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**Datasheet for the decision  
of 18 April 2018**

**Case Number:** T 1257/15 - 3.2.01

**Application Number:** 09167600.7

**Publication Number:** 2154015

**IPC:** B60J7/043, B60J7/04

**Language of the proceedings:** EN

**Title of invention:**

Panoramic roof module assemblies for vehicles

**Patent Proprietors:**

Ford Global Technologies, LLC  
JAGUAR CARS LIMITED

**Opponent:**

Webasto SE

**Headword:**

**Relevant legal provisions:**

EPÜ Art. 54(1), 56

**Keyword:**

Novelty - (yes)  
Inventive step - (yes)

**Decisions cited:**

G 0007/91, G 0008/91

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 1257/15 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 18 April 2018**

**Appellant:**

(Opponent)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 5 May 2015  
rejecting the opposition filed against European  
patent No. 2154015 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

<b>Chairman</b>	G. Pricolo
<b>Members:</b>	H. Geuss
	O. Loizou

## Summary of Facts and Submissions

- I. The appeal of the opponent is directed against the Decision of the Opposition Division of the European Patent Office posted on 5 May 2015 rejecting the opposition filed against European patent No. 2154015 pursuant to Article 101(2) EPC.
- II. The opposition division held inter alia that the subject-matter of claim 1 as granted is novel and based on inventive step, having regard to documents

DE 101 35 406 A1 (D1),  
DE 198 51 366 A1 (D2),  
DE 699 35 032 T2 (D3),  
EP 0 622 290 A1 (D4).

- III. Oral proceedings were held on 18 April 2018.

The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietors) requested that the appeal be dismissed.

- IV. Claim 1 as granted reads as follows (the numbering of features between square brackets added by the Board corresponds to that in accordance with the contested decision, see page 4):

[1.1] A panoramic vehicle roof module assembly (26) comprising:

[1.2] a front cross member (28) and a rear cross member (30), [1.3] each adapted to be mounted to a vehicle body (22) at spaced apart locations;

[1.4] a first extruded side rail (32) and a second extruded side rail (34), [1.5] each mounted to the front and rear cross members at spaced apart locations, [1.6] each side rail having a front integrated roof track (54), a rear integrated roof track (56) and an integrated sun shade track (58), [1.7] each track formed therein along a length thereof; [1.8] at least a front roof panel and a rear roof panel (36,38) supported by one of the integrated roof tracks of the side rails to interface with at least one of the cross members;

characterised by

[1.9] an intermediate cross member (40) having a first end mounted to the first side rail (32) and a second end mounted to the second side rail (34) at a location between the front cross member (28) and the rear cross member (30); [1.10] wherein the intermediate cross member (40) interfaces with the front roof panel (36) and the rear roof panel (38).

V. The appellant's submissions - as far as relevant for the decision - may be summarized as follows:

The subject-matter of claim 1 is not novel over document D1. In particular, D1 discloses extruded side rails (part 58) with at least one roof track on each side (figures 5 and 6). It is apparent for a person skilled in the art that a side rail as depicted in figures 5 and 6 consists of an extruded aluminium profile for stability reasons. The skilled person immediately identifies the area with a rectangular cross-section beside the lower cable channel 70 as a

roof track. As this cross-section is shown in both figures 5 (showing the front section) and 6 (rear section), the roof track is along the whole length of the roof. The front and the rear section correspond to the front integrated roof track respectively the rear integrated roof track according to feature 1.6.

As an alternative line of argument, a second roof track for the rear roof can be clearly derived from figure 6, above the roof track as mentioned above. In this area a second rectangular cross-section is shown, similar to the first one. As a result, two separate roof tracks are disclosed in D1, corresponding to the front and the rear integrated roof tracks according to feature 1.6.

The combination of documents D1 and D2 renders the subject-matter of claim 1 obvious.

D2 discloses the feature not shown in D1, namely two independent roof tracks, one for the front roof panel and another for the rear roof panel. The term integrated in the wording of feature 1.6 does not necessarily imply that both tracks are formed as a single part. A part which is mounted to another part is integrated therein.

The features 1.9 and 1.10 are disclosed in D3 or D4, respectively.

Further, the combination of documents D2 and D3 leads the skilled person to the subject-matter of claim 1 without involving an inventive step.

According to the patent specification, D2 discloses all features of the preamble of claim 1 as granted, cf. paragraph [0002]. The features of the characterizing portion are shown in D3. Thus, both documents together

disclose all features of the contested claim.

There would be no difficulty for a skilled person to integrate the cross member of D3 into the roof design of D2 in order to improve stability of the vehicle body.

For example the cross member could be screwed under the side rails as shown in figures 9 or 12 of D2. Both roof panels would be shortened in length so that they could interface with the cross member.

For the same reasons the combination of documents D4 and D2 leads in an obvious manner to the claimed subject-matter.

Figure 12 of D4 discloses a roof design which is very similar to the roof design according to the invention. A cross member according to features 1.9 and 1.10 is shown in figure 4 and in figure 17B, in the roof, between the reference signs 4A and 4B. D4 does not disclose in figure 12 a second roof track. However, the second roof track is disclosed in D2, as explained above.

The invention further lacks a sufficient disclosure. The skilled person is not able to perform the invention since it is not clear what is meant by "to interface" and "interfaces" in features 1.8 and 1.10, respectively.

In the patent description there is also no indication relative to technical means which would allow the skilled person to understand what is meant by the term "interfacing".

It is correct that this objection is mentioned in appeal proceedings for the first time, however, in the first instance proceedings, it was submitted that the patent left open how the term "to interface" was to be



understood and moreover no specific features were disclosed in this respect.

VI. The respondent's reply can be summarized as follows:

The subject-matter of granted claim 1 is novel over D1.

Document D1 does not disclose inter alia features 1.4 and 1.6. It is clear for a skilled person that, since the first side rail and the second side rail are formed by extrusion and since the roof tracks are integrated, each side rail is provided with two separate tracks.

In D1 however no roof track at all is explicitly disclosed. Although the form of the cross-section shown in Figures 5 and 6 and the presence of a cable channel makes it likely that in the area on the right hand side of the cable channel 70 there is a roof track, a further rail track is still missing since claim 1 defines two distinct rail tracks. Further D1 is completely silent about the material and the production process of the part 58 (Führungsschiene). In the introductory portion, D1 explains that a thermoplastic frame as an injection molded part is fixed to the vehicle body by metal sheets, cf. column 1, lines 15 et seq. It is important in the roof design of D1 that the frame and the side rails are flexible to be able to adapt to different curvatures of the vehicle body roof, cf. paragraph [0006]. Therefore, the side rail according to D1 is likely not an extruded aluminium profile but a reinforced molded injection part of a thermoplastic resin.

The combination of D1 and D2 is not able to render the subject-matter of claim 1 obvious since D2 does not disclose two separate rail tracks in one extruded side

rail, as defined in features 1.4 and 1.6 by the term "integrated". The roof tracks in D2, cf. figure 12, are formed in two separate parts, 43 and 45, which are connected together by a fixation system (Befestigungssystem 141). It was the purpose of D2 to select between different lengths for the front roof track and the rear roof track in order to be able to adapt the roof to different vehicle bodies. Thus an integration of two rail tracks in a single side rail would contradict the principle idea of D2.

For the same reason, the combination of D2 and D3 does not challenge inventive step of the subject-matter of claim 1.

Additionally it is questionable how the skilled person would integrate the cross member in the roof design of D2.

If it were simply screwed under the side rail according to figure 12 of D2 as asserted by the appellant, feature 1.10 would still not be met. In order to fulfil feature 1.10, the side rails should have to be separated and the cross member fitted in-between. This change would have a considerable impact on the sliding and lifting mechanism of the roof panels.

Since both D4 and D2 do not disclose feature 1.6 as explained above, also the combination of D4 and D2 cannot justify a lack of inventive step.

The consent to examine the new ground of opposition of lack of disclosure is not given.

## Reasons for the Decision

1. The appeal is admissible.
2. The subject-matter of claim 1 is new over document D1, Article 54(1) EPC.

Document D1 does not disclose a pair of extruded side rails according to feature 1.4. Further no front and rear roof tracks are shown in D1 (feature 1.6).

- 2.1 The opponent/appellant argues that it is apparent for a skilled person when looking at figures 5 and 6 that element 58 is an extruded aluminium profile. This profile is provided with at least one rail track (without reference sign, above the reference sign 58). It is not necessary that two different rail tracks on each side are disclosed in D1 since a single rail track with a rear and a front section would comply with the wording of feature 1.6.
- 2.2 The Board does not agree. There is no indication at all in document D1 about the kind of material of the rail track 58. D1 explains in the introductory portion that a flexible frame is necessary to adapt the sun roof structure to different curvatures of the vehicle body, cf. D1, paragraphs [0002] and [0005]. The proposed solution for D1 is a flexible frame (10) of thermoplastic material combined with rail tracks with a corresponding design of the curvature ("*durch entsprechende Gestaltung der Wölbung der Führungsschienen kann der Rahmen aufgrund der dem thermoplastischen Material inhärenten Biegeweichheit auf einfache Weise für unterschiedliche Dachwölbungen verwendet werden*", cf. paragraph [0006]).

For this reason it is completely open what material is used in D1 for part 58 and whether or not this part is extruded. The side rails 58 in D1 could also be formed as a reinforced injection molded component.

Moreover, even assuming that the appellant's argument that the area on the right hand side of the lower cable channel 70 depicts a roof track for a roof panel is correct, the wording of claim 1 clearly defines two distinct roof tracks on each side ("each side rail having a front integrated roof track and a rear integrated roof track..."). In the Board's view a single rail track with a front and a rear section does not meet the definition of feature 1.6. Indeed this feature requires that a front roof track and a rear roof track be identifiable as separate elements.

2.3 In an alternative line of argument the appellant alleges that the kind of rectangular cross-section of the area between the upper of channels 70 and the rail 68 for the lower sun shade ceiling would be immediately identified by a skilled person as a further roof track. This remains however an unsubstantiated allegation as there is not even an indication in D1 that this area would be suitable at all as a track.

3. The subject-matter of claim 1 is based on inventive step, Article 56 EPC.

None of the combinations of documents as brought forward by the appellant would lead to an assembly having all the features of claim 1.

In this aspect the Board follows the opinion of the opposition division to its full extent.

- 3.1 The opponent/appellant argues that the skilled person would combine document D1 with document D2, in which extruded aluminium profiles with two roof tracks on each side are disclosed.

The Board is not convinced. Claim 1 in suit defines that two roof rail tracks are integrated (feature 1.6) in the extruded side rail (feature 1.4). The Board is of the opinion that a skilled person would unambiguously understand that the two roof rails according to feature 1.6 are integrated by the extrusion process. However, D2 discloses a fixation point (*Befestigungssystem* 141) for connecting the rear roof track to the front roof track (cf. figures 12 and 9). Thus the roof track 45 (rear roof track) is not integrated in the side rail (which is constituted by part 43) contrary to what is required by claim 1. Therefore, feature 1.6 is also not disclosed in D2.

Consequently it may be left open whether or not document D3 respectively D4 discloses feature 1.10 as alleged by the appellant.

- 3.2 The opponent/appellant contends further that the subject-matter of claim 1 is rendered obvious starting from document D2 in combination with D3. Document D2 discloses all features of the preamble of claim 1. The missing features 1.9 and 1.10 would be easily derived from document D3.

The Board holds that even assuming that D2 and D3 together would disclose all the features of claim 1 (which is not the case; at least feature 1.6 is missing, cf. point 3.1, above), it is completely unclear for the skilled person how to integrate the intermediate cross member in the sun roof of D2. A

simple fixation to the side rails by screws - as the appellant suggests - would cause considerable problems with mechanics of the sliding elements and the lifting mechanism of the sun roof.

- 3.3 In a further line of argument the appellant alleges that the subject-matter of claim 1 is rendered obvious by the combination of D4 and D2.

This arguments fails for the same reasons as discussed above. Document D4 does not disclose feature 1.6 beyond dispute. Since document D2 does also not show feature 1.6 (cf. point 3.1, above), the combination of D4 and D2 is not able to disclose the set of features according to the preamble of claim 1.

Also here, it may be left open whether or not document D4 discloses features 1.10 and 1.9 and if not, whether D3 would render these features obvious as alleged by the appellant.

4. The appellant's objection of insufficient disclosure was raised for the first time with the statement of grounds of appeal. This amounts to raising a fresh ground for opposition under Article 100(b) EPC in appeal proceedings. In this respect, the appellant/opponent's reference to criticisms raised during the proceedings before the department of first instance in respect of what specific features are implied by the term "to interface" and of whether this term can provide a distinction over the prior art (see letter of 3 February 2015, page 3, lines 1, 2) is irrelevant, as these criticisms do not amount to raising, not to speak of substantiating, an objection of lack of sufficient disclosure under Article 100(b) EPC. Since in accordance with decisions G7/91 and G8/91 (OJ 993, 356

and 346) a fresh ground for opposition can only be admitted into the appeal proceedings if the patentee agrees to its introduction, cf. the Case Law of the Boards of Appeal, 8th edition, IV.D.3.2, and in the present case the patentee did not agree, the fresh ground for opposition is not admitted.

## Order

### For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated