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**Datasheet for the decision
of 11 March 2020**

Case Number: T 1050/18 - 3.2.01

Application Number: 09807790.2

Publication Number: 2326531

IPC: B60N2/235

Language of the proceedings: EN

Title of invention:
DISC RECLINER WITH REDUCED BACKLASH

Patent Proprietor:
Magna Seating Inc.

Opponent:
Adient Components Ltd. & Co. KG

Headword:

Relevant legal provisions:
EPC Art. 108, 56

Keyword:
Admissibility of appeal - appeal sufficiently substantiated
(yes)
Inventive step - (yes)

Decisions cited:

T 0774/05

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 1050/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 11 March 2020

Appellant: Adient Components Ltd. & Co. KG
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 February 2018 concerning maintenance of the
European Patent No. 2326531 in amended form.**

Composition of the Board:

Chairman H. Geuss
Members: J. J. de Acha González
O. Loizou

Summary of Facts and Submissions

- I. The appeal of the opponent lies against the interlocutory decision of the Opposition Division of the European Patent Office posted on 26 February 2018 concerning maintenance of the European Patent No. 2326531 in amended form according to the auxiliary request 2 filed in electronic form on 17 August 2017.
- II. In the contested decision the following pieces of prior art were cited among others:
- E1: US 7 360 838 B2, and
E3: EP 1 913 844 A1.
- III. Oral proceedings before the Board were held on 11 March 2020.
- The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.
- The respondent (patent proprietor) requested that the appeal be rejected as inadmissible or be dismissed (main request), or in the alternative, that the case be remitted to the Opposition Division for further prosecution, or, to maintain the patent in amended form on the basis of the set of claims of one of the auxiliary requests 1 to 4 as filed with the reply.
- IV. Claim 1 according to the main request, which is identical to claim 1 as granted, reads as follows (feature analysis as referred to by the parties):
- 1.0** "A disc recliner mechanism (100), comprising:
 - 1.1** a guide plate (102) including at least one pair of

- guides (106),
- 1.2** a tooth plate (104) including an inner radial edge extending circumferentially therearound,
 - 1.3** said inner radial edge having a plurality of teeth (112) thereon,
 - 1.4** at least one pawl (108) mounted between said guide plate (102) and said tooth plate (104),
 - 1.5** said pawl (108) including a radially inner cam surface and a toothed outer edge (110),
 - 1.6** said pawl (108) guided by said pair of guides (106) between a retracted position with said toothed outer edge (110) disengaged with said plurality of teeth (112) to allow rotational movement of said tooth plate (104) relative to said guide plate (102) and an extended position with said toothed outer edge (110) engaged with said plurality of teeth (112) to prevent rotational movement of said tooth plate (104) relative to said guide plate (102),
 - 1.7** a cam (120) rotatably mounted between said guide plate (102) and said tooth plate (104),
 - 1.8** said cam (120) including a radially outer cam profile selectively engaging and co-operating with said inner cam surface,
 - 1.9** wherein rotation of said cam (120) in a first direction moves said pawl (108) radially outward with respect to said guide plate (102) to said extended position and
 - 1.10** applies a rotational moment to said pawl (108) thereby wedging said pawl (108) between said pair of guides (106), and
 - 1.11** a pawl release plate (136) rotatably mounted adjacent said cam (120),
 - 1.12** said pawl release plate (136) operatively coupled to said cam (120) for rotation therewith, wherein rotation of said pawl release plate (136) in a second direction in response to rotation of said cam (120) in said second direction causes said pawl release plate (136)

to move said pawl (108) radially inward with respect to said guide plate (102) to said retracted position,

characterised by

1.13 outer diameters of the guide plate (102) and the tooth plate (104) being substantially the same."

The wording of the independent claim 1 of the auxiliary requests 1 to 4 is irrelevant for the present decision.

V. The arguments of the appellant maybe summarized as follows:

The appeal is admissible because it has been duly substantiated. In particular, the Opposition Division in its decision is correct in considering that E1 discloses the preamble of claim 1 and consequently there is no reason to address the matter in the statement of grounds of appeal.

Regarding obviousness, the subject-matter of claim 1 does not involve an inventive step in view of the combination of E1 with E3. The differentiating feature of the subject-matter of claim 1 with respect to the disclosure of E1 is feature 1.13. This feature is shown and hinted by the disc recliners of figures 4A and 4B of E3. In this context the unclear term "substantially the same" of claim 1 has to be interpreted in its broadest possible sense since the patent specification leaves its meaning open. When reading the patent specification and in particular the embodiment according to figure 17 together with para. 25 the skilled person has two possibilities for carrying out the recliner while maintaining the relative rotation between guide plate and toothed plate. Either to make the outer diameters of the guide plate and the toothed plated identical and then a stepped inner diameter of

the inner surface of the retainer ring, or to make the outer diameter of the toothed plate slightly smaller than the outer diameter of the guide plate and the inner diameter of a cylindrical constant inner surface of the retainer ring, thereby being all these diameters still substantially equal as claimed.

The former alternative is not rendered obvious by the available prior art but the latter, which represents the better one from a manufacturing point of view, is rendered obvious to the skilled person when confronted with figures 4A and 4B of E3.

VI. The arguments of the respondent maybe summarized as follows:

The appeal is inadmissible for lack of adequate substantiation. Specifically, the appellant fails to identify in E1 the specific passages that disclose features 1.1 to 1.12 of claim 1. Therefore, the statement of grounds of appeal does not contain sufficient reasons as to why the claimed subject-matter is allegedly not inventive and thus does not enable the Board and the respondent to understand immediately why the contested decision is incorrect, without first having to make investigations of their own.

The subject-matter of claim 1 involves an inventive step in view of the combination of E1 with E3. In particular, none of E1 and E3 discloses feature 1.13 of claim 1 because none of them discloses a guiding plate and a toothed plate having the same outer diameters. Here "substantially the same" of feature 1.13 has to be interpreted, in line with the Opposition Division in its decision, as being the same.

Reasons for the Decision

1. Admissibility of the appeal
 - 1.1 The appeal is admissible because it complies with the requirements of Article 108 EPC.
 - 1.2 The appellant argues in the statement of grounds of appeal that the subject-matter of claim 1 in suit lacks inventive step since - starting from E1 - the differing feature 1.13 is disclosed in E3.

The respondent sees a deficiency in the statement of grounds of appeal of the appellant in that it fails to substantiate where the features of the preamble of claim 1, i.e. features 1.0 to 1.12, are disclosed in E1. However - as put forward by the appellant - these features have been acknowledged by the Opposition Division in its decision as being disclosed in E1 (see point 11.5.1.1 of the contested decision). Also, the patent specification, and thus the respondent itself, acknowledges that E1 discloses the preamble of granted claim 1, which is identical to claim 1 of the version maintained by the Opposition Division (see para. 6 of the patent specification). The respondent had not contested this approach, neither during the opposition proceedings nor during the present appeal proceedings (see e.g. T 774/05, point 1.2.1 of the reasons). Consequently, it has never been contentious whether E1 discloses the preamble of claim 1, not even in the present appeal.

- 1.3 As pointed out by the respondent, it is established Case Law of the Boards of Appeal that in order for the appeal to meet the requirements of admissibility of

Article 108 EPC, third sentence, the statement of grounds of appeal should specify the legal or factual reasons on which the case for setting aside the decision was based. The arguments have to be clearly and concisely presented to enable the Board and the other party to understand immediately why the decision is alleged to be incorrect, and on what facts the appellant bases his arguments, without first having to make investigations of their own. Whilst passages from the literature setting out the state of the art might - provided sufficiently precise reference was made to them in the grounds of appeal - be considered an integral part of the grounds, they cannot by themselves form a sufficient statement of grounds (see Case Law of the Boards of Appeal of the EPO, 9th Edition, V.A.2.6.3 a) to d)).

- 1.4 In the present case, the appellant has clearly given the legal (Article 56 EPC) and factual (E1 and E3) reasons, and has clearly addressed the question why the decision under appeal is according to it incorrect. In particular, arguments are presented as to why the Opposition Division's interpretation of "substantially the same" in feature 1.13 of claim 1 was not correct (see point I. of the statement of grounds of appeal) and, accordingly, why the combination of E1 with E3 render obvious the subject-matter of claim 1 (Article 56 EPC). Since the Opposition Division followed the non contested view of the opponent (now appellant) that E1 disclosed the preamble of claim 1, the Board holds that the appellant does not need to provide any reasoning or precise reference in E1 in its statement of grounds of appeal to justify where the decision in its view is correct, but has merely to clearly and concisely present where the decision is found to be incorrect. This requirement is fulfilled.

Consequently, the Board is and for that matter undoubtedly also the respondent, clearly in a position to understand why according to the appellant the contested decision was incorrect without having to make investigations of their own.

2. Inventive step

2.1 The subject-matter of claim 1 is not obvious to a person skilled in the art in view of the combination of E1 with E3 (Article 56 EPC).

2.2 It is uncontested that E1 does not disclose the feature of the characterising part of claim 1, according to which the outer diameters of the guide plate and the tooth plate are substantially the same (feature 1.13). Both parties agree, that the objective technical problem in view of this difference can be formulated as how to reduce the size of the disc recliner of E1.

2.3 Appellant and respondent interpret the factual consequence in view of the outer diameter of the tooth plate and the guide plate being according to feature 1.13 "substantially the same" differently.

The Board agrees with the view of the Opposition Division in its decision (see point 1.5.1.2) and that of the respondent. The term "substantially the same" in claim 1 amounts to define that the outer diameter of the guide plate and that of the tooth plate are the same within manufacturing tolerances for these type of parts. These outer diameters represent nominal diameters which are equal. This means that the average value of the outer diameters of the guide plate and the toothed plate in a mass production of the recliner are

identical while at the same time the functionality of the disc recliner is assured.

In this sense, all parties and also the Board agree that in the recliners according to the patent specification, the outer diameter of the guide plate and the tooth plate, and the inner diameter of the retainer ring (also called fastening or mounting ring) cannot be constant and the same. Otherwise both plates would be fixed to each other through the retainer ring and consequently it would not be possible for the guide plate to rotate with respect to the toothed plate. Accordingly, in the invention disclosed in the contested patent, since the outer diameters of both the guide plate and the toothed plate are the same, the unspecified shape of the inner part of the retainer ring has to assure that it is placed over the toothed plate (by means of a play or clearance) and fixed to the guide plate (i.e. stalked to it, see para. 25 of the patent specification) in order to carry out the functionality of the disc recliner to allow the relative rotation between the guide and the toothed plate.

- 2.4 Bearing in mind this interpretation, the skilled person cannot find any hint in E3 to make the outer diameter of the guide plate and the outer diameter of the toothed plate of E1 equal. On the contrary, according to figures 4A and 4B of E3 together with their corresponding description (see para. 35 and 56), since the inner diameter of the cylindrical side portion 10b of the mounting ring 10 is substantially equal (or the same) to either the outer diameter of the guide plate 2 (figure 4A) or the outer diameter of the toothed plate 4 (figure 4B) so as to rotatably fix the corresponding guide plate 2 (figure 4A) or toothed plate (figure 4B)

to the mounting ring 10, the other plate (4 in figure 4A, and 2 in figure 4B) is slightly smaller in order to be loosely inserted with play to permit the needed relative rotation of one plate with respect to the other. Consequently, these outer diameters of the plates 2 and 4 are not substantially equal or the same in the sense of the contested patent.

Therefore E3 does not disclose a disc recliner in which the outer diameter of the guide plate and the outer diameter of the toothed plate are the same as claimed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

H. Geuss

Decision electronically authenticated