

**Internal distribution code:**

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

**Datasheet for the decision  
of 23 April 2021**

**Case Number:** T 1216/17 - 3.2.06

**Application Number:** 07824209.6

**Publication Number:** 2064143

**IPC:** B66B9/08

**Language of the proceedings:** EN

**Title of invention:**

IMPROVEMENTS IN OR RELATING TO STAIRLIFTS

**Patent Proprietor:**

STANNAH STAIRLIFTS LIMITED

**Opponent:**

Otto Ooms B.V.

**Headword:**

**Relevant legal provisions:**

EPC Art. 123(2)

RPBA 2020 Art. 13(2)

**Keyword:**

Amendments - allowable (no)

Late-filed request - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

Boards of Appeal of the  
European Patent Office  
Richard-Reitzner-Allee 8  
85540 Haar  
GERMANY  
Tel. +49 (0)89 2399-0  
Fax +49 (0)89 2399-4465

Case Number: T 1216/17 - 3.2.06

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.06**  
**of 23 April 2021**

**Appellant:** Otto Ooms B.V.  
(Opponent) Lekdijk Oost 27a  
2861 GB Bergambacht (NL)

**Representative:** Vernout, Robert  
Arnold & Siedsma  
Bezuidenhoutseweg 57  
2594 AC The Hague (NL)

**Respondent:** STANNAH STAIRLIFTS LIMITED  
(Patent Proprietor) Watt Close  
East Portway  
Andover  
Hampshire SP10 3SD (GB)

**Representative:** Van Breda, Jacobus  
Octrooibureau Los en Stigter B.V.  
P.O. Box 20052  
1000 HB Amsterdam (NL)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
9 March 2017 concerning maintenance of the  
European Patent No. 2064143 in amended form.**

**Composition of the Board:**

**Chairman** M. Harrison  
**Members:** M. Dorfstätter  
E. Kossonakou

## Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the interlocutory decision of the opposition division finding that European patent No. 2 064 143 met the requirements of the EPC. It requested that the decision under appeal be set aside and the patent be revoked.
- II. In its reply to the grounds of appeal, the respondent (patent proprietor) requested that the appeal be dismissed.
- III. On 3 August 2020, the Board issued a summons to oral proceedings. In a subsequent communication pursuant to Article 15(1) RPBA 2020 (hereafter referred to as 'the communication'), the Board expressed its provisional opinion on various aspects of the case, indicating *inter alia* that depending on the interpretation of the original wording of claim 1, the requirement of Article 123(2) EPC might well be regarded as not being fulfilled (see the communication, item 1, last paragraph).
- IV. With the consent of both parties, oral proceedings were held before the Board on 23 April 2021 by videoconference, during which the respondent filed an auxiliary request.
- V. The final requests of the parties were as follows:  
  
The appellant requested that the decision under appeal be set aside and the European patent be revoked.  
  
The respondent requested that the appeal be dismissed (main request), alternatively that the patent be

maintained on the basis of the auxiliary request filed at the oral proceedings before the Board.

VI. Claim 1 of the main request reads as follows (including the feature-by-feature analysis adopted during opposition proceedings and taken over on appeal):

- A "A stairlift carriage (12) for mounting on a stairlift rail (13) having a rail axis, said carriage including:
- B a central roller set (22) to locate and retain said carriage on said rail;
- C outer roller sets (24, 26) on either side of said central roller set,
- D said outer roller sets being operable to guide said carriage through transition (15, 16) and/or inside/outside (17) bends in said rail,
- E a connection (50, 54, 60, 61) linking said outer roller sets and operable to ensure simultaneous displacement of said outer roller sets with respect to said central roller set,
- F and each outer roller set is mounted to said connection for pivotal movement about two substantially orthogonal axes (53, 55),  
**characterised in that**
- G the pivotal movements of one outer roller set (24) about each of said orthogonal axes is independent of the pivotal movements of the other outer roller set (26) about each of said orthogonal axes,
- H wherein each outer roller set (24, 26) includes a top (42) and bottom (43) roller positioned to engage, respectively, surfaces of said rail (13) at or adjacent the upper and lower edges thereof; and a plurality of steering rollers (44, 45)

positioned to engage opposed side surfaces of said rail."

In the auxiliary request further features are added to claim 1, these however lacking relevance for the decision and thus not recited here.

VII. The appellant's arguments which are relevant for the decision may be summarised as follows:

The subject-matter of claim 1 of the main request did not meet the requirement of Article 123(2) EPC as it represented an inadmissible intermediate generalisation.

Claim 1 as filed could not form the basis for the subject-matter of claim 1 of the main request. The last feature of claim 1 as filed, 'each outer roller set is capable of pivotal movement about two substantially orthogonal axes which is independent from movement of the other outer roller set', had been replaced in claim 1 as granted by features F and G. Whilst the original feature in claim 1 defined that the pivotal movements of each outer roller set about each of said orthogonal axes was independent from any movement of the other outer roller set, Feature G referred to pivotal movements of one outer roller set about each of said orthogonal axes that were independent of the pivotal movements of the other outer roller set about said orthogonal axes.

The subject-matter of this amended definition was also not derivable from the rest of the application. Although several passages of the description referred to the independence of the pivotal movements of both outer roller sets from the connection member or the

cross-member, and although other passages referred to the independence of the pivotal movements of the outer roller sets of each other about one axis, the description was silent on the claimed independence between both outer roller sets about both axes.

If instead claim 11 as filed were the basis for claim 1 of the main request, the features added to claim 11 had been taken out of the context in which they were presented in the description. The passages cited by the respondent referred to the configuration shown in Figure 13, including among other details a figure-8-shaped rail. By not defining the shape of the rail claim 1 defined subject-matter constituting an inadmissible intermediate generalisation, thus extending beyond the content of the application as filed.

The auxiliary request should not be taken into account as there were no exceptional circumstances in the sense of Article 13(2) RPBA 2020. The whole argument in view of Article 123(2) EPC had already been made during the opposition proceedings and again when filing the appeal. The auxiliary request should thus have been filed earlier in the proceedings.

VIII. The respondent's arguments which are relevant for the decision may be summarised as follows:

The appellant's objection regarding Article 123(2) EPC was inadmissible, because it related to claim 1 as granted, which was not the subject of the appeal proceedings.

The subject-matter of claim 1 met the requirement of Article 123(2) EPC. The whole content of the

application had to be considered. Several passages on pages 11 to 14 referred to pivotal movements of both outer roller sets about two substantially orthogonal axes.

Claim 1 as filed provided the basis for Feature G. It was clear that 'movement' in claim 1 as filed could only mean 'pivotal movement'. The application had to be considered as a whole and several passages in the description made it clear that the whole application, thus including claim 1 as filed, referred to the mutual independence between the two outer roller sets with regard to pivotal movements about the two orthogonal axes.

Any movement could be considered a combination of movements about two orthogonal axes.

Claim 11 and the corresponding part of the description on pages 5 and 6 provided a further basis for the claimed independence of pivotal movements of both outer roller sets about both orthogonal axes. Also, features F and G had to be read together. Features F and G were a rewording of what had been defined in the characterising feature of claim 11 as filed. Feature H was disclosed not only together with claim 1 as filed, but also in general terms and was consequently applicable to the application as a whole. The description referred to several aspects and Feature H was an intrinsic part of all these aspects. This included the embodiment shown in Figure 13 and the subject-matter defined in claim 11 as filed. There was no need to include the shape of the rail in the claim as the rail did not form part of the claimed stairlift carriage.



The auxiliary request should be taken into account as it was filed in reply to the remark by the Board made for the first time during the oral proceedings, that although claim 7 provided a basis for Feature H, there was a further concern with regard to Article 123(2) EPC. The auxiliary request was thus filed to address that observation.

## **Reasons for the Decision**

### *Main request - Article 123(2) EPC*

1. As regards the respondent's argument that the appellant's objection regarding Article 123(2) EPC was inadmissible, the Board had already indicated in its communication that it did not see a reason therefor (see communication, item 1, first paragraph). It is rather obvious that, although the appellant referred to claim 1 as granted, which was admittedly not the subject of the appeal proceedings, the objection relates to features which are the same in claim 1 as found to be allowable by the opposition division (main request in appeal). The respondent did not react to this point of the communication. The Board has thus no reason to deviate from its preliminary opinion, which is herewith confirmed.

In regard to the objection as such, the respondent did not indicate a specific combination of any claim with passages of the application as filed to be the basis of claim 1 of the main request. Nonetheless the Board investigated the various passages cited by the respondent as a potential basis. From none of them however is the subject-matter of claim 1 directly and unambiguously derivable. The requirement of Article 123(2) EPC is thus not met.

2. *Claim 1 as filed as part of the basis*

In the claims as filed, claim 7 was directly dependent on independent claim 1 and literally corresponds to Feature H. Taking claims 1 and 7 as the basis, there is thus no doubt about the disclosure of the features of claim 1 together with Feature H.

It therefore remains to be investigated whether Features F and G, which were not literally included in claim 1 as filed, have the same meaning as the characterising feature of claim 1 as filed and, if this is not the case, whether they can be directly and unambiguously derived from the application as filed, in a generally applicable form.

2.1 Regarding the first question, i.e. whether Features F and G have the same meaning as the characterising feature of claim 1 as filed, the Board concluded that this is not the case. Features F and G do not define the same form of independence of movement. The Board does not accept the respondent's argument that the term 'independent from movement' in the characterising feature of claim 1 as filed was to be construed as meaning 'independent from pivotal movements.'

2.1.1 The characterising feature of claim 1 as filed defines that

'each outer roller set is capable of pivotal movement about two substantially orthogonal axes which is independent from movement of the other outer roller set' (emphasis added by the Board).

Feature G of claim 1 of the main request defines that

'the pivotal movements of one outer roller set about each of said orthogonal axes is independent of the pivotal movements of the other outer roller set about each of said orthogonal axes' (emphasis added by the Board).

- 2.1.2 In claim 1 as filed, when taken in its literal sense, the pivotal movements of a first outer roller set were thus not explicitly defined to be independent from pivotal movements, and less so from pivotal movements about each of the two orthogonal axes.

As also referred to in the communication (see item 1., 4<sup>th</sup> paragraph), Feature G is silent about whether there is a dependence of movements that are not pivotal, or of pivotal movements about other than said two orthogonal axes. Claim 1 as filed is thus not an explicit basis for Feature G.

- 2.1.3 Claim 1 as filed, however, also does not implicitly refer to only pivotal movements about said two orthogonal axes. Other interpretations are at least feasible and equally plausible, such as independence from linear movements or movements about other axes.

- 2.2 Regarding the second question, i.e. whether Features F and G can be directly and unambiguously derived from the application as filed in a generally applicable form, the Board concludes that this is also not the case.

The respondent's argument that the whole application, including claim 1 as filed, referred to the mutual independence of the two outer roller sets of pivotal movements about the two orthogonal axes, is not accepted. The reference to the passages in the

description given by the respondent do not bear out this allegation, as explained in detail in the following.

2.2.1 With regard to the two passages on page 5, lines 13-15, and on page 6, lines 19-21, these relate to different 'aspects' of the invention (the second and third aspect respectively, as stated on page 5, lines 7 and 19), and are also defined in separate independent claims 11 and 13 respectively. They are not regarded as a general disclosure applicable for all claimed aspects, but merely provide support for these specific claims. The fact that the description also uses different wording in support of claim 1 (as the first 'aspect') and for these claims only underlines that their meaning is, and was intended to be, different.

2.2.2 Regarding the passage on page 12, lines 27 and 28, stating that 'there is no connection between the outer roller sets hindering the ability of each to pivot independently about its respective axis 53', this only refers to the independence of movement about a single horizontal axis. In Figures 4 and 5, to which this passage relates, the two outer roller sets are also shown to pivot only about this single axis. Therefore, this passage is no basis for a general independence of movement of one outer roller set from the other about both axes.

This conclusion is the same for the sentences following this passage, up to page 13, line 5, which were further cited by the respondent.

2.2.3 In regard of the passage from page 13, line 26 to page 14, line 2, together with Figures 6 and 7, this clearly refers to the vertical pivots 55 and thus to pivotal

movements of the outer roller sets about their respective vertical axes only. This passage therefore also does not provide a basis for the independence of pivotal movement of one outer roller set from the other about both axes.

The same is true with regard to the passage on page 14, lines 13-16, together with Figures 9 and 10, which relates to pivotal movements about the same axis, but for a bend in the opposite direction.

- 2.2.4 The respondent further argued that Features F and G were a rewording of what had been defined in claim 11 as filed. Even accepting this to be correct, there is however then no basis in the application as filed for this 'reworded feature' together with the other features of claims 1 and 7 as filed which would be required to arrive at the combination of features of present claim 1.

Claims 1 and 11 as filed are formulated differently. This appears also to be deliberate. By not referring to pivotal movements in claim 1 and by not including a claim depending on claim 11 and comprising Feature H (as was done in claim 7 depending on claim 1), the two independent claims and the claims respectively dependent thereon establish two separate groups of claims. In the application as filed, the features and definitions in one group of claims are thus not presented in combination with those of the other group.

- 2.3 The further argument of the respondent that any movement could be considered a combination of movements about two orthogonal axes is also not accepted.

The Board understands the respondent's argument in the sense that it refers to the possibility of arriving from any given orientation of an object to any other orientation thereof, by a combination of two pivotal movements around respective orthogonal axes. While this statement can be accepted, it does not hold true for all movements. For example, a linear displacement of the object cannot be reproduced by pivoting around two orthogonal axes. The formulations used in Feature G and in claim 1 as filed are thus not equivalent.

3. Claim 11 as filed as part of the basis

Instigated by an argument presented by the respondent for the first time during the oral proceedings, the Board further investigated whether claim 11 as filed could be regarded as constituting a basis for the subject-matter defined in claim 1 of the main request. As argued by the respondent, features F and G, when taken together, can be seen as a reformulation of the last feature of claim 11 as filed. Claim 11 as filed also includes a definition of the connection, similar to that defined by feature E.

Considering claim 11 as filed as the basis, it thus remains to be investigated whether the subject-matter defined therein is, in combination with Feature H, directly and unambiguously derivable from the application as filed. This would necessitate that Feature H was disclosed not only together with claim 1 as filed, but in general terms and applicable to the application as a whole, as argued by the respondent. The Board however concludes that this is not the case.

3.1 The respondent argued that the description as filed referred to several aspects and that Feature H was an

intrinsic part of all these aspects. To support its view, the respondent referred to page 7, lines 9 and 10, in which it is stated that "[t]he various aspects of the invention will now be described with reference to the accompanying drawings". It then pointed to page 8, line 17, which started with "[r]eferring firstly to Figure 1", and to page 9, second paragraph, starting with "[r]eferring now to Figures 2 to 14", the latter passage including a description of Figure 13. The respondent further referred to page 11, second paragraph, which it deemed as support for claim 7, now Feature H. The respondent also pointed to page 15, last paragraph, which referred to Figure 13 and to page 16, first paragraph, which indicated an advantage of the configuration shown in Figure 13.

However, the respondent's argument that Feature H in its generality was an intrinsic part of all these aspects (and thus also of the embodiment shown in Figure 13 and the subject-matter defined in claim 11 as filed) is erroneous.

- 3.2 The statement on page 7 refers to 'various aspects of the invention'. In the Board's understanding, this means that these aspects are represented in the drawings, but not necessarily each aspect in every drawing. The skilled person would understand the introductory clause on page 8, line 17, only as an indication that this paragraph is to be read in connection with Figure 1, but not every detail described in the following paragraphs, certainly not unambiguously. The same considerations apply to the introductory clause on page 9, second paragraph, which the skilled person would interpret as meaning that this paragraph is to be read in connection with Figures 2 to 14. Indeed, all these figures show a skate 20 which is

included within a carriage 12 and comprises a central roller set 22 and first and second outer roller sets 24 and 26, respectively. This does however not mean that each and every detail explained in all the following paragraphs is separately disclosed in combination with what is shown in Figures 2 to 14.

3.3 The second paragraph on page 11 indeed describes the two outer roller sets and explains that they comprise a top roller 42, a bottom roller 43 and two lateral steering rollers 44 and 45. However, further details are described therein, such as a pivoting yoke 48 and a sub-frame 50, which are functionally and structurally linked to the roller sets. This paragraph hence does not constitute a general basis for the additional features of claim 7 as filed, now constituting Feature H, which is defined in a very general manner.

3.4 As to the argument that the last paragraph on page 15 related to Figure 13 and the first paragraph on page 16 to the advantages achieved thereby, this passage explicitly relates to the roller configuration as shown in the preferred embodiment and in combination with the rail configuration shown in Figure 13. As also argued by the appellant, the roller configuration of the embodiment, and as shown in Figure 13, is only described in connection with a rail having a figure-8-shaped cross-section. Indeed, in the last paragraph of page 9 particular reference is made to the rail having this shape. Although this paragraph ends with a sentence stating that the invention could be adapted for use with rails of alternative cross-section, this does not constitute a disclosure of how such cross-sections would look, or notably whether the particular roller configuration would then have to be adapted accordingly.



The Board therefore cannot concur with the respondent's argument that there was no need to include the shape of the rail in the claim. The description of the embodiment is to be seen as given only in connection with further details of a particular roller configuration on a specifically shaped rail together with further features as depicted in the drawings.

- 3.5 The Board thus concludes that the description does not include a general disclosure of Feature H. Combining the subject-matter of claim 11 as filed with this feature and not including the further details presented in the description thereof therefore defines subject-matter that is not directly and unambiguously derivable from the application as filed, contrary to the requirement of Article 123(2) EPC.

*Auxiliary request*

4. The auxiliary request was filed during the oral proceedings before the Board, and hence after notification of the summons to oral proceedings, which was issued on 3 August 2020. As this date was after the new Rules of Procedure of the Boards of Appeal (RPBA 2020) had come into force on 1 January 2020, Article 13(2) RPBA 2020 applies to the question of whether the Board shall take into account the auxiliary request.

Article 13(2) RPBA 2020 stipulates that "any amendment to a party's appeal case made [...] after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned" (emphases added by the Board).

4.1 The respondent's argument that the auxiliary request was filed in reply to a remark by the Board made for the first time during the oral proceedings, is not accepted. The Board's remark that although claim 7 provided a basis for Feature H, there was a further concern with regard to Article 123(2) EPC was made by the Chairman during the oral proceedings at a time when he had informed the respondent of the Board's conclusion that claims 1 and 7 as filed together with several passages of the description did not establish a basis for the subject-matter claimed in claim 1 of the main request.

However, the Board had merely followed the respondent's argument that features F and G could be regarded as being a reformulation of the last feature of claim 11 as filed. Further following the respondent's arguments, presented for the first time during the oral proceedings and not being part of the written submissions, that claim 11 and the corresponding passages of the description on page 5 were to be considered when assessing the original disclosure, the Chairman then explained that the Board might see a further possible basis in claim 11 as filed. And, in such a case, that if claim 11 were to be seen as the basis, the Board had a further concern with regard to Article 123(2) EPC, namely that Feature H, in its generality and without its dependence on the features of claim 1, was seemingly not derivable from the application as filed. This would however be necessary to conclude that claim 11 could be regarded a basis for the subject-matter of claim 1 of the main request. The respondent was then given the opportunity to present its arguments in regard of this second potential basis starting from claim 11.

The Board was however not persuaded by these arguments either (see above under Reasons 3.). That the observation by the Board with regard to a second potential basis was made on the day of the oral proceedings does hence not constitute exceptional circumstances in the sense of Article 13(2) RPBA 2020. On the contrary, after not being persuaded by the respondent's arguments, giving the respondent the opportunity to present, for the first time in the oral proceedings before the Board, a second line of argument should not be understood to also open the door for submitting a new request at such a late stage in the proceedings.

- 4.2 Therefore the Board concluded that there are no exceptional circumstances justified by cogent reasons in the present case for the Board to deviate from the general principle laid out in Article 13(2) RPBA 2020, i.e. not to take into account amendments to a party's appeal case after notification of a summons to oral proceedings.

## **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:



D. Grundner

M. Harrison

Decision electronically authenticated