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**Datasheet for the decision
of 24 January 2019**

Case Number: T 2667/16 - 3.2.01

Application Number: 10753769.8

Publication Number: 2411239

IPC: B60K37/04, B60N3/00, B60R7/06

Language of the proceedings: EN

Title of invention:
INSTRUMENT PANEL AND BOARD UNIT INTENDED FOR SAME

Patent Proprietor:
Scania CV AB

Opponents:
Daimler AG
Hyundai Motor Deutschland GmbH / Hyundai Motor Company

Headword:

Relevant legal provisions:
EPC Art. 54(1), 56, 100(a)

Keyword:
Novelty - main request (yes)
Inventive step - main request (yes)

Decisions cited:

T 0881/01, T 0681/01

Catchword:



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Case Number: T 2667/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 24 January 2019

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 October 2016 concerning maintenance of the
European Patent No. 2411239 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

- I. The appeal of the patent proprietor is directed against the decision of the opposition division to maintain European patent No. 2 411 239 in amended form on the basis of auxiliary request 1 filed during the oral proceedings on 19 September 2016 (with claims 1-4 as filed on 19 August 2016).

- II. In its decision the opposition division held that claim 1 of the patent as granted was not new in view of document D1 (DE 43 27 869 C1). Moreover, document D12 (DE 198 56 978 A1) cited in the decision under appeal is relevant for the present decision.

- III. Oral proceedings before the board took place on 24 January 2019.

The appellant (patent proprietor) requested that the decision under appeal be set aside and the opposition be dismissed (main request), or in the alternative, that a patent be maintained in amended form on the basis of the set of claims of one of the 1st or 2nd auxiliary request, all requests as filed with letter dated 31 August 2018.

The respondent 1 (opponent 1) requested that the appeal be dismissed.

The respondents 2 and 3 (opponents/interveners 2 and 3) had no requests and did not file a reply. As announced with letter dated 14 November 2018 they did not attend the oral proceedings.

IV. Claim 1 as granted (main request) reads as follows (broken into a feature analysis adopted by the parties):

M1 An instrument panel (10) for a motor vehicle, with an upper side

M2 comprising a raisable cover (30) which, at a forward edge, as observed when looking in the direction of forward movement of the vehicle, is supported for pivoting relative to a shell (20) of the panel, and

M3 with a storage space (40) delineated thereunder,

characterised by

M4 a board unit (50)

M5 which at a transverse edge (62) is supported for pivoting relative to the shell (20) between the cover and the storage space, and

M6 further comprises a pair of board leaves (70, 60)

M7 pivotably connected to one another at an opposite transverse edge (74, 64) in such a way

M8 that a first (70) of the board leaves can be deployed, from a retracted working position abutting against a second (60) of the board leaves under the cover (30),

M9 to a deployed working position situated in a substantially horizontal plane with the second board leaf (60).

Reasons for the Decision

1. *Novelty (Articles 54(1) and 100(a) EPC)*
 - 1.1 The subject-matter of claim 1 as granted is new over the disclosure of D1 (Articles 54(1) and 100(a) EPC).
 - 1.2 The main issue of dispute between the parties was whether features **M5** and **M8** were known from D1.
 - 1.2.1 As regards feature **M5**, the appellant argued that in D1 the board unit was attached to supporting arms arranged at the longitudinal edges of the board unit, so the board unit was not supported at a transverse edge. The hinges at the free ends of the supporting arms were pivotably supported at the cover, but they did not form a transverse edge as required by feature **M5**.

However, as pointed out by the respondent, an explicit disclosure of feature **M5** is to be found in claim 1 of D1. The wording used in claim 1 of D1 ("*Tischplatte (16) des Klapptisches (15) mit ihrer von der anderen Tischplatte (17) **abgekehrten** Längskante*") makes clear that the term "Längskante" in D1 corresponds to what is defined in the contested patent as a "transverse edge". Further, claim 1 in D1 states ("*Tischplatte (16) ... mit ihrer ... Längskante an der dem Beifahrer zugekehrten vorderen Längskante der Schließklappe (13) schwenkbar gehalten ist*") that the board leaf 16 of board unit 15 is pivotably supported with its transverse edge at the transverse edge of the cover 13. Figure 1 of D1 shows an embodiment of the claimed invention of D1 in which the transverse edge of board leaf 16 is not supported directly at the cover, but indirectly via support arms 18, 19.

The board finds that a similar interpretation must apply to the wording of claim 1 of the contested patent, since feature **M5** leaves open where the pivot axis or hinge is located, i.e. whether a transverse edge of the board unit is supported for pivoting directly (at its transverse edge) or indirectly (e.g. at the free ends of the support arms as shown in D1). Feature **M5** does not require a pivotable support at the transverse edge of the board unit (then feature **M5** would have to read e.g. "board unit which is pivotably supported at a transverse edge"), as argued by the appellant, but only a transverse edge which "is supported for pivoting", i.e. a support at the transverse edge which allows the board unit to pivot. The board cannot see that the slight difference in wording between feature **M5** ("*which at a transverse edge is supported for pivoting*") and claim 1 of D1 ("*Tischplatte (16) ...mit ihrer ... Längskante ... schwenkbar gehalten*") noted by the appellant, i.e. the fact that D1 uses the term "with" instead of "at", can change the board's finding. In both cases, only a support of the board unit's transverse edge is specified which allows a pivotable movement. Thus, a pivotable support provided at a distance from the transverse edge of the board unit also falls under the wording of feature **M5**, as known from D1. It is irrelevant whether the free ends of the supporting arms might represent a transverse edge of the board unit, as discussed in the contested decision.

Moreover, also the remaining part of feature **M5** is known from D1:

- The functional definition "*supported for pivoting relative to the shell*" does not require a direct hinged connection of the board unit on the shell,

but only a relative rotational movement between the two elements "board unit" and "shell", which might be indirectly connected to each other as in case of the board unit of D1. Irrespective of the pivot axis in D1 being provided at the transverse edge of the cover, the board unit when pivoting relative to the cover will also rotate relative to the shell.

- The additional term "*between the cover and the storage space*" only indicates the space in which the pivoting movement of the board unit is performed. When looking at Figure 2 of D1, the board unit pivots or turns in a space which is delimited by the cover and the storage space. The appellant's objection that the board unit of D1 (see Figure 2) was not supported between the storage space and the cover could not be followed, as feature **M5** ("supported for pivoting ... between the cover and the storage space") does not specify the location of the pivoting support, but only the region in which the pivoting movement takes place.

- 1.2.2 As regards feature **M8**, the board finds that D1 does not show "*a retracted working position ... under the cover*".

The respondent argued that Figure 5 of D1 showed a position with both board leaves abutting against each other under the cover, which represented an arrangement as specified by feature **M8**. As found by the opposition division, the term "working position" simply meant a stable position. A limited interpretation of the term "working position" as put forward by the appellant was allegedly not in line with decision T 881/01, according to which it was not legitimate on the basis of Article 69(1) EPC to read into the claim features appearing only in the description and then relying on

such features to provide a distinction over the prior art. The effect of Article 69 EPC and its Protocol on Interpretation was never for excluding what on the clear meaning was covered by the terms of the claims, or (see T 681/01) to read implicitly a limiting feature into a claim which was not explicitly derivable from the wording of the claim.

Moreover, a rather general definition of the term "Gebrauchsstellung" was given in D1, which did not exclude that the two board leaves were abutting against each other. According to the respondent, a working position in which the first of the board leaves was abutting against a second of the board leaves was reached in D1, either when starting from Figure 3 by swinging back (around hinge 23) board leaf 17 onto board leaf 16, or when starting from Figure 4 by further deploying the board unit until the transverse groove 27 of board leaf 17 was supported on handle grip 121. In this position, the board unit was at least partially "under the cover". As in the contested patent, the working position was only reached when raising the cover.

