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**Datasheet for the decision
of 16 December 2015**

Case Number: T 0629/13 - 3.2.01

Application Number: 07121100.7

Publication Number: 1916136

IPC: B60J7/00

Language of the proceedings: EN

Title of invention:

Open roof construction for a vehicle, as well as a sun screen
for use therein

Patent Proprietor:

Inalfa Roof Systems Group B.V.

Opponent:

Webasto SE

Headword:

Relevant legal provisions:

EPC 1973 Art. 54
RPBA Art. 13(1)

Keyword:

Novelty (main request, auxiliary request 3 : no)
Admission to the appeal proceedings (auxiliary requests 1, 2 :
no)

Decisions cited:

Catchword:



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Chambres de recours**

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Case Number: T 0629/13 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 16 December 2015

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 January 2013 concerning maintenance of the
European Patent No. 1916136 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: C. Narcisi
P. Guntz

Summary of Facts and Submissions

I. European patent No. 1 916 136 was upheld in amended form by the decision of the Opposition Division posted on 11 January 2013. An appeal was lodged by the Opponent on 8 March 2013 and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 8 May 2013.

II. Oral proceedings were held on 16 December 2015. The Appellant (Opponent) requested that the appealed decision be set aside and that the patent be revoked. The request for reimbursement of the appeal fee due to an alleged substantial procedural violation was withdrawn. The Respondent (Patentee) requested that the appeal be dismissed and the patent be maintained in amended form according to the appealed decision (main request), or that the patent be maintained on the basis of auxiliary requests 1 or 2 (both filed during oral proceedings), or that the patent be maintained on the basis of auxiliary request 3 (former sole auxiliary request filed in writing on 18 September 2013).

III. Claim 1 of the main request reads as follows:

"An open roof construction for a vehicle having an opening in its fixed roof (1), comprising a stationary part to be fixed to the roof, an adjustable upper closure element supported by said stationary part, which is adjustable between a closed position, in which it closes the roof opening (2), and an open position, in which it opens the roof opening (2) at least partially, as well as a lower closure element, in the form of a sun screen (9) in the form of a slidably, substantially rigid screen, which is provided with at least one ventilating opening for passing air through

the screen, wherein said screen comprises horizontally overlapping parts, at least adjacent to said ventilating opening, characterized in that the overlapping parts form a ventilating gap (16) covered from the upper side which ventilating gap (16) extends in the longitudinal direction with respect to the longitudinal axis of the open roof construction, which overlapping parts prevent direct incidence of light through the screen."

Claim 1 of auxiliary request 1 differs from claim 1 of the main request in that the wording "prevent direct incidence of light through the screen" is replaced by the wording "prevent direct incidence of light through the screen wherein the screen is movable forward and rearward with respect to the upper closure element".

Claim 1 of auxiliary request 2 differs from claim 1 of the main request in that the wording "prevent direct incidence of light through the screen" is replaced by the wording "prevent direct incidence of light through the screen, wherein said screen comprises a central part (17) and two edge parts (18), which slightly overlap said central part on the upper side and wherein the overlapping parts of said central part hide the ventilating openings to be formed from view, or wherein said screen comprises a central part (17) and two edge parts (18), wherein said central part overlaps the edge parts on an upper side thereof, and wherein the two edge parts are optionally interconnected at a front and rear edge of said screen, or wherein two overlapping parts extend in the longitudinal direction and symmetrically with respect to the longitudinal axis of the open roof construction."

Claim 1 of auxiliary request 3 is identical to claim 1 of the main request since the amendments in this request merely involve dependent claims 2, 6 and 8.

IV. The Appellant's arguments may be summarized as follows:

The subject-matter of claim 1 of the main request is not new over E1 (DE-C1-41 11 931), the contentious features of claim 1 being known from E1. These features are that the lower closure element is a "substantially rigid screen" (hereinafter designated as feature (i)) and that its "overlapping parts prevent direct incidence of light through the screen" (hereinafter designated as feature (ii)). Feature (i) is undoubtedly disclosed in E1, since this feature does not require an entirely and completely rigid lower closure element but merely sufficient rigidity enabling said closure element to perform its functions inherent to stable and reliable movement when closing the roof opening. This necessary rigidity of the lower closure element 20, 21 (E1, figures 1-9) is literally addressed ("erforderliche Steifigkeit") in E1 (E1, figure 8; column 3, lines 34-45) and obtained by adequate structural means (E1, column 3, lines 34-45). Feature (ii) is implicitly derived from E1 (E1, figure 9, column 3, lines 60-67), particularly since the lower closure element 20, 21 is explicitly mentioned as preventing passage of light rays therethrough ("wird .. Durchsicht verhindert"). Additionally, it is obvious from the position of the upper and lower closure elements as shown in figure 4 of E1, that light rays passing through the venting gap 15 formed between the two elements 10, 11 (constituting the upper closure element) are stopped by the lower closure element 20, 21 (openings 33 are merely optionally provided; E1,

column 3, lines 49-53). Therefore the lower closure element 20, 21 is not only apt to perform but undoubtedly actually performs the claimed function of preventing direct incidence of light. Finally it appears that the wording of contested claim 1 does not even require said lower closure element to actually perform said function according to feature (ii) and instead merely requires an aptitude to perform said function. This because an intransparent upper closure element also falls within the scope of claim 1 (see also patent specification (hereinafter designated as EP-B), paragraph [0009]) and so likewise does an open roof construction where the lower closure element is constrained to move together with the upper closure element in a longitudinal direction of the vehicle (case where no independent longitudinal movement is possible, see EP-B, paragraph [0010]).

The auxiliary requests 1 and 2 should not be admitted to the appeal proceedings since they were filed at a late stage of the proceedings and raise complex new issues. These new requests were submitted in response to long-standing objections of the Appellant filed already during opposition proceedings and reiterated with the statement of grounds of appeal. Consequently these requests should have been filed much earlier. In addition they introduce additional complex issues for discussion, given that the subject-matter of claim 1 of these requests is not clearly allowable, both in view of Articles 123(2) and 84 EPC (concerning auxiliary request 1) as well as of Article 54 and 56 EPC (concerning auxiliary request 2).

Auxiliary request 3 fails together with the main request since the subject-matter of claim 1 is the same in both these requests.

V. The Respondent's arguments may be summarized as follows:

The subject-matter of claim 1 of the main request is new over E1 since E1 does not disclose said features (i) and (ii) of claim 1. First, lower closure elements 20, 21 in figures 8 and 9 of E1 do not qualify as a lower closure element within the meaning of claim 1, for only element 20 ("Schiebehimmel" 20) comprises ventilating openings with overlapping parts ("Längschlitze" 30, 30'). However, element 20 is not "substantially rigid", due to the fact that it is formed by parallel plates 32 (figure 8, 9) whose rear ends are separated from each other. Further, both elements 20 and 21 do not act as a sunscreen according to E1, contrary to the claimed lower closure element, for both are able to move only together with the upper closure elements 10, 11 and these are not disclosed in E1 as being transparent. In effect, the object of E1 is merely to create a lining for the upper closure element ("Fahrzeugdach-Verkleidung", column 1, lines 25-28), such that the passengers do not have a view onto the lower side of upper closure element 10, 11 (E1, column 1, lines 65-68). Hence a transparent lower closure element 20, 21 would even run counter to the technical teaching of E1. Additionally, it is believed that the wording of claim 1 implicitly comprises the feature that said upper and lower closure elements move independently from each other, as this may be inferred for instance from the specific term "open roof construction". Finally, looking at figure 4 in E1 it is noticed that due to the ventilation apertures 33 in the lower closure element 20 this element cannot perform the function of a sunscreen, for sun rays will pass therethrough. Therefore, none of the embodiments

disclosed in E1 anticipates the subject-matter of claim 1.

Auxiliary requests 1 and 2 should be admitted to the appeal proceedings since they were filed in response to objections raised for the first time during the oral proceedings. In particular claim 1 of auxiliary request 1 addresses the objection that claim 1 of the main request appears to include arrangements where the upper and lower closure elements move only together and not independently. The amendments are based on paragraph [0010] of EP-B and are intended to render clear that the upper and lower closure elements are capable of moving independently relatively to each other. In auxiliary request 2, claim 1 is obtained by adding the features according to granted dependent claims 2, 3, 4 (these features however only as optional features) and 5, and therefore both the Board and the Appellant can be expected to be able to deal with this request.

Auxiliary request 3 was filed in due time with the written response to the statement of grounds of appeal and was intended to deal with objections (against some of the dependent claims of the main request) based on Article 100(c) EPC raised with the statement of grounds of appeal.

Reasons for the Decision

1. The appeal is admissible.
2. The subject-matter of claim 1 of the main request is not new over E1. It is clearly visible from figure 4 of E1 that the open roof construction of E1 (as represented by the embodiment of figures 1 to 9) discloses feature (ii) of claim 1. Indeed, the inclined

position of upper closure element 11 (E1, column 2, lines 50-63) (arising from rotation of the closure element about an axis located near its back edge), produces a ventilating gap 15 running transversely in roof aperture 12. It likewise ensues from figure 4 that the dimensions of the gap (in comparison to the dimensions of other constructional elements shown in the same figure) are such as to abundantly permit through passage of light rays. These are evidently only blocked or stopped by the presence of lower closure element 20, recalling that apertures 33 in lower closure 20 are merely optional (E1, column 3, lines 48-53), as they can be provided in addition to longitudinal openings 30 (designated with reference sign 30' in figure 9, which openings are formed by overlapping parts forming the ventilating gaps). Hence lower closure element 20, 21 acts as a sunscreen in accord with feature (ii).

As to feature (i) it is noted that E1 (column 3, lines 34-45) discloses appropriate structural elements in the form of reinforcing elements 29 ("erforderliche Steifigkeit des Schiebehimmels 21") and 31 ("... des Schiebehimmels 20, wo dieser durch ... Quersteg 31 verstärkt ist") respectively reinforcing lower elements 21 and 20, thus rendering these lower closure elements "substantially rigid". Additionally, it is obvious that feature (i) can only be construed as meaning that the lower closure element has the necessary and sufficient rigidity inherent to proper and faultless performing of its claimed functions. This is equivalently certainly the case for the lower closure element of E1. It is therefore concluded that both feature (i) and (ii) are likewise known from E1.

Finally it is noted that the term "open roof construction", contrary to the Respondent's view, does not define a construction with open and lower closure elements moving independently relatively to each other. Particularly, in the Board's view, said term merely more broadly defines a vehicle roof construction comprising an aperture and structural elements permitting opening and closing of said aperture formed in the roof. Since the remaining features of the claim are undisputedly known from E1, this document anticipates the subject-matter of claim 1 (Article 54 EPC).

3. The Board exercised its discretion pursuant to Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal) not to admit auxiliary requests 1 and 2 to the appeal proceedings. The Board did not share the view of the Respondent (see point V), that the mentioned objections were presented for the first time during the oral proceedings. Indeed, these objections were already presented in the statement of grounds of appeal (see page 5, first paragraph). Therefore these auxiliary requests cannot be considered as having been timely filed in response to these objections. The Board exercised its discretion inter alia in view of the criteria mentioned in Article 13(1) RPBA and found that the admission of said requests was not warranted at this late stage of the proceedings, for these requests were not clearly allowable and posed further questions related to the compliance of the subject-matter of claim 1 with both Articles 123(2) and 84 EPC. Specifically, the proposed amendment (based on the description of EP-B) according to claim 1 of auxiliary request 1 appeared to lack clarity (Article 84 EPC), given that the various kinds of movements (of the lower and upper closure elements) actually intended by the

corresponding wording in EP-B (see paragraph [0009]: "sun screen 9 can be moved forward and rearward, for example manually or automatically, or be moved along with panel 4") were apparently not clear and unambiguous, due to several possible interpretations arising from the terms "or" and "moved along with" and their combination. Therefore, the amendment based on this passage of EP-B and including only part of said wording ("wherein the screen is movable forward and rearward with respect to the upper closure element") apparently also lacked a clearly and unambiguously disclosed basis in EP-B, contrary to Article 123(2) EPC.

As to auxiliary request 2 it is noted that it comprises several alternatives, one of these being the combination of the features of claim 1 and dependent claim 5 of the main request. However, the features of claim 5 (in combination with those of claim 1) did not appear to restore novelty of the claimed subject-matter, given that it was possible to identify in E1 (embodiment of figures 1 to 9) a longitudinal axis of the open roof construction with symmetrically disposed overlapping parts 30' (figure 9) on respective sides of this axis (and said parts having the same overall dimensions).

4. The subject-matter of claim 1 of auxiliary request 3 is not new over E1 since it is identical with the subject-matter of claim 1 of the main request, which lacks novelty (see above reasons).

Order

For these reasons it is decided that:

1. The appealed decision is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated