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**Datasheet for the decision
of 7 July 2009**

Case Number: T 0499/07 - 3.2.01

Application Number: 98305100.4

Publication Number: 0911219

IPC: B60R 5/04

Language of the proceedings: EN

Title of invention:
Security shade support assembly

Patentee:
Irvin Automotive Products, Inc.

Opponent:
BOS GmbH & Co. KG

Headword:
-

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0499/07 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 7 July 2009

Appellant:
(Opponent)

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Respondent:
(Patent Proprietor)

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Representative:

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 25 January 2007
rejecting the opposition filed against European
patent No. 0911219 pursuant to
Article 102(2) EPC 1973.

Composition of the Board:

Chairman: S. Crane
Members: H. Geuss
G. Weiss

Summary of Facts and Submissions

- I. The appeal is directed against the decision posted 25 January 2007 rejecting the opposition against the European patent EP 0 911 219.
- II. The opponent (appellant) requested revocation of the patent, relying in its arguments with respect to inventive step in particular on the following documents:
- D1: US-A-5,464,052;
D3: US-A-4,222,601;
D7: US-A-5,351,743.
- III. With letter of 19 May 2009 the appellant withdrew its request for oral proceedings and has informed the Board that no-one would be attending the oral proceedings to be held on 7 July 2009.
- IV. With letter of 5 June 2009 the patentee (respondent) filed a new main request and a first and second auxiliary request. During the oral proceedings held on 7 July 2009 in absence of the appellant, the respondent restored the former main request, namely to maintain the patent as granted, and requested that the appeal be dismissed (main request) or in the alternative that the decision under appeal be set aside and that a patent be maintained in amended form of the claims according to auxiliary requests 1 or 2, filed with letter of 5 June 2009.

V. Claim 1 of the patent as granted reads as follows:

"A security shade support assembly (10) for mounting a roller tube (12) having a flexible panel (14) wound thereon within a motor vehicle, the assembly comprising: a housing (20) extending axially; an axle (36) extending through said housing; a bearing (58) receiving said axle and cooperating with said housing and attached to the roller tube in use; a groove (34, 72) extending substantially axially along said bearing and said housing to allow the roller tube and shade panel (14) to extend over at least a portion of said housing; characterised in that the housing includes a tubular outer wall (22) and an interior wall (24) dividing an interior of the housing into a first spring cavity (26) and a second spring cavity (28); a first spring (50) disposed in said first spring cavity for rotationally biasing said axle, said first spring being a motor spring (50); and a second spring (78) disposed in said second spring cavity, said second spring comprising a coil spring disposed over said axle between said bearing and a portion of said housing to allow axial compressibility therebetween."

VI. The appellant's arguments may be summarized as follows:

The assembly according to claim 1 of the patent as granted differs from the assembly of D1 only by virtue of the interior wall, dividing the interior of the housing in two spring cavities, and in the accommodation of the second spring in one of these spring cavities in the housing. However, these features are not able to solve the given problem which is to render the assembly

axially compact (statement setting out the grounds of appeal, page 3, first paragraph). Seen objectively, the problem is rather to integrate the housing in the inner of the roller tube, which is per se known from D3 (page 3, third paragraph).

The adjustment of dimensions which is necessary to arrive to an assembly according to the patent would be taken by a skilled person without any inventive effort (statement setting out the grounds of appeal, page 4, second paragraph).

Furthermore, the differing features are known from document D7, and these features can be transferred to the assembly of D1 without the need for an inventive activity (see also notice of opposition, pages 4 and 5).

- VII. The respondent argued that the modification of the assembly of D1 would be so extensive that a skilled person would not be able to come to an assembly according to granted claim 1 without an inventive step: too many features have to be added or altered to provide a support assembly that has the same advantages as the security shade support assembly according to the contested invention.

Reasons for the Decision

1. The appeal is admissible.
2. The subject-matter of granted claim 1 involves an inventive step with regard to the state of the art, Art. 56 EPC 1973.
 - 2.1 The shade support assembly according to this claim differs from the assembly of document D1 in that

- an interior wall divides the interior of the housing into a first and a second spring cavity; and in that
 - said second spring is disposed in said second spring cavity.
- 2.2 The problem to be solved by these distinguishing features is to render the assembly more compact.
- 2.3 The state of the art neither suggests an accommodation of the second spring in the housing of the roller nor renders the solution proposed by the patent obvious.
3. The Board judges that a person skilled in the art would not take into account document D7 as a relevant state of the art. This document relates to rollers for cabinet shutters, windows or a garage door, column 1, lines 7 to 11 and 40 to 51. The dimensions of the relevant parts and the specific problems for heavy duty applications are too different to those in the vehicle field.
4. The appellant argued in the statement setting out the grounds of appeal that the distinguishing features do not solve the defined problem. The statement setting out the grounds of appeal shows a modified figure coming from the patent specification in which the distinguishing features have been erased. Since the remaining support assembly has the same dimensions as the contested, the appellant feels confirmed in his assumption.

The Board is not persuaded by this aspect of the appellant's argumentation for the following reasons: The starting point for this argumentation is in fact the patent itself. It might be evident that the missing differing features in the assembly according to the invention do not alter the dimensions of the assembly

according to the invention (statement setting out the grounds of appeal, fig. 1: "Abwandlung der Fig. 4 des Streitpatents").

However, the relevant starting point for an inventive step evaluation is the state of the art; this is the situation the inventor is concerned with. Coming from D1 (reference is made to fig. 6) it is evident that an integration of the coil spring in the housing will alter the axial dimension of the spring motor.

Furthermore, the Board is not convinced that the inventor would take a larger roller tube into consideration which would render the whole assembly less compact (statement setting out the grounds of appeal, fig. 2 to 4). In this case, the person skilled in the art would have to accept the disadvantage of a substantial larger diameter of the roller tube in order to solve the problem of the invention, namely to avoid a gap between the shade panel and the side of the cargo area, and this disadvantage would hardly be acceptable in the vehicle field.

5. In summary, the Board judges that the appellant's argumentation is based clearly on a retrospective view: The argumentation starts with the patent and removes the inventive features from the claimed subject-matter in order to move towards the state of the art; this is possible only with the specific knowledge of the contested invention.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Vottner

S. Crane