However, the issue at stake is not that distinguishing features appearing only in the description or drawings should be read into the wording of claim 1, as argued by the respondent by referring to the above cited case law. Feature **M8** already contains a limiting feature by specifying explicitly a retracted working position (and not any position), which indicates a position of the board unit in which it can be used. The term "*retracted working position ... under the cover*" in feature **M8** might, at first glance, be somewhat unclear or even contradictory. As this granted feature is not open to an objection under Article 84 EPC, it has to be construed in a meaningful way on the basis of what is

described in the patent specification, according to the established case law with a mind willing to understand.

The board follows the appellant in that feature **M8** specifies a retracted working position of the board unit which immediately after having raised the cover provides a working surface and can be used to work on it, without having to pivot the board unit beforehand as in D1. This means that feature **M8** specifies a retracted working position of the board unit which was already present under the cover. This interpretation is also explicitly suggested in the patent specification in the description of the embodiment according to Figure 4 (see column 4, lines 21 ff), which indicates a working position with the unit 50 deployed forward in the shell and the underside of the board leaf 60 serving as a work surface (as depicted in the form of continuous lines in Figure 4), i.e. the retracted working position is identical to the storage position under the cover (see also in column 4, lines 15-17).

A retracted working position under the cover within the aforementioned meaning is not known from D1. The storage or stowed position shown in Figure 5 of D1 is not a working position that immediately provides a working surface after raising the cover, since the board unit has to swing out before it is ready for use. Moreover, the retracted state of the board unit (with board leaves abutting against each other) is described in D1 by the German term "Nichtgebrauchsstellung", which does not give a clear and unambiguous teaching that this position of the board unit is a position which could be qualified as a working position in the aforementioned sense. To the contrary, this term is used in D1 (see column 2, lines 8-13) to describe a position as depicted in Figure 5 of D1, showing a

retracted board unit abutting the cover. As can be seen in Figures 4 and 5 in D1, the board unit cannot provide a stable position allowing to work on it as long as it remains under the cover. Therefore, neither the storage position under the cover in D1 (see Figure 5), nor any intermediate position (as shown in Figure 2 or 4) can be regarded as a working position under the cover as required by feature **M8**.

According to the respondent a working position with both board leaves abutting against each other could be reached starting from Figure 3 or 4 in D1, with the board unit supported on handle grip 121. However, this requires that the board unit has to be deployed at least partially after raising the cover before a stable working surface can be provided, which is different from what is required by feature **M8** according to the board's interpretation of the term "*retracted working position ... under the cover*" as argued above.

1.3 For the reasons given above, novelty of the subject-matter of claim 1 as granted has to be acknowledged.

2. *Inventive step (Articles 56 and 100(a) EPC)*

2.1 The subject-matter of claim 1 as granted involves an inventive step (Articles 56 and 100(a) EPC).

2.2 In view of the board's finding that feature **M8** is not known from D1, the respondent only maintained its inventive step objection starting from document D1 as the closest prior art in combination with document D12.

As argued by the respondent, distinguishing feature **M8** provided the effect that a working position was reached immediately after raising the cover so that the board unit could be used directly. D12 showed a board unit

comprising board leaves 13, 16 in Figure 3 that could be arranged under the cover 1 in a retracted working position (with board leaves 13, 16 abutting against each other and the upper face of board leaf 13 representing a working surface) without being locked to the cover, so a retracted working position under the cover within the meaning of feature **M8** was known from D12. Allegedly, it was easy for the skilled person to apply the working principle of D12 (although it related to a center console of a vehicle) to the instrument panel of D1 and arrive at the claimed solution.

However, irrespective of whether the skilled person would contemplate considering D12 at all, the board cannot see how the skilled person would change the instrument panel of D1 so that the board unit is immediately available for use after raising the cover. The structural design features of D1 and D12 are completely different and incompatible so it would require a non-obvious redesign of the instrument panel of D1 to include the features known from D12. The board follows the appellant in this respect.

2.3 Therefore, the subject-matter of claim 1 as granted is not obvious in view of a combination of D1 with D12.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated