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**Datasheet for the decision
of 1 March 2021**

Case Number: T 2149/17 - 3.2.08

Application Number: 09760610.7

Publication Number: 2356342

IPC: F16B5/06, F16B37/04, B60R21/213

Language of the proceedings: EN

Title of invention:

PANEL-FASTENING CLIPS, ESPECIALLY FOR CURTAIN OR LATERAL AIRBAGS

Patent Proprietor:

ITW Metal Fasteners SL

Opponent:

A. Raymond et Cie. SCS

Headword:

Relevant legal provisions:

EPC Art. 100(a), 100(b), 100(c), 54, 56, 123(2), 123(3), 83,
84
RPBA 2020 Art. 13(1), 13(2)

Keyword:

Grounds for opposition - insufficiency of disclosure (no) -
added subject-matter (no)
Novelty - (no) - auxiliary request (yes)
Inventive step - auxiliary request (yes)

Decisions cited:

Catchword:



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Case Number: T 2149/17 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 1 March 2021

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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 24 July 2017
revoking European patent No. 2356342 pursuant to
Article 101(3) (b) EPC.**

Composition of the Board:

Chairman C. Herberhold
Members: A. Björklund
P. Schmitz

Summary of Facts and Submissions

- I. The appeal was filed by the patent proprietor (appellant) against the decision of the opposition division to revoke the patent in suit (hereinafter "the patent").
- II. The opposition division found that the patent disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art and that the subject-matter of the claims as granted did not extend beyond the content of the application as filed. However, it decided that the subject-matter of claim 1 as granted was not novel in view of D3 and D5 and that the subject-matter of claim 1 of then auxiliary request 2 did not involve an inventive step in view of D3 in combination with the common general knowledge.
- III. With a letter dated 21 February 2020 the respondent and former opponent withdrew its opposition.
- IV. Oral proceedings by videoconference were held before the Board on 1 March 2021.
- V. The appellant requested that the decision under appeal be set aside and that the patent be maintained as granted, or alternatively, that the patent be maintained on the basis of one of auxiliary requests 1 to 3, whereby auxiliary requests 1 and 3 were filed with letter of 7 January 2021 and auxiliary request 2 with letter of 23 November 2017.
- VI. Claim 1 of the main request, with feature designations added by the Board, reads:

1 "PANEL FASTENING CLIPS, of the type used to
fix panel accessories, mainly used in curtain
and/or lateral airbags,
2 featuring inner and outer elements relative
to said panel,
3 said outer elements allowing the securing of
said accessories and including a surface (2)
from which can emerge flexing arms (3),
4 said inner elements, passing through a hole
in the panel to an interior zone, including
several legs (4) that are elastic and
5 that tend to converge at their ends in the
general shape of an inverted "V" in the
direction in which the clip is inserted,
6 and continuing via a loop, in opposite
direction, in several wings (5)
7 whose ends work against the inner surface of
said panel and preventing release of the clip
(1) in a way contrary to its insertion,
CHARACTERIZED by the fact that
8 the ends of said wings (5) have an enlarged
working surface (8) in contact with the inner
surface of said panel;
9 whereby said enlarged working surface (8) and
said wings (5) have a section in the form of
"L";
10 said wings (5) having flanges (6) which, by
bending at their edges, join with said
enlarged working surface (8)."

Claim 1 of the first auxiliary request, with amendments compared to claim 1 of the main request highlighted, reads:

"PANEL FASTENING CLIPS, ~~of the type used to fix panel accessories, mainly used in~~ for fixing curtain and/or lateral airbags to a panel, featuring inner and outer elements relative to said panel in use, said outer elements allowing the securing of said accessories curtain and/or lateral airbags and including a surface (2) from which can emerge several flexing arms (3), said inner elements, passing through a hole in the panel to an interior zone in use, including several legs (4) that are elastic and that tend to converge at their ends in the general shape of an inverted "V" in the direction in which the clip is to be inserted, and continuing via a loop, in opposite direction formed by bending said legs (4) backward and outward, in several wings (5) whose ends work against the inner surface of said panel in use and preventing release of the clip (1) in a way contrary to its insertion, **CHARACTERIZED by** the fact that the ends of said wings (5) have an enlarged working surface (8) in contact with the inner surface of said panel in use; whereby said enlarged working surface (8) and said wings (5) have a section in the form of "L"; said wings (5) having outer sides that have flanges (6) which terminate, by bending at their edges in an "L"-shaped section fold, ~~join with in~~ said enlarged working surface (8)."

VII. The following documents are referred to in the present decision:

D3	US 3,205,546
D4	US 5,991,976
D5	US 2008/0240851
D6	DE 10 2006 019 256 A1

VIII. The appellant's arguments can be summarised as follows.

Main request - novelty

D3

As shown in Figure 10 of D3, the panel was held against the finger portions 18 of the spring arms 14 and not against deflecting portions 20. These deflecting portions, which allegedly formed the enlarged working surface claimed, were thus not in contact with the inner surface of the panel, contrary to what was defined in the claim. There was simply neither a disclosure of, nor sufficient space for, the panel being held between the arms 22 and the deflecting portions 20.

D4

The fastener as shown for example in Figure 6 of D4, at the least, did not have inner elements including several legs converging at their ends in the shape of an inverted "V" in the direction in which the clips are inserted, which were continuing via a loop in opposite direction.

D5

The term "join" in feature 10 defined a bending between components, as shown in Figures 6 to 16 of the patent. The skilled person would thus understand the enlarged working surface as an integral shape of the flange formed by bending at the edges of the flange.

The wording of the claim required the clip to have a wing with a discrete flange and an additional enlarged

working surface. It therefore had two bending portions, one between the wing and the flange and another one between the flange and the enlarged working surface.

This distinguished the claimed clip from that in Figure 1 of D5, which only had one small bent portion between the wing 9 and the enlarged working surfaces 11 and 12, respectively. A flange was a rim or shelf-like portion reinforcing a part. The small portions of the clip of D5 were not described as separate components of the wings or as reinforcing the wing. They were thus not flanges in the sense of feature 10, but rather extensions of the wing or parts in between the wing and the enlarged working surfaces.

The subject-matter of claim 1 as granted was therefore new.

Auxiliary request 1 - admittance

The request directly addressed the Board's concerns of sufficiency, added subject-matter and patentability raised in the preliminary assessment annexed to the summons.

It should therefore be admitted into the proceedings.

Auxiliary request 1 - amendments

The amendments concerning the suitability of the clip for fixing lateral and/or curtain airbags had a basis in claim 1 and paragraphs [8], [21] and [27] of the application as originally filed.

The amendments concerning how the loop was formed, and those concerning the position of the flanges and how by

bending they terminated in the enlarged working surfaces, had a basis in paragraph [36] of the application as filed. The skilled person would understand that the features discussed there were also applicable to clips for fixing airbags, since paragraph [35] stated that the clips in Figures 11 to 16, which were described in paragraph [36], incorporated characteristics of the invention.

The amendments concerning the relation of the clip and the panel "in use" had a basis in claim 1 as filed.

The amendments therefore neither extended beyond the content of the application as filed, nor extended the protection conferred.

Auxiliary request 1 - novelty

The clips of D3 and D5 did not have the required strength for fixing airbags. Moreover, D5 did not disclose wings having outer sides that have flanges as now claimed.

Auxiliary request 1 - inventive step

D6 disclosed clips suitable for holding airbags and thus was the closest prior art.

The subject-matter of claim 1 differed from the clips of D6 by the enlarged working surfaces formed by bending of the end of the flanges at the outer sides of the wings.

The enlarged working surfaces solved the problem of avoiding the "knife effect".

The person skilled in the art would not consider the clips in D4 or D5, since they were not strong enough for fixing airbags. Furthermore, the end of the flanges of the clips of D6 had a specific geometry which allowed the clip to be used on plates of varying thickness. This functionality would be lost if changing the ends of these flanges by providing them with enlarged working surfaces by bending. Moreover, D4 and D5 disclosed specific enlarged surfaces at the end of the wing, not on flanges emerging from the sides of the wing. If at all, the person skilled in the art would transfer the complete enlarged surface construction, not just isolated bits of the teaching, which would effectively result in enlarged surfaces at the end of the wings, not at flanges emerging from the sides of the wing.

The subject-matter of claim 1 therefore involved an inventive step.

Reasons for the Decision

1. Withdrawal of the opposition

The respondent withdrew its opposition against the patent with the letter of 21 February 2020. It is thus no longer a party to the proceedings.

Regarding the objections raised by the former opponent under Article 100(c) EPC, Article 100(b) EPC and Article 100(a) in combination with Article 54(2) EPC, novelty of claim 1 in view of D4, the Board sees no reason to deviate from the opposition division's decision concerning the patent as granted.

2. Main request

2.1 Novelty in view of D3

The clip shown in the figures of D3 is configured to hold a panel against the respective finger portion 18 of the spring arms 14 and not against the deflecting portion 20 extending from each finger portion. The deflecting portions allow pushing the spring arms together by a tool 42 for releasing the clip and would not be suitable to withstand the forces involved in fixing the clip to the panel, in particular not when fixing an airbag. Furthermore, there is no disclosure that a panel would fit between the arms 22 and the deflecting portions 20. The latter are therefore not enlarged working surfaces within the meaning of claim 1.

2.2 Novelty in view of D5

It is undisputed that Figure 1 of D5 discloses a clip according to features 1 to 9 of claim 1 as granted.

2.2.1 The appellant disputes that this clip shows "flanges which, by bending at their edges, join with said enlarged working surface" as required by feature 10.

In its view, the portions between the wing 9 and the enlarged working surfaces 11 and 12 were not flanges in the sense of feature 10, since they were not described as discrete portions of the clip connected to the wing by a bend or as reinforcing the wing, but rather extensions of the end of the wing or parts in between the wing and the enlarged working surface.

However, according to paragraph [0028] of the patent specification, the wings have "flanges that terminate, by means of an "L"-shaped section fold in a working surface against the lower part of the panel". This implies that the term "flange" as used in the patent comprises everything which extends out of the plane of the wing, not only the enlarged surface in which it terminates. These flanges are - as defined in claim 1 as granted - bent "at their edges", i.e. at their ends, to form the enlarged surfaces. This interpretation is fully in accordance with the appellant's understanding of the feature, as can also be seen from the wording of claim 1 of present auxiliary request 1.

Applying the above understanding of the claim, it is the enlarged surfaces 11 and 12, together with the respective portions between the wing 9 and the enlarged working surfaces, which form the structures that have to be judged on whether or not they qualify as flanges. In the view of the Board, this is indeed the case.

With the enlarged surfaces 11, 12 being in the form of an L, the clip shown in D5, Figure 1, has wings (9) having flanges (nos. 11, 12 in combination with the portions connecting them to the wings) extending out of the plane of the wing and which, by bending at their edges, terminate in the enlarged working surfaces 11, 12.

The subject-matter of claim 1 is therefore not new (Article 54(2) EPC).

3. First auxiliary request

3.1 Admittance

The first auxiliary request was filed after the summons to oral proceedings and it replaced the first auxiliary request which had been filed with the statement of grounds of appeal. Its admittance is therefore at the discretion of the Board under Article 13(1) and (2) RPBA 2020.

The request can be seen as a reaction to issues raised in the Board's preliminary opinion pursuant to Article 15(1) RPBA as well as to the Board's interpretation of claim 1 which evolved following the explanations given by the appellant during the oral proceedings. The Board considers such evolved understanding of the claim to be exceptional circumstances in the context of Article 13(2) RPBA 2020. Furthermore, the amendments made in the claim are not complex and prima facie overcome the objections to novelty in view of D5.

The Board therefore decided to admit the request into the proceedings (Article 13(1) and (2) RPBA 2020).

3.2 Article 123(2) and (3) EPC

3.2.1 The claim has been amended to specify that the clip is "for fixing curtain and/or lateral airbags to a panel". This has a basis in claim 1 and paragraphs [12], [21] and [27] of the application as filed.

The further amendments that the loop is "formed by bending said legs backward and outward" and "said wings having outer sides that have flanges, which terminate, by bending at their edges, in an "L"-shaped section

fold, in said enlarged working surface" have a basis in paragraph [0036] of the application as filed. While this paragraph describes general-purpose panel clips, they "incorporate the characteristics of this invention", see paragraph [35], which focused on clips for airbags. The skilled person would therefore see the disclosure concerning these clips to be applicable also to clips for fixing airbags.

The amendments regarding the clips' various relations to the panel "in use" have a basis in claim 1 as filed.

The amendments thus fulfil the requirements of Article 123(2) EPC.

- 3.2.2 The amendments concerning the use of the clip for fixing airbags and the more detailed specification of the loop formed by bending the legs backward and outward restrict the protection conferred by the claim.

Furthermore, the Board agrees with the appellant that the skilled person would have always understood features 8 to 10 of claim 1 as granted to define the enlarged working surface as a part formed by bending the flange and not as a part of another portion of the end of the wing to which a portion of the flange was then additionally joined by bending, as submitted by the former opponent.

The amendments to claim 1 further define where the flanges are positioned and how they are bent to form the enlarged working surfaces. These amendments therefore also restrict the protection conferred by the claim.

The requirements of Article 123(3) EPC are thus met.

3.3 Article 83 EPC and Article 84 EPC

The Board has no doubt that the skilled person could carry out the invention defined in claim 1. It neither finds any lack of clarity arising from the amendments made to the claim.

The requirements of Articles 83 and 84 EPC, in so far as they are to be examined, are thus met.

3.4 Novelty

The claim defines a clip for fixing curtain and/or lateral airbags. Such clips are subjected to high forces when the airbag is triggered.

Neither of documents D3 and D5 disclose clips which have the required strength for such a use, but rather clips for securing a moulding strip (D3) or a clip for attaching a roof grip for a motor vehicle (D5) which involve considerably lower forces.

Furthermore, the clip of D5 does not have flanges on the outer sides of the wings, but on the ends of them.

The subject-matter of claim 1 is thus new (Article 54(2) EPC).

3.5 Inventive step

Since none of the clips of D3 and D5 are suitable for fixing airbags, they are not appropriate starting points for arriving at the claimed invention.

D6, Figures 1 to 4, discloses two different embodiments of clips which support relatively high forces, see paragraph [0004]. The appellant acknowledges that they are suitable for fixing lateral and/or curtain airbags. These clips therefore form the closest prior art.

- 3.5.1 The subject-matter of claim 1 differs from these clips in that the flanges terminate, by bending at their edges, in an "L"-shaped section fold, i.e. in enlarged working surfaces.
- 3.5.2 The enlarged working surfaces distribute the forces when triggering the airbag to a larger area of the panel, thereby avoiding damage to the panel to which the clip is attached in use by preventing the flanges from cutting through the panel material, thus avoiding the "knife effect" (see the patent, paragraphs [0011] and [0015]).
- 3.5.3 D4 and D5 disclose clips having enlarged working surfaces. However, these clips are not dimensioned for the forces involved in fixing airbags, and since the forces they are submitted to in use are not as high, the problem of the clip cutting through the panel to which it is attached is not mentioned. There is thus no pointer towards the problem posed in these documents.

Furthermore, these documents do not teach providing enlarged working surfaces on flanges positioned on outer sides of the wings.

D6, as described in paragraph [0004], aims at providing clips being usable with panels of a relatively wide range of varying thicknesses. This is achieved by the inclined ends of the flanges, which also have a blocking lug 19 to prevent the outwardly biased wings

10 of the clip to spring completely apart when used on thin panels, see the final sentence of paragraph [0019]. This function could not be readily maintained if the flanges were bent to provide enlarged working surfaces.

The skilled person would not therefore consider transferring the teaching of the enlarged working surfaces formed by bending in D4 or D5 to the clips of D6.

Even if they did, they would transfer the complete teaching of the enlarged working surfaces connected to the end of the wing, rather than providing the already existing flanges of the clips of D6 with enlarged working surfaces.

The skilled person would thus not arrive at the clip of claim 1 without the involvement of inventive skills. The subject-matter of claim 1 therefore involves an inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the opposition division with the order to maintain the patent on the basis of the following documents:
 - Claims 1 to 4 of auxiliary request 1 filed by letter of 7 January 2021,
 - Description paragraphs 1 to 31 as filed during the oral proceedings before the Board,
 - The figures as granted.

The Registrar:

The Chairman:



D. Magliano

C. Herberhold

Decision electronically authenticated