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**Datasheet for the decision
of 3 April 2019**

Case Number: T 0992/17 - 3.2.01

Application Number: 09162860.2

Publication Number: 2263896

IPC: B60J7/02

Language of the proceedings: EN

Title of invention:
Open roof construction for a vehicle

Patent Proprietor:
Inalfa Roof Systems Group B.V.

Opponent:
Webasto SE

Headword:

Relevant legal provisions:
EPC Art. 123(2), 54(3)

Keyword:
Amendments - extension beyond the content of the application
as filed (no)
Novelty - (yes)

Decisions cited:

Catchword:



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Case Number: T 0992/17 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 3 April 2019

Appellant: Webasto SE
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Respondent: Inalfa Roof Systems Group B.V.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
15 February 2017 concerning maintenance of the
European Patent No. 2263896 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
O. Loizou

Summary of Facts and Submissions

- I. The appeal of the opponent is directed against the decision of the Opposition Division to maintain the above mentioned European Patent in amended form according to the auxiliary request 1.
- II. The Opposition Division held that the the patent as amended met the requirements of the EPC and in particular those of Articles 83, 84, 123(2), 54 and 56 EPC.

Among others the following document is cited in the contested decision:

D5: EP 2 130 706 A2

- III. Oral proceedings were held on 3 April 2019.

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 patent be maintained in amended form on the basis of the main request, filed as second auxiliary request with letter dated 1 March 2019, the description as filed during the oral proceedings before the opposition division and the figures of the patent as granted.

- IV. Claim 1 of the patent according to the main request reads as follows:

"1. Open roof construction for a vehicle, comprising a roof opening defined in a stationary roof part of the

vehicle and a movable panel (1) for opening and closing said roof opening, of which panel the rear end, as viewed in the longitudinal direction of the vehicle, can be moved upward and downward by a first moving mechanism and of which panel (1) the leading end can be moved upward and downward by a second moving mechanism comprising at least a curved track (3) attached to the panel and a guide pin (6) engaging said curved track and movable along a first guide (2) fixedly connected to the stationary roof part, wherein said curved track (3) is attached to the panel (1) in a pivotable manner, such that the inclination of the curved track with respect to the panel increases when the leading end of the panel moves upward, and wherein the curved track (3) is part of a lever (4) which with a first end is pivotably connected to the panel (1) and with its opposite second end is slideable and rotatable in a second guide (2) fixedly connected to the stationary roof part and extending substantially in the direction in which the main sliding movement of the panel (1) occurs, wherein means are provided for allowing a longitudinal sliding motion of the panel substantially in the longitudinal direction only when the leading end has moved upward, and wherein the panel (1) at its leading end is provided with a second slide shoe (9) cooperating with a third guide (2) fixedly connected to the stationary roof part, which third guide has a first portion (10) inclined substantially vertically with respect to said longitudinal direction followed by a second portion (11) substantially in parallel to said longitudinal direction such that the slide shoe (9) cannot move in the longitudinal direction and thus the panel cannot move in the longitudinal direction, followed by a second portion (11) substantially in parallel to said longitudinal direction, wherein said second slide shoe (9) is positioned in said inclined

portion (10) when the leading end of the panel (1) is in a lower position and moves towards the second portion (11) when the leading end of the panel moves upward."

V. The appellant's submissions may be summarised as follows:

The subject-matter of claim 1 of the main request goes beyond the content of the application as originally filed. In particular, the added feature "such that the slide shoe (9) cannot move in the longitudinal direction " according to paragraph [0022] of the application as originally filed is disclosed in combination with the wording specifying that the slide shoe cannot move in the longitudinal direction at all. This "at all" has been omitted in amended claim 1 and, accordingly, some play in the longitudinal direction due to tolerances is still allowed, whereas when explicitly stating that it does not move at all in the longitudinal direction, any tolerances are excluded.

The subject-matter of claim 1 is not new in view of D5. The open roof construction of figures 7 to 9 of D5 shows a first portion 19 of the guide 18 inclined substantially vertically such that the panel 2 cannot move in the longitudinal direction.

The description should be adapted to recite the wording of amended claim 1 according to the main request. In particular, in paragraph [0022], lines 31 et seq. should read "...because the inclined portion extends substantially vertically such that the slide shoe 9 cannot move in the longitudinal direction at all." instead of "...because the inclined portion extends

substantially vertically, and the slide shoe 9 cannot move in the longitudinal direction at all."

VI. The respondent (patent proprietor) countered essentially as follows:

The subject-matter of claim 1 does not represent an inadmissible extension of the content of the application as originally filed. In particular, the features added to claim 1 as compared to claim 1 as maintained by the Opposition Division clarify the meaning of "substantially vertically" for the first portion of the third guide, which is supported by paragraph [0022] of the A publication of the application as filed. Further, the omission of the wording "at all" found in this paragraph does not add any further technical information since the expression with or without "at all" means exactly the same.

D5, as put forward by the Opposition Division in its decision, does not disclose a first portion of the third guide inclined substantially vertically with respect to the longitudinal direction such that the slide shoe cannot move in the longitudinal direction and thus the panel cannot move in the longitudinal direction. On the contrary according to paragraph [0023] of D5 the portion 19 of the guide 18 falls forwardly and consequently when the shoe 17 slides along that portion it moves vertically as well as longitudinally.

Finally, paragraph [0022] of the adapted description as filed during the oral proceedings before the Opposition Division needs not reciting literally the wording of claim 1 of the main request. Both wordings support each other since they have the same significance.

Reasons for the Decision

1. Inadmissible extension - main request
 - 1.1 The subject-matter of claim 1 of the main request does not extend beyond the content of the application as originally filed (Article 123(2) EPC).
 - 1.2 Claim 1 is based on claims 1, 2, 4 and 5, as well as on paragraphs [0012], [0022] and [0026] of the description of the A publication of the application as originally filed.
 - 1.3 In line with the patent proprietor, the Board takes the view that the feature of claim 1 reading "the slide shoe cannot move in the longitudinal direction" has the same meaning for the skilled person with or without the expression "at all" at its end. When the second slide shoe moves along the first portion it cannot move in the longitudinal direction and neither can the panel, irrespective of any kind of tolerances which are inevitably present in this kind of mechanisms. No further technical information is thus added to the subject-matter of the claim by its omission and consequently an inadmissible extension of the content of the application as filed is not present.
2. Novelty - main request
 - 2.1 The subject-matter of claim 1 is new in view of the open roof construction disclosed in figures 5 to 7 of D5 (Article 54 EPC).

- 2.2 According to the embodiment of these figures of D5, which represents state of the art only for the purposes of novelty pursuant to Article 54(3) EPC, the front portion 19 of the guide 18, along which the slide shoe 17 moves, falls forwardly (see also paragraph [0023] of D5). Consequently and as pointed out by the respondent as well as by the Opposition Division in its decision (see point 18) D5 does not disclose a third guide having a first portion inclined substantially vertically such that the slide shoe cannot move in the longitudinal direction and thus the panel cannot move in the longitudinal direction.
3. The Board considers that the description is adapted to the claims of the main request. In particular, the wording in claim 1 regarding the first portion of the third guide being inclined substantially vertically such that the slide shoe cannot move in the longitudinal direction needs not be repeated literally in the description. Paragraph [0022] of the description that recites "because the inclined portion extends substantially vertically and the slide shoe 9 cannot move in the longitudinal direction at all" has the same meaning. In fact, it can only be read as stating that the substantially vertical inclination of said first portion results in that ("such that") the slide shoe cannot move in the longitudinal direction.
4. Considering that no further objections, in particular with respect to novelty and inventive step, have been raised for the main request by the appellant, and that the description is adequately adapted to the set of claims, the present documents form a suitable basis for the maintenance of the patent in amended form.

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 1-4, as filed during the oral proceedings on 31 January 2017 before the opposition division.

Claims:

No. 1-7 of the main request filed as the second auxiliary request with letter dated 1 March 2019.

Drawings:

Figures 1-3 of the patent as granted.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated