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Datasheet for the decision of 10 April 2024

Case Number: T 0924/22 - 3.2.04

Application Number: 15738661.6

Publication Number: 3171723

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Language of the proceedings: EN

Title of invention:
"PROTECTIVE GARMENT PROVIDED WITH AN INFLATABLE PROTECTIVE DEVICE AND ASSOCIATED INFLATING METHOD"

Patent Proprietor:
Alpinestars Research S.p.A.

Opponent:
Dainese S.p.A.

Headword:

Relevant legal provisions:
EPC 1973 Art. 100(a), 54(2), 123(2), 56
RPBA 2020 Art. 12(4), 12(6), 13(2)

Keyword:

Novelty - main request (no)
Amendments - added subject-matter (yes)
Inventive step - auxiliary request (no)
Late-filed objection - admitted (yes)
Late-filed request - admitted (no)

Decisions cited:

Catchword:

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Beschwerdekammern

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Case Number: T 0924/22 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 10 April 2024

Appellant: (Opponent)	Dainese S.p.A. Via Louvigny, 35 36064 Colceresa (VI) (IT)
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Representative:	Dragotti & Associati S.R.L. Via Nino Bixio, 7 20129 Milano (IT)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 1 February 2022 rejecting the opposition filed against European patent No. 3171723 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	A. de Vries
Members:	G. Martin Gonzalez
	K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. The opponent appeals the decision of the opposition division to reject their opposition.

II. The division held inter alia that the subject-matter of granted independent claims 1 and 13 was new over D7 and involved an inventive step.

III. In preparation for oral proceedings the board issued a communication setting out its provisional opinion on the relevant issues.

Oral proceedings before the Board were held by videoconference on 10 April 2024.

IV. The appellant opponent requests that the decision under appeal be set aside and the patent revoked.

The respondent proprietor requests that the appeal be dismissed or in the alternative that the patent be maintained on the basis of one of the auxiliary requests 5, 1, 9bis (as filed during oral proceedings before the Board), 2, 6, 7 or 10 (all requests except for 9bis filed or re-filed with their reply of 26 October 2022).

V. The independent claims relevant to this appeal read as follows:

(a) Main request (granted claims)

1. "Protective garment (10, 110) provided with an inflatable protective device, comprising:

- at least one inflatable bag (12) suitable for moving between a rest condition, wherein it is in a deflated status, and an operating condition, wherein it is in an inflated status;
- an inflator device (14) coupled to the at least one inflatable bag (12) and designed for inflating the at least one inflatable bag (12), once the inflator device (14) is triggered;
- at least one acceleration sensor (16) suitable for detecting the acceleration undergone by the garment (10, 110);
- a control unit (18) designed for processing the acceleration data detected by the at least one acceleration sensor (16) and for sending a triggering signal to the inflator device (14), when a crash situation is identified;

characterized by further comprising a transmitting unit (20, 120) designed for sending an activation signal (15) outside the protective garment (10, 110) when the triggering signal is generated by the control unit (18) and a receiving unit (21, 121) suitable for receiving a signal (15) from outside the protective garment (10, 110) and generating the triggering signal of the inflator device (14) when the received signal (15) is recognized as an activation signal."

13. "A method for inflating an inflatable protective device (12) of a protective garment (10, 110), the method comprising the following steps:

- detecting the acceleration undergone by the protective garment (10, 110);
- processing, for identifying a dangerous situation for the user of the protective garment (10, 110), the detected acceleration data;

- generating a triggering signal when a dangerous situation has been identified so as to inflate the inflatable protective device (12) of the protective garment (10, 110);

the method characterized by further comprising the following steps:

- sending an activation signal outside the protective garment (10, 110) when the triggering signal is generated; and
- automatically monitoring signals received from outside the protective garment (10, 110) for generating a triggering signal of the inflatable protective device (12) when an activation signal is received."

(b) First auxiliary request

Claim 1 as in the main request with the following amendments (emphasis by the Board to indicate added text or ~~removed text~~):

1. "Assembly formed by a first protective garment (10) and a second~~Protective~~ protective garment (~~10,~~ 110), each of said first protective garment (10) and said second protective garment (110) being provided with an inflatable protective device and~~,~~ comprising:

.../...

