

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 5 October 2010**

Case Number: T 2003/07 - 3.2.01

Application Number: 01306272.4

Publication Number: 1176041

IPC: B60J 5/04

Language of the proceedings: EN

Title of invention:

Vehicle door inner panel with integrated mount for window regulator drive means

Patentee:

ArvinMeritor Light Vehicle Systems-France

Opponent:

Brose Fahrzeugteile GmbH & Co. KG, Coburg

Headword:

-

Relevant legal provisions:

-

Relevant legal provisions (EPC 1973):

EPC Art. 84, 102(3)

Keyword:

"Opposition proceedings - amendments - clarity (no)"

Decisions cited:

G 0001/04, T 0002/80, T 0759/91, T 0552/91

Catchword:

-



Case Number: T 2003/07 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 5 October 2010

Appellant: Brose Fahrzeugteile GmbH & Co. KG, Coburg
(Opponent) Ketschendorfer Str. 38-50
D-96450 Coburg (DE)

Representative: 2K Patentanwälte Blasberg Kewitz & Reichel
Partnerschaft
Corneliusstraße 18
D-60325 Frankfurt am Main (DE)

Respondent: ArvinMeritor Light Vehicle Systems-France
(Patent Proprietor) 105, route d'Orléans
F-45600 Sully sur Loire (FR)

Representative: Jones, John Bryn
Withers & Rogers LLP
Goldings House
2 Hays Lane
London SE1 2HW (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
5 October 2007 concerning maintenance of
European patent No. 1176041 in amended form.

Composition of the Board:

Chairman: S. Crane
Members: Y. Lemblé
S. Hoffmann

Summary of Facts and Submissions

I. The opponents' appeal is directed against the interlocutory decision of the opposition division posted 5 October 2007 and according to which, account being taken of the amendments made by the patent proprietors during the opposition proceedings, the European patent No. 1 176 041 and the invention to which it related were found to meet the requirements of the EPC.

II. In the oral proceedings, held 5 October 2010, the appellants requested that the decision under appeal be set aside and that the patent be revoked.

The respondents (patent proprietors) requested that the patent be maintained on the basis of the documents approved by the opposition division with an amended page 2 of the description filed with letter dated 4 March 2010 (main request), or in the alternative, on the basis of the auxiliary request filed with letter dated 3 September 2010.

III. Independent claims 1 and 12 of the main request read as follows:

"1. A door inner panel assembly (10) including a door inner panel (12) formed from a sheet material and a window regulator drive means, the window regulator drive means having a drive portion and an output shaft (32) projecting from the drive portion, the inner panel having an abutment portion (26) for cooperation with the drive portion and a shaft support portion for cooperation with a portion of the shaft remote from the

drive portion to support the shaft, the abutment portion and shaft support portion being integrally formed from the same sheet material and further including a window regulator drum (44) secured on the shaft and positioned between the drive portion and the shaft support portion in which the door inner panel comprises a door inner skin connected to a door outer skin."

"12. A method of providing a door inner panel assembly (10) including a door inner panel (12) formed from a sheet material and a window regulator drive means comprising the steps of providing a window regulator drive means having a drive portion and an output shaft (32) projecting from the drive portion, providing an inner panel having an abutment portion for co-operation with the drive portion and a shaft support portion for co-operation with a portion of the shaft remote from the drive portion to support the shaft, providing a window regulator cable drum (44), positioning the window regulator drive means relative to the door inner panel via at least one location feature (36) of the panel, and securing the window regulator drive means relative to the door inner panel, in which the abutment portion and shaft support portion are integrally formed from the same sheet material in which the window regulator drum is secured on the shaft and positioned between the drive portion and the shaft support portion in which the door inner panel comprises a door inner skin connected to a door outer skin."

Independent claims 1 and 12 of the auxiliary request repeat the features of claim 1 and claim 12

respectively of the main request with the following additional feature:

"in which the sheet material is a sheet metal such as sheet steel."

IV. The appellants contended inter alia that the amendments made to the independent claims 1 and 12 during the opposition proceedings rendered the claims unclear (Article 84 EPC).

V. The respondents countered that the claims 1 and 12 of the main request were clear and that no objection under EPC Article 84 could be sustained. The same was true of the auxiliary request.

They submitted that it was well known in the art that car doors included a cavity within which a window glass was received when in the lowered position. That cavity was created by an outer part (known as an outer skin) attached to an inner part, whereby the outer skin was contoured to match the other panels of the vehicle and was relatively flat when compared to the inner part.

The inner part had a side part that was generally parallel with the outer skin, a base part which was generally parallel with the ground and a front and back part which were generally vertical, generally parallel to each other and positioned at approximately 90 degrees to the side part and base part.

Car doors typically included ancillary components such as window winders, loudspeakers, door latches etc. Such

components could be attached to the door in one of two ways:

A first possibility was to attach them to a module plate that could be secured in a relatively large aperture of the inner part of the door. An example of such an arrangement was shown in EP-A-1090788, as referred to on page 1 of the present patent. This arrangement was also described at reinstated paragraph 5 of amended page 2 of the patent.

Another possibility was to make the inner part such that the side part, base part, front and back parts were all formed from a single integral pressing. Such a pressing was known as a door inner skin. The inner skin would have relatively small holes cut or otherwise formed in it to mount each ancillary component. This arrangement was also described at paragraph 6 on page 2 of the patent.

It is clear that the description from the final paragraph of page 2 onwards is applicable to both types of door arrangement (module mounting plate type doors and inner skin type doors). The whole of the description from the last paragraph on page 2 onwards clearly described the door inner panel (and in particular the abutment portion and shaft support portion), the window regulator drive means, and how these components all interacted.

Whilst the independent claims (claims 1 and 12) as originally granted covered both module mounting plates as described on page 5 of paragraph 2 and door inner skins as described on page 6 of page 2, the amended

claims now just covered embodiments incorporating a door inner skin as described in paragraph 6 of page 2 .

The appellants questioned the interpretation of the word "comprised" and referred to decisions T 759/91 and T 552/91. However, both these cases related to chemical substances where the terminology "comprise" has a very specific and broad meaning ("include" or "comprehend"). In the circumstances of the present case, it was clear from reading claim 1 alone that the term "comprises" had the narrower meaning, i.e. that the door inner panel was a door inner skin. The guidelines for examination (see C-III, 4.21) explicitly mentioned the possibility for the word "comprise" to have the narrower meaning. However, even if there were some doubt as to the meaning of this word, the reintroduction of paragraph 5 on page 2 clarified any uncertainty. Thus, by reading paragraphs 5 and 6 on page 2 in conjunction with claim 1, it was clear what a door inner panel was, how it differed from a module mounting plate, and that a module mounting plate was not the subject of the present invention.

Moreover, the claimed "door inner panel assembly" was not necessarily to be construed as a "sub-assembly" to be mounted on the inner side of a door. This term was to be understood in a more general way as meaning an assembly of certain components, one of which was a door inner panel. Contrary to the allegation of the appellants, the distinction between the "door inner panel" and the "door inner panel assembly" was plain to see. A door inner panel assembly was simply an assembly which included, among other components, a door inner panel.

Reasons for the Decision

1. The appeal is admissible.
2. Main request; admissibility of the amendments
 - 2.1 In order to overcome an objection of lack of novelty of the subject-matter of claim 1 as granted the claims were amended in the course of the oral proceedings before the opposition division. The amendment consists in the introduction of the following feature taken from the description on page 2, lines 20-21 of the originally filed application documents:
"in which the door inner panel comprises a door inner skin connected to a door outer skin" (hereinafter called feature i)).
 - 2.2 In their response to the statement of the appellants setting out the grounds of appeal, the respondents contended that the word "comprises" in feature i) should be construed narrowly and simply meant that the door inner panel is the door inner skin itself (letter dated 18 August 2010: page 3, third paragraph).
 - 2.3 Questioned by the Board the respondents confirmed that the present wording of claim 1 was intended to relate to two arrangements. In the first, the door inner skin is connected to the door outer skin and then the window regulator drive means and window regulator drum are mounted on the door inner skin using the integrally formed abutment portion and shaft support portion. They argued that after this had been done there resulted a

"door inner panel assembly" within the terms of the claim. In the second arrangement the door inner skin, window regulator drive means and window regulator drum were pre-assembled before the door inner skin was connected to the door outer skin. On the other hand the amendment was intended to exclude an arrangement deemed by the opposition division to belong to the state of the art, in which the window regulator drive means and the window regulator drum were pre-assembled on an inner panel which was then mounted on a door inner skin to close a substantially sized opening in the latter.

- 2.4 In the view of the Board these intentions cannot be effectively served by the amendment made to claim 1 in a manner which is consistent with the requirements of clarity (Article 84 EPC). The first problem resides in the reference to a "door inner skin connected to a door outer skin" (emphasis added). With respect to the second alternative which the claim is intended to cover as described above it might, with some latitude, be possible to interpret this requirement in the sense that the door inner is to be connected to the door outer skin, in other words as a sort of confirmatory statement as to the nature and character of a "door inner skin". However, with respect to the first alternative described above this is not possible and the contentious term can only be understood a meaning that the door inner skin has actually been connected to the door outer skin, since it is only in this state, after the addition of the further components involved, that any form of "assembly" as required by the claim is created. But this has the consequence that the claim is not longer directed to a "door inner panel assembly" as

stated but in effect to a door including such an assembly, and is thus inherently unclear.

The second problem stems from the use of the word "comprises" in feature i). Certainly, one possible interpretation of this is the one proposed by the respondents, namely that the door inner panel is constituted by the door inner skin alone. The claim itself does not however contain anything which would make this restricted reading of "comprises" obligatory. Indeed, constructions can be readily envisaged in which a door inner panel assembly comprises a pre-assembled door inner skin and mounting plate which supports further ancillary equipment. Thus this feature is also unclear, particularly as its intended function of distinguishing the claimed subject-matter from the most relevant state of the art is not achieved.

- 2.5 Given that the amendment in question was freely chosen by the respondents in the course of these opposition proceedings, the Board is of the opinion that it should be clear in its own right, without any undue recourse to the description to interpret it. However, even if that view of the legal situation were incorrect, the Board notes that there is nothing in the description that could assist in overcoming the lacks of clarity identified above. The reason for this lies in the fact that the feature added to the amended claim is based solely on a substantially coterminous passage of the particular description, the rest of which is concerned with a specific embodiment no longer intended to be covered by the claims.

3. The above conclusion regarding lack of clarity applies by analogy to independent method claim 12 which also does not meet the requirements of Article 84 EPC.
4. The modification made in the independent claims 1 and 12 of the auxiliary request ("the sheet material is a sheet metal such as sheet steel") is not able to overcome the above mentioned defect of lack of clarity, as was recognized by the respondents in the oral proceedings.
5. It follows from the foregoing that the respective claims according to both of the respondents' requests fail to satisfy the requirements of the 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:

A. Vottner

S. Crane