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**Datasheet for the decision
of 30 April 2020**

Case Number: T 1616/18 - 3.2.02

Application Number: 13800671.3

Publication Number: 2854738

IPC: A61G5/06, A61G5/10

Language of the proceedings: EN

Title of invention:

DEVICES FOR ENABLING MOVEMENT OF A WHEELCHAIR ON STAIRS AND A
WHEELCHAIR INCLUDING THE DEVICES

Applicant:

Beeri, Shmuel

Headword:

Relevant legal provisions:

EPC Art. 111(1), 123(2)
RPBA 2020 Art. 11, 12(2)

Keyword:

Amendments - added subject-matter (no)
Appeal decision - remittal to the department of first instance
(yes)

Decisions cited:

T 1966/16, T 0547/14, T 0731/17

Catchword:



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Case Number: T 1616/18 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 30 April 2020

Appellant: Beerli, Shmuel
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 3 January 2018
refusing European patent application No.
13800671.3 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman M. Alvazzi Delfrate
Members: S. Böttcher
Y. Podbielski

Summary of Facts and Submissions

- I. The applicant filed an appeal against the decision of the Examining Division to refuse European patent application No. 13800671.3 because claim 1 of the main request did not meet the requirements of Articles 84 and 123(2) EPC. The written decision was dispatched on 3 January 2018.
- II. The appellant requested that the decision under appeal be set aside and that the case be remitted to the Examining Division for further prosecution on the basis of the main request filed on 8 April 2020.
- III. Claim 1 of the main request reads as follows:

"A wheelchair (2) having a longitudinal axis and a lateral axis, the wheelchair further having front wheels with rotational axes and rear wheels with rotational axes, said front wheels and said rear wheels being separated from each other along said longitudinal axis of the wheelchair, the wheelchair comprising a device (4) comprising:

- a hollow sleeve (22);
- a leg (24) slidable in the sleeve; the leg (24) having a retracted position in the sleeve (22) and an extended position in the sleeve (22), the leg is bent to form a foot (25), said foot (25) having a plurality of auxiliary wheels (26A, 26B, 26C) spaced along the length of the foot (25) or a continuous track is attached to the foot;

the device (4) being attached to the wheelchair between the front wheels of the wheelchair and the back wheels of the wheelchair;

wherein when the leg is in the extended position, the

auxiliary wheels or track are positioned [sic] below the bottom of the front and back wheels and the auxiliary wheels or track can rotate when the wheelchair moves forward."

IV. The arguments of the appellant relevant for the present decision may be summarised as follows:

The feature the continuous track "can rotate when the wheelchair moves forward" did not add subject-matter since it was clear from the description of the application (page 5, lines 8 to 9, 23 to 26 and 30 to 33, and page 3, lines 31 to 32) that the auxiliary wheels or track were positioned on the wheelchair in a way that allowed the auxiliary wheels or track to function (i.e. rotate) when the wheelchair was moved forward. Hence, the requirements of Article 123(2) EPC were met. The objection under Article 84 EPC of the impugned decision had been met by amending claim 1.

Reasons for the Decision

1. Subject-matter of the application

Claim 1 of the main request relates to a wheelchair comprising a device that is attached between the front wheels and the back wheels of the wheelchair. The device comprises a hollow sleeve (22) and a leg (24) slidable in the sleeve from a retracted position (Figure 1) to an extended position (Figure 2). The leg has a foot (25) with a plurality of wheels (26A, 26B, 26C) spaced along the length of the foot.

Alternatively, the leg has a continuous track at an end of the leg (not shown in the figures). The device is positioned on the wheelchair such that the wheels or track can rotate when the wheelchair moves forward.

2. Main request - added subject-matter

2.1 The Examining Division considered that the feature the continuous track "can rotate when the wheelchair moves forward" in claim 1 was not directly and unambiguously derivable from the original application documents (point 10 of the appealed decision).

The Board holds that the feature does not mean that the complete continuous track is rotatable but the wheels thereof.

Figure 2 shows the wheelchair with the leg in an extended position. The leg has three auxiliary wheels which are arranged in a row on the foot in a way such that they can rotate when the wheelchair moves forward (when the leg is in the extended position and the auxiliary wheels are positioned below the bottom of the front and back wheels). On page 3, lines 31 to 32, it is mentioned that instead of wheels, the foot may comprise a continuous track.

Even if it is not explicitly mentioned in the application as filed, it can be derived directly and unambiguously that the wheels of the continuous track have to be arranged in the same orientation as the auxiliary wheels such that the continuous track can fulfill the same function, namely, to rotate when the wheelchair moves forward. It follows that this feature does not add subject-matter.

2.2 The Examining Division also objected that the application as originally filed disclosed the rotation of the auxiliary wheels only in an extended position where the auxiliary wheels are positioned below the bottom of the front and back wheels, while claim 1 underlying the decision did not recite this position (point 9 of the appealed decision).

Present claim 1 comprises this feature. Hence, the objection of the Examining Division no longer applies.

2.3 Claim 1 of the main request therefore meets the requirements of Article 123(2) EPC.

3. Main request - clarity

The Examining Division considered that claim 1 then on file sought to define the invention ("a device") by its relationship to a second entity (a wheelchair) which was not part of the claimed entity, resulting in a lack of clarity (point 8 of the appealed decision).

Since present claim 1 is directed to a wheelchair this objection does no longer apply.

4. Remittal to the department of first instance

As mentioned above, claim 1 of the main request meets the requirements of Article 123(2) and Article 84 EPC. However, the claims of the main request have not been examined with regard to novelty and inventive step by the Examining Division.

Under Article 111(1) EPC, the Board may in the present case either proceed further with the examination of the application or remit the case to the Examining

Division for further prosecution. Since the present appeal was pending on 1 January 2020, the revised version of the RPBA applies (OJ EPO 2019, A63). In particular Article 11 RPBA 2020 is applicable.

Article 11 RPBA 2020 provides that the Board shall not remit a case to the department whose decision was appealed for further prosecution, unless special reasons present themselves for doing so. However, this provision has to be read in conjunction with Article 12(2) RPBA 2020, which provides that it is the primary object of the appeal proceedings to review the decision under appeal in a judicial manner (see also T 731/17 of 15 January 2020, point 7.3 of the reasons, T 1966/16 of 20 January 2020, point 2.2 of the reasons and T 0547/14 of 29 January 2020, point 7.1 and 7.2 of the reasons).

This principle would not be respected if the Board were to conduct a complete examination of the application. Consequently, in the present case, Article 11 RPBA 2020 cannot be interpreted to mean that the Board should carry out a full examination of the application for compliance with the requirements of Articles 54 and 56 EPC for which no decision of the first instance exists yet.

Consequently, the Board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case to the department of first instance for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.

The Registrar:

The Chairman:



D. Hampe

M. Alvazzi Delfrate

Decision electronically authenticated