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**Datasheet for the decision
of 23 July 2019**

Case Number: T 0009/16 - 3.2.06

Application Number: 04029086.8

Publication Number: 1568588

IPC: B62M9/12

Language of the proceedings: EN

Title of invention:

Motorized front derailleur mounting member

Patent Proprietor:

SHIMANO INC.

Opponent:

SRAM Deutschland GmbH

Headword:

Relevant legal provisions:

EPC Art. 56

RPBA Art. 13(1)

Keyword:

Inventive step - (no)

Late-filed auxiliary requests - request clearly allowable (no)

Decisions cited:

Catchword:



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Case Number: T 0009/16 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 23 July 2019

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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
30 November 2015 concerning maintenance of the
European Patent No. 1568588 in amended form.**

Composition of the Board:

Chairman M. Harrison
Members: M. Dorfstätter
W. Ungler

Summary of Facts and Submissions

- I. Both the opponent and the proprietor filed an appeal against the interlocutory decision of the opposition division, in which it found that European patent No. 1 568 588 in an amended form met the requirements of the EPC.
- II. The appellant (opponent), hereafter 'opponent', requested that the decision be set aside and the patent be revoked.

The appellant (proprietor), hereafter 'proprietor', requested that the decision be set aside and the patent be maintained as granted. With its reply to the opponent's appeal it requested that if the main request were not met, the patent be maintained according to one of auxiliary requests 1 and 2.

- III. Subsequent to its summons to oral proceedings, the Board issued a communication, in which it indicated *inter alia* that the ground of opposition under Article 100(c) EPC did not appear to prejudice maintenance of the patent according to the main request. In its communication, the Board also indicated that it considered the subject-matter of claim 1 according to the main request to be novel but to lack an inventive step.
- IV. With its submission of 24 June 2018, the proprietor filed auxiliary requests 3 and 4.
- V. Oral proceedings were held before the Board, during which the proprietor withdrew auxiliary requests 1 and 2.

At the end of the oral proceedings, the final requests were as follows:

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

The proprietor requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or based on one of auxiliary requests 3 or 4 filed with letter dated 24 June 2018.

VI. The following documents referred to by the opponent are relevant to the decision:

- WUE12 "Shimano Bicycle Systems Components";
pgs. 41, 42; 1982
- WUE13 "Shimano Bicycle Systems Components";
pgs. 40, 41; 1984
- WUE14 "Shimano Bicycle Systems Components";
pgs. 15-18, 21, 22; 1988
- WUE15 US 6 623 389 B1

VII. Claim 1 of the main request reads as follows (numbering of the features added by the Board in line with the numbering used in the appealed decision):

- 1.0 A motorized front derailleur mounting member (32) comprising:
 - 1.1 a bicycle frame mounting portion (51) configured and arranged to be coupled to a seat tube (16) of a bicycle frame (14) by a bracket (18);
 - 1.2 a front derailleur mounting portion (52) configured and arranged to be coupled to a linkage (41) of a front derailleur (33), the front derailleur mounting portion including at

- least a first pivot point (P₃) with a first pivot axis;
- 1.3 and a motor unit mounting portion (53) configured and arranged to be coupled to a motor unit (33),
- 1.4 wherein the bicycle frame mounting portion (51), the front derailleur mounting portion (52) and the motor unit mounting portion (53) are integrally formed as a one-piece unitary member,
- 1.5 and includes a projection (54) that projects outwardly from a first side of the motorized front derailleur mounting member (32) to a free end that forms a curved front surface (54a), **characterized in that**
- 1.6 the curved front surface (54a) of the frame mounting portion (51) has a threaded hole (54b), and
- 1.7 is configured and arranged to contact a corresponding curved portion of the bracket (18)
- 1.8 such that the motorized front derailleur mounting member (32) cannot rotate relative to the bracket (18).

Claim 1 of auxiliary request 3 reads as claim 1 of the main request with the following features appended:

"wherein the motor unit mounting portion (53) including an output shaft cutout (53b) that has a center axis that is substantially parallel to the first pivot axis of the first pivot point (P₃) of the front derailleur mounting portion (52)."

Claim 1 of auxiliary request 4 reads as claim 1 of the main request with the following feature appended:

"wherein the first pivot axis of the first pivot point (P3) passes through the threaded hole (54b)."

VIII. The proprietor's arguments can be summarised as follows:

The subject-matter of claim 1 of the main request did not extend beyond the content of the application as filed. It was not necessary to include a reference to a fastener or bolt. Also, the claim would be understood by a skilled person to mean that the projection in feature 1.5 projected from the frame mounting portion.

WUE15 was late filed in the opposition proceedings and should not be admitted into the appeal proceedings. The novelty-attack based on WUE15 constituted a fresh ground of opposition which should not have been admitted into the opposition proceedings and should not be considered at the appeal stage.

The subject-matter of claim 1 was anyway novel over WUE15. The only disclosure in WUE15 relevant for the claimed subject-matter was the figures which were ambiguous such that features 1.4 to 1.8 could not be identified.

The subject-matter of claim 1 involved an inventive step. The skilled person had no motivation to amend any part of the mounting structure shown in WUE15. The skilled person would not have considered using mounting structures of mechanical front derailleurs in motorised ones. WUE12 to WUE14 should not be admitted.

Additionally, WUE12 to WUE14 did not show a projection and a curved surface in the sense of claim 1.

Auxiliary requests 3 and 4 should be admitted into the proceedings; only dependent claims had been incorporated into the independent claim. These requests were filed after the Board had issued its communication giving its opinion for the first time. The appended features resulted in a more compact arrangement of the front derailleur and were nowhere shown in the prior art. The subject-matter claimed in auxiliary requests 3 and 4 thus involved an inventive step.

IX. The opponent's arguments can be summarised as follows:

The subject-matter of claim 1 of the main request extended beyond the content of the application as filed. Without a reference to a fastener or bolt, the claim constituted an unallowable intermediate generalisation. Additionally, claim 1 of the main request covered mounting members with a projection projecting from other portions than the bicycle frame mounting portion 51 which was not derivable from the application as filed.

WUE15 should be admitted into the proceedings as it was *prima facie* relevant to the issue of novelty as it disclosed all features of claim 1. In any case, the subject-matter of claim 1 lacked an inventive step starting from WUE15 in combination with common general knowledge or with the information known from one of WUE12 to WUE14.

Auxiliary requests 3 and 4 should not be admitted into the proceedings. They merely defined constructional details that had no synergistic effect with other

claimed features. The subject-matter of the claims of these requests hence *prima facie* lacked an inventive step.

Reasons for the Decision

1. *Main request*

1.1 *Interpretation of claim 1*

Feature 1.5 defines "includes a projection". When this feature is read in isolation, it may be ambiguous which part includes the projection.

As already indicated in the communication of the Board sent prior to oral proceedings, when considering the interrelationship of all features of claim 1, the skilled person would understand feature 1.5 such that the "projection" projects from the frame mounting portion and the curved surface in feature 1.5 is the same curved surface as in feature 1.6.

The exact reasoning for this is not important for the purposes of this decision, as it corresponds to the meaning ascribed to it by the proprietor, and based on which the Board concluded that the subject-matter of claim 1 lacked an inventive step.

1.2 *Article 100(c) EPC*

The ground of opposition under Article 100(c) EPC does not prejudice maintenance of the patent as granted.

The Board's provisional opinion on this matter was given in the Board's communication sent prior to oral

proceedings (see item 1). No further arguments were made during the oral proceedings on this point, such that the Board had no reason to alter its provisional opinion. The detailed reasons as to why the opponent's objections fail under this ground of opposition are not important for the purposes of this decision because the subject-matter of claim 1 anyway does not involve an inventive step, as explained below.

1.3 *Novelty (Articles 100(a) and 54 EPC)*

The subject-matter of claim 1 is novel with respect to WUE15.

1.3.1 Admittance of fresh ground of opposition and WUE15 into the proceedings

The proprietor argued that lack of novelty was only raised late during the opposition proceedings and the opposition division should not have admitted this fresh ground. Consequently, it argued that it should also not be dealt with in the appeal proceedings.

In its communication sent prior to oral proceedings (see item 2, second paragraph), the Board noted that, by virtue of the fact that the opposition division had dealt with the ground of novelty in the contested decision, also in respect of WUE15 (see the interlocutory decision, pages 9 to 12), it became part of the appeal's legal and factual framework. Furthermore, the parties were heard on that ground of opposition during the oral proceedings before the opposition division (cf. minutes, pages 4 to 6).

In its communication (see item 2, first paragraph), the Board also indicated that it saw no reason to reverse

the discretionary decision of the opposition division to admit *inter alia* WUE15 into the proceedings.

The parties did not comment further on this issue after receipt of the Board's communication either in writing or during the oral proceedings before the Board. Thus, there was no reason for the Board to deviate from the provisional opinion set out in its communication.

Although not in itself decisive for the present case, the issue of novelty will however be discussed below, such that the features of claim 1 which differ from WUE15 are established before moving on to inventive step.

- 1.3.2 The opponent filed several figures taken from WUE15 to which colour was added by the opponent. Whilst this might help the other parties and the Board to understand how the opponent interprets the figures of WUE15, it cannot compensate for missing or ambiguous information in the original document which contains only black and white drawings and which may be read together with the description of WUE15.
- 1.3.3 The proprietor argued that WUE15 did not show features 1.3 and 1.4 in combination. It argued that it was not unambiguously disclosed that the bicycle frame mounting portion, the motor unit mounting portion and the front derailleur mounting portion were integrally formed as a one-piece unitary member.

The Board however does not concur. Figures 10 to 12 are said to illustrate "a further example of implementation" (column 5, line 39). It is further noted that not all features are consistently depicted when considering the three figures. However, the

skilled person would derive certain basic principles therefrom, some also implicitly. The description explains that the "motor and reduction gear assembly 27 ... [is] mounted on the fixed body 16 so as to oscillate around an axis 90" (column 5, lines 54 to 55). The Board finds that, the axis 90 (see Figs. 11 and 12) and the bracket around the motor 27 are not a "motor unit mounting portion" but that they form, together, the motor unit. The motor unit mounting portion in the sense of claim 1 is a portion of the one-piece unitary member. In WUE15, this unitary member corresponds to the fixed body 16. From the cited paragraph, it must be concluded that the motor unit 27 (including the bracket around axis 90) and the axis 90 are attached to the fixed body 16. The "motor unit mounting portion" in the sense of feature 1.3 is hence realised in WUE15 by the portion of the fixed body 16 to which these parts are attached.

The same reasoning applies to the other two claimed portions:

The fixed body 16 must somehow be connected to the bicycle frame. If the bracket extending around the seat tube (see figure 11) were formed integrally with the fixed body 16, then the bracket would constitute the frame mounting portion. If this were not the case, then the section of the fixed body 16, to which the bracket is attached, would then form the frame mounting portion. Either way, the fixed body 16 comprises an integral frame mounting portion.

In the same way, the fixed body 16 must comprise a section to which the axes of the linkage system are attached. This section constitutes an integral front derailleur mounting portion.

The Board hence concludes that WUE15 discloses features 1.3 and 1.4.

- 1.3.4 The opponent's argument that the skilled person would interpret figure 10 as showing features 1.5 to 1.8 is not accepted. In this regard, the opponent referred to the description of WUE15, column 5, lines 41 to 43, where it is stated that "the front derailleur is comprised, in a well known manner, of a first body 16, designed to be attached in some known manner to the bicycle frame" (underlining added by the Board). With this information, the opponent argued that a skilled person understood figures 10 to 12 to show a known attachment structure and would interpret it correspondingly to arrive at the claimed features.
- 1.3.5 However, the Board does not accept this. Even with known arrangements in mind, figure 10 does not clearly and unambiguously show a projection with a curved front surface. The schematic drawing is not depicted in a manner precise enough to clearly identify such a part. In this case, the inconsistencies between figures 10, 11 and 12 actually prevent the skilled reader from unambiguously understanding what was truly intended to be shown. The Board hence follows the proprietor's argument that WUE15 is not concerned with the details of attachment and, as such, the part identified by the opponent as forming the projection appears to be flush with what could potentially be a portion of the bracket mounted to the seat tube 2. This cannot be ascertained with certainty. In figure 11, however, it is noted in particular that the corresponding part protrudes substantially in the vertical direction, which would not correspond to figure 11 and that, in figure 12, such a part is entirely absent.

Therefore, WUE15 does not clearly and unambiguously disclose feature 1.5.

- 1.3.6 The same reasoning applies to the features of the characterising portion. There is no unambiguous disclosure of a threaded hole in any part that could be interpreted as being the frame mounting portion. The argument of the opponent that the cylindrical part in the upper right corner of figure 10 is a threaded bolt that is screwed into a correspondingly threaded hole in the frame mounting portion is pure speculation. It is not disputed that the skilled person might well know that mounting solutions exist in which such parts are used. However, that does not make their use implicit. The part which the opponent identifies as a threaded bolt could also be another component whose function is not derivable from WUE15. Thus, the part which the opponent identifies as being the "projection" does not need to have a threaded hole. Feature 1.6 is hence neither explicitly or implicitly disclosed in WUE15.
- 1.3.7 The same ambiguity as with the curved front surface arises in view of the "corresponding curved portion of the bracket" as defined in feature 1.7. Figure 10 is only schematic and the other figures do not show this detail at all.
- 1.3.8 Since neither a curved front surface of a projection, a corresponding curved portion of a bracket, nor a threaded hole in the curved surface are unambiguously shown, feature 1.8 is not known from WUE15.
- 1.3.9 The subject-matter of claim 1 is hence novel with respect to WUE15.

1.4 *Inventive step (Articles 100(a) and 56 EPC)*

The subject-matter of claim 1 lacks an inventive step when starting from WUE15 as the closest prior art when considering general knowledge of the skilled person.

- 1.4.1 The Board does not accept the proprietor's argument that WUE15 does not constitute the closest prior art and therefore cannot be used as a starting point for the problem-solution approach.

Even though WUE15 is not explicitly concerned with the attachment of a front derailleur, any such gear changing component cannot be used without being mounted to a bicycle. The skilled person wishing to make use of a given front derailleur is hence always faced with the problem of how to attach it to a bicycle frame. Applied to WUE15, the skilled person must necessarily consider its mounting structure in order to connect the fixed member 16 to the frame. If the front derailleur of WUE15 were to be used on a bicycle frame with a different mounting bracket, for example a bracket that forms part of the frame (that which the opponent referred to as the so-called "brazed-on type"), modification of the mounting structure might be necessary. The skilled person is well aware of this and will consider known possible ways of attachment. A non-matching attachment structure would not stop the skilled person from using the derailleur mechanism on any given frame. The fixed member 16 of the derailleur in WUE15 hence constitutes a suitable starting point for a mounting member that can be used together with a "brazed-on" type of bracket.

The Board does not concur with the proprietor's argument that the skilled person has no motivation to

change any part of the structure shown in WUE15. No additional motivation to modify a component appropriately is required if the need to do so is apparent. Here the need is to mount it to a bicycle frame. This is also apparent from column 5, lines 42 and 43 of WUE15, where the reader is instructed that the fixed body 16 (referred to at that juncture as first body 16) is simply to be attached to the bicycle frame in "some known manner".

- 1.4.2 As laid out under 'novelty' above, the subject-matter of claim 1 differs from WUE15 by the provision of features 1.5 to 1.8.
- 1.4.3 All these features relate to the type of attachment of the mounting member to the frame. Different types of attachment are commonly known in the field of front derailleurs. As the opponent argues, there are at least two known standard types that can be referred to as the "band type" and the "brazed-on type". That these form part of the skilled person's common general knowledge was also not contested by the parties. Additional evidence is given by catalogues WUE12 to WUE14.
- 1.4.4 In this regard, the arguments that WUE12 to WUE14 should not have been admitted into the proceedings and that their availability to the public was not proven are not accepted.

In its communication (see item 2, first paragraph), the Board indicated that it saw no reason to reverse the discretionary decision of the opposition division to admit *inter alia* WUE12 to WUE14 into the proceedings. The Board also stated in its communication (see item 5), that the proprietor's unsubstantiated contestation

was not sufficient to cast doubt on the public availability of the catalogues WUE12 to WUE14.

The parties did not comment further on these issues after receipt of the Board's communication. Thus, there was no reason for the Board to deviate from the opinion as set out in its communication.

1.4.5 Band-type front derailleurs are attached to the bicycle frame by a clamp which is usually part of the front derailleur. As not all bicycle frame tubes are suited to being put under pressure by a clamp, the brazed-on type can be used as a well-known alternative. In such a case, a bracket is welded or brazed to the frame and provides a commonly used concave surface for a correspondingly shaped convex surface on the front side of the front derailleur.

