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**Datasheet for the decision  
of 1 December 2021**

**Case Number:** T 1101/20 - 3.2.01

**Application Number:** 13182037.5

**Publication Number:** 2842827

**IPC:** B61F5/24

**Language of the proceedings:** EN

**Title of invention:**

Vehicle having side wind effect compensation

**Applicant:**

Bombardier Transportation GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 111(1)

EPC R. 71(3)

**Keyword:**

Appeal decision - remittal to the department of first instance  
(yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1101/20 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 1 December 2021**

**Appellant:** Bombardier Transportation GmbH  
(Applicant) Eichhornstraße 3  
10785 Berlin (DE)

**Representative:** Cohausz & Florack  
Patent- & Rechtsanwälte  
Partnerschaftsgesellschaft mbB  
Bleichstraße 14  
40211 Düsseldorf (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 28 October 2019  
refusing European patent application No.  
13182037.5 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** V. Vinci  
S. Fernández de Córdoba

## **Summary of Facts and Submissions**

I. The appeal was filed by the appellant (applicant) against the decision of the examining division to refuse the patent application in suit.

II. At the examination oral proceedings the examining division informed the appellant that the main request did not meet the requirements of Articles 84 and 83 EPC and that it intended to grant a patent based on the auxiliary request 1 filed during the oral proceedings.

In response to the communication under Rule 71(3) EPC the appellant did not approve the text intended for grant and explicitly requested to grant a patent based on the main request as filed on 21 January 2019 and discussed at the examination oral proceedings.

In the decision under appeal the examining division held that the subject-matter of the dependent claims 2 to 8 and 11 to 15 of the main request was not clear in the meaning of Article 84 EPC and that the requirements of Article 83 EPC were not met.

III. With the communication according to Rule 100(2) EPC dated 15 June 2020 the Board informed the appellant of its preliminary assessment of the case.

Oral proceedings pursuant to Article 116 EPC were held before the Board on 01 December 2021 by videoconference.

IV. The appellant requested that the decision under appeal be set aside and that an European patent be granted on the basis of the auxiliary request 2 (now main

request), the latest corresponding to the auxiliary request 1 considered allowable by the examining division at the examination oral proceedings.

### **Reasons for the Decision**

1. The Board notes that the main request and the auxiliary request 1 filed with the grounds of appeal have been withdrawn during the oral proceedings (see minutes, page 2, second paragraph) and that the only request maintained by the appellant as new main request, namely the auxiliary request 2 filed with the grounds of appeal, corresponds to the auxiliary request 1 discussed at the examining oral proceedings and deemed to be allowable by the examining division.
2. As announced by the Chairman during the oral proceedings, the Board does not see any reason for interfering with the assessment of the examining division leading to the communication according to Rule 71(3) EPC informing the appellant of its intention to grant an European patent on the basis of the auxiliary request 1 filed at the oral proceedings, and therefore considers it appropriate to remit the case to the first instance with the order to grant a patent in the form already considered allowable by the examining division.

### **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 with the order to grant a patent with the documents specified in

the communication under Rule 71(3) EPC dated  
5 April 2019 in respect to auxiliary request 1.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated