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**Datasheet for the decision
of 13 October 2009**

Case Number: T 0452/07 - 3.2.08

Application Number: 99916378.5

Publication Number: 1070209

IPC: F16F 1/38

Language of the proceedings: EN

Title of invention:

Engine mount

Patentee:

LORD CORPORATION

Opponent:

Jörn GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56

Relevant legal provisions (EPC 1973):

-

Keyword:

"Novelty (no)"

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0452/07 - 3.2.08

D E C I S I O N
of the Technical Board of Appeal 3.2.08
of 13 October 2009

Appellant:
(Patent Proprietor)

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Respondent:
(Opponent)

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Representative:

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 19 January 2007
revoking European patent No. 1070209 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: T. Kriner
Members: M. Alvazzi Delfrate
E. Dufrasne

Summary of Facts and Submissions

- I. The appellant (patent proprietor) lodged an appeal on 8 March 2007 against the decision of the opposition division posted on 19 January 2007 to revoke the patent. The appeal fee was paid on the same day. The statement setting out the grounds for appeal was filed on 18 May 2007.
- II. Oral proceedings were held on 13 October 2009.
- III. The appellant requests that the patent be maintained in amended form
- on the basis of auxiliary request D filed with telefax dated 1 October 2009 (main request), or
 - on the basis of auxiliary request C filed with letter dated 18 May 2007 (first auxiliary request), or
 - on the basis of auxiliary request G filed with telefax dated 1 October 2009 (second auxiliary request).
- IV. The respondent (opponent) requests that the appeal be dismissed.
- V. Claim 1 of the main request reads as follows:
- "An engine mount (20) for supporting and isolating an engine from another member comprising:
outer means (22) consisting of one or two components formed to be connected to the other member, said outer means having a first pair of inclined inwardly facing surfaces (24) diverging from each other on opposite sides of a first plane and said surfaces extending from

respective locations, which are spaced apart, in a first direction from a second plane passing through the locations and normal to the first plane, the outer means further consisting of a second pair of inwardly facing surfaces (24) diverging from each other on opposite sides of the first plane and extending from respective aforementioned locations in a second direction opposite from said first direction from said second plane;

inner means (26) consisting of one or two elements formed to be connected to the engine, the inner means having outwardly facing surfaces (28) in parallel spaced relation to respective ones of said inwardly facing surfaces (24) to form four opposed pairs of surfaces (28, 24);

and elastic means (3) contiguously connected between the outer and inner means;

the mount being characterised in that the inner means (26) includes a shelf (150/250/550/750) laterally offset from the outer means (22) and extending parallel to the said second plane to provide a means for securing the inner means to the engine."

Claim 1 of the first auxiliary request departs from the main request in that the characterising portion reads as follows:

"... the said one or two elements of the inner means (26) includes a shelf (150/250/550/750) laterally offset from the outer means (22) and extending parallel to the said second plane to provide a means for securing the inner means to the engine and to provide a surface for attaching the engine, and bolts extending through the shelf for attaching the engine to the mount, the bolts

being spaced on either side of, and extending parallel to, the first plane."

Claim 1 of the second auxiliary request departs from the main request in that the characterising portion reads as follows:

"... the inner means (26) includes a shelf (150/250/550/750) laterally offset from the outer means (22) and extending parallel to the said second plane to provide a means for securing the inner means to the engine and to provide a surface for attaching the engine, and two bolts extending through the shelf for attaching the engine to the mount, the two bolts being spaced on either side of, and extending parallel to, the first plane."

VI. The following documents are relevant for the present decision:

E1: DE-A-2360857, and
E6: DE-A-4322126.

VII. The arguments of the appellant can be summarised as follows.

Document E6 was late filed and should not be introduced into the proceedings.

Document E1 did not disclose an engine mount comprising a shelf. In particular the element to which the engine was fixed, as shown in Figure 7, could not be regarded as a shelf, since it merely fixed the engine laterally,

and did not support it. The subject-matter of claim 1 of the main request was therefore novel.

Starting from E1, which represented the most relevant prior art, the object to be achieved by the present invention could be regarded as being to provide a simpler and safer mounting of the engine. This object was achieved by the provision of a shelf, which supported the engine when the fixing means are broken or not yet in place.

E6 could not suggest the provision of a shelf, since the mount disclosed by E6 was too soft and did not support the engine. Accordingly, the man skilled in the art would not consider E6 when faced with the object to be achieved.

Moreover, E1 dealt with the problem of keeping the space occupied by the mount as small as possible. Therefore, the provision of a shelf, which rendered the mount bulkier, would go against the teaching of E1. Accordingly, even if considering E6, it would not be obvious to use the shelf shown in E6 in a mount according to E1.

Therefore, the subject-matter of claim 1 of the main request involved an inventive step.

Claim 1 of each auxiliary request defined the orientation of the shelf and of the bolts. Since E6 did not provide any teaching as to how to orient said elements, the features concerning the orientation of the shelf and of the bolts were not obvious.

VIII. The arguments of the respondent can be summarised as follows.

E6 should be introduced into the proceedings, since it provided evidence that laterally extending support arms were already known in the art. Therefore, it was highly relevant.

E1 undisputedly disclosed the features of the preamble of claim 1 of all present requests. Moreover, it disclosed, in particular in Figure 7, a protruding portion of the inner means to which the engine was fixed. Since the term "shelf" had a broad meaning and defined for example a protrusion, no difference could be seen between the shelf of claim 1 and the protruding portion shown in Figure 7 of E1. Therefore, the subject-matter of claim 1 was not novel.

In the event that the protruding portion of E1 should not be regarded as a shelf, its provision would be obvious. In order to support the engine during its mounting, the man skilled in the art would, without the need of an inventive activity, provide a shelf as disclosed for example in E6. Therefore, the subject-matter of claim 1 of the main request lacked an inventive step.

Moreover, the shelf shown in E6 was provided with two holes for fixing the engine. It was obvious to use bolts to realise such a fixing. Since the shelf had to be placed horizontally, said shelf and bolts would be oriented as required by claim 1 of the first and second auxiliary requests. Accordingly, the subject-matter of

claim 1 of the first and second auxiliary requests also lacked an inventive step.

Reasons for the Decision

1. The appeal is admissible.

2. *Introduction of E6*

E6 was filed together with the reply to the statement of grounds of appeal as a reaction to the introduction of the term "shelf" into claim 1 during the opposition proceedings.

Since E6 is a prior art document showing a shelf according to claim 1 of all the present requests, it is of high relevance for the question of inventive step. Therefore, the board decides to admit it into the proceedings.

3. *Novelty*

E1 (see in particular Figures 6 and 7) discloses an engine mount for supporting and isolating an engine (39) from another member (34) and comprising: outer means (32) consisting of a component formed to be connected to the other member, said outer means having a first pair of inclined inwardly facing surfaces diverging from each other on opposite sides of a first plane and said surfaces extending from respective locations, which are spaced apart, in a first direction from a second plane passing through the locations and normal to the first plane, the outer means further

consisting of a second pair of inwardly facing surfaces diverging from each other on opposite sides of the first plane and extending from respective aforementioned locations in a second direction opposite from said first direction from said second plane; inner means (17) consisting of an element formed to be connected to the engine, the inner means having outwardly facing surfaces in parallel spaced relation to respective ones of said inwardly facing surfaces to form four opposed pairs of surfaces; and elastic means (18-21, 30, 31) contiguously connected between the outer and inner means.

Figure 7 of E1 additionally shows that the inner means includes an element (upper portion of 17) laterally offset from the outer means and extending parallel to the second plane to provide a means for securing the inner means to the engine (via screw 38). However, E1 does not disclose that this element is a shelf.

In the context of claim 1 the "shelf" is clearly to be understood as an element being part of the inner means and providing a horizontal surface for supporting the engine. Figure 7 of E1 merely shows a laterally protruding element where the engine is to be attached to a side of this element.

Since this element cannot be regarded as a "shelf" in the sense of the patent in suit, the subject-matter of claim 1 is novel over E1.

4. *Inventive step*

4.1 Although the description of the patent in suit does not explicitly mention it, it is derivable from the

drawings that the shelf (150/250/550/750) supports the engine during the mounting.

Starting from E1, which is undisputedly the closest prior art, the object to be achieved by the present invention can thus be seen in providing a simpler and safer mounting of the engine.

According to claim 1 of the main request this object is achieved in that the element for fixing the engine is a shelf.

- 4.2 E6 discloses (see in particular Figures 2, 3 and 5) an engine mount comprising an inner element including a shelf (flange 2) extending in a horizontal plane. Since this shelf is provided for supporting an engine which is to be fixed to it (see column 3, line 7-16), it is suitable for a simple and safe mounting of the engine.

The submission of the appellant that the mount of E6 was too soft to achieve the given object is not convincing, in particular in view of the fact that a supporting action of said shelf is explicitly described in E6 (see column 3, line 7-16; "abzustützensden Motor").

Contrary to the appellant's argument nothing would prevent the man skilled in the art from applying the shelf of E6 in a mount according to E1. E1 (see in particular page 2 first and last paragraphs and page 6 first paragraph) discloses a mount where the space occupied by the elastomeric parts is reduced. However, it is not directed to the reduction of the space occupied by the element used to connect the mount to

the engine. Therefore, the man skilled in the art would refer to E6 in order to achieve the given object.

Accordingly, the provision of the shelf of E6 in the mount of E1 in order to achieve the object underlying the patent in suit is obvious.

Therefore, the subject-matter of claim 1 of the main request does not involve an inventive step.

- 4.3 As shown in Figure 5 of E6, the shelf (2) providing a horizontal surface for attaching the engine has two holes (29) extending through it for attaching the engine to the mount, the two holes being spaced on either side of a plane which corresponds to the "first plane" as defined in claim 1. The adoption of two bolts to fix the engine to the shelf via said two holes is a standard measure which would be adopted by the man skilled in the art without the need of an inventive activity, even if E6 does not explicitly disclose their use. With respect to the construction of the shelf of E6 (see for instance Figures 3 and 5), said two bolts would be spaced on either side of, and extending parallel to, the "first plane" as defined in claim 1 of the patent in suit, irrespective of the fact that said plane is not explicitly mentioned in E6. Therefore, the man skilled in the art, adopting the shelf of E6 to solve the problem of providing a simpler and safer mounting, would also arrive in an obvious way at the mounts according to the first and second auxiliary requests.

Accordingly, the subject-matter of claim 1 of both the first and second auxiliary requests does not involve an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

V. Commare

T. Kriner