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**Datasheet for the decision
of 21 January 2020**

Case Number: T 0397/17 - 3.2.01

Application Number: 11176299.3

Publication Number: 2554415

IPC: B60J7/02, B60J7/043

Language of the proceedings: EN

Title of invention:
Roof system for a vehicle

Patent Proprietor:
Inalfa Roof Systems Group B.V.

Opponent:
Webasto SE

Headword:

Relevant legal provisions:
EPC Art. 84, 123(2), 123(3), 56

Keyword:

Clarity (yes)

Added subject-matter (no)

Extension of protection (no)

Inventive step (yes)

Decisions cited:

Catchword:



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Case Number: T 0397/17 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 21 January 2020

Appellant: Webasto SE
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Respondent: Inalfa Roof Systems Group B.V.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 15 December
2016 rejecting the opposition filed against
European patent No. 2554415 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: C. Narcisi
O. Loizou

Summary of Facts and Submissions

- I. The opposition against European patent No. 1 730 028 was rejected and the patent was maintained as granted by the decision of the Opposition Division posted on 15 December 2016. Against this decision an appeal was lodged by the Opponent in due form and in due time pursuant to Article 108 EPC.
- II. Oral proceedings were held on 21 January 2020. The Appellant (Opponent) requested that the decision under appeal be set aside and that the patent be revoked. The Respondent (Patent Proprietor) requested that the decision under appeal be set aside and that the patent be maintained in amended form on the basis of the claims of the main request and the description as filed during oral proceedings.
- III. Claim 1 of the main request reads as follows:
- “Roof system for a vehicle having a roof opening (1) in a roof part (2, 2') thereof, comprising:
at least a closure (3) which is movable between a closed position in which it closes the roof opening and an open position in which it opens the roof opening and is positioned at least partially above an adjoining roof part (2');
a stationary guide rail (13) at each longitudinal side (1') of said roof opening (1), suitable for slidably guiding an operating mechanism that operates the closure (3) in a longitudinal direction of the vehicle, said operating mechanism comprising:
a first device (5) including a lever (16) for moving the rear edge of the closure towards a raised position relative to the closed position and above the adjoining roof part;

a second device (6) including a lever (7) for moving the front edge of the closure in a vertical direction; and

a guiding slide (14) which is slidably accommodated in each guide rail and is drivable by a drive member in order to move the closure both in vertical and in horizontal direction through the first and second devices;

wherein said levers (7; 16) are spaced apart in longitudinal direction and have, at a first end, a first pivotal connection (9; 18) to the closure, and, remote from the first end, spaced second and third connections (8, 10; 17, 19), at least the third connection (10, 19) of which connecting the respective lever at least to the guiding slide (14) in order to enable control of the movements of said respective levers, wherein the connection to the guiding slide (14) at the third connection of at least one (7) of said levers (7; 16) is through a cam (10) on said lever (7) and a track (15) in the guiding slide (14); characterized in that said at least one (7) of said levers (7; 16) is pivotally connected to a sliding member (22) at said second connection (8), said sliding member (22) being separate from the guiding slide (14), being capable of sliding in the longitudinal direction of the stationary guide rail (13) and being supported by the guide rail in vertical and sideward directions perpendicularly to the longitudinal sliding direction."

IV. The Appellant's arguments may be summarized as follows:

The subject-matter of claim 1 (main request) does not meet the requirements of Article 123(2) EPC, for the following features extend beyond the content of the application as filed:

"- said levers (7;16) [...] have [...] spaced second and third connections (8,10; 17,19), at least the third connection (10, 19) of which connecting the respective lever at least to the guiding slide (14) [...]"
- said at least one (7) of said levers (7; 16) is pivotally connected to a sliding member (22) at said second connection (8)".

The corresponding feature in the application as filed (see claim 1 in published patent application, hereinafter designated as EP-A) reads as follows:
"- at least one of said levers (7; 16) has [...] remote from the first end, spaced second and third connections (8, 10; 17, 19) connecting the respective lever at least to the guiding slide (14);
-at least one of said levers (7;16) is pivotally connected to a sliding member (22) at one of said second and third connections (8, 10; 17, 19)".

Thus, the amended feature in claim 1 does not any more entail that (at least) one of said levers has second and third connections both connecting the respective lever to the guiding slide, as required by claim 1 as filed. Instead, claim 1 merely requires at least one of said second and third connections (e.g. only the second connection) to connect said (at least) one lever to the guiding slide. This was evidently not disclosed in the application as filed.

The scope of protection as derivable from the subject-matter of claim 1 is broader than that of granted claim 1, thus infringing Article 123(3) EPC. Indeed, claim 1 includes amendments based on a combination of both dependent claims 3 and 4 as granted. However, both these claims only depend on claim 1, claim 4 not depending on claim 3. Thus, the inclusion of both

claims 3 and 4 into claim 1 leads to a scope of protection broader than that of the granted patent in that embodiments that should not fall under the scope of claim 1 as granted are now covered by claim 1.

The subject-matter of claim 1 is not clear, for from the feature "said at least one of said levers is pivotally connected to a sliding member" it is not derivable which of the levers mentioned in the claim is implied.

The subject-matter of claim 1 is not inventive over D5 in view of D2. The skilled person starting from D5 would arrive in view of D2 in an obvious manner at the claimed subject-matter. The only feature of claim 1 missing in D5 is feature M11 (i.e. "said sliding member (22) being separate from the guiding slide (14), being capable of sliding in the longitudinal direction of the stationary guide rail (13) and being supported by the guide rail in vertical and sideward directions perpendicularly to the longitudinal sliding direction"), which is however disclosed and suggested by D2. Indeed, according to D5, pin 8 formed at one end on one side (facing guiding slide 14) of lever 7 slides in the rear part of guide curve 15 formed in guiding slide 14. The skilled person, aiming at improving stability of the roof system, would obviously recognize that D2 proposes a solution to this technical problem, disclosing a sliding member 10 (connected to the front lever) sliding in the stationary guide rail and being supported in sideward and vertical directions (see [0055], [0064], [0065]). Thus, the skilled person would implement this solution in the roof system of D5 by arranging said pin 8 on the opposite side (facing the stationary guide rail) of said front lever and pivotally connecting it to a sliding member sliding in

the stationary guide rail, said sliding member having adequate support in vertical and sideward directions as illustrated in D2. The skilled person would not have to overcome any specific difficulties (contrary to the view of the Opposition Division in the appealed decision), as correct functioning of the roof system would be obtained by proper dimensioning of said levers and of the corresponding guide curves, these aspects being part of the skilled person's customary practice.

V. The Respondent's arguments may be summarized as follows:

The subject-matter of claim 1 does not include subject-matter extending beyond the content of EP-A, as set out in detail in the appealed decision.

The subject-matter of claim 1 is clear as the term "said at least one (7) of said levers" refers to the term "at least one of said levers" already defined in the preceding portion of claim 1.

The subject-matter of claim 1 is inventive over D5 and D2, this combination of documents being possible only through hindsight reasoning. Moreover, just moving pin 8 to the other side of lever 7 and pivotally connecting it to a slider (sliding within the stationary guide rails) would not lead to a working mechanism, as correctly concluded by the Opposition Division. Front lever 20 of D2 operates differently compared to front lever 7 of D5, since front lever 20 of D2 is not controlled by its engagement with guiding slide 50, but only by its engagement with a stationary guide curve 13.

Reasons for the Decision

1. The appeal is admissible.
2. Claim 1 results essentially from the combination of granted claims 1 and 3. The Appellant's objections of added subject-matter are the same that were raised under Article 100(c) EPC against claim 1 as granted. However, the subject-matter of claim 1 (main request) does not extend beyond the content of the application as filed (EP-A). In effect, the contested feature as defined in claim 1 of EP-A includes "spaced second and third connections (8, 10; 17, 19) connecting the respective lever at least to the guiding slide".

In the Board's view this wording does not necessarily imply that both the second and the third connection do connect the respective lever to the guiding slide. Indeed, from said wording it is inferred that "said second and third connections connecting ..." can be regarded as a single unit (i.e. being part of or forming a single physical entity), as is actually the case, both being formed on said respective lever (as recited by claim 1 and disclosed in the description of EP-A). Consequently, according to claim 1 as originally filed, the disputed feature entails that the physical unit formed by the "second and the third connection" may be connected to the guiding slide through the second, the third or even through both the second and third connections, all three alternatives being equally disclosed by the wording of claim 1 as filed (see EP-A).

It ensues that the contested feature in claim 1 of the main request (including "spaced second and third

connections (8,10; 17,19), at least the third connection (10, 19) of which connecting the respective lever at least to the guiding slide") does not extend beyond the content of the application as filed, for it merely corresponds to one of the above mentioned possible alternatives. In addition, this alternative is clearly and unambiguously disclosed in the specific embodiments illustrated in EP-A (see e.g. dependent claim 9; [0027]).

3. The scope of protection implied by the subject-matter of claim 1 is not broadened as compared to granted claim 1. The Appellant's contention is unfounded, for both granted claim 3 and 4 include only limiting features. In addition, the features of claim 4 are likewise also limiting with regard to those of claim 3, evidently including only one of the alternatives mentioned in claim 3. Hence Article 123(3) EPC is not contravened by including the features of both these claims into claim 1.

4. The subject-matter of claim 1 (main request) does not contravene Article 84 EPC. Specifically, it can be unambiguously inferred from claim 1 that "said at least one (7) of said levers (7; 16)" mentioned in the feature "characterized in that said at least one (7) of said levers (7; 16) is pivotally connected to a sliding member (22)" is already defined in the preceding portion of the claim, namely by the feature "wherein the connection to the guiding slide (14) at the third connection of at least one (7) of said levers (7; 16) is through a cam (10)". Hence, no ambiguities arise in conjunction with the term "said at least one (7) of said levers (7; 16)".

5. The subject-matter of claim 1 (main request) is not rendered obvious for the skilled person in view of D5 and D2 (Article 56 EPC). The subject-matter of claim 1 distinguishes from the roof system of D5 undisputedly at least through feature M11 (see above). Contrary to the Appellant's view, the combination of D5 and D2 would not be obvious for the skilled person, for several reasons.

First, the front lever 20 according to D2 operates differently to front lever 7 disclosed in D5. In D2 front lever 20 is not driven or controlled by its engagement with guiding slide 50, this front lever being merely guided in (and controlled by) stationary guide curve 13 and driven by a connection with the roof panel, further support being provided by sliding member 10 sliding according to a purely linear motion on the main stationary rail (see D2, [0043]-[0046], [0060]). By contrast, the front lever 7 in D5 is directly driven by engagement with guide curve 15 formed in the guiding slide 14, the engagement being obtained by cam 10 (formed near one end of front lever 7) and pin 8 (formed at the opposite end of front lever 7) both engaging with guide curve 15.

Thus, the skilled person would not combine in an obvious manner two roof systems incorporating completely different mechanical concepts.

Further, it would not be possible for the skilled person to combine D5 and D2 in the manner suggested by the Appellant, as pin 8 and cam 10 both slide in different portions of guide curve 15, these portions being both curved (see e.g. figure 7 in D5), and both contributing to obtain the desired motion of front lever 7. Quite to the contrary, as a result of the suggested combination of D5 and D2, pin 8 would instead be connected to a sliding member sliding on the

stationary guide rail 13 of D5 (analogously to sliding member 10 of D2), resulting in a purely linear motion of pin 8 and thus in an entirely different control of the motion of lever 7. This would clearly not be compatible with the overall mechanics of the system of D5 and the specific motions of its components, unless significant changes would be introduced in relation to the motion of these components too. Therefore, even on the assumption that the skilled person would combine D5 and D2 in an obvious manner (quod non), it would not arrive at the claimed subject-matter.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance with the order to maintain the patent in amended form on the basis of the following:
Description:
Columns 1 and 2, as filed during oral proceedings.
Columns 3 to 9 of the patent as granted.
Claims:
No 1 to 13 of the main request as filed during oral proceedings.
Drawings:
Fig. 1 to 16 of the patent as granted.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated