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**Datasheet for the decision  
of 2 November 2022**

**Case Number:** T 0996/20 - 3.2.01

**Application Number:** 14721006.6

**Publication Number:** 2981496

**IPC:** B66F9/065, B66C23/80, B66F9/075

**Language of the proceedings:** EN

**Title of invention:**  
A LIFT TRUCK EQUIPPED WITH STABILIZER MEANS

**Patent Proprietor:**  
Magni Real Estate S.r.l.

**Opponent:**  
Manitou Italia S.r.l.

**Headword:**

**Relevant legal provisions:**  
EPC Art. 83, 84, 123(2), 123(3), 54, 56  
RPBA 2020 Art. 13(2), 12(4)  
EPC R. 80

**Keyword:**

Sufficiency of disclosure - clarity of disclosure - (yes) -  
support by the description (yes)  
Claims - clarity (yes) - support in the description (yes)  
Amendments - extension beyond the content of the application  
as filed (yes) - added subject-matter (no)  
Novelty and inventive step - (yes)  
Amendment after summons - exceptional circumstances (yes) -  
taken into account (yes)  
Amendment occasioned by ground for opposition - (yes)  
Amendment to case - admissibly raised and maintained (yes)

**Decisions cited:**

T 1149/97

**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 0996/20 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 2 November 2022**

**Appellant:** Manitou Italia S.r.l.  
(Opponent) Via Cristoforo Colombo 2  
Localita' Cavazzona  
41013 Castelfranco Emilia (Modena) (IT)

**Representative:** Gagliardelli, Fabrizio  
Bugnion S.p.A.  
Via M. Vellani Marchi 20  
41124 Modena (IT)

**Respondent:** Magni Real Estate S.r.l.  
(Patent Proprietor) Via A. Vespucci 2  
41013 Castelfranco Emilia (MO) (IT)

**Representative:** Hoffmann Eitle  
Patent- und Rechtsanwälte PartmbB  
Arabellastraße 30  
81925 München (DE)

**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
21 February 2020 concerning maintenance of the  
European Patent No. 2981496 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** M. Geisenhofer  
A. Jimenez

## Summary of Facts and Submissions

- I. The appeal was filed by the opponent (appellant) against the interlocutory decision of the opposition division finding that, on the basis of the main request (then on file), the patent in suit met the requirements of the EPC.
- II. The opposition division decided that the claimed subject-matter was novel and involved an inventive step (Article 100(a) EPC in combination with Articles 54 and 56 EPC) over *inter alia* the following document:

D1 US 4 124 226

The opposition division further held that the patent, on the basis of this request, disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC), and that the subject-matter of the claims did not extend over the disclosure of the application as originally filed (Article 100(c) EPC).

The opposition division neither admitted the late filed document

A3 US 3 958 813

nor the prior uses filed after expiry of the opposition period based on *inter alia* documents

E2.3 Excerpt of Manitou Instruction Manual 648394

E3.3 Excerpt of Manitou Instruction Manual 648385

III. At the oral proceedings held before the Board, the appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained in the form found allowable by the opposition division (main request) or, in the alternative that the patent be maintained based on one of the 1st to 3rd auxiliary requests filed during oral proceedings before the board, or based on one of the 4th to 7th auxiliary requests filed with the reply to the statement of grounds of appeal.

IV. Independent claim 1 according to the **main request** reads as follows:

*"A lift truck equipped with stabilizer means for resting on the ground including a chassis (1), movable on wheels (2), on which a rotating platform (3) is mounted and accommodates an operating arm (4); said chassis (1) being provided, at the front as well as at the back, with stabilizer means including two pairs of two telescopically extensible arms (5), which have respective ends, opposite to those intended to rest on the ground, by means of stabilizer plates or feet (8), the ends of the arms being respectively hinged to the chassis (1) in diametrically opposed positions with respect to the vertical median plane which contains the longitudinal axis of the truck; wherein the arms are respectively hinged in positions situated near opposite sides of the chassis (1) so as to swivel about parallel axes; the two arms (5) of each pair being arranged side by side at short distance from each other and acting in planes parallel to each other; said arms (5) being also individually bound to the chassis (1) by means of*

*hydraulic cylinders (11) which have the closed sides of their first sections (13) hinged to the chassis (1) and have the distal ends of their stems (14) hinged to the first segments (6) of the corresponding arms (5); characterized by control means being designed to control at least the return movements of each pair of said telescopically extensible arms (5) to a folded, contracted configuration according to a predetermined sequence which provides that, for each single arm (5), full retraction of a respective second segment (7), telescopically coupled to the first segment (6), is carried out, at least for a predetermined portion of the final part of its return stroke, only after that the first segment (6) of the other arm 5, belonging to the same said pair of arms (5), has reached a final folding position;*  
*wherein said predetermined portion of the final part of the return stroke of the single second segment (7) is determined so that the distance between said plate or foot (8) of the second segment (7) of the single arm (5) and the end of the first segment (6) of the other arm (5) of the same pair of arms (5) is not negative, that is, such as to not generate interference between said plate or foot (8) and said first segment (6), in each intermediate configuration taken by the first segment (6) between the one of maximum extension and the one of minimum extension of the hydraulic cylinders (11)."*

Independent claim 1 of the **new 1st auxiliary request** filed during oral proceedings before the board differs from the main request only in that the term

*"stabilizer means including two pairs of two telescopically extensible arms (5)"*

was replaced by

*"stabilizer means constituted by two pairs of two telescopically extensible arms (5)".*

V. The appellant's arguments can be summarised as follows:

- (a) The subject-matter of claim 1 of the **main request** extended over the disclosure of the application as originally filed, contrary to Article 123(2) EPC.

The application was originally filed in Italian language before a translation into English was provided. Originally filed claim 1 referred to a *"stelo (7)"* (hence *stem*) whereas in claim 1 of the main request the same part was described as *"second segment (7)"*. Granted claim 1 hence did no longer refer to the stem of a hydraulic cylinder that could be extended from the first segment, which was an unallowable generalization.

Furthermore, originally filed claim 1 referred to *"mezzi stabilizzatori costituiti da due coppie di due bracci"* (hence *stabilizing means being constituted by two pairs of two arms*) whereas claim 1 of the main request read *"stabilizing means including two pairs of two arms"*. The claimed subject-matter was thus not restricted to two pairs of arms but could include further pairs of arms and/or other stabilizing means.

The term *"ends of the arms being respectively hinged to the chassis"* lacked a disclosure in the application as originally filed.

(b) Furthermore, the expression "*ends of the arms being respectively hinged to the chassis*" was omitted during examination before grant of the patent in suit and hence the proprietor abandoned an embodiment having this feature. Reintroducing this feature with the main request during opposition proceedings thus extended the scope of protection, contrary to Article 123(3) EPC and decision T 1149/97.

(c) The skilled person was not able to carry out the invention as defined in claim 1 of the main request, the main request therefore did not comply with the requirements of Article 83 EPC.

Claim 1 required the arms to be hinged at their ends to the chassis whereas the description and the drawings only provided disclosure for an embodiment with arms being hinged via a bracket to the chassis, the bracket not being arranged at the end of the arms. The skilled person hence lacked an embodiment teaching how to design and arrange the hinge at the end of the arms.

(d) The claimed subject-matter further lacked support in the description due to this contradiction and thus did not comply with Article 84 EPC.

(e) The **new 1st auxiliary request** should not be admitted pursuant to Rule 13(2) RPBA 2020 since it was late filed (only during oral proceedings before the board) without providing cogent reasons. It was moreover based on the 1st auxiliary request filed with the reply to the statement of grounds of appeal which was also late filed and did not comply with Rule 80 EPC since the replacement of the term



"control means being designed to control at least the return movements" by "means suitable to control at least the return movements" did not remedy a ground for opposition.

- (f) The term "*control means being designed to control at least the return movements*" lacked a basis in the application as originally filed in Italian language, contrary to Article 123(2) EPC. Albeit this deficiency was first raised during oral proceedings before the board, it shall be admitted since the request was only filed during oral proceedings.
- (g) The subject-matter of claim 1 was not novel, such that the new 1st auxiliary request did not comply with Article 54 EPC.

D1 disclosed in column 8, line 68 - column 9, line 6 that retracting the arms followed the same sequence of steps as defined in claim 1. The switches shown in figure 5 were "*control means being designed to control the return movements of each pair of the telescopically extensible arms ... according to a predetermined sequence*".

The fore stabilizing means of D1 were arranged behind the front wheels which was still at the front area of the chassis.

- (h) The subject-matter of claim 1 was neither inventive over a combination of document D1 with A3, nor over a combination of document A3 with D1.

Starting from D1, document A3 would render it obvious to use a fore stabilizing means arranged at the front of the chassis of the truck of D1.

Starting from A3, document D1 would suggest a sequence of steps when retracting the arms that falls under the definition given in the characterizing portion of claim 1.

- (i) Document A3 should have been admitted by the opposition division since it was found to be the closest prior art during examination procedure, A3 being hence *per se* part of the appeal proceedings.
- (j) The prior uses not admitted by the opposition division were a timely reaction to the infringement proceedings initiated by the respondent and hence should have been admitted.

The subject-matter of claim 1 was not novel over these prior uses, in particular if a human operator operating the arms via switches was considered to represent a control means in the sense of claim 1.

Furthermore, the skilled person would always first raise all arms and only then retract them fully. Automatizing this sequence of steps was not inventive.

VI. The respondent's arguments can be summarised as follows:

- (a) The amendments were allowable under Article 123(2) EPC.

Not each and every telescopically extensible cylinder was *per se* a hydraulic cylinder.

Claim 1 of the main request claimed a second member being telescopically coupled to the first segment. Furthermore, the claim recited that the second member was retractable. Accordingly, the second member corresponded to the stem of a cylinder.

It was derivable from the disclosure of the entire application as originally filed that the stabilizing means comprised more than just the arms, but also the feet and hydraulic cylinders to actuate the arms. The term "*costituiti*" hence had to be understood as "comprising".

The arrangement of the hinge at the end of the respective arm was disclosed in originally filed claim 2 which was fully incorporated into independent claim 1 of the main request.

- (b) Omitting the feature "*ends of the arms being respectively hinged to the chassis*" before grant did not imply that the feature was abandoned and as a consequence, an embodiment having this feature was excluded. When reintroducing the feature during opposition proceedings, the scope of protection of claim 1 was restricted such that claim 1 complied with Article 123(3) EPC.
- (c) The term "*ends of the arms being respectively hinged to the chassis*" furthermore did not restrict the location of the hinges to the very end of the arm but also included arrangements near the very end of the arms.

The embodiment shown in the figures and described in the description hence provided sufficient information for the skilled person to choose a suitable arrangement for the hinge, whereby the main request complied with the requirements of Article 83 EPC.

- (d) The claimed subject-matter in the correct understanding of the term "*ends of the arms being respectively hinged to the chassis*" was also supported by the description and the drawings, thus complying with Article 84 EPC.
- (e) The filing of the **new 1st auxiliary request** was a reaction to the objection under Article 123(3) EPC with regard to the former 1st auxiliary request. This objection was first raised during oral proceedings such that exceptional circumstances for the late filing should be acknowledged. Moreover, the former 1st auxiliary request had already been filed during opposition proceedings in reaction to an objection under Article 123(2) EPC raised by the opponent.
- (f) The objection under Article 123(2) EPC with regard to the expression "*control means being designed to control at least the return movements*" should not be admitted under Article 13(2) RPBA 2020 since the opposition division already decided on this issue but this decision was not attacked by the appellant with their statement of grounds of appeal.
- (g) The subject-matter of claim 1 was novel in the sense of Article 54 EPC since D1 neither disclosed the sequence of steps when retracting the arms required by claim 1 nor a front stabilizing means.

Furthermore, D1 was not a lift truck but a mobile crane.

- (h) Document A3 was not admitted by the opposition division and the appellant did not provide a reason why this decision was incorrect. There was hence no reason to admit A3 in appeal.
- (i) Even if A3 would be admitted, neither D1 nor A3 disclosed the sequence of steps when retracting the arms as defined in claim 1 such that also a combination of these documents could not render the sequence obvious.
- (j) The decision of the opposition division not to admit the prior uses was correct since the prior uses were late filed and did not constitute a reaction to the initiated infringement proceedings.
- (k) Even if the prior uses were admitted and the skilled person would automatize the sequence of steps as alleged by the appellant, the skilled person would not arrive at the sequence of steps required by claim 1.

## **Reasons for the Decision**

### **Main request**

#### **Clarity (Article 84 EPC) and sufficiency of disclosure of the invention (Article 83 EPC)**

1. The appellant argued that the hinge of the arms of the stabilizing means shown in figures 1 - 4 was provided on a bracket attached to the arm, the bracket not being

arranged at the end of the arm. Claim 1, however, required the "*ends of the arms being respectively hinged to the chassis*" such that the independent claim contradicted the embodiment. The skilled person therefore was neither able to carry out the invention nor was the subject-matter of claim 1 supported by the description.

