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**Datasheet for the decision
of 25 September 2013**

Case Number: T 1454/10 - 3.2.01

Application Number: 07000900.6

Publication Number: 1813475

IPC: B60R 5/04

Language of the proceedings: EN

Title of invention:
Tonneau cover device

Patent Proprietor:
Mazda Motor Corporation

Opponent:
BOS GmbH & Co. KG

Headword:
-

Relevant legal provisions (EPC 1973):
EPC Art. 54(1), 56

Keyword:
"Novelty (yes)"
"Inventive Step (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 1454/10 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 25 September 2013

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 7 May 2010
rejecting the opposition filed against European
patent No. 1813475 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman: G. Pricolo
Members: Y. Lemblé
P. Guntz

Summary of Facts and Submissions

I. The appeal is directed against the decision of the Opposition Division to reject the opposition against European patent No. 1 813 475.

II. The patent was opposed under Art. 100(a) EPC 1973. In its decision, the Opposition Division held that the opposition was admissible and that the subject-matter of the patent as granted met the requirements of novelty and inventive step having regard to the prior art documents cited by the Opponents.

III. In their statement setting out the grounds of appeal the Appellants referred to the following documents of the opposition proceedings

D1: JP-A-57- 126719 (with certified translation into English),

D2: WO-A-98/24657

and maintained their position that the subject-matter of claim 1 as granted lacked novelty over document D1 and lacked an inventive step in view of the combination D1/D2.

IV. In reply to the summons to oral proceedings, the Appellants, with letter dated 21 June 2013, informed the Board that they would not attend the oral proceedings.

V. Oral proceedings were held on 25 September 2013.

The Appellants did not appear. Their request, made in writing, was that the decision under appeal be set aside and the patent be revoked (see notice of appeal).

The Respondents (Patent Proprietors) requested that the appeal be dismissed. All other requests were withdrawn at the oral proceedings before the Board.

VI. Claim 1 as granted reads as follows:

"A tonneau cover device (10), comprising:
a tonneau cover (11) provided behind a seat back (6) of a vehicle, the tonneau cover (11) being configured to at least partly cover over a baggage compartment (4) formed before a rear opening (2) that is opened and closed by a back door (3) that is operated along an opening and closing direction (OCD); and
one or more guide rails (21,21;42,42) provided at or near one or both side rear pillars (7,7) of the vehicle that is located before the rear opening (2); and
a front end portion (20) of said tonneau cover (11) is pivotally supported at the vehicle, the tonneau cover (11) comprises a plurality of board members (12,13,14,15) that are provided substantially in a longitudinal direction (LD) of the vehicle and jointly connected to each other, at least one board member (15) of the tonneau cover (11) is supported by said guide rails (21,21) so as to move substantially along the guide rails (21,21;42,42), and a change of a longitudinal distance between a support point (26;61) of said one board member (15) at the guide rail (21,21;42,42) and a pivot axis portion (20) of said

front end of the tonneau cover (11) at the vehicle when said one board member (15) moves along the guide rails (21,21;42,42) is configured to be absorbed by said joint connection (16,17,18) of the board members (12,13,14,15), wherein the guide rails (21,21;42,42) are configured to support one or both side rear end portions of the tonneau cover (11) movably in substantially an oblique direction".

VII. The Appellants' submissions, made in writing, may be summarised as follows:

The Opposition Division was wrong when it came to the conclusion that the last feature of claim 1, according to which "the guide rails are configured to support one or both side rear end portions of the tonneau cover movably in substantially an oblique direction" (hereinafter called feature (i)), was not known from the tonneau cover device of prior art document D1. The English translation of D1 did include a reference on page 5, line 1 to the rear end of the rear parcel body moving "nearly horizontally" along a guide rail 24 (see figure 4). The same expression "nearly horizontally" was repeated in the last paragraph of page 1 in the translation of D1 when referring to the position of the rear parcel tray. The Opposition Division was wrong in considering that this wording clearly excluded the possibility for the rear end portion of the parcel body to be movable in an oblique direction. The term "nearly horizontal" should be broadly interpreted as not requiring for the rear parcel body to strictly move horizontally and included the possibility that the movement also deviated from an

ideal horizontality. It was self-evident for the man skilled in the art that there might be some slight deviations from the ideal horizontal direction in the movement of rear end of the parcel body. This implied that this movement might be inclined with respect to the horizontal, i.e. be in an oblique direction. As a matter of fact, the wording of claim 1 of the patent did not include any limitation on the degree of inclination. Thus, a rear parcel tray which moved along a path which had even the slightest inclination with respect to the horizontal direction would be movable in an "oblique direction". The subject-matter of claim 1 was therefore not novel over the tonneau cover device of prior art document D1.

The subject-matter of claim 1 did not involve an inventive step because it was obviously derivable from a combination of the prior art documents D1 and D2. As noted by the Opposition Division, apart from the above-mentioned feature (i) all the other features of claim 1 were known from the prior art document D1. The technical problem as formulated by the Opposition Division on the basis of this distinguishing feature was incorrect because that problem could already be solved by increasing the number of board members in the cover device of document D1, a measure which provided for a larger opening along an horizontal direction and was mentioned in D1. In fact, the inconvenient with the device of document D1 was that, since the board members can only move horizontally, the distance between the board members and the bottom of the luggage compartment remained constant. Thus, the technical problem was rather that the baggage compartment did not open widely enough in the vertical direction for loading and

unloading the luggage. A skilled person starting from the device of D1 and trying to solve that problem would consider the teaching of D2. This document taught that, in order to enlarge the extent of the access opening for luggage in the vertical direction, the covering device for the luggage compartment should be provided with a guiding device which allowed the cover to be moved upward when the backdoor of the automobile was opened. Contrary to the opinion of the Opposition Division, the application of this teaching to a cover made of rigid board members like that of D1 did not present any difficulty, as the end portion of the flexible cover of D2 also consisted of a rigid profile obliquely guided in guide rails. Thus, for the person skilled in the art it would be obvious to adopt this feature from D2 in the device of D1, thus arriving at the tonneau cover device according to claim 1.

VIII. The arguments presented by the Respondents may be summarized as follows:

On the basis of a correct and realistic interpretation of the term "oblique" one could only come to the conclusion that the subject-matter of claim 1 as granted was novel over the prior art document D1 cited by the Appellants.

The argument of the Appellants that the skilled person would combine D1 and D2 and thereby arrive at the subject matter of granted claim 1, was no more than an inadmissible ex post facto analysis made in light of the present invention. There was no suggestion in these prior art documents nor was it obvious for the man skilled in the art to adapt the board type tonneau

cover of D1 such that it included feature (i) of granted claim 1.

Reasons for the Decision

1. The appeal is admissible.

2. Novelty

2.1 The Board can only confirm the findings of the Opposition Division that the subject-matter of claim 1 is novel over document D1. In analogy with the claimed tonneau cover which is made of rigid board members as required by the wording of the claim (see also column 7, lines 39-48 and column 11, lines 25-34 of the patent specification), the device of document D1 refers to a rear parcel tray which partitions the luggage compartment from the passenger area and is made of substantially rigid board members. It has also some supportive function as indicated by the word "parcel tray". In this particular context, as mentioned in page 1, last paragraph of the translation of D1 (7th line from the bottom), such a tray, when unfolded, extends along a plane and is "provided nearly horizontally". Following this statement, the indication on page 5, line 1 of the translation of D1 that the rear end of the tray "moves nearly horizontally" simply means that this movement is along the same "near horizontal" plane as the plane defined by the unfolded tray. There is no indication that the movement of the rear end of the tray along the guide rails mentioned on page 5, line 1 of the translation of D1 ("...moves nearly horizontally") is along a direction which differs from

the "near horizontal" direction of extension of the tray when it is at rest (back door closed).

In claim 1 instead, it is clear that the tray or the plurality of board members, when at rest, "are provided substantially in a longitudinal direction" (the "near horizontal" direction of D1) and that the rear end portions thereof can move along the guide rails "in substantially an oblique direction" which clearly differs from the "substantially longitudinal direction" of extension of the tray when it is at rest.

2.2 Moreover, the features of the last paragraph of claim 1 have to be understood within the context of the invention, taking into due account the objective contribution that the invention makes over the prior art in accordance with the patent specification (see especially paragraph [0006] of the patent specification). In the present case, the features of the characterising part can only mean that the "substantially oblique direction OD" (direction of movement along the guide rails) clearly differs from the "substantially longitudinal direction LD" (direction of extension of the cover when at rest). This is not the case in D1 where both directions are the same and both mentioned as being "nearly horizontal".

2.3 The fact that D1 does not disclose feature (i) including the "oblique guide rails" is even more apparent when purposively interpreting granted claim 1 and making technical sense out of it. According to the established case law of the Technical Boards of Appeal (see e.g. Case Law of the Boards of Appeal, sixth

edition, II.B.5. Interpretation of claims, 5.1 General principles), the skilled person, when considering a claim, should rule out interpretations which are illogical or which do not make technical sense. It is readily apparent to the person skilled in the art that the oblique guide rails of the granted patent are intended to be substantially inclined with respect to the horizontal (see column 8, lines 30-33 of the European patent specification). Minor deviations from the horizontal direction due to tolerable constructional variations in the orientation of the guide rails, however, clearly cannot be seen as anticipating feature (i).

2.4 The Board concludes from the considerations made above that feature (i) of claim 1 is not disclosed by the prior art document D1.

3. Inventive step

3.1 In their contention that the subject-matter of the granted claim lacked an inventive step, the Appellants started from document D1 as the closest prior art and proposed another formulation of the objective technical problem, when using the problem-solution-approach. In the Board's view, their formulation of the problem that the baggage compartment did not open widely enough in the vertical direction (see page 4 of the appeal's grounds, last but one paragraph), has elements of hindsight. As can be seen from figure 2 of D1, the luggage compartment of D1 is of a type with a trunk sill, wherein baggage is loaded and unloaded from the top of the luggage compartment in a vertical direction. Therefore, the skilled person would understand that in

order to load and unload bigger luggage, the width of the opening of the tonneau cover must be enlarged in the horizontal direction. Accordingly, the problem formulated by the Appellants would not arise when starting from D1 as prior art.

3.2 But even if the man skilled in the art, starting from the partitioning device of document D1, wanted to solve the problem of a narrow opening in the vertical direction in a somewhat different loading configuration of the luggage compartment (e.g. cargo space of a station wagon), as formulated by the Appellants, he would find a complete solution to this problem in the prior art shown in figure 1 of D1 where a rear parcel tray already offers an opening in the vertical direction.

3.3 D2 discloses a sheet type roll cover having a guiding device at its rear end which allows the cover to be moved upward when the backdoor of the automobile is opened so as to allow easier access into the cargo space.

Considering the teaching of document D2 the man skilled in the art would have no reason to single out the feature of the oblique guiding device (guide rails 35 on C-pillar) and apply this single feature to the tonneau cover of D1. Sheet type roller blinds like the one of D2 are not rigid and can easily be wound up and reeled off. Moving the rear end of a sheet type roller blind along an oblique guide rails can be realised easily, because the change of distance and direction of extension between the front end and the rear end of the cover is absorbed by winding the roller blind up and/or off and by its flexibility. Accordingly, the skilled

person would consider that the feature relating to the oblique guide rails in D2 is closely connected to the fact that the cover of D2 is of the flexible sheet roller type. Therefore it is not obvious to adapt the board type tonneau cover of D1 so as to combine it with guide rails supporting the rigid rear end portion of the tonneau cover in an oblique direction.

3.4 It follows from the above that the findings of the Opposition Division that the subject-matter of claim 1 as granted involves an inventive step (Article 56 EPC 1973) must be confirmed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

A. Vottner

G. Pricolo