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DECISION
of 8 January 2004

Case Number: T 0607/01 - 3.2.1

Application Number: 95830310.9

Publication Number: 0694436

IPC: B60N 2/28

Language of the proceedings: EN

Title of invention:

Device for quick coupling of a child seat to a motor-vehicle seat

Patentee:

LEAR CORPORATION ITALIA S.p.A.

Opponent:

Johnson Controls GmbH
Aktiebolaget Volvo
Keiper GmbH & Co.

Headword:

-

Relevant legal provisions:

EPC Art. 104(1), 112(1), 123(2)

Keyword:

"Costs - apportionment (no)"
"Enlarged Board - referral (no)"
"Amendments - added subject-matter (yes)"

Decisions cited:

T 0169/83

Catchword:

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Case Number: T 0607/01 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 8 January 2004

Appellant:
(Opponent I)

Johnson Controls GmbH
Industriestr. 20-30
D-51399 Burscheid (DE)

Representative:

Wolff, Felix, Dr.
Kutzenberger & Wolff
Theodor-Heuss-Ring 23
D-50668 Köln (DE)

Appellant:
(Opponent III)

Keiper GmbH & so.
Hertelsbrunnenring 2
D-67657 Kaiserslautern (DE)

Representative:

Bartels, Martin Erich Arthur
Patentanwälte
Bartels und Partner
Lange Strasse 51
D-70174 Stuttgart (DE)

Respondent:
(Proprietor of the patent)

LEAR CORPORATION ITALIA S.p.A.
Via Legnano 27
I-10128 Torino (IT)

Representative:

Notaro, Giancarlo
c/o Buzzi, Notaro & Antonielli d'Oulx s.r.l.
Via Maria Vittoria 18
I-10123 Torino (IT)

Party as of right: Aktiebolaget Volvo
(Opponent II) S-40508 Göteborg (SE)

Representative: Harrison, Michael Charles
Albihns GmbH
Grasserstrasse 10
D-80339 München (DE)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
20 April 2001 concerning maintenance of
European patent No. 0694436 in amended form.

Composition of the Board:

Chairman: S. Crane
Members: J. Osborne
G. E. Weiss

Summary of Facts and Submissions

- I. The opponents' appeals are directed against the decision of the Opposition Division posted 20 April 2001 according to which European patent No. 0 694 436 and the invention to which it relates, account being taken of the amendments made by the patent proprietor according to the first auxiliary request during the opposition proceedings, were found to meet the requirements of the EPC.
- II. The patent proprietor (Appellant I) filed an appeal and requested that the patent be maintained in amended form according to the respective main and first auxiliary requests filed during the oral proceedings before the Opposition Division.

Appellant II (opponent I) requested a preliminary decision that the patent proprietor's appeal be declared inadmissible because it was not reasoned or in the alternative that the patent proprietor's appeal be dismissed as unfounded, the impugned decision set aside and the patent revoked. Appellant II also requested the Board to order a different apportionment of costs in accordance with Article 104(1) EPC.

Appellant III (opponent III) requested that the patent proprietor's appeal be dismissed, the impugned decision set aside and the patent revoked. It further requested the Board to refer to the Enlarged Board of Appeal a question as to whether it is possible during opposition proceedings to restrict a claim by adding a feature which is disclosed only in the drawings of a patent.

The party of right (opponent II) requested that the patent proprietor's appeal be declared inadmissible because it was not reasoned.

With a communication pursuant to Article 12 RPBA the Board indicated its provisional opinion that the patent proprietor's grounds for appeal were insufficiently reasoned to meet the requirements of Article 108 EPC, third sentence and that, in accordance with G 9/92 (OJ EPO 1994, 875), the patent proprietor would be restricted to defending the patent in the form approved by the Opposition Division (first auxiliary request). The Board further indicated its provisional opinion that features introduced into claims 1 and 3 according to the first auxiliary request had not been originally disclosed, resulting in contravention of the provisions of Article 123(2) EPC.

III. With a letter dated 25 July 2003 the patent proprietor withdrew its appeal and stated that it would not participate further in the appeal procedure.

IV. Independent claims 1 and 3 as found allowable by the Opposition Division read as follows wherein, in comparison with the sole independent claim 1 as granted deleted wording has been indicated in square parentheses and additional wording is shown in italics:

"1. Device connecting a child seat (1) to a motor-vehicle seat (5), comprising at least two couplings for connection of the child seat to the frame of the motor-vehicle seat, characterized in that said couplings are in form of quick couplings (3, 4) [each] comprising:

- a receiver element (4) and an element (3) for engaging the receiver element (4), which are carried by either of the child seat (1) and the frame (8) of the backrest (7) of the motor-vehicle seat (5) respectively; *the one of these elements (3,4) which is carried by the frame (8) of the backrest (7) being fixed to a portion of this frame (8) which is spaced upwardly from the lower end of the backrest,*

- releasable locking means (13, 32), having a first position for locking each engaging element (3) within the corresponding receiver element (4) and a second position for releasing the engaging element from the receiver element,

spring means (17) for biasing the releasable locking means (13,32) towards said first locking position,

in that each quick coupling is a coupling of the type known per se used for safety belts, in which the engaging element is a tab (30) and the receiver element is a buckle for safety belts (32),

and in that the buckle (32) is arranged at the rear of the child seat (1) with its receiving aperture facing downwardly and the tab (30) is fixed to the frame (8) of the backrest (7) of the motor-vehicle seat (5) and projects forwardly from the gap between the cushion (6) and the backrest (7) of the motor-vehicle seat (5), and has an end portion (30a) directed upwardly."

"3. Device connecting a child seat (1) to a motor-vehicle seat (5), comprising at least two couplings for connection of the child seat to the frame of the motor-vehicle seat, characterized in that said couplings are in form of quick couplings (3, 4) [each] comprising:

- a receiver element (4) and an element (3) for engaging the receiver element (4), which are carried by either of the child seat (1) and the frame (8) of the backrest (7) of the motor-vehicle seat (5) respectively, *the one of these elements (3,4) which is carried by the frame (8) of the backrest (7) being fixed to a portion of this frame (8) which is spaced upwardly from the lower end of the backrest,*

- releasable locking means (13, 32), having a first position for locking each engaging element (3) within the corresponding receiver element (4) and a second position for releasing the engaging element from the receiver element,

spring means (17) for biasing the releasable locking means (13,32) towards said first locking position,

in that said engagement element is a U-shaped bracket (50) fixed to a cross-member (58) forming part of the frame (8) of the backrest (7) of the seat (5),

and in that said U-shaped bracket is in form of a U-shaped pin with ends connected to the backrest frame (7) and a central portion directed transversally to the longitudinal direction of the vehicle, which is adapted to cooperate with the respective receiver element."

V. The opponents argued essentially as follows:

The feature added to claims 1 and 3 that an element is fixed to a portion of the seat backrest frame which is "spaced upwardly from the lower end of the backrest" is unclear because it does not define how far the frame portion must be spaced from the backrest lower end. Moreover, the original application contained no explicit disclosure of this feature which is said to

have been disclosed in the drawings. However, as can be seen from Figures 2, 5, 9, 11, 14, 19 and 20, the drawings in fact show the element fixed to the lower portion of the backrest frame and there was no original disclosure of the feature added to the claim.

Even if the feature were considered to be originally disclosed in the drawings, it should not be possible to introduce into the claims during an opposition procedure a feature disclosed only in that way. To do so would place third parties at a disadvantage because of the resulting necessity for them to anticipate in which way the patent protection might change. The question of whether it is permissible to introduce into the claims of a patent features which are disclosed only in the drawings therefore should be referred to the Enlarged Board of Appeal.

In view of the inadmissibility of the patent proprietor's appeal it would be equitable to award a different apportionment of costs in accordance with Article 104(1) EPC. Appellant II/opponent I was forced by the patent proprietor's filing of an appeal to file its own appeal in order to defend its position in the light of G 2/91 (OJ EPO 1992, 206). Had the patent proprietor not filed an appeal, it would have been unnecessary for appellant II/opponent I to appeal.

Reasons for the Decision

1. Because the patent proprietor withdrew its appeal it is not necessary for the Board to consider admissibility of that appeal. Moreover, for the same reason, the

patent proprietor's request to maintain the patent in amended form according to the main request filed during the oral proceedings before the Opposition Division is non-existent. The basis for the opponents' appeals is therefore the amended version of the claims according to the first auxiliary request filed during the oral proceedings before the Opposition Division and which the Opposition Division found to be allowable.

Compliance with the provisions of Article 123(2) EPC

2. The patent relates to an arrangement for quick connection of a child-safety seat to a motor-vehicle seat. Coupling elements are provided on both seats, one being designated an engaging element 3 and the other a receiving element 4 and the two elements cooperate to mount the child seat on the vehicle seat. The element provided on the vehicle seat is carried by the frame of the backrest of that seat and claims 1 and 3 have both been amended by the addition of the feature that this element is fixed to a portion of the frame which is spaced upwardly from the lower end of the backrest. It has not been disputed that the text of the application as originally filed contained no disclosure of this spacing. The matter to be considered is whether this feature was disclosed in the drawings.

2.1 According to jurisprudence of the Boards of Appeal, features not mentioned in the description or claims are considered as having been disclosed provided "they are clearly shown in the drawings originally filed and are clearly, unmistakably and fully derivable from the drawings in terms of structure and function by a person skilled in the art and so relatable by him to the

content of the description as a whole as to be manifestly part of the invention", see T 169/83, OJ EPO 1985, 193. It is therefore necessary to consider whether the original disclosure satisfies these conditions in respect of the feature added to claims 1 and 3.

- 2.2 The original application for the present patent contains a number of embodiments of the coupling elements. The present claims have been restricted to those embodiments shown in Figures 9 to 22 having either a buckle and tongue arrangement such as is commonly used on car safety belts (claim 1) or a U-shaped bar arrangement (claim 3). However, in the following the Board will consider the original disclosure in respect of all of the embodiments.
- 2.3 In the embodiment of Figures 1 to 4 a bolt 3 mounted on the child seat is received in a bush 10 which is mounted on the backrest frame and forms part of the receiving element 4. The bolt is locked axially by a latch 13 which is attached to the backrest using screws 16, one of which is positioned immediately adjacent the lowermost edge of the backrest frame (Figure 2). The bush and the latch are positioned as close to the lower edge of the frame as is possible in view of the presence of the screw 16. The embodiment of Figures 5 to 8 differs essentially from that of Figures 1 to 4 in as far as the bolt 3 is mounted on the backrest frame and is received in a hole 20 in the child seat. The bolt is welded to a plate 19 which is attached to the backrest frame 8 by screws 16 located similarly to those in the first embodiment. In the embodiment shown in Figures 9 and 10 the element mounted on the backrest

is a tab 30 which according to the description is welded to the backrest. However, the figure shows that the tab passes through the backrest and is welded to a plate attached to the backrest by screws positioned similarly to those in the first and second embodiments. Also in the embodiment of Figures 11 to 13 the engaging element is a tab but in this case it passes below the lower end of the backrest; it is mounted directly to the backrest frame and is attached using screws 33 located similarly to the screws 16 in the earlier embodiments. In the embodiment shown in Figures 16 to 19 U-shaped brackets 50 form the engaging element and are fixed to a cross-member 51 which is located immediately adjacent the lower edge of the backrest frame. Finally, in the embodiment of Figures 20 to 22 the engaging elements in the form of U-shaped brackets 50 are attached to a plate 58 which is mounted on the backrest frame by means of four screws 59, the lower ones of which are illustrated as being located adjacent the lower edge of the frame.

- 2.4 In every disclosed embodiment the elements appear to be fixed to the frame as close to the lower end of the backrest as the extent of the frame permits so that any implied teaching would appear to suggest the contrary of the claimed relationship. Although in each of Figures 9, 11 and 19 the claimed relationship is unquestionably present, this is the inevitable result of the fact that the lower end of the backrest frame is spaced upwardly from the lower end of the backrest and there is no basis for the skilled person to attribute any specific technical function to the claimed relationship. Moreover, even if the claimed relationship were to be considered as disclosed in the

drawings they would not disclose it as "so relatable ... to the content of the description as a whole as to be manifestly part of the invention". In this respect the Board notes that in the original disclosure of the object of the invention and the problem to be solved it was stressed that the child seat should be attached to the backrest rather than to the seat squab or the vehicle chassis. However, that was in order to prevent relative movement between the seat backrest and the child seat in the event of a collision. No implicit teaching to the skilled person in respect of the claimed relationship is derivable from this.

- 2.5 It follows from the foregoing that the addition to claims 1 and 3 of the feature that the engaging or receiving element which is carried by the frame of the backrest is fixed to a portion of this frame which is "spaced upwardly from the lower end of the backrest" contravenes the provision of Article 123(2) EPC.
3. The patent proprietor chose not to participate in the appeal procedure initiated by the opponents. As a result it forfeited any possibility of remedying the above finding that the amendments made contravene the provision of Article 123(2) EPC and the patent cannot be maintained.

Referral to the Enlarged Board of Appeal

4. Appellant III requested a referral to the Enlarged Board of Appeal concerning the matter of whether it is permissible to introduce into the claims of a patent features which are disclosed only in the drawings. However, as set out above, the conditions for

disclosure of a feature in the drawings are not fulfilled. The question therefore is not relevant to the present case and the request is refused.

Apportionment of costs

5. Appellant II/opponent I justifies its request for apportionment of costs by arguing that it was forced into filing an appeal by the need to defend its position in the face of the patent proprietor filing its own, inadmissible appeal. It refers to G 2/91 (*supra*) which sets out that "a person who is entitled to appeal but does not do so and instead confines himself to being a party to the appeal proceedings under Article 107, second sentence, EPC, has no independent right to continue the proceedings if the appellant withdraws the appeal" (point 1 of the Order).

According to Article 107, second sentence, EPC any non-appealing party to the proceedings shall be parties to the proceedings as of right. In the face of an attempt by the appealing patent proprietor to improve its position achieved at the conclusion of the opposition proceedings appellant II/opponent I as a party of right would have had the same opportunity to defend its position as it did as an appellant, both as regards admissibility of the patent proprietor's appeal and in respect of substantive matters. As a result of appellant II/opponent I having filed its own appeal it has enjoyed the advantages of ensuring continuation of the appeal procedure subsequent to the withdrawal of the patent proprietor's appeal and of improving its position by achieving revocation of the patent. However, those advantages were achievable only by

filing an appeal, irrespective of whether the patent proprietor filed its own appeal. The Board therefore cannot agree with the arguments of appellant II/opponent I in this respect. Moreover, there are no other reasons of equity in this case which justify the Board ordering a different apportionment of costs than that set out in Article 104(1) EPC according to which each party shall meet its own costs.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The request for apportionment of costs is refused.

The Registrar:

The Chairman:

S. Fabiani

S. Crane