- 1.1 The opposition division decided that the expression is neither unclear (cf. reasons for the decision, point 2.4.3) nor that the invention is insufficiently described (cf. reasons for the decision, point 2.5.2).
- 1.2 The board fully shares the opposition division's decision with regard to the requirements of Articles 83 and 84 EPC:
  - 1.2.1 The end of an arm is not only the very end but encompasses a region of the arm near its very end. The skilled person when reading the claim understands that the hinge of the arm shall be arranged near the very end but not necessarily at the face plate of the arm.
  - 1.2.2 When turning to the figures, the skilled person's understanding of the end of the arm is confirmed since the respective pivot point of each arm of the embodiment shown in figures 1 - 4 is near the very end of the arm. The claim neither requires that the pivot point must be on the arm not that the arms are directly in contact with the chassis. It is hence not excluded by claim 1 that the pivot point is arranged on a bracket connected to the arm and extending therefrom.
  - 1.2.3 There is hence no contradiction between claims and description, the subject-matter of claim 1 being also supported by the description.

**Scope of protection (Article 123(3) EPC)**

2. The appellant alleged that the feature "*ends of the arms being respectively hinged to the chassis*" used in claim 1 of the main request was omitted during examination procedure before the patent in suit was granted. The proprietor hence abandoned an embodiment in which the ends of the arms were hinged to the chassis. This resulted in an extension of the scope of protection of claim 1 as held in decision T 1149/97.

2.1 During opposition proceedings, the appellant raised this line of argument under Article 123(2) EPC but could not convince the opposition division (cf. reasons for the decision 3.2.2).

2.2 The argument also fails to convince under Article 123(3) EPC:

2.2.1 Omitting this feature from the wording of the independent claim during examination procedure is not to be considered as an abandonment of the embodiment provided with this feature.

The situation is not comparable to T 1149/97 in which an inconsistency was resolved by omitting the conflicting disclosure in the description. In the present case, the amendments to claim 1 during examination procedure were not occasioned by an inconsistency.

2.2.2 In addition thereto, paragraph [0012] of the granted description describes the arms to have "*respective ends, opposite to those intended to rest on the ground by means of stabilizer plates or feet, hinged to the*

chassis". An embodiment having this feature hence is present in the granted patent and cannot be considered as abandoned.

- 2.2.3 The above-mentioned feature thus limits the scope of protection as compared to claim 1 of the patent as granted, by specifying that the arms are hinged to the chassis at a region which is near to the very end of the arms (see the above reasoning as regards Article 83 and 84 EPC).

### **Amendments (Article 123(2) EPC)**

3. The appellant alleged that the amendments to claim 1 of the main request lacked a basis in the application as originally filed.

The application was filed in Italian language and translated pursuant to Article 14(2) EPC into English, the language of procedure. Assessing the requirements of Article 123(2) EPC implies hence a comparison of claim 1 with the originally filed application in Italian.

- 3.1 The appellant argued that originally filed claim 1 in Italian referred to a "*stelo (7)*" (hence "*stem*" in English) whereas in claim 1 of the main request the same element was described as "*second segment (7)*". In the granted claim it was hence omitted that the part referred to was the stem of a hydraulic cylinder.
- 3.2 The board notes that claim 1 of the main request requires that the second segment is telescopically coupled to the first segment and can be fully retracted. This corresponds to the definition of a stem of a cylinder such that claim 1 implicitly defines that



the arm comprising first and second segments is a cylinder with a stem.

The term "*stem*" moreover does not imply that the cylinder is hydraulic.

3.3 In a slightly different line of argument raised during oral proceedings, the appellant alleged that the "*stelo*" mentioned in claim 1 as originally filed was the stem of a hydraulic cylinder driving the telescopic arm and hence was a different element in addition to the first and second segments of the arm.

3.4 This understanding is, however, not justified having regard to the wording of claim 1 as filed. It is true that in the characterizing portion of originally filed claim 1 in Italian, reference is made to the foot (8) of the stem (7) of the single arm (5) ("*piede (8) dello stelo (7) del singolo braccio (5)*"). However, it is clear that the "*stem (7)*" is the same element as the second segment (7) mentioned in the preamble of claim 1: when mentioning the stem (7) ("*stelo (7)*") not only the same reference numeral (7) as for the second segment is used, but also the stem is mentioned in the context of "*said predetermined portion of the final part of the return stroke of the single second stem*", whereby in the preamble of claim 1 "*said predetermined portion of the final part of the return stroke*" is clearly attributed to the second segment (7). Hence there is no doubt that the stem is part of the arm and identical to the second segment, and is not the stem of an additional (hydraulic) cylinder.

3.5 In the context of this objection the appellant further submitted that the term "*stelo*" in Italian was exclusively used in the context of an hydraulic

cylinder. For this assertion, which was contested by the respondent, no evidence was filed and therefore it can only be regarded as an unsubstantiated allegation.

In any case, the Board is not aware that the English translation of "*stelo*", namely "*stem*", only applies to the stem of a hydraulic cylinder.

3.6 The appellant further argued that the feature "*the ends of the arms being respectively hinged to the chassis*" used in claim 1 of the main request lacked disclosure in the application as filed.

3.7 Originally filed claim 1 indeed only requires that the arms are hinged to the chassis without specifying where the hinge is located on the arm. However, dependent claim 2 as originally filed specifies that the arms are hinged at their respective ends to the chassis ("*presentando le rispettive estremità ... incernierate rispettivamente al telaio*").

3.8 The appellant further argued that originally filed claim 1 in Italian requires the stabilizing means to consist of exactly two pairs of two arms ("*costituiti da due coppie di due bracci*") whereas the granted claim 1 reads "*including two pairs of two ... arms*", thus allowing also stabilizing means with more than two pairs of arms. Such stabilizing means with more than two pairs of arms, however, lacked disclosure in the originally filed application.

The respondent countered that a correct translation of the term "*costituiti da*" in the originally filed claim 1 would be "*being constituted by*", the term thus referring to a non-exhaustive list of elements covering also more than two pairs of arms.

- 3.9 In the board's view, even if the correct translation would be "*being constituted by*" the expression cannot clearly and unambiguously be understood as providing a disclosure for a stabilizing means with more than two pairs of arms. The expression "*stabilizing means being constituted by two pairs of arms*" still restricts the number of pairs of arms to two. This is confirmed by the description, which only discloses embodiments with two pairs of arms. The originally filed application in Italian language thus lacks a disclosure for stabilizer means having more than two pairs of arms.
- 3.10 The main request therefore was unallowably amended, contrary to Article 123(2) EPC.

**New 1st auxiliary request - admissibility**

4. The new 1st auxiliary request was filed during the oral proceedings to replace the previous 1st auxiliary request filed by the respondent with their reply to the statement of grounds of appeal. The admittance into the proceedings of the new 1st auxiliary request is to be examined under Article 13(2) RPBA 2020 which requires the presence of exceptional circumstances justified with cogent reasons. It hence implies to review the discussion that took place during the oral proceedings on the previous 1st auxiliary request filed with the reply to the statement of grounds.
5. During the oral proceedings, the question of admissibility of the 1st auxiliary request filed by the respondent with their reply to the statement of grounds was discussed.

The appellant submitted that the 1st auxiliary request was filed late and that it contravened Rule 80 EPC.

6. Following this discussion, the board expressed its view that the 1st auxiliary request was admissible and complied with Rule 80 EPC (see the minutes of the oral proceedings) for the following reasons:

6.1 The 1st auxiliary request filed with the reply to the statement of grounds of appeal is identical to the 1st auxiliary request filed in opposition proceedings before a final decision was announced (cf. reasons for the decision, point 2.8.3). Contrary to the appellant's view, a final decision was not announced when the chairman stated that the main request met the requirements of the EPC, but rather an opinion of the opposition division (see point 10 of the minutes of oral proceedings before the opposition division, and see also point 12 referring to the announcement of the decision after the filing of the auxiliary request).

6.2 The appellant also argued that the auxiliary request was anyway inadmissible because filed at the end of the oral proceedings rather than at the beginning, whereby the opponent had no opportunity to gain knowledge of the auxiliary request until the end of the oral proceedings. In the Board's view this is irrelevant in the present case because anyway the auxiliary request was not the subject of discussion at the oral proceedings; the only discussion was on whether the patent proprietor should be allowed to file auxiliary requests at the end of the oral proceedings (see points 10 and 11 of the minutes of oral proceedings).

6.3 The question here is rather whether the auxiliary request 1 was admissibly raised and maintained in the

proceedings leading to the decision under appeal, see Article 12(4) RPBA 2020. This question is to be answered in the affirmative, as the 1st auxiliary request included an amendment intended to overcome an objection under Article 123(2) EPC raised by the opponent for the first time with letter of 26 July 2019, i.e. filed shortly in advance of the oral proceedings that took place on 30 September 2019. The amendment consists in replacing the expression "*control means being designed to control*", which was objected to under Article 123(2) EPC, by the expression "*means suitable to control*" which was allegedly disclosed in the application as filed in Italian.

- 6.4 Under these circumstances, the Board was not justified to disregard the 1st auxiliary request filed with the reply to the statement of grounds under Article 12(4) RPBA 2020. This request was part of the respondent's appeal case (Article 12(3) RPBA 2020).
  
7. During the oral proceedings before the board, following a discussion triggered by the appellant's objections under Article 123(2) and (3) EPC with regard to the expression "*means suitable to control*", the Board considered that the objection under 123(3) EPC raised for the first time during the oral proceedings was convincing. The respondent then withdrew the 1st auxiliary request filed with the reply and replaced it by the new 1st auxiliary request.
  
- 7.1 The Board considers that the filing of the new 1st auxiliary request is justified by the exceptional circumstance that the objection under Article 123(3) EPC against the previous 1st auxiliary request was raised for the first time during the oral proceedings

even though the previous 1st auxiliary request was filed with the reply.

- 7.2 Accordingly, the Board decided to exercise its discretion under Article 13(1) and (2) RPBA 2020 to admit the new 1st auxiliary request replacing the former 1st auxiliary request on file.

### **Patentability of new 1st auxiliary request filed during oral proceedings**

#### **Amendments (Article 123(2) EPC)**

8. The amendment ("*constituted by*" instead of "*including*") remedies the deficiency under Article 123(2) EPC which prejudiced maintenance of the patent according to the main request (cf. points 3.9 and 3.10 above). This was not disputed by the appellant.
9. During oral proceedings the appellant raised an objection under Article 123(2) EPC with regard to the expression "*control means being designed to control*" used in claim 1.
- 9.1 They argued that the originally filed application in Italian language only provided support for "*mezzi atti a comandare*" (hence "*means suitable to control*") which is not the same as "*control means being designed to control*". Albeit filed only during oral proceedings before the board, this objection should be admitted since the new 1st request was also only filed during oral proceedings.
- 9.2 The board notes that the main request maintained by the opposition division already contains the same

expression as used in the new 1st auxiliary request. Furthermore, an objection under Article 123(2) EPC with regard to the feature "*control means being designed to control*" was already brought forward by the appellant during opposition proceedings and the opposition division decided that the objection was not convincing (cf. reasons for the decision, point 2.3.2.12, lower half of page 11).

The appellant when making their case with the statement of grounds of appeal did not, however, object to this part of the decision of the opposition division.

- 9.3 Reintroducing the objection only at the very late stage of the appeal proceedings constitutes therefore an amendment of the appellant's case which requires exceptional circumstances justified with cogent reasons, pursuant to Article 13(2) RPBA 2020.
- 9.3.1 The appellant only argued that the request was formally new and therefore they did not had an opportunity to object to it before the request was filed during oral proceedings.
- 9.3.2 This is not convincing since the above-mentioned expression was identically present in the main request discussed and decided during opposition proceedings. The objection therefore should have been raised with the statement of grounds of appeal and reasons should have been provided why the opposition division erred when deciding that the expression complies with Article 123(2) EPC.
- 9.4 The board thus decided to exercise its discretion pursuant to Article 13(2) RPBA 2020 not to admit the above-mentioned objection under Article 123(2) EPC.

**Novelty (Article 54 EPC)**

10. The appellant alleged that the subject-matter of claim 1 of the 1st auxiliary request filed during oral proceedings was not novel over **document D1**.

10.1 D1 discloses a truck with a chassis (11) on wheels (13, 14), a rotating platform (24) mounted on the chassis and stabilizer means. The stabilizer means consist of two pairs of telescopically extensible arms (30 - 33) having feet (55) attached to their one end. The other end of the arms is hinged to the chassis, respectively. The arms can be telescopically extended and retracted, and raised and lowered by rotation of the arms.

10.2 It is disputed between the parties whether

- (a) the vehicle shown in D1 is a lift truck;
- (b) the fore stabilizing means of D1 are arranged at the front of the chassis; and
- (c) the lift truck of D1 comprises control means being designed to control at least the return movements of each pair of the arms according to claim 1.

10.3 With regard to feature (b), the appellant argued that the fore stabilizing means of D1 are arranged in the front part of the chassis, the front part not being restricted to the very end of the chassis.

The relevant term under discussion in claim 1 reads "the chassis being provided at the front as well as at the back with stabilizer means". The fore stabilizer means of D1, however, are arranged between the wheels of the vehicle such that they are not provided at the front of the chassis but somewhere in the middle of it.



10.4 With regard to feature (c), the board notes that in D1 the return movements of the arms are controlled by a human operator using several switches that are shown in figure 5. A human operator, however, cannot be considered to be a "control means".

The switches in turn are means used by the operator to control the return movement. However, the switches as such are not designed to control the return movement according to a predetermined sequence but depend on the actuation by the human operator.

Document D1 therefore lacks a control means designed to control at least the return movements of each pair of said telescopically extensible arms to a folded, contracted configuration according to a predetermined sequence.

10.5 Furthermore, it is disputed whether the predetermined steps required by claim 1 are used in D1.

10.5.1 Document D1 discloses in column 8, line 69 - column 9, line 6 a sequence of steps for the return movement of the arms to their stored position. This sequence comprises first rising all four arms at the same time and only when the arms are in their fully raised position retracting the arms until the second segment is fully retracted into the first segment of each arm.

The control of the retraction of the second segment only depends on the position of the first segment of the very same arm but not - as required by claim 1 of the new 1st auxiliary request - on the position of the first segment of the corresponding arm of the same pair of arms.

10.5.2 Avoiding an interaction between two adjacent arms of one and the same stabilizing means is neither mentioned in D1 nor implicitly disclosed. In the block diagram of figure 6 no sensors or other suitable means are shown which would allow for controlling the movement of one arm dependent on the position of the other arm.

The appellant's argument that the table given in column 8 of D1 would disclose a synchronizing of the movements of one arm with the corresponding arm of the same pair of arms does not convince. The control of the movement of each arm ("outrigger") is independent from the position (but also from the actuation) of the respective other arm: outrigger 30 involves cylinders 40 and 50 which are actuated by switches 70 and 71, whereas the corresponding outrigger 31 involves cylinders 41 and 51 which are actuated by switches 72 and 73.

10.6 The appellant's argument that when raising all four arms simultaneously in D1 then the movement of one arm will be made dependent on the position of the corresponding other arm of the same pair of arms is not convincing. In fact, the dependency required by claim 1 requires a synchronizing step which must somehow be provided by the control means.

For carrying out this synchronizing step, the control means needs to evaluate whether the respective first segment has reached the final folding position, and this requires that the control means is suited to receive and elaborate the corresponding information.

D1 does not disclose control means being such suited.

Moreover, D1 even points out in column 7, line 67 - column 8, line 5 that each arm can be controlled independently, i. e. that the control allows to move an arm independently from the corresponding arm of the same stabilizing means.

- 10.6.1 D1 thus discloses that the arms can be moved according to a predetermined sequence but does not disclose that the control means provides a predetermined sequence such that for each single arm, full retraction of a respective second segment, telescopically coupled to the first segment, is carried out, at least for a predetermined portion of the final part of its return stroke, only after that the first segment of the other arm, belonging to the same said pair of arms, has reached a final folding position.

Furthermore, D1 fails to disclose that the predetermined portion of the final part of the return stroke of the single second segment is determined so that the distance between said plate or foot of the second segment of the single arm and the end of the first segment of the other arm of the same pair of arms is not negative, that is, such as to not generate interference between said plate or foot and said first segment, in each intermediate configuration taken by the first segment between the one of maximum extension and the one of minimum extension of the hydraulic cylinders.

- 10.7 The subject-matter of claim 1 is hence novel over D1 whereby it can be left open whether the truck disclosed in D1 is a lift truck (distinguishing feature (a) identified above).

11. The novelty attack based on the alleged prior uses according to documents E2.3 and E3.3 raised in the statement of grounds of appeal was no longer maintained in view of the board's interpretation of claim 1 , according to which a human operator controlling the retraction movement of the arms via switches cannot be equated to a control means designed to control the movement in a predetermined sequence in the sense of claim 1 of the new 1st auxiliary request.
- 11.1 Further novelty attacks were not raised by the appellant.

**Inventive step (Article 56 EPC)**

12. The appellant argued in a first line of argument starting from **document D1 as closest prior art.**
- 12.1 In the appellant's view, A3 would render it obvious to rearrange the fore stabilizing means of D1 at the front of the vehicle, thus arriving at a truck with stabilizing means at the front and at the back of the chassis.

The board does not agree that the skilled person receives a suggestion from A3 that the stabilizing means should preferably be attached to a chassis always at its front and at its back. On the contrary, the skilled person understands from A3 and D1 due to his/her expert knowledge about how to stabilize a mobile crane that the fore and aft stabilizing means shall be arranged symmetrically with regard to the platform on which the load bearing device is arranged. Since the stabilizing means of D1 are already arranged symmetrically to the platform, rearranging the

stabilizing means in a non-symmetrical arrangement would be counterproductive to the stability of the truck. The skilled person would therefore not consider such a modification of D1.

- 12.2 Independently from the question whether the skilled person would rearrange the stabilizing means, the skilled person has no teaching at hand to replace the switches of D1 by control means carrying out a predetermined sequence of steps including synchronizing the movement of one arm with the position of the corresponding arm of the same pair of arms as required by claim 1.
  - 12.2.1 It is accepted that the skilled person would consider automation of the retracting movements of the arms.
  - 12.2.2 A simple automation of the sequence of steps set out in D1, would - however - only result in control means raising all arms simultaneously to their fully raised position and only then fully retracting the arms. In such a control, the position of the corresponding arm is not taken into consideration contrary to what is required by claim 1.
- 12.3 A combination of document D1 with A3 would hence not render the subject-matter of claim 1 obvious, such that it can be left open whether the opposition division's decision to not admit document A3 was correct and/or whether document A3 should be admitted in appeal proceedings.
13. The appellant argued in a second line of argument starting from **document A3 as closest prior art.**

- 13.1 This line of argument was first raised in the oral proceedings in appeal proceedings. The respondent objected to this line of argument as late filed and requested to not admit it.
- 13.2 The appellant did not mention any exceptional circumstances justifying the objection being only raised during oral proceedings before the board. The new 1st auxiliary request is substantially identical in content to the main request already discussed during opposition proceedings such that this line of argument should have been raised before.
- 13.3 The board therefore did not admit the line of argument starting from A3 as closest prior art pursuant to Article 13(2) RPBA 2020.
14. In a third line of argument, the appellant referred to the alleged **prior uses based on documents E2.3 and E3.3** respectively as closest prior art, and argued that it would be obvious to automate the sequence of steps disclosed therein.

The prior uses were not admitted by the opposition division.

- 14.1 According to the appellant's submissions, in both alleged prior uses, lift trucks with the features of the preamble of claim 1 according to the new 1st auxiliary request are disclosed. The trucks are provided with stabilizing means consisting of two pairs of arms attached to the front and back of the chassis.

The arms are controlled by a human operator using switches: E2.3 discloses on page 22 a switch Q that allows the operator to select whether the arms are

lifted/lowered or extended/retracted. With switch S, the chosen operation is started.

The same is disclosed in E3.3, page 22.

- 14.2 These passages, however, do not disclose a particular sequence of steps and in particular they do not disclose that the operation of one arm is (at least over the final part of the return movement) synchronized with the position of the corresponding other arm of the same pair of arms. In fact, this was not disputed by the appellant who only argued that the prior used lift trucks were provided with *"scissor outriggers devised to be manually operated in such a way as to perform the "predetermined sequence" described in claim 1 of the opposed patent"* (see point 4.7.1 of the statement of grounds of appeal).

Hence, with respect to the operation of the arms, the alleged prior uses do not go beyond the disclosure of D1: here as well, there is no control means which itself provides the predetermined sequence according to claim 1, in particular by being suited to receive and elaborate information about the first segments reaching their final folding positions. Accordingly, for the same reasons as set out with respect to D1, the mere automation of the steps carried out by a human operator using the truck lifts according to the alleged prior uses would neither result in the predefined sequence of steps defined in claim 1 of the new 1st auxiliary request nor would it render obvious the provision of control means in accordance with claim 1.

- 14.3 Therefore, even if the alleged prior uses were admitted and effectively took place as alleged by the appellant, they would not be prejudicial to the novelty and

inventiveness of the claimed subject-matter. It hence can be left open whether the prior uses can be admitted and whether they indeed were public.

- 14.4 Further lines of argument with regard to inventive step were not raised by the appellant.

### **Adaptation of description**

15. The appellant alleged that paragraph [0021] would be in contradiction with claim 1 of the new auxiliary request 1 and therefore needs to be adapted.

- 15.1 The board is not aware of a contradiction. Paragraph [0021] explains that the second segment is only retracted when the first segment of the corresponding other arm has reached the collapsed position. This implies that not only the final part of the return stroke but the entire retraction of the second segment only occurs after the arms were entirely raised.

- 15.2 The board hence concluded that an adaptation of the description was not necessary and that the patent could be maintained based on the new 1st auxiliary request.

### **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:



- Description:

Pages 2,3 of the patent specification

- Claims:

No. 1 to 3 according to the first auxiliary request  
filed during the oral proceedings

- Drawings: of the patent specification.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated