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**Datasheet for the decision
of 19 January 2021**

Case Number: T 1952/18 - 3.2.01

Application Number: 10837960.3

Publication Number: 2512840

IPC: B60D1/56, B60D1/14, B60R19/34

Language of the proceedings: EN

Title of invention:
BUMPER FOR A VEHICLE

Patent Proprietor:
Gestamp HardTech AB

Opponent:
Benteler Automobiltechnik GmbH

Headword:

Relevant legal provisions:
EPC Art. 54(2), 56

Keyword:
Public prior use (yes)
Inventive step (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 1952/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 19 January 2021

Appellant: Benteler Automobiltechnik GmbH
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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 4 June 2018 rejecting the opposition filed against European patent No. 2512840 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	C. Narcisi
	A. Jimenez

Summary of Facts and Submissions

- I. The opposition was rejected and the European patent No. 2 512 840 was maintained as granted by the decision of the Opposition Division posted on 4 June 2018. Against this decision an appeal was lodged by the Opponent in due form and in due time pursuant to Article 108 EPC.
- II. Oral proceedings were held on 19 January 2021. The Appellant (Opponent) requested that the impugned decision be set aside and that the patent be revoked. The Respondent (Patentee) requested that the decision under appeal be set aside and that the patent be maintained in amended form according to the main request filed as auxiliary request 3 on 7 February 2019 with the reply to the statement of grounds of appeal.
- III. Claim 1 of the main request reads as follows:
- “Bumper including a bumper bar (14) and two tapered crash boxes (11) extending into the bumper bar and welded thereto, at least one of the crash boxes being adapted to have an attachment means for a towing eyelet (17),
characterised in that
the said one crash box (11) has a welded-on cover (13) and the bumper bar is supported by the crash box in that it is welded to this cover, the cover (13) and the bumper bar (14) having coaxial holes (16, 19) at an axial distance from one another adapted to receive an internally threaded sleeve (17) welded at least to one or other of the cover and the bumper bar and forming the said attachment means for a towing eyelet,
and in that

the cover (13) has an indentation (15) directed into the crash box in which the hole (16) of the cover is located and the bumper bar has a protuberance (21) in which the hole (16) of the bumper bar is located."

IV. The Appellants' arguments may be summarized as follows:

The subject-matter of claim 1 (main request) lacks an inventive step in view of the public prior use OV11 based on the following documents: D11 (technical drawing), D11 B-B (detail from D11), D11 E-E (detail from D11), D12 (extract from book "Hörschen Technisches Zeichnen", 27th edition 1998, page 332), EV (affidavit of Mr. Ulrich Lütke-Bexten), D13 (independent expert's opinion for conservation of evidence), D14 (Report on taking of evidence by the attesting notary)).

In effect, disputed features c) (i.e. "extending into the bumper bar and welded thereto"), e) (i.e. "the said one crash box (11) has a welded on cover") and s) (i.e. "and the bumper bar has a protuberance (21) in which the hole (16) of the bumper bar is located") are known from prior use OV11, whilst feature t) (i.e. "the cover (13) has an indentation (15) directed into the crash box in which the hole (16) of the cover is located") is rendered obvious for the skilled person starting from OV11 in view of D9 (DE 10 2004 008 435 A9), D4 (DE 10 2004 056 A1) or D5 (FR 2 869 263 A1).

Feature c) is derived from technical drawing D11, showing that the bumper's longitudinal shape and cross section (i.e. longitudinal shape and cross section in a horizontal plane as viewed from above) is curved, and that the crash box extends into said curved cross section. There are no valid reasons to construe feature c) as implying that the crash box extends into the bumper's vertical cross section (as was done in the

appealed decision), such an interpretation not being supported by the patent specification (hereinafter designated as EP-B). Feature e) is known from technical drawings D11 B-B and D11 E-E, showing that the crash box has a cover welded thereto. As to feature s), this is known from prior use OV11, the bumper bar having (see D11 B-B), as seen in vertical cross section, an overall shape forming a protuberance, said sleeve being mounted on the front face of the protuberance. Additionally, a protuberance is also formed in the longitudinal horizontal cross section (see view from above in D11) at the location where the crash box is mounted to the bumper. Finally, feature t) would be obvious for the skilled person in view e.g. of D9 (or of D4, D5), these documents showing an indentation directed into the crash box with a hole for mounting said sleeve.

The prior us OV11 was made publicly available, since the front bumper (as illustrated in the technical drawings D11) was mounted on the vehicle BMW X5 E70, which was for sale on the market starting from August 2006. This front bumper was produced by Benteler (from 2006 to 2013) in the United States and delivered to BMW's factory in Spartanburg (USA). This is confirmed by the affidavit (EV) of Mr. Ulrich Lütke-Bexten. Further evidence of the prior use is provided by documents D13 and D14. D13 includes the German registration certificate of a vehicle BMW X5 E70 having chassis number WBAFF01070L205883 (dated of 23.07.2008, before the relevant priority date 17.12.2009) and includes photographs of the vehicle and of the bumper. This is confirmed by D14, representing a notary attestation of the evidence provided in D13. Hence, on the balance of probabilities, sufficient evidence is provided for the public availability of the prior use.

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

The subject-matter of claim 1 is new over the alleged public prior use OV11. Indeed, it does not disclose anyone of features c), e), s) and t) and these features are not rendered obvious from the prior art.

To begin with, feature c) is not shown by OV11, given that the crash box shown in drawings D11 does not "extend into the bumper bar". It ensues from the overall disclosure of EP-B that this feature has to be construed as in the appealed decision, requiring the crash box to extend into the vertical cross section of the bumper bar. This is derivable from the figures (in particular figure 4 in EP-B) and from the description, stating that the mounting plate 13 (or cover 13) "is welded to the outer part of the bumper bar" (EP-B, column 2, lines 5-6). Further, it is confirmed by the citation of the relevant prior art EP 1 736 369 A2 (D7) in EP-B (paragraph [0002]) as showing the closest prior art representing the preamble of claim 1, this document clearly illustrating that the crash box is directly mounted to the outer front face of the bumper bar according to preamble of claim 1.

Feature e) is likewise not disclosed in OV11, for a cover is not provided, merely a mounting bracket being shown in D11. Indeed this constructional part is separate and distinct from said crash box, it is not substantially flat and has a flanged outer portion, thus not defining a cover, instead being a part of the bumper bar being used as mounting bracket for mounting the crash box to the bumper bar.

Feature s) is also not disclosed by OV11, since the bumper is not provided with a protuberance having a hole for receiving said sleeve. Finally, feature t) is not rendered obvious by the cited prior art, for the skilled person starting from OV11 would not have any incentive to modify the bumper bar of OV11 according to feature t), i.e. by forming an indentation in which a hole is located, directed into the crash box.

The alleged prior use OV11 was not made publicly available, for it has not been proved that the bumper bar shown in technical drawings D11 is the same bumper bar which was for sale on the market mounted to said BMW X5 E70 starting from August 2006. In particular, BMW part number "7165458" does not indicate a specific bumper but only generally specifies a type of bumper. In other words, the bumper mentioned respectively in document D13 and in the affidavit EV is not necessarily the same identical bumper. Accordingly, documents D13 and D14 are factually a completely new alleged prior use, which was not substantiated within the opposition period, and thus should not have been admitted. The circumstances under which the vehicle of D13, D14 was made publicly available are not proved, the vehicle being owned by a firm or company (Logiball GmbH) and there being no information about this vehicle being publically used by this firm after the vehicle's registration on July 23, 2008.

Reasons for the Decision

1. The appeal is admissible.
2. In the Board's judgement the alleged prior use OV11 was made publicly available and therefore constitutes prior art according to Article 54(2) EPC.
The Board also concurs with the decision of the Opposition Division to admit late filed documents D13 and D14 into the opposition proceedings, as these documents provide additional evidence for the public availability of the prior use.

The affidavit (EV) of Mr. Ulrich Lütke-Bexten states that the bumper of the prior use was mounted on the vehicle BMW X5 E70, which was available for sale on the market starting from August 2006. Further, according to the affidavit (EV), the bumper was built according to technical drawings D11 (from 2006 to 2013), having Benteler-drawing number BMP4-21794-BC, the BMW-component number 7165458 being printed beside the Benteler-drawing number. This is confirmed and proved by D13 and D14, D13 including a German registration certificate of a vehicle BMW X5 E70 dated of 23.07.2008 (before the relevant priority date) and including photographs of the vehicle and of the bumper, D14 representing a notary attestation of the evidence provided in D13. The photographs in D13 show said BMW-component number on the vehicle's bumper and the geometrical shape of the bumper being the same as illustrated in D11. Moreover, the bumper was brought by the Appellant to the oral proceedings before the Opposition Division for visual inspection and the testimony of Mr. Ulrich Lütke-Bexten was likewise

offered (which was however declined by the Opposition Division).

Under these circumstances it is considered that the proper standard of proof to be adopted is the "balance of probabilities". Indeed, it is clear that given the vehicle being on sale on the market (as proved by D13 and D14), all the evidence did not reside within the Opponent's sphere of control, and that the Patentee could have procured the evidence as well, in particular to verify that BMW X5 E70 vehicles including said bumper were available on the market for sale to the public and to potential customers before the priority date of the contested patent.

D13 and D14 prove in particular that a vehicle BMW X5 E70 with a bumper having said component number was sold and made publicly available before the relevant priority date, thus also proving that a multiplicity (possibly thousands) of other similar vehicles were already sold (i.e. made publicly available) by that date (23.07.2008), said vehicle according to D13 evidently being no prototype.

Finally, the affidavit establishes that "said component" (i.e. referring explicitly to the bumper depicted in drawing D11, having Benteler-drawing number BMP4-21794-BC) was produced by Benteler in the USA from 2006 to 2013" for mounting to BMW X5 E70 vehicles. Therefore, on the balance of probabilities it can be safely assumed (contrary to the Patentee's view), as bumper photographs and BMW-component number on the bumper illustrated in D13 and D14 likewise demonstrate, that the bumper disclosed in D11, concerning its constructional, configurational and technical aspects, is the same bumper as in D13 and D14. More importantly, the Patentee did not put forward any argument whatsoever concerning purported or supposed

constructional differences, despite having the opportunity to access and inspect the bumper of D13 and D14 which was made available for inspection by the Opponent.

In view of the above reasons it is concluded that prior use OV11 was publicly available.

3. The subject-matter of claim 1 is inventive (Article 56 EPC) over the alleged prior use OV11 in view of D9 (or D4, D5).

The claimed subject-matter differs from the public prior use OV11 in that in the Board's view disputed features s) and t) are not known therefrom, whereas features c) and e) are disclosed by said prior use. Indeed, feature c) should not be construed in a more limited way than is implied by the broad wording of claim 1, claim 1 not including any support for interpreting the wording "extending into the bumper" as in the appealed decision. Specifically, the wording of claim 1 in no way implies (explicitly or implicitly), that said cover or mounting plate 13 is "welded to the outer part of a bumper bar 14" (EP-B, column 2, lines 5-6), or that it extends into the vertical cross section of the bumper bar. Therefore it is entirely reasonable and justified to construe broadly worded feature c) as encompassing the configuration illustrated in drawings D11, i.e. the crash box extending into the longitudinal curved cross section of the bumper bar. In addition, D11, D11 B-B disclose that the crash box is contiguous and connected to the bumper bar (by means of the cover welded thereto), thus effectively contacting and extending into the bumper bar.

Feature e) is known from OV11, since the constructional part shown in drawings D11, D11 B-B (interposed between the bumper and the crash box) actually covers

the interior volume of the crash box, thus constituting a cover. Moreover, the "cover" mentioned in claim 1 is also designated as "mounting plate 13" in EP-B (see column 2, lines 5-7), thus no difference being given between said cover of claim 1 and the cover shown in D11.

Features t) and s) are not known from OV11. In effect, it can be inferred from technical drawings D11 and D11 B-B that the portion of the bumper's front face located in front of the crash box is flat and planar, thus no protuberance being provided (even considering the longitudinal bumper configuration or cross section in horizontal plane view). Also, the bumper's overall shape (as seen in vertical cross section) cannot be regarded as representing said protuberance (as alleged by the Appellant), given common known bumpers generally and self-evidently having an outwardly curved C-shape or U-shape as seen in cross section. The protuberance has therefore to be construed as forming a clearly identifiable local deviation from a regular, commonly known bumper shape (i.e. C-shaped or U-shaped), forming a protrusion or blown-up portion. Such a protuberance is not disclosed by OV11.

As to feature t), OV11 merely discloses an indentation, which is not directed into the crash box.

The combination of aforesaid features s) and t), distinguishing the claimed subject-matter from prior use OV11, is not rendered obvious by the cited prior art documents D9, D4 or D5.

Indeed, features s) and t) aim at stabilizing the towing eyelet or sleeve when it is pulled at an angle, providing the necessary axial distance between said coaxial holes, respectively formed in the bumper's front face and in said cover (see EP-B, [0003]; [0005], lines 19-24). This technical problem arises in D7 (EP

1736 369 A2) (cited in EP-B, see above), representing the starting point of the invention, where said cover directly contacts the front face of the bumper, however not in prior use OV11 having considerable axial distance between said cover and the bumper's front face. Hence, it would not be obvious for the skilled person to implement features s) and t) in view of the object of the invention (as stated in EP-B) when starting from OV11.

Nevertheless, the Appellant considers that features t) and s) would be obvious for the skilled person, in view of the necessity in specific cases of having to adapt said axial distance between said coaxial holes to given dimensions of said towing sleeve.

The Board takes the view that this technical problem is rather artificial under the present circumstances, given that prior art OV11 is a prior use representing a very specific concrete technical implementation of a bumper bar, wherein all components and parts have been conceived, dimensioned and tested in order to fit and cooperate together and mutually concur to obtain optimum results concerning crash and towing aspects. This of course includes the sleeve, which is shown in detail in technical drawing D11 B-B of the prior use OV11. Consequently, the problem mentioned by the Appellant hardly would arise and is certainly not realistic, otherwise the overall design of the bumper bar would have been a different one. In particular, it is evident that different dimensions of said sleeve (e.g. allowing for higher towing forces) could also affect specific dimensions of the bumper bar and crash box.

It is therefore concluded that the skilled person would not arrive in an obvious manner at the subject-matter of claim 1.

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 as amended in the following version:
 - Claim 1 according to the main request filed as auxiliary request 3 on 7 February 2019 with the reply to the statement of grounds of appeal.
 - Description: columns 1, 2 as filed during the oral proceedings.
 - Drawings 1-4 of the patent as granted.

The Registrar:

The Chairman:



D. Magliano

G. Pricolo

Decision electronically authenticated