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**Datasheet for the decision  
of 21 February 2025**

**Case Number:** T 1721/23 - 3.2.01

**Application Number:** 18212428.9

**Publication Number:** 3486159

**IPC:** B63B32/66

**Language of the proceedings:** EN

**Title of invention:**

FIN FOR WATERCRAFT

**Patent Proprietor:**

Fin Control Systems Pty. Limited

**Opponent:**

ISA - International Surf Alliance, Lda

**Headword:**

**Relevant legal provisions:**

EPC Art. 56, 123, 84

RPBA 2020 Art. 12(4), 12(6)

**Keyword:**

Inventive step - main request (no) - obvious combination of known features - auxiliary request 3 (yes) - non-obvious modification

Late-filed evidence - should have been submitted in first-instance proceedings (yes) - admitted (no)

Late-filed objection - admitted (no)

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

Claims - clarity after amendment (yes)

**Decisions cited:**

G 0010/91

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1721/23 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 21 February 2025**

**Appellant:** ISA - International Surf Alliance, Lda  
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**Decision under appeal:** **Decision of the Opposition Division of the European Patent Office posted on 28 July 2023 rejecting the opposition filed against European patent No. 3486159 pursuant to Article 101(2) EPC.**

**Composition of the Board:**

**Chairman**            G. Pricolo  
**Members:**            A. Wagner  
                              S. Fernández de Córdoba

## **Summary of Facts and Submissions**

- I. The appeal of the opponent lies against the decision of the opposition division to reject the opposition filed against European patent No. 3 486 159.
- II. The only ground for opposition was Article 100(a) with Article 56 EPC. In its decision, the Opposition Division held that none of the submitted attacks was prejudicial to the maintenance of the patent as granted.
- III. In order to come to these conclusions the opposition division considered, among others, the following documents:
- D1: US 6,764,364 B1  
D2: US 2010/0233921 A1  
D5: US 7,121,911 B1
- IV. With their grounds of appeal the opponent submitted the following documents:
- D9: US 2010/0120305 A1  
D10: Article "Slot-Machine", magazine SURF, 1-2/2012
- With letter of 19 February 2025, the appellant submitted document D10T, an English translation of D10.
- V. At the oral proceedings, held by videoconference before the Board on 21 February 2025, the objections submitted in writing by the appellant (opponent) concerning the format of the oral proceedings were no longer pursued.

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 dismissed or, as an auxiliary measure, that the patent be maintained in amended form on the basis of one of the auxiliary requests 1 to 3 filed with the reply to the opponent's statement of grounds of appeal.

VI. Claim 1 of the main request (patent as granted) reads as follows (feature numbering adopted from the appellant):

**1.1** A water craft fin (50) to be removably secured to a water craft fin plug (10)

having distinct front and rear open cavities (75, 20) and a bridge section (95) there between, the front open cavity (75) of the fin plug (10) having a front cavity fin engagement means (80) comprising a protrusion in a front end of the front open cavity and a first recess between the protrusion and a base surface of the front open cavity (75); and the rear open cavity (20) of the fin plug (10) having a resiliently protruding ring-shaped member (35) extending into the rear open cavity (20) from an elongate side surface of the rear open cavity (20);

the water craft fin (50) comprising:

**1.2** a base portion (18) having a front tab (90) and a rear tab (15) adapted to be received in the front open cavity (75) and the rear open cavity (20) respectively;

**1.3** the front tab (90) includes a nose section (85) at a front portion of the tab (90) which is adapted to engage with the first recess and the protrusion so as to be retained by the front cavity fin engagement means (80); and

**1.4** the rear tab (15) includes a side surface (70) which is partially recessed at a forward location of the rear tab side surface, adapted to at least partially receive the resiliently protruding ring-shaped member (35) of the rear cavity (20); whereby

**1.5** at fin insertion the front tab (90) engages with the front cavity fin engagement means (80) and the fin pivots to insert the rear tab (15) into the rear cavity (20) and engage with the resiliently protruding ring-shaped member (35) such that the fin (50) is removably secured to the fin plug (10) by the fin engagement means (80) and the resiliently protruding ring-shaped member (35).

Claim 1 of **auxiliary request 1** is identical to claim 1 of **auxiliary request 2**. Claim 1 includes the features of granted claim 5 as follows (numbering according to the appellant):

**1.6** wherein the partially recessed side surface (70) of the rear tab (15) includes an inclined surface section (16),

**1.7** the inclined surface section (16) being adapted to cooperate with the ring-shaped member (35) mounted to a resilient rod (30) of the fin plug (10), so as to cause a force, that is inwardly and laterally into the fin plug (10), to be applied to the rear tab (15) when the resilient rod (30) bends resiliently; and

**1.8** wherein the force being applied is such that a removal of the rear tab (15) from the fin plug (10) is inhibited.

**Auxiliary request 3** is based on the main request. In claim 1 as granted feature 1.1 is amended as follows (amendments indicated by strike-through and underlines):

1.1' A water craft fin (50) to be removably secured to a water craft fin plug (10)  
having distinct front and rear open cavities (75, 20) and a bridge section (95) there between, the front open cavity (75) of the fin plug (10) having a front cavity fin engagement means (80) comprising a protrusion from ~~in~~ a front end of the front open cavity and ...

VII. The appellant's (opponent's) arguments relevant to the present decision may be summarized as follows:

*Admission of D9 and of the attacks based on D9*

D9 refuted the surprising view of the opposition division that the skilled person would not consider modifying the fin of D2 by providing two separate tabs instead of one. However, this was a matter of common general knowledge as proven by D9, figures 4A and 5 with paragraph [0022].

Furthermore, D9, figure 5, was prima facie novelty destroying for the subject-matter of claim 1. The inventive step attack with D9 as closest prior art submitted during oral proceedings before the Board was already included in the arguments with regard to the



novelty objection submitted with the statement of grounds of appeal.

*Admission of D10, D10T*

D10 was submitted as proof of common general knowledge and showed that

- buying a new surf board and wanting to continue using an existing fin was a common problem;
- the use of two-tab fins in one-slot plugs was commonly done by surfers;
- fin manufacturers sold dual use fins that fit in different plugs;
- fiddling and tinkering with existing fins was absolutely common;
- milling side notches and sawing parts of a fin tab was considered as "relatively simple".

*Main request - D2 with common general knowledge*

Claim 1 of the main request differed from D2 in that two separate tabs were provided. The underlying technical problem was to provide a lighter fin while maintaining the advantages of the system of D2. Based on their common general knowledge (e.g. D10), the skilled person would simply omit the middle section of the tab to provide a two tab fin to solve the problem posed.

*Auxiliary requests 1 and 2*

The amendments made to claim 1 did not overcome the inventive step objection with regard to the main request.

*Auxiliary request 3 - allowability of the amendment*

The amendment made to claim 1 contravened Article 123(2) and (3) EPC. The term "from" did not find a basis in the original disclosure and was broader than "in". Furthermore the amendment contravened Article 84 EPC as it was unclear whether the protrusion was still completely inside the front open cavity.

*Auxiliary request 3 - inventive step*

The claimed subject-matter was also not inventive over D2 with common general knowledge because the subject-matter was essentially the same as that of claim 1 of the main request.

Additionally, the claimed subject-matter was obvious over D1 alone or with D2, or over figure 28B1 of the patent in suit referring to prior art combined with D2.

*- D1 alone or with D2*

Claim 1 only differed from D1 in that the recess was provided at a forward location (feature 1.4). Contrary to the opposition division's opinion, with the spring 72 as part of the tab, D1 (figure 5a) showed a recess in the side surface of the rear tab. To solve the problem of increasing the retaining force at the rear tab it was obvious to add a further spring at the front of the rear tab, thereby automatically providing a recess at a forward location.

Alternatively, the combination with D2 resulted in an obvious way in the claimed subject-matter. In a first line of argumentation, the problem to be

solved was to adapt the fin of D1 such that it could be used with other fin plugs. Contrary to the opposition division's finding, the skilled person would combine D1 and D2 as it was common practice to design fins that fit into different fin boxes - as disclosed in D10 and even in the patent itself (paragraphs [0087] and [0098] and figures 28, 30 to 32). The skilled person would simply provide a recess according to feature 1.4 to the fin tab of D1 to allow attachment to the plug of D2.

In a second line of argumentation, the problem to be solved was to reduce the risk of injuries caused by the springs. The opposition division was wrong in concluding that the teaching of D1 was not compatible with the teaching of D2. The skilled person would consider D2 and provide recesses at the tabs and plungers in the plug of D1 - as proposed in D2 - to replace the springs.

*- Prior art of the patent (figure 28B1) with D2*

Claim 1 only differed from the fin known from the prior art as shown in figure 28B1 of the patent in suit, in feature 1.3, i.e. the nose section at the front tab. Feature 1.4 was shown by the circle on the rear tab. The underlying problem was to adapt the fin shown in figure 28B1 such that it could be used in fin boxes in which the front tab was hooked in. Such a fin box was known from D2. The fin tabs shown on figure 28B1 were suitable to cooperate with the fin plug of D2 such that the skilled person simply would provide the hook slot of D2.

VIII. The respondent's (patent proprietor's) arguments relevant to the present decision may be summarised as follows:

*Admission of D9 and of the attacks based on D9*

D9 was not to be admitted into the proceedings. D9 was a new document and the novelty issue based thereon was raised for the first time in appeal as a new ground of opposition. According to G10/91 and G9/91, the Board's decision must not deal with it in substance at all since the proprietor did not consent to the introduction of the new ground of opposition into the proceedings.

*Admission of D10*

D10 was not to be admitted into the proceedings as the appellant failed to explain why D10 was more relevant than D1 or the other documents on file that showed two-tab fins.

*Main request - D2 with common general knowledge*

There was no motivation for the skilled person to modify the fin of D2. Should the skilled person be motivated to save weight, they would not consider changing the tab but would seek to reduce weight in other areas - as held by the opposition division.

*Auxiliary requests 1 and 2*

The claimed subject-matter involved an inventive step for the same reasons as claim 1 of the main request.

*Auxiliary request 3 - allowability of the amendment*

The amendment limited the claimed subject-matter to a protrusion extending from the front end, i.e. the front end surface of the front open cavity. Basis could be

found in numerous embodiments, e.g. figures 2A, 3A, 4A, 12C, 14B etc. of the patent in suit. The requirements of Article 123(2) and (3) EPC were thus met. In the context of the claim, the amendment was also clear.

*Auxiliary request 3 - inventive step*

As the claim now required a protrusion from the front end of the cavity, D2 could not render obvious the claimed fin because the nose section of the fin of D2 was not suitable for such a protrusion.

With regard to the further attacks, the following was submitted:

*- D1 alone or with D2*

The opposition division was right in concluding that D1 alone would rather hint the skilled person to replace the existing spring 72 by a stronger spring than to add a spring at the front. Anyway, the spring 72 at the fin tab was not a part of the fin as asserted by the appellant.

Further, the skilled person would not combine D1 and D2 because D1 taught away from incorporating any mechanism into the plug fin (column 5, lines 43 to 48) and from a lateral engagement of the fin tabs (column 5, lines 49 to 53). In D2, the holding mechanism was provided exactly in the arrangement that was to be avoided in D1, namely in the plug fin with lateral engagement of the fin tabs.

- *Prior art of the patent (figure 28B1) with D2*

A nose section as required in feature 1.3 was not disclosed and it was not obvious how to provide such a nose section at the front tab of the known embodiment shown in figure 28B1 of the patent in suit.

## **Reasons for the Decision**

### **1. New ground for opposition**

1.1 With the statement of grounds of appeal, the opponent introduced document D9 and raised an objection of lack of novelty under Article 54 EPC .

1.2 This objection constitutes a new ground for opposition which can only be considered in appeal proceedings with the consent of the patent proprietor (G 10/91).

1.3 As in the present case the patent proprietor did not give their approval, this ground may not be dealt with in substance in the decision of the Board of Appeal at all.

### **2. Admission of D9**

2.1 The Board did not admit D9 into the proceedings pursuant to Article 12 (6) RPBA. As a consequence all objections based on D9 were likewise not admitted.

2.2 Beside the novelty objection based on D9, the appellant submitted D9 as proof for common general knowledge that was - from the appellant's point of view - surprisingly disputed by the opposition division during oral

proceedings.

- 2.3 However, D9 is a patent literature that usually - and also in the present case - is not considered to be common general knowledge (Case Law of the BoA, 10th edition, chapter I.C.2.8.2). The paragraph referred to by the appellant as disclosing general knowledge (D9, paragraph [0022]) describes preferred embodiments of the invention of D9 as shown in figures 1 to 5.
- 2.4 The appellant also used D9 as a secondary document in an inventive step objection starting from D2 (statement of grounds of appeal, point 4.2.4). During oral proceedings, D9 was additionally presented as a possible starting point for inventive step.
- 2.5 However - leaving aside the fact that the stricter requirements of Article 13(2) RPBA apply for the inventive step attack starting from D9 - an inventive step objection with D9 against claim 1 as granted - be it with D9 as closest prior art or as a secondary document - could and should have been submitted during first instance proceedings (Article 12(6) RPBA). Already in the preliminary opinion of the opposition division (page 8, penultimate paragraph and page 9, first paragraph), the opponent (now appellant) was informed that the opposition division would probably not follow the objection based on D2 combined with common general knowledge. In this regard, the submission of D9 with the statement of grounds of appeal can not be seen as a direct reaction to the impugned decision.

### **3. Admission of D10**

3.1 D10 is an article in a magazine from 2012 called "Surf" comparing fin boxes available on the market at that time. D10 was submitted with the statement of grounds of appeal as proof for common general knowledge.

3.2 The Board admitted D10 into the proceedings. In contrast to the patent literature D9, the disclosure of D10 is considered to be representative of common general knowledge in respect of different types of fins and fin plugs well known and available on the market before the priority date of the patent in suit.

3.3 The respondent did not dispute that the skilled person was aware of the fins and plugs shown in D10.

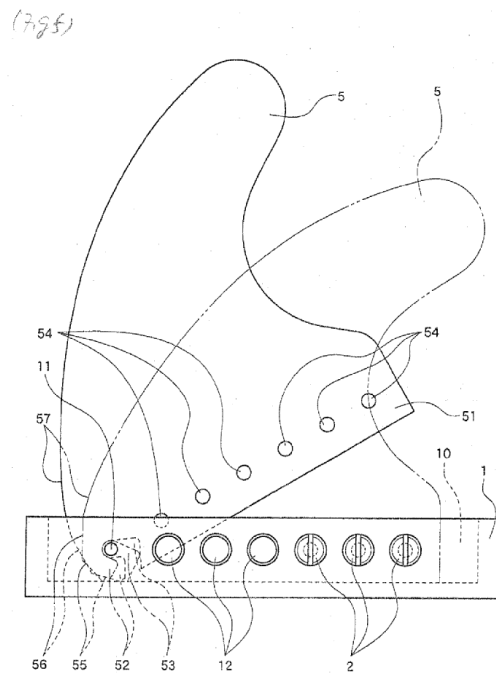
4. **Main request - D2 with common general knowledge**

4.1 The subject-matter of claim 1 as granted (main request) does not involve an inventive step when starting from D2 seen together with common general knowledge.

4.2 It is undisputed that claim 1 only differs from D2 in that two separate tabs are provided while D2 discloses one continuous tab.  
The underlying technical problem can be seen in providing a lighter fin while maintaining the advantages of the system of D2.

4.3 D2 discloses in the embodiment of figure 5 (reproduced below) a fin and plug system with three plungers 2 in holes 12 at the rear end of the plug ("*fin box 1*"). The plungers engage lateral recesses 54 in the tab ("*attachment base portion 51*") of the fin 5. The remaining holes 12 in the plug are empty and not used to retain the fin in the plug.





- 4.4 The Board agrees with the appellant that the skilled person would consider to omit the not used section of the tab 51 that is complementary to the empty holes 12 in the plug in order to provide a lighter fin, therewith arriving at a two tab fin as defined in claim 1.
- 4.5 The respondent (patent proprietor) argued that there was no motivation for the skilled person to modify the fin of D2. Furthermore, as held by the opposition division, the skilled person would not consider changing the tab but would seek to reduce weight in other areas.
- 4.6 However, the problem of saving weight as formulated by the appellant is a reasonable problem which, starting from D2, prompts the skilled person to consider ways of solving the problem. The skilled person knows that the fin itself is hydro-dynamically optimised such that the only area that might easily be modified to save weight is the tab portion 51 which does not influence the flow

characteristics of the fin. Thus, an obvious way to reduce the weight of the fin without affecting the functionality of the fin is to provide two tabs instead of a single, long tab.

4.7 The respondent further argued that the opposition division was right in stating that the stability would be negatively affected when omitting the middle part of the tab 51.

4.8 However, a fin with two separate tabs is a commonly used design in the prior art. This was also not disputed by the respondent.

D2 discloses with regard to the holes 12 and the plungers 2 in the plug that "*the number of mounting portions is arbitrarily and it is only required for the plunger 2 to be provided at arbitrary portions of the hollow part on both sides.*" (paragraph [0101]).

Therefrom it is clear that the empty holes 12 and thus also the complementary recesses 54 are not necessary for securing the fin in the plug.

Furthermore, claim 1 does not further specify the application of the water craft fin (windsurfing, SUP, wave riding,..), each having different requirements with regard to the stability.

4.9 The requirements of Art 56 EPC are thus not met.

## **5. Auxiliary requests 1 and 2**

5.1 Auxiliary requests 1 and 2 do not meet the requirements of Article 56 EPC for the same reasons as the main request.

- 5.2 In auxiliary requests 1 and 2, claim 1 - supplemented by the features of granted claim 5 - is identical.
- 5.3 The features added from claim 5 as granted define that the partially recessed side surface (70) of the rear tab (15) includes an inclined surface section (16) (feature 1.6). Feature 1.6 is the only feature that includes a structural limitation for the fin.
- 5.4 The further features 1.7 and 1.8 of claim 5 as granted describe features of the plug and how the inclined surface section of the fin cooperates therewith. However, claim 1 is only directed to the fin. The plug itself is not claimed. All features concerning the plug are thus only "suitable for"-features.
- 5.5 As argued by the appellant, feature 1.6 is known from D2, figure 4. The inclined surface of the recess shown therein is of the same shape (spherical) as in the patent in suit and thus suitable to cooperate with a plug according to features 1.7 and 1.8.
- 5.6 The respondent did not submit any further arguments regarding features 1.6 to 1.8 going beyond those already put forward for claim 1 as granted.

**6. Auxiliary request 3 - allowability of the amendments**

- 6.1 Auxiliary request 3 corresponds to auxiliary request 2 filed in the proceedings before the opposition division.
- 6.2 In claim 1, the wording of feature 1.1 as granted "*a protrusion in a front end of the front open cavity*" is amended to "*a protrusion from a front end of the front open cavity*".

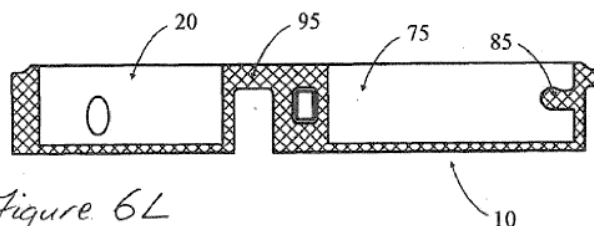
Contrary to the opinion of the appellant, the amendment is allowable under Articles 123(2), 123(3) and 84 EPC.

6.3 It is noted that the amendment refers to a feature of the not-claimed fin plug. However the amendment influences feature 1.3 which defines the nose section at the front tab of the fin that has to be suitable to engage the defined protrusion.

6.4 In the Board's view the claim is to be construed as defining a protrusion that extends from the front end surface of the cavity. Although claim 1 as granted, reciting "*a protrusion in the front end*" could be read such that the "front end" referred to a front end section, the wording "*a protrusion from a front end*" in claim 1 as amended implies that the "front end" is the end of the cavity, i.e. the front end surface of the cavity.

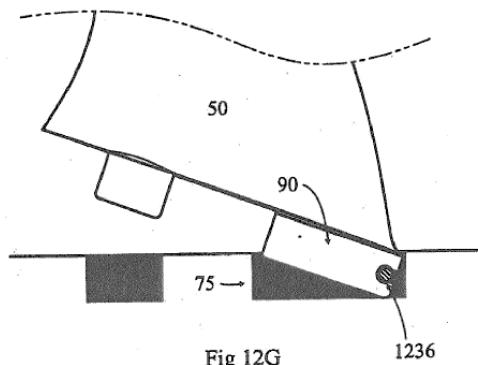
**6.5 Article 123(2) EPC**

6.5.1 The Board agrees with the respondent (patent proprietor) that the patent discloses a variety of embodiments with a protrusion from a front end of the front open cavity. Such embodiments are shown e.g. in figures 2A, 3A, 4A, 5A, 6L (reproduced below, protrusion 85), 7D, 8D, 12C, 14A, 15A, 18A, 21. These figures form sufficient basis for the amendment made to claim 1.



6.5.2 The appellant objected to paragraphs [0119] and [0121] as originally filed, to which the respondent additionally referred to as an alleged basis for the amendment made.

(a) It was argued that paragraph [0121] referred to specific embodiments shown in figures 12A to 12H. These embodiments included in figures 12F and 12G (reproduced below) "a ledge extending from one end of said second open cavity" that was shown as a laterally extending pin ("pin 1236" in figure 12H). This pin however protruded from a side wall of the cavity at a distance from the front end. Should the claim wording be understood as being limited to a protrusion that extended from the front end surface of the cavity, then the original disclosure did not correspond to what was claimed.



(b) The Board can agree with the appellant that the disclosure of original paragraphs [0119] and [0121] is not a suitable basis for the amendment. In particular the embodiments shown in figures 12F and 12G do no longer fall under the claimed subject-matter as confirmed by the respondent during oral proceedings.

However, while there is no literal basis in the original disclosure, the figures themselves provide

sufficient support for the amendment made.

6.5.3 The appellant further argued that the amendment resulted in an unallowable intermediate generalisation.

(a) The protrusion no longer had to be "in" the front end. The amendment also allowed the protrusion to extend out of the front end. However, all embodiments with a protrusion extending from the front end of the cavity were shown as being "in" the cavity. This difference influenced the design of the nose section at the fin.

(b) The Board is not convinced. The wording "*a protrusion from a front end of the front open cavity*" has to be seen in the context of all features of the claim.

With regard to the fin, feature 1.2 requires a front tab adapted to be received "in" the front open cavity. Feature 1.3 then defines that the front tab includes a nose section at the front portion of the tab. Consequently also the nose section is received "in" the cavity when attached to the plug. This nose section further has to engage with the protrusion to be secured to the fin plug (feature 1.5). As the nose section is "in" the cavity when attached, also the protrusion from the front end of the cavity that is engaged by the nose section has to be "in" the cavity.

6.5.4 Consequently the requirements of Article 123(2) EPC are met.

## **6.6 Article 123 (3) EPC**

- 6.6.1 The amendment does not result in an extension of the protection conferred by the patent as granted.
- 6.6.2 The objection of the appellant corresponds to the objection under Article 123(2) EPC, point 6.5.3(a) above. The scope of protection was extended because the claim no longer required the further limitation that the protrusion had to be "in" the front cavity.
- 6.6.3 The Board is not convinced for the reasons given under point 6.5.3(b) above. Seen in the context of the claim, the protrusion is still required to be in the front open cavity.
- 6.6.4 The requirements of Article 123(3) EPC are thus met.

## **6.7 Article 84 EPC**

- 6.7.1 The amendment made to claim 1 is clear.
- 6.7.2 The objections of the appellant are analogous to the objections under Article 123(2) EPC.

Firstly, with paragraph [0047] of the patent in suit that corresponded to original paragraph [0121] - which according to the respondent formed basis for the amendment - it was unclear whether embodiments as shown in figures 12F and 12G with a laterally protruding pin 1234 or 1236 being described as "*extending from one end*" still fell under the claim wording "*protrusion from a front end*" or not. The claim did not explicitly mention a "front end surface".

Secondly, it was unclear whether the protrusion still

had to be inside the cavity or may also extend out of the cavity.

6.7.3 With regard to the first issue, reference is made to points 6.4 and 6.5.2(b) above. The Board considers neither original paragraph [0121] as an appropriate basis for the amendment nor the embodiments of figures 12F and 12G as falling under the wording of claim 1.

6.7.4 With regard to the second issue, reference is made to point 6.5.3(b) above. From the context of the claim, it is clear that the protrusion is inside the cavity.

6.7.5 Consequently the requirements of Article 84 EPC are met.

## **7. Auxiliary request 3 - Inventive step**

7.1 The subject-matter of claim 1 is not rendered obvious by the prior art cited by the appellant.

7.2 The appellant submitted the following attacks:

- D2 with common general knowledge;
- D1 alone or with D2;
- prior art of the patent, figure 28B1, with D2.

### **7.3 D2 with common general knowledge**

7.3.1 The claimed subject-matter involves an inventive step when starting from D2 as closest prior art.

7.3.2 As argued by the respondent, claim 1 differs from D2 in that the nose section defined in feature 1.3 has to be suitable to engage with a protrusion from the front end of the front cavity. Instead, in D2, the nose section



with hook slot 53 (figures 3 and 5) turns around the pin 11 provided at the side walls of the cavity of the fin plug.

- 7.3.3 D2 with common general knowledge does not render obvious a fin with a nose section as claimed.

Starting from D2, the skilled person would not modify the hook to a nose section as e.g. known from D1. The rotation of the nose section of D2 around pin 11, which is arranged laterally, allows the fin to readily come off to prevent injuries without getting lost (D2, paragraph [0051]). There is no motivation for a skilled person to forgo this advantage.

- 7.3.4 The appellant argued that the subject-matter of claim 1 of auxiliary request 3 was not changed compared to the subject-matter as granted. Therefore claim 1 was for the same reasons not inventive as claim 1 as granted (point 4 above).

- 7.3.5 The Board is not convinced.

(a) The appellant's argument is based on the assumption that the patent itself, paragraph [0047] with figures 12A to 12H, disclosed that the wording "*from a front end*" was not limited to protrusion extending from the front end surface but still encompassed pins that are located in the front end area but protrude laterally from a side wall of the cavity. The pins in figures 12F, 12G of the patent corresponded to the pin 11 in the fin box of D2 (figure 5) and were described as "extending from" an end of the cavity. Therefore the attack provided for claim 1 as granted applied *mutatis mutandis*.

(b) Reference is made to point 6.4 of this decision.

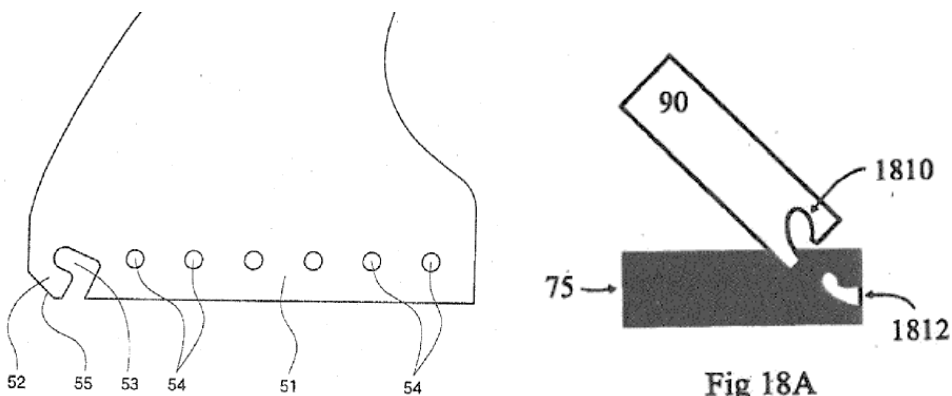
The claim wording implies that the front end is to be understood as the front end surface of the cavity. Consequently the embodiments shown in figures 12F and 12G of the patent in suit do not fall under the amended claim wording as acknowledged by the respondent.

As a further consequence, also the pin 11 disclosed in D2 is not a "protrusion from the front end".

7.3.6 Further on, it was argued - based on the submissions with regard to the main request - that the skilled person would, for a further weight reduction, take away parts of the nose section, thereby arriving at a nose section suitable to engage a protrusion from a front end of the front open cavity.

7.3.7 However the skilled person would immediately recognise that the possible weight saving would be so small that it would not outweigh the advantage of the shape of the hook slot 53 as described in paragraph [0051] of D2.

7.3.8 Finally, the appellant argued that the hook slot 53 of the fin disclosed in D2 (figure 2, a section of which is reproduced below, left) would fit onto a protrusion as e.g. shown in the embodiment of figure 18A of the patent in suit (reproduced below, right).



7.3.9 The Board does not agree. The skilled person would not consider the hook slot 53 as being suitable to engage a protrusion as claimed. In D2, the access to the slot 53 is provided at the straight surface of the fin that faces the base surface of the cavity. As becomes apparent from figures 5 and 6 of D2, the shape of the hook slot 53 is such, that for inserting the fin into the fin plug, the hook slot 53 has to enter a space between the front end surface of the cavity and the pin and, coming from this direction, has to go under the pin 11. Such a movement is simply impossible with a projection from the front end.

#### **7.4 D1 as closest prior art**

7.4.1 The claimed subject-matter involves an inventive step when starting from D1 as closest prior art. The Board therewith confirms the findings of the opposition division with regard to the main request (impugned decision, point 2.2.1) which likewise apply to auxiliary request 3.

7.4.2 D1 discloses a two-tab fin and a nose section at the front tab suitable to engage a protrusion from the front end of the front open cavity. It is undisputed that claim 1 differs from D1 in that the rear tab 68 (figure 5a) does not include a side surface that is partially recessed at the forward location (feature 1.4).

7.4.3 Starting from D1, three attacks were submitted:

(a) D1 alone with the problem to increase the retaining force at the rear tab (impugned decision, point

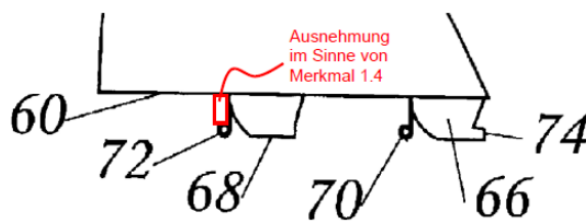
2.2.1.1);

(b) D1+D2, first line of argumentation: the problem was to adapt the fin of D1 such that it could be used with other fin plugs (impugned decision, point 2.2.1.2, second and third paragraph);

(c) D1+D2, second line of argumentation: the problem was to reduce the risk of injuries (impugned decision, point 2.1.6 and 2.2.1.2, page 8, second and third paragraph).

*D1 alone*

7.4.4 The appellant argued that the fin shown in D1, figure 5a, had a rear tab comprising the tab 68 and the spring 72. With the spring 72, the rear tab was provided with a side surface that was partially recessed at the backward location (see indicated square in the annotated excerpt of figure 5a taken from the opponent's statement of grounds of appeal, page 32).



*Fig. 5a*

To solve the problem to increase the retaining force at the rear tab it was obvious to add a spring at the front of the rear tab, whereby a recess at a forward location was automatically provided.

7.4.5 The Board is not convinced. Even if the above indicated area was seen as a partially recessed side surface, the

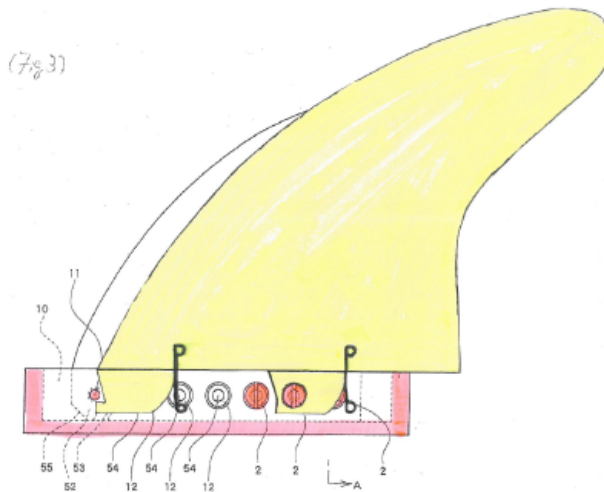
problem posed by the appellant is not related to the distinguishing feature that the recess is at a forward location. The problem posed is thus not in alignment with a proper application of the problem-solution approach but based on hindsight.

- 7.4.6 Furthermore, to solve the problem posed the Board agrees with the opposition division (impugned decision, point 2.2.2.1) that the skilled person would rather replace the existing spring 72 by a stronger spring than add a spring at the front.

*D1 with D2, first line of argumentation*

- 7.4.7 The appellant argued that the underlying technical problem could be seen in adapting the fin of D1 such that it could be used with other fin plugs having lateral engagement means. This was common practice as became apparent from D10, disclosing that "*Anyone who has bought a new board but still wants to use their old fin is familiar with the problem. Your old fin never fits the fin box of the board you want*" (D10T, page 63, left column, first sentence).

To hold the fin of D1 in the plug of D2, the only necessary modification would be a recess at the side surface of the rear tab of D1 for engagement with the plungers 2 in the plug of D2. For geometry reasons, the only useful location for the recess would be at a forward location of the rear fin as was demonstrated by a sketch on page 18 of the statement of grounds of appeal (Abb. 10, reproduced below).



Such a modification was common practice in the field of water craft fins as described in D10. On the last page of D10T, under the heading "Tips and Tricks", it was described how a user could modify a fin designed for the older US box to fit the new Slotbox in a few simple steps, i.e. by sawing and milling. Fin manufacturers even already provided fins suitable for the US box as well as for the Slotbox as described in D10T, "Tips and Tricks", last paragraph of the middle column.

Furthermore, a surfer on a day at the beach, having a board with a fin and plug system according to D2 and an old fin according to D1, would easily modify the fin of D1 such as to fit the plug of D2 in case the fin of D2 broke at the day to continue surfing.

Even if the recess might not be located at the forward location but in the middle or at a backward location of the rear tab, the different location would not provide any other technical effect than a possible lateral engagement with the plunger. The exact location of the recess was irrelevant and thus not to be considered for inventive step.

7.4.8 However, even if the Board can agree that the problem as formulated by the appellant is a reasonable problem

the skilled person might be confronted with, the Board is not convinced.

In the established problem-solution approach applied by the EPO, a skilled person starts from the prevailing state of the art with an unbiased view of the actual disclosure.

(a) The skilled person is defined by the appellant themselves as an engineer with experience in the development of fins for watercraft (letter of 19 February 2025, point 1). This skilled person wants to provide - apart from the hydrodynamic design - a safe, reliable and securely held fin, contrary to a surfer on the beach that looks for a quick, temporary solution to be able to continue surfing. The surfer himself is therefore not the skilled person on whom the problem-solution approach should be based on.

(b) An unbiased view on the documents D1 and D2 does not prompt the skilled person to combine these two documents.

As argued by the respondent, the holding mechanism of D2 with the recesses in the fin and the plungers in the plug corresponds exactly to an arrangement that D1 wants to avoid. D1 teaches away from incorporating any mechanism into the fin plug (column 5, lines 43 to 48: "*Our invention has snaps on the fins. The plugs are solid structures with no moving parts. If for any reason a snap becomes damaged it can be easily and conveniently replaced. There is no reason for replacing the plug.*"). However, in D2, the holding mechanism is arranged in the fin plug.

D1 also teaches away from a lateral engagement of the fin tabs (column 5, lines 49 to 53: "*Our invention does not require lateral engagement of the fin tabs in the plug slots. This allows engagement in the front and rear of the tabs. This allows both sides of the tabs to be fully supported by the slots. The tab sides are supported along the entire depth of the slot.*"). However, in D2, the holding mechanism engages laterally.

Thus, according to D1, lateral engagement of the fin tabs in the plug slots are disadvantageous. Confronted with the problem formulated by the appellant (adapting the fin of D1 such that it may be used with other fin plugs having lateral engagement means), the skilled person would refrain from modifying the fin of D1 such that it fits in the fin plug of D2, because this would precisely require the provision of lateral engaging means which is contrary to the teaching of D1.

- (c) Even if the argument of the appellant, according to which the different teachings would not hinder the skilled person to combine D1 and D2, were accepted, still the claimed subject-matter is not rendered obvious by the combination of these documents.

As found by the opposition division (impugned decision, point 2.2.1.2), the figures of D1 and D2 are only schematic without any scale. It is not obvious where exactly the rear tab 68 of D1 would be positioned in relation to the plungers of the plug of D2. Considering the common general knowledge of D10, disclosing that elongated recesses may be provided at the base portion of a fin for any lateral engagement means, the skilled



person would not be prompted to provide a recess at the forward location of the tabs. Instead they would provide an elongated groove such that a flexible engagement would be possible regardless of the position of the plunger.

It is further noted that the Board does not share the appellant's view that any recess that somehow extends into a forward location of the front fin falls under the wording of feature 1.4 "*partially recessed at a forward location*". In fact, the claim requires the side surface of the rear tab to be partially recessed at a forward location, i.e. specifically at a forward location and not also at other locations.

*D1 with D2, second line of argumentation*

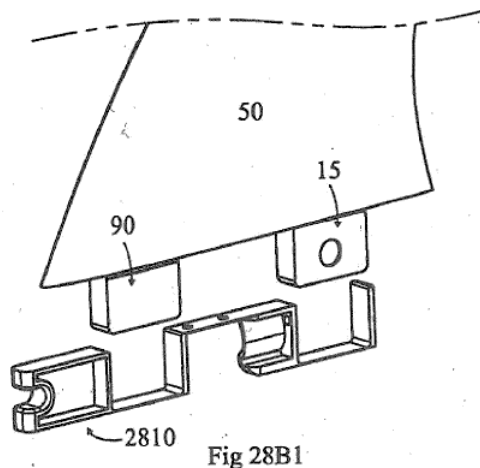
- 7.4.9 The second line differs from the first line of argumentation in the formulation of the problem posed. The problem was to reduce the risk of injuries caused by the springs 70, 72.
- 7.4.10 According to the appellant, to reduce this risk, the skilled person would consider D2 and would provide recesses at the tabs and plungers in the plugs of D1 as proposed in D2 to replace the springs.
- 7.4.11 The Board is not convinced for the reasons given by the opposition division (decision, point 2.1.6, page 6, first paragraph). Instead of providing simply a recess at the rear tab, the skilled person would rather take over the complete system of complementing fin and plug of D2 to reduce the risk of injuries. D2, paragraph [0051], describes that the fin readily comes off to prevent damage to human body and that with the structure disclosed there is at the same time the

advantage of preventing the loss of the fin. There is no reason why the skilled person should forego this additional benefit.

When using the fin of D2, then the hook slot 53 of the fin would not be suitable to engage a protrusion from the front end of the cavity as explained above (points 7.3.8 and 7.3.9).

**7.5 Figure 28B1 of the patent in suit with D2**

7.5.1 The patent discloses in figure 28B1 (reproduced below) and paragraph [0087] a known two-tab fin. The embodiment of figure 28B1 undisputedly does not disclose a nose section at the front tab 90 (feature 1.3).



7.5.2 According to the appellant the underlying problem was to adapt this known fin such that it can be used in fin plugs in which the front tab is hooked in.

7.5.3 The Board does not agree with the argument of the appellant that the combination with D2 obviously resulted in the claimed subject-matter. There is no reason for the skilled person to modify the shown two tab-fin when considering the fin plug of D2. The skilled person would simply use the corresponding fin disclosed in D2. This fin, however, does not have a

nose section according to feature 1.3 because the hook slot 53 shown in D2 is not suitable to engage a protrusion from the front end of the cavity as explained above (points 7.3.8 and 7.3.9).

- 7.5.4 Since feature 1.3 already establishes an inventive step, the question of whether the circle shown in the centre of the rear tab 15 in figure 28B1 represents a recess according to feature 1.4 (as asserted by the appellant) or not (as stated by the opposition division, decision, point 2.2.2.4, last paragraph) can therefore be left open.

## **8. Adaptation of the description**

- 8.1 The parties agreed that for the adaptation of the description the case is remitted to the department of first instance.
- 8.2 In the adaptation, the understanding of the claim wording confirmed by the patent proprietor shall be taken into account, according to which "a protrusion from a front end" is to be understood as "extending from a front end surface". Consequently, embodiments as e.g. shown in figures 12F, 12G, 16, 19 with lateral pins, or figures 13, 17, 22 not having a respective protrusion at all, do not fall under the claimed subject-matter in accordance with auxiliary request 3.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.

2. The case is remitted to the opposition division with the order to maintain the patent in amended form with the claims according to auxiliary request 3 filed with the reply to the statement of grounds of appeal and a description to be adapted thereto.

The Registrar:

The Chairman:



H. Jenney

G. Pricolo

Decision electronically authenticated