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**Datasheet for the decision  
of 8 June 2022**

**Case Number:** T 2225/21 - 3.2.01

**Application Number:** 16787360.3

**Publication Number:** 3526071

**IPC:** B60K37/04, B60K35/00,  
B60K37/06, B60R11/02, B60R11/00

**Language of the proceedings:** EN

**Title of invention:**

APPARATUS FOR A VEHICLE, METHOD FOR CONTROLLING THE SAME, AND  
DISPLAY FOR A VEHICLE

**Applicant:**

Continental Automotive GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 123(2), 109(1), 111(1)  
RPBA 2020 Art. 11  
EPC R. 103(1)(a), 103(4)(c)

**Keyword:**

Novelty - (yes)

Amendments - extension beyond the content of the application  
as filed (no)

Interlocutory revision - department of first instance should  
have rectified decision (yes)

Remittal - fundamental deficiency in first-instance  
proceedings (yes)

Reimbursement of appeal fee - (no)

**Decisions cited:**

T 1173/10, T 0139/87, T 0180/95, T 1060/13, T 1994/11

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 2225/21 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 8 June 2022**

**Appellant:** Continental Automotive GmbH  
(Applicant) Vahrenwalder Straße 9  
30165 Hannover (DE)

**Representative:** Continental Corporation  
c/o Continental Teves AG & Co. OHG  
Intellectual Property  
Guerickestraße 7  
60488 Frankfurt a. Main (DE)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 4 October 2021  
refusing European patent application No.  
16787360.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** J. J. de Acha González  
A. Jimenez

## Summary of Facts and Submissions

- I. The appeal of the applicant lies against the decision of the Examining Division to refuse European patent application No 16787360.3.
- II. In its decision the Examining Division found that the subject-matter of claim 1 of the sole request before it was not new in view of a sole piece of prior art, namely

**D1:** US 2014/153168 A1.

In an *obiter dictum* the Examining Division further pointed out that the subject-matter of claim 1 represented an unallowable intermediate generalisation of the content of the application as originally filed.

- III. With the statement of grounds of appeal, the appellant requested to set aside the decision of the Examining Division and to grant a patent according to the main request, or, in the alternative, according to the auxiliary request, both new and filed with the statement of grounds of appeal.
- IV. With communication of 24 March 2022 pursuant to Article 15(1) RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) the Board expressed its preliminary view of the case, according to which the appeal was allowable and the case was to be remitted to the Examining Division for further prosecution.
- V. With letter dated 04.04.2022, filed in response to the communication of the Board, the appellant agreed with

the Board's findings and with the case remittal. The appellant further withdrew the request for oral proceedings and requested the reimbursement of the appeal fee at 25% under Rule 103(4)(c) EPC .

VI. Oral proceedings scheduled for 19 July 2022 were thus cancelled.

VII. Claim 1 of the main request reads as follows (differences with respect to claim 1 of the main request underlying the contested decision are underlined or in strikethrough, emphasis added by the Board):

" *An apparatus (300,400) for a vehicle, the apparatus (300, 400) comprising:*

*a support structure (302) adapted to support a display panel(362);*

*a drive assembly (204, 304) capable of selectively driving the support structure (202, 302) to rotate about a first axis (208, 308) and to rotate about a second axis (210, 310), the first axis (308) being different from the second axis (210, 310); and*

*a sensor arrangement (206) located at a first predetermined position along a path of the rotation about the first axis (208, 308) and at a second predetermined position along a path of the rotation about the second axis (210, 310), **characterized in that** the sensor arrangement (206) being configured to directly detect the support structure (202, 302) selectively at the first and second predetermined positions,*

~~*wherein the support structure (202, 302) comprises:*~~

~~*a turn-table (322); and*~~

~~— a display holder (320) hingedly connected to the turn-table (322), the display holder (320) being adapted to receive the display panel (262, 362). and wherein the apparatus further comprises a~~  
processor,

wherein the first predetermined position defines a first end position along the path of the rotation about the first axis (208,308), and wherein the second predetermined position defines a second end position along the path of the rotation about the second axis (210,310), and

in response to the detection of the support structure (202, 302) by the sensor arrangement (206) selectively at the first end position and the second end position, the processor is configured to provide a fault signal to the drive assembly (204, 304) to prevent any corresponding rotation of the support structure (202, 302) about at least one of the first axis (208,308) or the second axis (210,310) beyond the first end position and the second end position."

## **Reasons for the Decision**

1. The main request was filed for the first time with the statement of grounds of appeal. It contains 16 claims, wherein claim 1 is a combination of claims 1 and 13 as originally filed and claims 2 to 16 correspond to claims 2 to 12 and 14 to 17 as originally filed with numbering and dependencies adapted.

2. Consequently, the subject-matter of the main request does not go beyond the content of the application as originally filed (Article 123(2) EPC).
3. Claim 1 of the main request includes the features of claim 13 which were not included in claim 1 of the request underlying the contested decision. It appears from the examination proceedings (see point 1.3 of the communication from the Examining Division of 25 November 2020) that the Examining Division considered the subject-matter of claim 13 to be new over D1 but not involving an inventive step when considering common general knowledge of the skilled person. The reasons are however unspecified in the communication and the objection to claim 13 does not form part of the grounds for refusal.
4. The subject-matter of claim 1 of the main request is new over D1 already in view of the fact that the sensor arrangement (Figs. 13-19: 48, 58, 68, 78a and 78b) of D1 is located within the drive assembly for driving the support structure about first and second axes (Figs 14, 15: axes 5a and 6a; sensors 58 and 68) or at predetermined positions along a path of rotation about a third axis (Fig. 17: axis 7a; position switches 78a and 78b), and not in a first and second predetermined positions along a path of rotation of the support structure about first and second axes respectively, which define a first and second end positions of the support structure along the path of rotation about the first and second axes respectively.  
In fact (see Fig. 12 and par. [0077]), in D1 there is a support chassis 8 that supports the display panel 3 and a base plate 51 with a slider 52 that moves linearly relative to the base plate. When the slider 52 moves, the support chassis 8 rotates on the first rotation

axis 5a, and the display panel is tilted right or left. A position sensor 58 is provided to the base plate 51 for detecting a position of the slider 52, which position corresponds to an angle of the display surface about the first axis (see par. [0087]). The position sensor 58 is thus not along a path of the rotation about the first axis. The same applies to the position sensor 68 for the second axis 6a (see Fig. 15), as it is analogously connected to a slider 62 which position corresponds to an angle of the display surface about the second axis 6a (see par. [0099]), whereby rotation about axis 6a provides up or down tilting of the display panel.

The display panel can also be rotated about an axis 7a (see Fig. 17) by means of a rotation mechanism (see par. [0120] and [0121]) which includes two position switches 78a and 78b that detect the posture (portrait mode or landscape mode) of the display panel. These switches provide a sensor arrangement located along a path of rotation about the axis 7a.

There is however no other sensor arrangement located along another path of rotation as required by claim 1. Hence, already for this reason, the subject-matter of claim 1 is novel over D1.

5. It follows that the sole ground for refusing the current patent application (novelty) is remedied by the new main request. Moreover, the view of the Examining Division according to the *obiter dictum* of the decision regarding the inadmissible extension does no longer apply either. Accordingly, the appeal is allowable and consequently, the decision under appeal is to be set aside.
6. Under Article 109 EPC, if the department whose decision is contested considers the appeal to be admissible and



well founded, it shall rectify its decision. It is established Case Law of the Boards of Appeal that, if the appeal is objectively to be considered as admissible and well founded, the first-instance department is obliged to grant interlocutory revision, without room for discretion (see e.g. T 1173/10, T 139/87, T 180/95, T 1060/13).

In the present case the Examining Division should have therefore carried out an interlocutory revision and resumed the examination proceedings because its sole ground for refusal did no longer apply. The fact that the Examining Division did not rectify the decision although it was obliged to do so constitutes a fundamental deficiency which according to Article 11 RPBA justifies a remittal of the case for further prosecution.

The fact that the Examining Division in its above mentioned communication raised an inventive step objection (D1 together with common general knowledge) for the subject-matter of claim 13 as originally filed is irrelevant, since this objection was fully unsubstantiated and anyway does not form part of the grounds for refusal, let alone part of the *obiter dictum* (see Case Law of the Boards of Appeal of the EPO, 9th Edition, V.A.2.9.2).

Under these circumstances and also considering the request of the appellant, the case is immediately to be remitted (Article 111(1) EPC).

7. The requested partial reimbursement of the appeal fee at 25% under Rule 103(4)(c) EPC is granted since the appellant withdrew the request for oral proceedings within one month of notification of the Board's

communication in preparation for the oral proceedings and no oral proceedings have taken place.

A full reimbursement of the appeal fee under Rule 103(1)(a) EPC is nevertheless not justified because the above mentioned fundamental deficiency cannot have been causally linked with filing the appeal since it occurred thereafter (see e.g. T 1060/13, point 4.5; T 1994/11, point 4).

## **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.
3. The appeal fee is reimbursed at 25%.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated