemming from a manual switch or the brake pedal, i.e. at most when initiating a park brake activation sequence.

- As regards D13, the appellant has not shown that D13 shows more than the documents previously discussed.
- In D14 (column 2, lines 51 ff and 64ff; column 4), by operating the park brake input device the service brakes can be actuated at higher vehicle speed, whereas for a vehicle speed below a threshold value the park brake system is actuated.
- D8 relates to a specific operation mode in case of abnormal operation of a park brake input device (see page 1). Therefore, the board follows the respondent that a combination of D4 with D8 is not obvious. The passages referred to by the appellant in D8 (page 5) only disclose the automatic actuation of the parking brake at zero vehicle speed.
- E8 discloses that the park brake is automatically locked when the vehicle is stationary (claim 5), without being linked to a release of the park brake input device. When exceeding a predetermined speed threshold, the park brake is released if the driver releases a park brake input device (see page 4, line 10 ff). However, this does not mean that at lower vehicle speed the park brake is locked upon release of the input device.

5.4 The appellant's argument of lack of inventive step starting from D5 as the closest prior art could not convince the board either. As argued above (see 5.3), D5 fails to show that locking of the park brake in an applied status is linked to the release of a park brake

input device, and such a link is also not obvious in view of the common general knowledge as represented e.g. by D16 (see 5.2) or in view of D14 (see 5.3).

5.5 According to the appellant, documents D11, D12 and D13 show that the park brake is locked if the speed of the vehicle is below a threshold value. However, the board does not see that these documents show a step of locking the park brake upon termination of a park brake activation sequence, as required by the combination of features d) and e2). D13 might show (paragraph [0065]) a double check of vehicle speed, but only in response to the driver having actuated the parking brake actuator. The combination of D11, D12 or D13 with D4, D10 or D14 might suggest a proportional braking effect, as argued by the appellant, but cannot suggest the combination of features d) and e2) (see further above).

5.6 As shown already further above when discussing novelty over E1, E2/E2.1 or E8, none of these documents of prior art teaches to lock the park brake in an applied status upon termination of the park brake activation sequence if the vehicle speed was below a second threshold speed at park brake activation sequence termination, as required by features d) and e2).

For this reason alone, the skilled person would not be prompted to implement method steps according to features d) and e2), i.e. a check of the vehicle speed when releasing the park brake input device to lock the park brake in an applied status, in the method for controlling a vehicle park brake system known from E1, taking into account the teaching of E2/E2.1 or E8, as put forward by the appellant and by the opponent 2.

For the same reason, the skilled person would not arrive at the subject-matter of claim 1 when starting from E2 as the closest prior art, which according to the appellant was also a promising starting point for the consideration of inventive step.

5.7 It follows from the above considerations that the subject-matter of claim 1 as granted involves an inventive step. Similar considerations apply also in respect of dependent claims 2-5 as granted.

6. Further arguments submitted by the appellant and the opponent 2 in respect of interpretation of the claims (such as feature b)) and with regard to lack of novelty and inventive step, as summarised in the Facts and Submissions, are not relevant for the findings of the present decision. Therefore, there is no need to deal with these arguments in the present decision.

7. *Objection raised by the appellant under Rule 106 EPC*

As can be taken from the minutes of the oral proceedings, after the chairman had announced the decision of the board that Mr Kassem, as a professional representative, was entitled to represent the patentee, the appellant requested again not to admit further submissions of Mr Kassem and submitted then an objection under Rule 106 EPC in writing.

The board could not recognise that with this objection (see point VI above) the appellant was pointing to a procedural defect in the sense of Article 112a(2)(c) and (d) EPC. In fact, the objection merely questions the entitlement of Mr Kassem to represent the patentee, an issue which was debated during the oral proceedings and on which all the parties had the opportunity to

present their comments before a decision was announced, as can be inferred from the minutes of the oral proceedings. In fact the appellant's objection represents a further attempt, in addition to the previous requests (see point 2.4 above), for re-opening the issue of the entitlement of Mr Kassem to represent the respondent. Accordingly the board dismissed the objection under Rule 106 EPC.

The board further notes that such attempts are not only prejudicial to procedural economy and thus to the interests of all parties involved, but are also disrespectful of the judging body after it has given a judgment. Rule 106 EPC should aim at raising an objection in respect of a procedural defect in the sense of Article 112a(2)(c) and (d) EPC, not as a last possibility for questioning a judgment of the board.

Order

For these reasons it is decided that:

1. The appeal is dismissed.

2. The objection under Rule 106 EPC is dismissed.

The Registrar: The Chairman:

A. Pinna G. Pricolo

Decision electronically authenticated