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**Datasheet for the decision
of 11 January 2021**

Case Number: T 2619/18 - 3.2.01

Application Number: 04015663.0

Publication Number: 1493618

IPC: B60N2/70, B60N2/72

Language of the proceedings: EN

Title of invention:

Seat structure

Patent Proprietor:

FICO CABLES LDA

Opponent:

Pullmaflex Benelux N.V.

Headword:

Relevant legal provisions:

EPC Art. 100(c), 100(a)

RPBA Art. 12(2), 12(4)

RPBA 2020 Art. 13(2)

EPC R. 103(1)(a)

Keyword:

Grounds for opposition - subject-matter extends beyond content of earlier application (no) - lack of novelty (no) - lack of inventive step (no)

Amendment after summons - exceptional circumstances (no)

Reimbursement of appeal fee - (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 2619/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 11 January 2021

Appellant:

(Patent Proprietor)

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Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
21 August 2018 concerning maintenance of the
European Patent No. 1493618 in amended form.**

Composition of the Board:

Chairman

G. Pricolo

Members:

S. Mangin

S. Fernández de Córdoba

A. Wagner

A. Jimenez

Summary of Facts and Submissions

- I. The appeals were filed by the appellant 1 (opponent) and appellant 2 (proprietor) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1 (oa", revised version), the patent in suit (hereinafter "the patent") met the requirements of the EPC.
- II. During the opposition proceedings, the opponent had raised the grounds for opposition under Article 100(a) EPC (lack of novelty and/or lack of inventive step) and 100(c) EPC.
- III. The opposition division decided that
 - (1) the subject-matter of the claims as granted extended beyond the content of the application as filed;
 - (2) the subject-matter of the claims as amended during the opposition proceedings according to auxiliary request 1 (oa", revised version filed during oral proceedings) did not extend beyond the content of the application as filed, was novel over D1, D6, D15 and D17 and involved an inventive step starting from D1-D4, D6 and D18.
- IV. The appellant 2 (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted or alternatively, that the appeal of the opponent be dismissed or that the patent be maintained according to the auxiliary request oa" in the version filed with the letter dated 8 January 2021 or that the patent be maintained based on one of the auxiliary requests ob, 1, 1a, 1a", 1b, 2, 2a, 2a", 2b, 3, 3a, 3a", 3b, 4, 4a, 4a" and 4b, in the

version mentioned in the reply to the opponent's grounds of appeal or as filed with the letter dated 4 January 2021.

The appellant 1 (opponent) requested that the decision under appeal be set aside and that the European patent be revoked.

V. Oral proceedings were held before the Board on 11 January 2021.

VI. Claim 1 of the main request reads as follows:

A seat structure (1) for supporting a seat cushioning, in particular for motor vehicle seats, comprising:

- a. a support structure (40) having at least two lateral wire elements (42) between which a plurality of transverse wires (44) extends curvilinearly, wherein
- b. at least two of said transverse wires (44) extend beyond the lateral wire elements (42) terminating in connecting ends (46);
- c. a seat frame (20) at least partly surrounding said support structure (40), wherein said connecting ends (46) are attached at the inside (30) of said seat frame (20) directed to said support structure (40) and
- d. mounting means (32) are rigidly arranged at the inside (30) of said seat frame (20) directed to said support structure (40), which mount said support structure (40) within said seat frame (20) by means of a direct connection with said connecting ends (46); characterized in that
- e. said connecting ends (46) comprise a hook structure (48);
- f. the planes of the hook structure (48) are substantially perpendicularly aligned to the adjacent lateral wire element (42);

g. said mounting means (32) are integrally worked out from the inside (30) of said seat frame (20) and comprise a window (36) and a closed loop (32), which is formed by a web bridging said window (36);
h. said hook structure (48) of said connecting ends (46) is directly hooked in said closed loop (32).

VII. In the present decision, reference is made to the following documents:

D1: GB2342286
D2: FR2743271
D3: GB2342287
D4: GB2341087
D6: US2003/085600
D10: US6132003
D11: EP0625445 A1
D12: GB1133804
D13: JP2000-350637
D14: EP1179308 A1
D17: Alleged public prior use P5, "Renault X76", "Renault X65" and "Mercedes SCS 2000"
D18: Alleged public prior use P3, "Renault X56"
D17a: Document based on D17 with further information regarding the alleged public prior use P5, "Renault X76", "Renault X65" and "Mercedes SCS 2000"
D18a: Document based on D18 with further information on Alleged public prior use P3, "Renault X56"
D25: Technical drawings of seats of the prior use "Renault Megane II"
D26: CAD drawings of particulars of seat of the prior use "Renault Megane II"
D27: Affidavit From Mr. Leclerc in relation with the prior use "Renault Megane II"
D28: pictures of seats disassembled from a Renault Megane II from 2002, for benchmarking purposes.

D29: pictures of a seat disassembled from a Renault Megane II from 2003 and brought online.

Annexes 1-5:

pictures of the prior use "Renault X76" brought for inspection at the oral proceeding in opposition, submitted with the grounds of appeal of appellant 1.

Annexes 6-9:

pictures of the prior use "Renault X65" brought for inspection at the oral proceeding in opposition, submitted with the grounds of appeal of appellant 1.

Reasons for the Decision

Main request: Patent as granted

1. Article 100(c) EPC

The patent as granted does not extend beyond the content of the application as originally filed.

- 1.1 Appellant 1 is of the opinion that features f. and g. extend beyond the content of the application as originally filed. As a matter of fact,
- feature f. with the term "planes" in the plural form requires that the hook structure has several planes and this cannot be derived from the application as originally filed, and
 - feature g. was amended in a way that it now implies that the mounting means comprise a window, and this cannot find a basis in the application as originally filed. Referring to page 13, line 28 - page 14, line 10, page 14, lines 17- page 15, line 8 and figures 2 and 3, appellant 1 is of the opinion that it is the seat frame that comprises the window and not the

mounting means. Appellant 1 further refers to D10, figure 10, for illustrative purposes, allegedly disclosing a frame comprising a window and a mounting means wherein the mounting means clearly cannot be considered to comprise the window.

1.2 The Board judges that claim 1 as granted does not extend beyond the content of the application as originally filed for the following reasons:

- feature f., based on original dependent claim 4, defines that *"the planes of the hook structure (48) are substantially perpendicularly aligned to the adjacent lateral wire element (42)"*. The term "plane" which was in the singular form in original dependent claim 4 has been introduced in claim 1 in the plural form. Since there is only one plane of the hook structure that can be perpendicular to the adjacent lateral wire element, the skilled person would directly derive from feature f. as a whole that either the planes (plural) refer to the planes of the hook structures (plural) or that the term "planes" refers to the plane (singular) of a hook structure (singular). Therefore feature f., with the term "planes" in the plural form does not confront the skilled person with any new teaching extending beyond the content of the application as originally filed.

- feature g. defines that *"said mounting means (32) are integrally worked out from the inside (30) of said seat frame (20) and comprise a window (36) and a closed loop (32), which is formed by a web bridging said window (36)"*. Whether the wording used is such that it is the mounting means which comprise the window or whether it is the frame which comprises the window, the technical teaching is the same as the mounting means are

integrally worked out from the frame resulting in a closed loop bridging the window.

The reference to document D10 is irrelevant, contrary to the opinion of appellant 1, because in figure 10 of D10 there is no closed loop formed by a web bridging the window as required by feature g. In figure 10, the window (6b) is rather surrounded by a frame, which cannot be considered as a loop bridging the window. In figure 10 the mounting means and the frame comprise only a hole.

2. Article 100(a) EPC - Novelty

The subject-matter of claim 1 is novel over the prior use "Renault X65" and over the prior use "Renault X76" which technical features are as shown in documents D17, D17a and the pictures annexed by the appellant 1 with its ground of appeal.

2.1 The subject-matter of claim 1 differs from the prior use "Renault X65" in that the mounting means comprise a closed loop, which is formed by a web bridging the window (feature g).

The prior use "Renault X65" discloses holes in the frame without any closed loop formed by a web bridging the window.

Appellant 1 is of the opinion that the patent does not give any indication of what is meant by a "closed loop formed by a web bridging said window" and that there is no reason not to consider a part of the frame as the web bridging the window. Accordingly, the part of the frame between the round hole and the end of the frame can be considered as a closed loop, which is formed by a web bridging the window (the round hole).

The Board disagrees and considers that in accordance with the normal reading of claim 1, the web bridging the window in feature g. requires that on each side of the closed loop formed by the web, there is a part of the window. This is moreover confirmed by figures 2 and 3 of the patent. Therefore, the part of the frame surrounding the round hole in the prior use "Renault X65" (annexes 6-9) cannot be considered as a web bridging the round hole according to feature g.

- 2.2 The subject-matter of claim 1 differs from the prior use "Renault X76" in that the support structure comprises two mounting means comprising a window and a closed loop formed by a web bridging the window for hooking at least two hooks of two transverse wires (see feature b).

The prior use "Renault X76" has at most two mounting means comprising a window and a closed loop formed by a web bridging the window for the hooks placed on the same lower transverse wire, thus not for hooks on two different transverse wires.

Appellant 1 is of the opinion that the number of mounting means comprising a window and a closed loop formed by a web bridging the window is not defined in claim 1 and that the prior use "Renault X76" comprising two mounting means comprising a window and a closed loop bridging the window is novelty destroying.

The Board does not agree with appellant 1. Feature b. of claim 1 requires that *"at least two of said transverse wires (44) extend beyond the lateral wire elements (42) terminating in connecting ends (46)"* and that *"said hook structure (48) of said connecting ends (46) is directly hooked in said closed loop (32)"* according to feature h, whereby the arrangement of the

closed loop is defined in feature g. Thus claim 1 requires at least four mounting means according to feature g, to connect the two ends of the at least two transverse wires.

2.3 The Board does not admit in the appeal proceedings:

- the novelty objection based on the prior use "Mercedes SCS 2000" with the static suspension disclosed in D17a and
- documents D25-D29 and the novelty objection based on the prior use "Renault Megane II" having the features shown in documents D25-D29.

2.3.1 The novelty objection based on the prior use "Mercedes SCS 2000" with the static suspension, documents D25-D29 and the novelty objection based on the prior use "Renault Megane II" having the features shown in documents D25-D29 were submitted by appellant 1 for the first time with their letter of 10 December 2020, after the notification of a summons to oral proceedings. In accordance with Article 13(2) RPBA 2020 (which applies in the present case as the summons to oral proceedings was issued after entry into force of the revised RPBA, see Article 25(3) RPBA 2020), an amendment to a party's appeal case made after the 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.

2.3.2 Appellant 1 argues that the novelty objection based on the prior use "Mercedes SCS 2000" with the static suspension does not constitute an amendment to their appeal case after the notification of the summons to oral proceedings as the objection was raised in:

- (i) the originally filed opposition (cf page 6, lines 8-23);
- (ii) the statement setting out the grounds of appeal (cf page 18, last 2 lines and page 19, first two lines), and
- (iii) the response to the proprietor's appeal (cf. page 5, line 1-4).

Furthermore the appellant is of the opinion that the prior use "Mercedes SCS 2000" is prima facie novelty destroying, that the evidence was already present in opposition proceedings (document D17a) and that the discussion would be short.

- 2.3.3 The Board judges that the novelty attack based on the prior use "Mercedes SCS 2000" with the static suspension is an amendment to the appeal case of appellant 1 made after the notification of a summons to the oral proceedings for the following reasons:

- (i) Page 6, lines 8-23 of grounds of opposition reads:

As explained in attachment D17, the hooks of the transverse wires of the "P5" suspension mat were provided to be hooked into different geometries of mounting means of a seat frame. Attachment D17 i.a. shows an example for an attachment using a lug or loop as a mounting means that is rigidly arranged at the inside of the seat frame and is integrally worked out from the inside of the seat frame. In addition, attachment D17 also shows an example for a different type of attachment in connection with the Mercedes SCS 2000 project, which is referred to as a "dogbone attachment" in D17. According to this "dogbone attachment", the respective hook is hooked into a closed loop which forms a web bridging a window formed in the inside of the respective seat frame. This type of attachment is identical to the preferred embodiment which is shown in Fig. 3 of the opposed European patent.

Consequently, attachment D17 does not only anticipate all the features of the preamble of independent claim 1 of EP 1 493 618 B1, but it also anticipates the characterizing features of claim 1, so that claim 1 is not allowable for lack of novelty over D17.

The above novelty objection against claim 1 in view of D17 and in particular in view of the prior use Mercedes SCS 2000 project is limited to the fact that a "dogbone attachment" is disclosed (see page 10 of D17).

D17 which was filed with the statement of grounds only discloses the "2 way manual suspensions" and not the "static suspension". Therefore, the opponent (appellant 1) did not raise the objection of lack of novelty in view of the Mercedes SCS 2000 project with the static suspension with their notice of opposition.

(ii) Pages 18-19 of the statement setting out the grounds of Appeal reads:

As regards the additional features defined in the dependent claims and the subject-matter of the other auxiliary requests submitted by the Patent Proprietor, to

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avoid unnecessary repetitions reference is made to the corresponding observations filed by the Opponent during the first-instance opposition procedure.

This passage is a general reference to the opposition proceedings for the dependent claims and the other auxiliary requests and not for claim 1 of the patent as granted. Furthermore, the legal and factual reasons why the decision should be set aside are not stated in this passage.

(iii) Page 5, lines 1-4 of the response to the proprietor's appeal reads:

in order to avoid repetitions, reference is made to said statement setting out the Grounds of Appeal filed on December 20, 2018 as well as the corresponding submissions filed during the written procedure of the first-instance opposition proceedings.

This passage is also a general reference to the grounds of appeal and the opposition proceedings, with no legal and factual reasons given.

The two above general references do not meet the requirements of Article 12(3) RPBA 2020 (which corresponds to Article 12(2) RPBA 2007) as they do not set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld and do not specify expressly all facts, arguments and evidence relied on, and are not taken into consideration in accordance with Article 12(4) RPBA 2007, last sentence.

Therefore the objection of lack of novelty of claim 1 in view of the prior use "Mercedes SCS 2000" with the static suspension, specifying expressly the facts, arguments and evidence relied on, is raised by appellant 1 for the first time with the letter of 10 December 2020, after the notification to the summons to oral proceedings and constitutes an amendment to the appeal case which shall in principle not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concern.

In the present case, while the prior use "Mercedes SCS 2000" with the static suspension may be prima facie relevant, based on evidence already submitted in opposition (D17a) and the discussion required be short,

this cannot constitute exceptional circumstances justified with cogent reasons that could justify its admittance under Article 13(2) RPBA 2020. On the contrary if the evidence was submitted in opposition proceedings and if it was prima facie relevant then it could and should have been raised in opposition proceedings and with the statement of grounds of appeal. There was no reason to delay its submission.

2.3.4 Regarding the novelty objection based on the prior use "Renault Megane II" based on documents D25-D29 submitted with letter of 10 December 2020, appellant 1 argues that documents D25 and D26 could only be submitted at this stage as:

- the documents are not publicly accessible
- they rely entirely outside the control of the opponent
- they are almost 20 year old relating to products which have been long out of production, so that even after many exchanges with the companies involved, over the course of several months, it took a significant time to recover them.

Document D27 was not submitted sooner as it would not have been relevant to the proceedings without D25, D26. Documents D28 and D29 have only been identified following the discovery of D25.

Furthermore appellant 1 considers that the technology is not complex and could be dealt with during the oral proceedings before the Board.

2.3.5 While D25 and D26 might be difficult to retrieve, appellant 1 gave no reasons why they could only be filed after the summons to oral proceeding in appeal in 2020, considering that the notice of opposition was filed in 2015. As acknowledged by appellant 1, the more

time passes between the stop of production, the more difficult it is to retrieve the necessary information. Therefore, the reasons alleged by appellant 1 do not constitute exceptional circumstances justified with cogent reasons.

Furthermore prima facie relevance and non-complexity of the late filed evidence do not constitute cogent reasons at this stage of the proceedings, because otherwise an appellant could submit (highly) relevant documents for the first time in appeal and expect the documents to be admitted into the appeal proceedings on grounds of relevance and/or non-complexity only. Anyhow, in the present case the allegation of prior use not only involves the issue of relevance but also the issue of public availability, with the assessment of the available evidence, that might give rise to questions that would unduly delay the proceedings.

3. Article 100(a) - Inventive step

- 3.1 The subject-matter of claim 1 involves an inventive step in view of "Renault X56" (document D18) in combination with D12, D13 or D14 and the skilled person's common general knowledge.

The prior use "Renault X56" disclosed in documents D18 and D18a differs from the subject-matter of claim 1 in that:

- (i) the mounting means are integrally worked out from the inside of said frame (feature g). In the prior use "Renault X56", the mounting means are plastic clips inserted into the seat frame;
- (ii) at least two transverse wires extend beyond the lateral wire elements terminating in connecting ends (feature b). In the prior use "Renault X56", additional

wires are laterally attached to the support structure to connect it to the seat frame.

The two above mentioned differences do not interact with each other and do not lead to any synergetic effect, such that two partial problems can be identified.

While appellant 1, with letter of 10 December 2020, defined the objective partial technical problem associated to the difference (i) as to minimize the manufacturing effort of the seat, appellant 1 redefined the partial objective technical problem during oral proceedings as to save material. According to appellant 1, the skilled person would combine the prior use "Renault X56" with the teaching of D12, D13 or D14 thereby arriving at the subject-matter of claim 1. Furthermore, appellant 1 argues that:

- The specific dimensions and orientation of the mounting means, besides not being claimed, are at most a matter of simple modifications, which the skilled person would perform without the exercise of any inventive skills, in order to adapt the mounting means to the orientation of the hooks as needed.
- The clips of the prior use "Renault X56" are recognised as viable alternative to the claimed mounting means in the patent itself, see figure 7.
- The replacement of the clips with the mounting means "worked out" from the frame is not only providing technical advantages, but also disadvantages as they generate more noise in operation.

As regards difference (ii), appellant 1 is of the opinion that the objective problem associated thereto is to provide an alternative way of attaching the suspension mat to the seat frame, and that this

alternative is part of the common general knowledge of the skilled person as illustrated by documents D1-D4 or D6.

While the Board agrees with the partial problem solution approach based on the difference (ii) presented by appellant 1, the Board judges that the difference (i) involves an inventive step.

Documents D12, D13 and D14 deal with seat frame capable of securing individual sinuous / zigzag springs, whereas the prior use "Renault X56" comprises a suspension mat comprising two lateral wires, on which the transverse wires are connected. The skilled person would not consider the seat frames of D12, D13 and D14 when looking for a suitable frame for mounting the suspension mat of the prior use "Renault X56", which has other requirements than the individual sinuous springs that are mounted independently from each other.

In particular, D12, page 1, lines 17-46, is directed at securing the end of sinuous springs to a tubular lower frame of the seat. Starting from the prior use "Renault X56", which comprises a suspension mat with wires ending in a hook perpendicular to the seat frame attached to the side of a non tubular shaped frame, the skilled person would not consider D12.

D12, page 2, lines 19-24, further discloses that the bridge 7 is made with sufficient width and length to accommodate an end portion of the sinuous spring 2 and that in the lower edge of each hole 5, a shoulder is formed 6 to secure the sinuous spring. These requirements are proper to the sinuous spring to avoid their longitudinal displacement and rotation, requirements that are not relevant for the suspension mat of the prior use "Renault X56".

D13 (Japanese document) discloses on figures 1, 2 and 5 rather long bridges on a non-tubular frame to secure sinuous springs. Since appellant 1 did not refer to the description and did not provide a translation of the document, no further information can be taken from this document. Starting from the prior use "Renault X56", the skilled person has no incentive to look into D13 to solve the objective problem of saving material.

As for D14, the object of the invention is to improve the rigidity of a seat back frame assembly without deteriorating a comfort obtained with zigzag springs (see paragraph [0007]). While figures 2 and 3 depict the zigzag springs attached to the frame, nothing in the description relates to the mounting means and their arrangement. On figures 2 and 3, the mounting means do not even have a reference number. The teaching of D14 is actually not directed to the mounting means for securing the zigzag springs to the seat frame but rather to the seat frame itself.

To conclude the skilled person has no incentive to consider D12, D13 and D14.

Should the skilled person consider modifying the prior used object "Renault X56" with the aim of saving material, argued by the appellant 1, then the skilled person "could" save material by changing the plastic clips to mounting means integrally worked out from the inside of the frame, but the determining question that has to be answered is whether the skilled person "would" do this. Starting from the prior use "Renault X56", there is no reason for the skilled person to specifically focus on details such as the mounting means when faced with the problem of saving material,

as modifications thereof would not be expected to lead to substantial savings, if any. Rather, the skilled person would focus on design of the frame as a whole.

Should the skilled person nevertheless consider combining the prior use "Renault X56" with any of D12 to D14, then the skilled person would have to modify extensively the mounting means of D12 to D14. The orientation and the size of the mounting means would need to be adapted in view of the orientation and the shape of the hooks of the suspension mat of the prior use "Renault X56" illustrated on page 6 of D18a and in view of the shape of the frame of the prior use "Renault X56" illustrated on pages 9 and 10 of D18a. These modifications cannot be considered straight forward as alleged by appellant 1 in view of all the constraints, dictated by the suspension mat and the frame of the prior use "Renault X56".

Appellant 1 further argues that the mounting means worked out from the seat frame do not only have advantages but has the disadvantage of being noisy during use. This alleged disadvantage, however, would rather discourage the skilled person from using mounting means worked out from the seat frame.

3.2 The following objections are not admitted in the appeal proceedings:

(i)- The inventive step objection starting from the prior use "Renault X56" (D18) in combination with D11 and D17, D17a, prior use "Mercedes SCS 2000" and prior use "Renault X76", and D25, prior use "Renault Megane II" as well.

(ii)- All inventive step objections starting from D1.

(iii)- All inventive step objections starting from D6.

(iv)- All inventive step objections starting from D17, D17a, the prior use "Renault X65".

(v)- The inventive step objection starting from D17, D17a, the prior use "Renault X76".

Similarly to the novelty objections based on the prior use "Mercedes SCS 2000" and the prior use "Renault Megane II", these new inventive step objections constitute amendments to appellant 1's case that were only made by appellant 1 with letter of 10 December 2020 after the notification to the summons to oral proceedings.

According to Article 13(2) RPBA 2000, these inventive step attacks shall not be taken into account unless there are exceptional circumstances, which have been justified by cogent reasons by the party concern.

- 3.2.1 (i) Regarding the inventive step objections starting from the prior use "Renault X56" (D18) in combination with D11 and D17, D17a, prior use "Mercedes SCS 2000" and prior use "Renault X76", appellant 1 argued that the documents were already part of the opposition proceedings. As to the combination with D25, prior use "Renault Megane II", appellant 1 is of the opinion that the objection is not complex.
- (ii) and (iii) Regarding the inventive step objections starting from D1 and D6, appellant 1 argued that they were raised in opposition proceedings.
- (iv) Regarding the inventive step objections starting from the prior use "Renault X65", appellant 1 argued that the attacks are similar to the one starting from the prior use "Renault X56".
- (v) Regarding the inventive step objection starting from the prior use "Renault X76", appellant 1 argued

that it is not complex as the difference has no technical advantage.

Furthermore, appellant 1 argued that in opposition proceedings a large number of requests submitted by the proprietor were admitted such that the inventive step objections submitted on 10 December 2020 should be admitted.

- 3.2.2 The above reasons cannot be considered as exceptional circumstances, which have been justified by cogent reasons.

The fact that an inventive step objection was raised in opposition proceeding or based on documents that were in opposition proceedings, cannot justify raising the objection after the notification of the summons to attend oral proceedings before the Board. On the contrary appellant 1 already had all the facts and evidence at their disposal and could have raised the inventive step objections with the statement of grounds of appeal. For these reasons the inventive step objections starting from the prior use "Renault X56" (D18) in combination with D11 and D17, D17a, prior use "Mercedes SCS 2000" and prior use "Renault X76", and all the objections starting from D1, D6, the prior use "Renault X65", and the prior use Renault X76 are not admitted in the proceedings. All these inventive step objections were either raised during opposition proceedings or based on documents which were submitted in opposition proceeding, and were not raised with the grounds of appeal of appellant 1 or the reply to appellant's 2 grounds of appeal but only after the notification to the summons to oral proceedings was issued, with the letter of 10 December 2020.

Furthermore the Board does not admit documents D25-D29 as well as the novelty attack based on them (reference

is made to point 2.3.5). For the same reasons an inventive step attack based on documents D25-D29 is not admitted.

Finally the large number of requests admitted in opposition proceedings by the opposition division cannot justify the late filed submitted inventive step objections as the inventive step objections concern granted claim 1.

4. Appellant 1 alleged that the opposition division committed substantial procedural violations which justified a reimbursement of the appeal fee pursuant Rule 103(1)(a) EPC.

According to Rule 103(1)(a) EPC, a pre-requisite for the reimbursement of the appeal fee is that the Board deems the appeal to be allowable. As has been set out above, the appeal of appellant 1 has to be dismissed. This means that the pre-requisite mentioned in Rule 103 EPC for the reimbursement of the appeal fee is not fulfilled in the present case. Therefore, the reimbursement of the appeal fee is not possible.

Order

For these reasons it is decided that:

- The decision under appeal is set aside.
- The patent is maintained as granted.

The Registrar:

The Chairman:



D. Magliano

G. Pricolo

Decision electronically authenticated