1.4.6 The technical effect attributable to the distinguishing features 1.5 to 1.8 compared to WUE15 is hence that the front derailleur can be mounted to a bicycle frame having a brazed-on type of bracket with a commonly used concave surface.

1.4.7 The objective technical problem can therefore be seen as to find a suitable way to attach the front derailleur of WUE15 to a given bicycle frame.

The proprietor's argument that the skilled person is not guided to this problem is not persuasive. First, there is no reason that the skilled person need be guided to the objective problem, since an objective problem results from the difference(s) compared to the prior art and the problem that this(these) objectively solve.

Additionally, while WUE15 leaves open how the fixed body 16 should be attached to the bicycle frame, it states, however, that this should be accomplished "in some known manner" (see column 5, lines 42 to 43). Presented with this information, the skilled person understands that, among known alternatives, a mounting structure should be chosen that is suitable for the particular bicycle frame with which the front derailleur is to be used.

The reference to an attachment "in some known manner" hence anyway provides specific reference to the skilled person towards the problem defined above.

- 1.4.8 What remains to be answered is whether the skilled person would have applied a "brazed-on" type mounting structure to solve this problem and whether all distinguishing features would be realised thereby.
- 1.4.9 The proprietor's argument that the skilled person would not consider mechanical derailleurs as shown in WUE12 to WUE14 as they were not suitable for bearing the load of the electric motor of motorised front derailleurs, is not convincing. The mounting structure must withstand several different kinds of forces, amongst which are those arising during shifting. The main force is that applied during shifting and is no different whether the derailleur is motorised or manually operated. As regards the additional weight of the motor, the materials and dimensioning of the parts must be chosen accordingly, but selections like these have to be made during the standard design process anyway. The skilled person will therefore not exclude the use of other mounting structures that are known in manually operated derailleurs, merely because they are dealing with a motorised derailleur.

The Board thus concludes that already the wording "in some known manner" in WUE15 constitutes enough motivation to make use of any of the generally known mounting structures, including the "brazed-on type" as exemplified by WUE12 to WUE14. The skilled person hence would, as one obvious possibility, apply a known "brazed-on type" mounting structure as for example shown in WUE12 to WUE14 when wishing to mount the derailleur of WUE15 in order to solve the objective problem.

1.4.10 This type of mounting structure (as known for example from WUE12 to WUE14, which as such was not disputed) is provided with a projection with a curved front surface on its end, including a threaded hole. The curved front surface is configured and arranged to contact a corresponding curved portion of a bracket (which is, in use, welded/brazed to the bicycle frame). The configuration is such that the mounting member cannot rotate relative to the bracket, at least not in the relevant direction in which a load arises during shifting. These facts were undisputed by the parties.

1.4.11 The proprietor argued, however, that even when applying a mounting structure according to any of WUE12 to WUE14, the skilled person would not arrive at the invention, because claim 1 defined a projection which was different from the known ones and hence different from WUE12 to WUE14. In its view, in the known mounting structures of the "brazed-on type" the projection was formed by the curved surface, whilst the claim defined a curved surface extending to a point at the end of the projection, and not a curved surface which simply formed the projection.

The Board does not accept this. Feature 1.5 defines a projection that projects outwardly to a free end. Thereby, the projection represents a 3-dimensional body. In this context, the "end" is the portion of this body where the projection ends. No additional body or part is defined.

Feature 1.5 defines that the end forms a curved front surface. This means that the end *of the projection* forms a curved surface. Therefore, feature 1.5 does not define an end which is present in addition to the projection.

Feature 1.5 thus covers all kinds of projections having a curved front surface at their free end, including those used in commonly known mounting members of the "brazed-on type" like those of WUE12 to WUE14.

1.4.12 Thus, by applying a known "brazed-on type" mounting structure as the frame type to which the motorised front derailleur of WUE15 is to be connected, the skilled person would arrive automatically at a mounting member comprising all features of claim 1, without exercising an inventive step. As a consequence, the ground of opposition under Article 100(a) EPC prejudices maintenance of the patent.

2. *Auxiliary request 3*

2.1 *Admittance (Article 13(1) RPBA)*

2.1.1 This request was filed after the Board's communication and thus represents an amendment to the proprietor's complete case (Article 12(2) RPBA). Under Article 13(1) RPBA such an amendment to a party's case may be admitted and considered at the Board's discretion. The

discretion shall be exercised *inter alia* in view of the need for procedural economy, which implies that amended requests should at least be *prima facie* allowable in order to be admitted.

- 2.1.2 Auxiliary request 3 is not *prima facie* allowable as the subject-matter of its claim 1 *prima facie* lacks an inventive step, for the following reasons:

The feature introduced in claim 1 by way of this request defines an output shaft cutout whose axis is parallel with respect to an axis of the linkage system of the derailleur. In order to involve an inventive step, a technical effect must be attributable to the provision of the distinguishing feature. Which effect is achieved by arranging the axis of the cutout parallel to an axis of the linkage system of the derailleur must be determined.

The proprietor argued that the parallel orientation of the cutout provided the effect that the axis of the motor could be tilted such that mounting space could be saved.

However, whether mounting space is actually saved depends on the orientation and position of the motor on the derailleur. Neither of these is however defined in the claim. With the output shaft cutout made parallel to the axis of the linkage system, the intended orientation of the output shaft in the fitted derailleur is horizontal. However, even accepting this, it is still possible that the motor is fitted in an upright position by using an angled transmission (as is notably also the case in the embodiment of the patent in suit disclosed in figures 5 to 7, where the longest dimension of the motor is vertical, but the axis of its

output shaft 85 runs horizontally through the cutout in the mounting member). Such an arrangement takes up just as much or possibly even more space than would be needed with an output shaft cutout having a vertical axis. Therefore, the alleged effect of saving space cannot be attributed to the feature concerning the orientation of the central axis of the output shaft cutout. With no technical effect being apparent due to the features introduced into the claim, it remains unclear which problem, if any, apart from being a simple arbitrary choice, would be solved by the orientation of the output shaft cutout. Therefore, in the absence of any technical problem solved, the appended feature would not, at least *prima facie*, lead to an inventive step being involved.

2.1.3 The subject-matter of claim 1 thus *prima facie* fails to involve an inventive step (Article 56 EPC) such that auxiliary request 3 is not *prima facie* allowable. The Board therefore exercised its discretion under Article 13(1) RPBA not to admit this request into the proceedings.

3. *Auxiliary request 4*

3.1 *Admittance (Article 13(1) RPBA)*

3.1.1 Since this request was also filed after the Board's communication, the same considerations apply as with auxiliary request 3. Auxiliary request 4 is not *prima facie* allowable as the subject-matter of its claims at least *prima facie* does not involve an inventive step for the following reasons:

The feature introduced into claim 1 defines that the first pivot axis of the first pivot point (of the

linkage system) passes through the threaded hole (in the projection).

The argument of the proprietor that the overall compactness of the system was improved by this arrangement is not persuasive. The formulation of the appended feature is so broad that it would not achieve compactness over the whole scope of the claim. The axis of the first pivot point is not necessarily the same as the axis of the threaded hole. Instead, for fulfilling the definition in claim 1, it is sufficient merely that the axes intersect (as indeed also argued by the opponent), such that one axis could be at any (unspecified) angle to the other. This being the case, no space saving is apparent. Even if *arguendo* the axes were necessarily coaxial with one another, this would anyway not imply compact dimensions unless further changes to the design were made that are however not defined in the claim (not least the proximity of the threaded hole to the first pivot point).

The further argument of the proprietor that the front derailleur could be mounted to the bicycle frame by the same screw that forms the pivot axis of the linkage system simply lacks any basis. No effect of using a single screw to provide the two alleged functions is stated in, or derivable from, the application as originally filed or the patent. Nor is any other technical effect plausible, other than perhaps making mounting and disassembly more complicated.

Therefore, in the absence of any technical problem solved by the first pivot axis passing through the threaded hole, this feature cannot be seen as anything but an arbitrary choice which would not, at least *prima*

facie, lead to an inventive step being involved when starting from WUE15.

3.1.2 The subject-matter of claim 1 thus *prima facie* fails to involve an inventive step (Article 56 EPC) such that auxiliary request 4 is not *prima facie* allowable. The Board therefore exercised its discretion under Article 13(1) RPBA not to admit this request into the proceedings.

4. In the absence of any request which meets the requirements of the EPC, the patent has to be revoked.

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:



M. Kiehl

M. Harrison

Decision electronically authenticated