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**Datasheet for the decision
of 7 July 2020**

Case Number: T 2514/19 - 3.2.01

Application Number: 14723175.7

Publication Number: 2969726

IPC: B62K25/20, B62K25/28

Language of the proceedings: EN

Title of invention:

BICYCLE REAR SUSPENSION

Applicant:

Voss, Darrell W.

Headword:

Relevant legal provisions:

EPC Art. 84, 123(2), 111(1)
RPBA 2020 Art. 11

Keyword:

Claims - clarity (yes)

Amendments - extension beyond the content of the application
as filed (no)

Appeal decision - remittal to the department of first instance
(yes)

Decisions cited:

Catchword:



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Case Number: T 2514/19 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 7 July 2020

Appellant: Voss, Darrell W.
(Applicant) P.O. Box 119
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Representative: Dickerson, David
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 March 2019
refusing European patent application No.
14723175.7 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman H. Geuss
Members: J. J. de Acha González
S. Fernández de Córdoba

Summary of Facts and Submissions

- I. The appeal of the applicant lies against the decision of the Examining Division to refuse the European patent application 14723175.7.
- II. In its decision the Examining Division held among others that the independent claim 1 of the underlying main request (filed on 18 May 2016) did not meet the requirements of clarity as set under Article 84 EPC with regard to the expressions "drivetrain force" and "substantially aligned".
- III. The Board in its communication pursuant to Article 15(1) RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) expressed its preliminary view of the case. It considered among others that claim 1 of the main request (underlying the contested decision) did not meet the requirements of Article 84 EPC with regard to the expression "substantially aligned" and that the subject-matter of claim 1 of the main request did not meet the requirements of Article 123(2) EPC since it represented an intermediate generalisation of the subject-matter of claims 1, 3 and 26 as originally filed.
- IV. Oral proceedings before the Board were held on 7 July 2020.
- V. The appellant requested that the decision under appeal be set aside and that a patent be granted according to the second auxiliary request filed during oral proceedings before the Board (now main request), or in the alternative according to the third to fourth

auxiliary requests filed during oral proceedings before the Board.

VI. The only independent claim, claim 1, of the main request reads as follows (amendments with respect to claim 1 as originally filed highlighted by the Board):

"1. ~~A motion control system for a vehicle (10) comprising:~~
a front structure (14),
a rear structure (16), and
a drivetrain (78) that induces a drivetrain force (146) between the front and the rear structures when the vehicle is under load acceleration, and
a motion-control system the system comprising:
 a first member (48) coupling the front and the rear structures at coupling locations, ~~a line between the coupling locations at the front and the rear structures being substantially aligned with the drivetrain force;~~ and
 a second member (46, 88) coupling the front and the rear structures, wherein
the first member is positioned above the second member,
said second member guides the front and the rear structures throughout a range of relative motion,
the first member transmits at least 75% of the drivetrain force,
said drivetrain force is a chain force, and
said first member is situated and oriented relative to said drivetrain force such that a suspension of the vehicle does not travel substantially or induce a substantial compression cycle due to the drivetrain force."

Reasons for the Decision

1. In its decision the Examining Division considered that the expressions "substantially aligned" and "drive train force" in independent claim 1 of the main request were not clear (Article 84 EPC).

1.1 Amended claim 1 according to the main request in appeal proceedings does not include the expression "substantially aligned". Further, claim 1 has been amended to include that the drive train force between the front and the rear structures is a chain force. The Board is satisfied that the chain force as a drive train force in claim 1 is clear to the skilled person and so was the Examining Division in its decision (see point 2.1.3 of the contested decision) since it considered that the skilled person is able to determine the direction of a chain force.

1.2 Accordingly, the independent claim 1 according to the main request of the appellant has been amended so as to overcome the objections under Article 84 EPC raised by the Examining Division in its decision.

Consequently, the decision under appeal is to be set aside.

2. Independent claim 1 is based on originally filed claims 1, 2, 3 and 26 together with paragraphs [0132] to [0138] of the description as originally filed.

The Board is also satisfied that the subject-matter of claim 1 meets the requirements of Article 123(2) EPC since no further technical information has been

introduced that goes beyond the content of the originally filed application.

According to established Case Law of the Boards of Appeal, the criteria to assess whether the subject-matter of an amended application extends beyond the content of the application as originally filed is the gold standard, namely whether the amendment of the claim results in subject-matter which is directly and unambiguously derivable by a skilled person, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the documents as filed.

In the present case, the unclear expression "a line between the coupling locations at the front and the rear structures being substantially aligned with the drivetrain force" present in originally filed claim 1 has been replaced by the features that read "the first member transmits at least 75% of the drivetrain force" and "said first member is situated and oriented relative to said drivetrain force such that a suspension of the vehicle does not travel substantially or induce a substantial compression cycle due to the drivetrain force". This subject-matter is directly and unambiguously derivable from the application as originally filed, since it is clear for the skilled person that the term 'aligned' referred to in the description (see in particular paragraphs [0133], [0134] and [0137] of the description as originally filed) does not actually refer to a strict alignment of the first member with the drive train force but to an orientation of the first member with respect to the drive train force in the vehicle, which can lie within a certain vertical separation from the drive train force and within a relative angle of up to 30°, but

that is such that the majority of the drive train force, i.e. at least 75%, is transmitted through the first member in order to be able to compensate squand. This functional feature finds thus its basis in the application as originally filed and does not need to be limited to a specific structural configuration because, as explained in the whole disclosure of the application as filed, this functional feature is dependent on the specific geometry selected for all members of the vehicle including the orientation of the drive chain force.

3. The impugned decision was only based on Article 84 EPC for the subject-matter of independent claim 1 of the main request.

Under Article 111(1) EPC the Board of Appeal may either decide on the appeal or remit the case to the department which was responsible for the decision appealed.

Under Article 11 RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2019, A63) the Board may remit the case to the department whose decision was appealed if there are special reasons for doing so.

The Board holds that such special reasons are apparent in the present case because the Examining Division has not taken an appealable decision on other requirements of the EPC than those of Article 84 EPC for this subject-matter. As recalled in Article 12(2) RPBA 2020, the primary object of the appeal proceedings is to review the decision under appeal in a judicial manner. This principle would not be respected if the Board were to conduct a complete examination, especially with further state of the art documents which have not been

yet considered by the Examining Division. Consequently, in the present case, Article 11 RPBA 2020 does not entail that the Board should carry out a full examination of the application for compliance with the other requirements of the EPC, in particular novelty and inventive step of the subject-matter of claim 1 (Article 54 and 56 EPC) for which no decision of the Examining Division exists yet.

Under these circumstances and in agreement with the appellant, the Board considers it appropriate to remit the case to the Examining Division for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution on the basis of the second auxiliary request (now main request).

The Registrar:

The Chairman:



D. Magliano

H. Geuss

Decision electronically authenticated