~~characterized by further comprising~~

... (14) when the received signal (15) is recognized as an activation signal;

said first protective garment (10) being designed for being paired with said second protective garment (110);

the transmitting unit (20) of the first protective garment (10) being suitable for sending an activation signal to the receiving unit (121) of the second protective garment (110) and the transmitting unit

(120) of the second protective garment (110) being suitable for sending an activation signal to the receiving unit (21) of the first protective garment (10)."

(c) Second auxiliary request

Claim 1 as in the main request with the following features added at the end of the claim amendments (emphasis by the Board to indicate added text):

1. "...is recognized as an activation signal; said protective garment (10, 110) further comprising a storage memory for storing an identification code of the inflatable protective device mounted on the protective garment (10, 110); the identification code being codified or encrypted in the activation signal."

(d) Fifth auxiliary request

Claim 1 as in the main request with the following features added at the end of the claim amendments (emphasis by the Board to indicate added text):

1. "...is recognized as an activation signal; said protective garment (10, 110) being designed for being paired with a second protective garment (10, 110)."

Claim 12 as method claim 13 of the main request with the following features added at the end of the claim amendments (emphasis by the Board to indicate added text):

12. "...- automatically monitoring signals received from outside the protective garment (10, 110) for

generating a triggering signal of the inflatable protective device (12) when an activation signal is received and
pairing the protective garment (10, 110) with a further protective garment (10, 110)."

(e) Sixth auxiliary request

Claim 1 as in the main request with the following features added at the end of the claim amendments (emphasis by the Board to indicate added text):

1. "...is recognized as an activation signal;
the protective garment further comprising a storage memory for storing an identification code and the receiving unit (21, 121) being suitable for recognizing as an activation signal a received signal containing the identification code stored in the storage memory."

(f) Seventh auxiliary request

Claim 1 as in the main request with the following features added at the end of the claim amendments (emphasis by the Board to indicate added text):

1. "...is recognized as an activation signal; the transmitting unit (20, 120) and the receiving unit (21, 121) being each supplied as a separate component of the control unit (18);
the protective garment further comprising a storage memory for storing an identification code and the receiving unit (21, 121) being suitable for recognizing as an activation signal a received signal containing the identification code stored in the storage memory."

(g) Auxiliary request 9bis

Claim 1 as in the main request with the following amendments (emphasis by the Board to indicate added text or ~~removed text~~):

1. "A first protective garment (10) designed to be worn by the rider of a motorcycle and a second~~Protective~~ protective garment (~~10,~~ 110) designed to be worn by the passenger of the motorcycle, said first protective garment (10) and said second protective garment (110) being provided with an inflatable protective device and, comprising:
- at least one inflatable bag (12) suitable for moving between...

~~characterized by further comprising~~

...is recognized as an activation signal;
said first protective garment (10) being designed for being paired with said second protective garment (110);
the transmitting unit (20) of the first protective garment (10) being suitable for sending an activation signal to the receiving unit (121) of the second protective garment (110) and the transmitting unit (120) of the second protective garment (110) being suitable for sending an activation signal to the receiving unit (21) of the first protective garment (10)."

(h) Tenth auxiliary request

Claim 1 as method claim 12 of the fifth auxiliary request.

VI. In the present decision, reference is made to the following documents:

(D2) US 2005/0067816 A1
(D3) US 2009/0055053 A1
(D7) US 8,662,528 B1

VII. The appellant's arguments can be summarised as follows:

Granted claim 1 is not new over D7. Auxiliary request 1 contains added subject-matter. Claim 1 of any of auxiliary requests 2,5-7,10 does not involve an inventive step. The inventive step objection starting from D7 in combination with D3 for auxiliary request 5 is admissible. The appellant opponent does not object to the admissibility of auxiliary request 9bis.

VIII. The respondent's arguments can be summarised as follows:

Granted claim 1 is new and involves an inventive step over the cited prior art. Auxiliary request 1 does not contain added subject matter. The objection of lack of inventive step for auxiliary request 5, starting from D7 in combination with D3, is late-filed and not admissible. If admitted, remittal to the opposition proceedings for further prosecution is justified. The independent claims of auxiliary requests 2, 5-7, and 10 are new and involve an inventive step. The admission of late-filed request 9bis is justified by the change in the preliminary opinion of the Board regarding added subject-matter of auxiliary request 1.

Reasons for the Decision

1. The appeal is admissible.

2. Background

The invention pertains to a protective garment equipped with an inflatable protective device, specifically designed for motorcyclists, and a method for inflating the aforementioned protective device, see paragraphs 0001-0002 of the patent specification. A primary focus of the invention is addressing the challenge of integrating corresponding systems when two individuals are traveling on the motorcycle, as discussed in paragraph 0013.

3. Main request - Novelty

3.1 The novelty objections largely revolve around the interpretation of the claim term "activation signal" used in features 1b and 1e, as detailed in the claim feature analysis on pages 4-5 of the impugned decision:

- feature 1b: "a transmitting unit (20, 120) designed for sending an activation signal (15) outside the protective garment (10, 110)"
- feature 1d: "and a receiving unit (21, 121) suitable for receiving a signal (15) from outside the protective garment (10, 110) and"
- feature 1e: "generating the triggering signal of the inflator device (14) when the received signal (15) is recognized as an activation signal".

3.2 The contention from both the division and the respondent is that the outgoing activation signal in feature 1b must be of the same nature as the incoming activation signal in feature 1e. The implication is that the activation signal in feature 1b must also eventually trigger the activation of another, undefined inflator device, namely one located outside the garment. Thus, both activation signals would have properties that limit their use to that ultimate purpose, thereby excluding other uses. This interpretation would be supported by considering the claim as a whole, either alone or in combination also with the entirety of the patent disclosure.

3.3 As variously stated in case law if the claims are worded so clearly and unambiguously as to be understood without difficulty by the person skilled in the art, there is no need to use the description to interpret the claims. If a term used in a claim has a clear technical meaning, the description cannot be used to interpret such a term in a different way, see Case Law of the Boards of Appeal, 10th edition 2022 (CLBA), II.A.6.3.1.

Although the appellant cites T312/94, reasons 2.2 and T1321/04, reasons 2.3, in support of the principle that the person skilled in the art does not consider the terms of a claim in isolation from the remainder of the patent specification, this is not in contradiction with the above principle. While a claim term should not be interpreted in isolation, it should however be given its broadest technically sensible meaning within its context. Its meaning should not be narrowed down by implying into it features which appear only in the description, as this would deprive claims of their intended function.

3.4 Turning to the present case, claim 1 of the main request is directed to a single garment. It thus seeks to define the scope of protection for a single garment. This is the immediate context in which it should first be considered. The Board further notes that while the patent disclosure primarily focuses on integrating garment systems for two individuals traveling on a motorcycle, it does not exclude the situation of a single protective garment worn by a rider, as can be derived from para 0022 of the patent: "Another aim of the present invention is to provide a protective garment provided with an inflatable protective device suitable for being worn, without adjustments, by the rider and/or by the passenger of a motorcycle" (emphasis added).

3.5 In this context, the term "activation signal" of feature 1b can be readily and without difficulty be understood in its common and normal sense as meaning a signal that activates. Therefore, the skilled person would not need to resort to the description for an interpretation of the term.

Neither is the narrower interpretation derivable from the claim context. The claim is directed to a single protective garment. There is no mention at all to further garments or interactions with them. There is also no indication in the claim of any properties of the signal that might be relevant to its use for a specific purpose, such as triggering. Indeed, the particular purpose a signal serves will depend on how the system is designed to respond to the signal; it is not an inherent property of a signal itself. It is easily conceivable that an "activation signal" can be used for a different purpose or purposes than just

triggering a suit. Nor is it apparent from the claim wording that the activation signals of feature 1b and 1e are identical. In this regard the division relied on the fact that both features 1b and 1e use the same reference sign (15) for "an activation signal". Firstly, as noted by the parties Rule 43(7) EPC stipulates that reference signs shall not be construed as limiting the claim. Moreover, in the embodiments the system must be able to differentiate between outgoing and incoming signals for it to work, implying that they are most likely different.

3.6 Therefore the respondent's and division's arguments that the term "activation signal" of feature 1b defining the outgoing signal should exclude other type of activation signals, for instance a signal to an emergency station to activate an emergency protocol, are not convincing.

3.7 Considering the above, the Board holds that document D7 discloses all claimed features and thus anticipates the subject-matter of claim 1. It describes a protective garment 10 with inflatable air bags 18. A central processor 28 may include an accelerometer in order to trigger the air bags 18 when a crash situation is identified, see col. 3, ln. 38-41. A transmitting unit (smart phone 36 or similar) makes "an automatic emergency call to alert police, medical assistance, etc..." when triggering of the air bag charge occurs, see col. 3, ln. 50-63. This automatic emergency call by the smart phone or similar is regarded by the Board as an outward activation signal in the sense of feature 1b, namely one that activates an emergency response elsewhere.

The suit is further configured to receive a signal from a motorcycle tilt sensor 58 to activate inflation in the event that excessive tilt is detected, see col. 4 ln. 50 - col. 5, ln. 65. The suit is therefore also provided with a receiving unit to receive an activation signal (excessive tilt) to trigger inflation, features 1d and 1e, as claimed.

3.8 The respondent argues that the protective suit 10 in combination with the motorcycle 54 of D7 is a second embodiment of the invention which cannot be combined with the previously described protective suit. This argument is not convincing. The main and only application of the protective suit described in D7 is motorcycles, mentioned throughout description and claims. Thus, where D7 describes features of the motorcycle that may act in cooperation with the suit, it goes without saying, that it is the protective suit, which is the main focus of D7, that is meant.

3.9 D2, second embodiment, also anticipates the claimed subject-matter. This document describes an active protective garment (APG) in which an air bag inflator is automatically deployed "when sensors detect the accelerations ... associated with the early phases of an accidental fall", see para 0010, with the accelerometers, as described in para 0030. As stated in para 0038 the APG can also comprise a link to a Personal Emergency Locator System (PELS), with activation of the APG triggering a signal to the PELS to call emergency services, see para 0038. This signal to the PELS can be regarded as an outward activation signal in the sense of feature 1b of granted claim 1. The APG also receives signals from room mounted sensors, see para 0035. If the garment determines from the received signals that the person is too close to

the floor (in the claim language it determines that the signal is an activation signal), inflation is activated, corresponding to features 1d and 1e of granted claim 1.

3.10 Therefore, the subject-matter of claim 1 of the main request is not new over D2 and D7. The same conclusion holds for method claim 13, reciting similar or corresponding features in the form of method features.

4. Admission of auxiliary requests 1 to 7

The requests were filed early on in the opposition proceedings, with letters of 21 October 2019, 3 September 2020 and 5 August 2021 respectively, before the Rule 116(1) EPC deadline of 6 August 2021 mentioned in the summons of 25 November 2020. Even if they did not converge, that criterion applies only if requests are late filed, after the Rule 116(2) deadline, see Examination Guidelines 2024, H-III, 3.3.2.2. As they were further substantiated to the required level in opposition, they are seen to have been admissibly raised in opposition. Though they were not examined there is no indication that these requests were not maintained. Finally, though their substantiation in appeal is very succinct, the Board considers it sufficient to allow all to understand the case the respondent proprietor is making for them. The Board therefore decided to admit these requests into the appeal proceedings in the exercise of its discretion under Art 12(4) and 12(5) RPBA.

5. First auxiliary request - Added subject-matter

5.1 Auxiliary request 1 is amended to claim an assembly formed by two protective garments, each having the same features as the garment of the main request, further being designed to be paired, and suitable for transmitting an activation signal to one another that inflates the other's inflatable device.

Therefore claim 1 now requires that "said first protective garment (10) being designed for being paired with said second protective garment (110); the transmitting unit (20) of the first protective garment (10) being suitable for sending an activation signal to the receiving unit (121) of the second protective garment (110) and the transmitting unit (120) of the second protective garment (110) being suitable for sending an activation signal to the receiving unit (21) of the first protective garment (10)."

5.2 The above added features have been extracted in isolation from a specific embodiment described in the original document, with reference to Figs. 4-6, spanning from page 11, line 21 to page 12, line 13, where they are exclusively described as motorcycle gear. The added feature is discussed within the context of two protective garments worn by both a rider and accompanying passenger of a motorcycle, aimed at reducing triggering time. The reduction in triggering time for the passenger's inflatable protective devices occurs in the event of a frontal or head on collision, while for the rider's device, it occurs in the event of a rear end collision, as stated in the concluding remarks on page 12, lines 10-13. All features are therefore inextricably functionally linked. Therefore, the omission of the limitation that the protective garments are specifically intended for motorcycles represents an unallowable intermediate generalization.

The ability for mutual triggering of inflation between any two garments by sending an activation signal, which was not originally disclosed in a context other than motorcycle riding, is now encompassed by the claim scope. It therefore constitutes added subject-matter extending beyond the content of the application as originally filed, Art 123(2) EPC.

5.3 The appellant cites original claim 10 and the original description from page 3, line 37 to page 4, line 3 (corresponding to para 0027 of the patent specification). They argue that these passages indicate the claimed garment's applicability beyond motorcycle riding.

However, original claim 10 merely mentions pairing the claimed garment with a second garment without specific details on its uses or functions. The specific pairing for mutual inflation triggering, as discussed earlier, is disclosed elsewhere in the original documents exclusively in the context of motorcycling. Therefore, original claim 10 does not support the generalization now included in the amended claim 1 of auxiliary request 1. The same applies to the statement in para 0027 of the specification, where it mentions the garment's potential use in other fields. However, this passage refers to a single protective garment, and what features would be relevant for use in other fields is not clearly stated. It is particularly not evident that the added feature of mutual inflation of two garments is intended for use in other fields.

5.4 The Board therefore concludes that claim 1 of auxiliary request 1 contains added subject-matter, Art 123(2) EPC.

6. Second auxiliary request - Inventive step

6.1 Claim 1 is amended with respect to the main request to specify that the protective garment further comprises a storage memory for storing an identification code of the inflatable protective device mounted on the protective garment; the identification code being codified or encrypted in the activation signal.

6.2 The subject-matter of claim 1 is, in the Board's view, an obvious practical realisation of the garment described by D2.

6.3 It follows from the finding of lack of novelty for the main request that the only difference of present claim 1 over D2 is the provision of the identification code and its codification or encryption in the activation signal, neither feature being expressly mentioned in D2. It is immediately evident to the skilled person that an identification code codified in an emitted signal serves the purpose to identify the source of the signal for the signal receiver.

The garment of D2, as explained above for the discussion of the main request, incorporates a Personal Emergency Locator System (PELS). The PELS system is to call emergency services or other support personnel to assist the wearer. As is evident from its designation it is a system that is *personal* and *locates*, in other words it not only transmits an emergency signal but it must also allow identification and location of the person at risk of injury. If it is not already implicit in D2, then these features are immediately obvious to the skilled person, when carrying out the invention of D2. Thus, the skilled person in realizing the teaching of D2 will need to find a way of realizing

identification and location by the PELS system based on the signal emitted. The most obvious, if not the only way of doing so, is by including that information in the signal, by appropriate coding.

6.4 The Board therefore concludes that claim 1 of auxiliary request 2 does not involve an inventive step in the sense of Art 56 EPC.

7. Fifth auxiliary request - Admission of objection and request for remittal.

7.1 Claim 1 of this request is amended vis-a-vis the main request to specify that the garment is designed for being paired with a second protective garment.

7.2 The respondent contests the admissibility of the appellant's lack of inventive step objection based on D7 in combination with D3 under Art 13(2) RPBA for being filed only in appeal and after the summons to oral proceedings. D7 was filed (as D8) with the appellant opponent's letter of 3 December 2020, but only cited against the granted claims, and admitted in the oral proceedings before the division and discussed in that context in the decision, (see minutes page 1 and section 3.1 of the appealed decision).

7.3 The appellant opponent raised this objection in their reply of 7 August 2023 after issuance of the summons, so that the previous 2020 version of Art 13(2) RPBA is applicable. According to this version, any amendment to a party's appeal case made after notification of a summons to oral proceedings, shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

7.4 The Board finds that there are exceptional circumstances governing this case. The respondent proprietor submitted auxiliary request 5 in appeal with the reply to the statement of grounds on 26 October 2022. The appellant then objected to this request in its reply to the proprietor's observations on 7 August 2023, which was the first reasonable opportunity to do so, after the summons but well before the Board issued its preliminary opinion on 8 December 2023. In the Board's view the appellant opponent should be given a fair opportunity to respond to the respondent proprietor's requests that they could not foresee when they filed their appeal, even if these requests are those filed already in opposition. This situation represents exceptional circumstances under Art 13(2) RPBA, 2020, so that the Board is no longer bound in its discretion by the strict principle expressed in this provision.

7.5 The criteria of Art 13(1) RPBA referring to Art 12(4) to (6) RPBA then have to be applied. Thus, any amendment (of the appellant opponent's case) should be suitable in regard of the relevant issues, not detrimental to procedural economy and not complex.

The Board finds that all three criteria are met. Because D7 was cited against granted claim 1 and found to be novelty destroying, it is clearly a suitable starting point for evaluating inventive step. D3 was already cited in the notice opposition (section 14.2) against corresponding granted claim 10. Both documents thus lie within the factual and evidentiary framework set out in the opposition proceedings for the corresponding features of the auxiliary requests.

The parties are thus also familiar with their relevant contents. Furthermore, the objection is not complex, and can easily be dealt with within the framework of the proceedings without affecting procedural economy.

7.6 In the light of the above, the Board at the oral proceedings decided to admit this objection into the proceedings.

7.7 The respondent proprietor also requested remittal if the objection was admitted by the Board.

However, inventive step was duly discussed and decided for the upheld request, and the issue is thus within the framework of the appeal, Art 12(1) RPBA 2020. Document D7 is one of those documents on which the division duly heard and decided both novelty and inventive step for that request. It was extensively discussed in opposition and again in both partie's submissions in appeal. The relevant teachings of D3 and corresponding arguments for the new features of auxiliary request 5 were known to the proprietor already from the notice of opposition. The Board therefore sees no special reasons in the sense of Art 11 RPBA for remitting the case, and shall therefore also consider inventive step of auxiliary request 5 in the light of D7 in combination with D3.

8. Auxiliary request 5 - Inventive step

8.1 The Board finds that claims 1 and 12 of auxiliary request 5 do not involve an inventive step starting from D7 in combination with the teachings of D3.

8.2 Claim 1 of this request is amended vis-a-vis the main request to specify that the garment is designed for being paired with a second protective garment, which, according to the above analysis of lack of novelty of the main request, is the only distinguishing feature from D7. *Garment* is read in its broadest meaning as "an article of clothing" (Merriam Webster) and need therefore not refer to a complete suit, but can also refer to the individual pieces of clothing (trousers, jacket) that make up the suit. Thus the claim also covers pairing of say a jacket and trousers.

8.3 The parties are in agreement that this difference improves functionality of the D7 suit. The associated technical problem can therefore be formulated accordingly as how to improve the functionality of the suit of D7.

8.4 D3 teaches the option of both full body and two piece suits, upper body and lower body, where the two pieces can operate independently or as master/slave components, see para 0065 of D3. It is immediately apparent to the skilled person that a two-piece suit enhances the functionality of the suit as it can be adapted to different situations of the wearer. Therefore, a skilled person seeking to improve D7 would take into account the teachings of D3 and modify the full body suit into a two piece suit allowing one piece to be paired with another as a matter of obviousness.

8.5 The respondent argues that D7 explicitly discloses a one-piece garment, suggesting that it would teach away from splitting it into component articles. However, the invention of D7 is not based on this particular feature, as can be seen from its “summary of the invention” section in cols. 1 and 2, which emphasises

features relating to the airbags, electronics, and sensor connections rather than the garment's structure. The aim of a coverall structure in D7 can be seen from the fact that D7's invention is primarily aimed at motorcyclists, which means covering the entire body except for the head, hands and feet, see col. 2, ln. 58-60. However, this is compatible and consistent with D3's teaching of a two-piece suit. The Appellant further argues that D7 specifically teaches the provision of a single sensor belt for the garment, making it inconsistent with splitting the garment. However, the Board fails to see how the presence of a belt precludes compatibility with a two-piece suit.

8.6 Claim 12 of auxiliary request 5 adds similar features, namely the step of pairing the protective garment with a further protective garment, vis-à-vis method claim 13 of the main request, which was also found not novel over D7. It therefore lacks an inventive step in the light of D7 in combination with D3 for similar reasons as claim 1.

9. Auxiliary request 6 - Inventive step

9.1 Claim 1 of the sixth auxiliary request is amended compared to the main request to include the features that the garment further comprises a storage memory for storing an identification code and a receiving unit capable of recognizing as an activation signal a received signal containing the stored identification code. These additions, as is derivable from the analysis of novelty for the main request, are the only distinguishing features from D7.

9.2 In D7, the suit is designed to receive an activation signal from a motorcycle tilt sensor to trigger inflation in case of excessive tilt, typically transmitted through a connecting cable 52b, see col. 5, ln. 21.

9.3 The use of a storage memory and the recognition of an identification code—allow for wireless communication with the motorcycle system 56, providing the technical effect of enabling reliable wireless communication. The technical problem addressed can be formulated as how to modify the receiving unit of D7 to allow an alternative communication.

9.4 As argued by the appellant opponent, wireless communication is a well-established alternative to wired connections, particularly for short distances such as between a rider and their motorcycle. Common wireless transmission technologies include the use of identification codes for secure and reliable communication. Thus, incorporating an identification code for signal recognition would be an obvious modification for the skilled person seeking an alternative to cable transmission in D7. The preference for wired transmission in D7, as indicated in column 4, lines 46-49, does not alter this conclusion, as the document also acknowledges wireless transmission as a viable option.

9.5 The Board therefore concludes that claim 1 of auxiliary request 6 does not involve an inventive step in the sense of Art 56 EPC.

10. Auxiliary request 7 - Inventive step

10.1 The subject-matter of claim 1 of auxiliary request 7 lacks inventive step in the light of D7 in combination with common general knowledge.

10.2 The respondent objects to the admissibility of this inventive step attack starting from D7 under Art 13(2) RPBA. The Board considers it admissible for similar reasons as the combination of D7 with D3 for auxiliary request 5, see above.

10.3 This request adds to auxiliary request 6 the features that the transmitting unit and the receiving unit are each supplied as a separate component of the control unit.

10.4 The respondent submits, as is mentioned in para 0059 of the patent specification, that these features enable users to purchase and install components independently, facilitating potential upgrades. However, this effect is not achieved by the mere modularity provided by the claimed features. Claim 1 does not specify that the components can be mounted by a user, or at a later date or that they are not initially attached to the garment, only that they are supplied as separate components. Thus, the effect achieved and the corresponding technical problem can be seen merely as how to facilitate assembly.

10.5 The other differentiating features of an identification code in a storage memory and recognition of an identification code and the corresponding technical effect are unrelated to the supply of the transmission and receiving units as separate components. Nor indeed

has the contrary been argued. Therefore, inventive step can be assessed independently.

10.6 As explained above for auxiliary request 6, the provision of an identification code in a storage memory and its recognition to identify an activation signal is obvious in the light of D7 in combination with common general knowledge.

10.7 Regarding the supply of the receiving unit and the transmitting unit as separate components, providing electronic components as separate items solely to facilitate assembly without any unforeseeable advantage beyond convenience of assembly is well within the ordinary skills of a person skilled in the art, and therefore also lacks inventive step.

11. Auxiliary request 9bis - Admission

11.1 The respondent submitted auxiliary request 9bis during the oral proceedings before the Board, representing an amendment to their case. Its admission is subject to the discretion of the Board under Art 13(2) RPBA. Any such amendment shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

11.2 The respondent argues that the new auxiliary request is justified due to the change of the Board's preliminary opinion regarding added subject matter for auxiliary request 1

However, as variously stated in case law, patent proprietors are not entitled to hold back on making amendments in response to an opponent's objections

until being confronted with an unfavourable preliminary opinion of the board or realising that the board was not going to endorse their position and arguments, see CLBA V.A.4.5.6.i). Moreover, given that that opinion is preliminary, it is an objectively possible and foreseeable outcome of the oral proceedings that this opinion may change in the light of the submissions made at the oral proceedings (if this were not so, then oral proceedings would serve little purpose). It is therefore not an exceptional circumstance.

11.3 Although the appellant opponent indicated no objection to the admission of this new request during the oral proceedings, this does not alter the Board's conclusion. The discretionary authority conferred by Art 13(2) RPBA rests with the Board and does not necessitate a request or objection from a party to be exercised.

11.4 In conclusion, the Board finds the respondent's justifications unpersuasive. Consequently, auxiliary request 9bis, filed during the oral proceedings, is disregarded in accordance with Art 13(2) RPBA.

12. Auxiliary request 10 - Inventive step.

Claim 1 of auxiliary request 10 is identical to method claim 12 of auxiliary request 5, which was previously determined to lack inventive step, as discussed above regarding auxiliary request 5.

Consequently, the conclusion of lack of inventive step under Art 56 EPC naturally applies to claim 1 of the current auxiliary request 10.

13. The Board is thus unable to confirm the conclusion of the decision under appeal that none of the opposition grounds raised against claim 1 as granted prejudices the maintenance of the European Patent. Therefore the decision must be set aside. Furthermore, the auxiliary requests are not allowable for the reasons above or have not been admitted. Consequently, the Board concludes that, taking into consideration the amendments made by the appellant-proprietor, the patent and the invention to which it relates do not meet the requirements of the Convention, so that patent must be revoked pursuant to Article 101(3)(b) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairman:

G. Magouliotis A. de Vries

Decision electronically authenticated