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**Datasheet for the decision
of 30 November 2022**

Case Number: T 2046/20 - 3.2.01

Application Number: 12802449.4

Publication Number: 2723625

IPC: B62D6/00, B60W50/16, B62D5/04,
B62D1/04, B62D1/06

Language of the proceedings: EN

Title of invention:
SENSOR SYSTEM FOR STEERING WHEEL FOR VEHICLE

Patent Proprietor:
TK Holdings Inc.

Opponent:
Valeo Schalter und Sensoren GmbH

Headword:

Relevant legal provisions:
RPBA 2020 Art. 12(3)(a), 11
EPC Art. 83, 100(b), 111

Keyword:

Appeal admissible (yes)

Statement of grounds of appeal - requests expressly specified
(yes)

Grounds for opposition - main request - insufficiency of
disclosure (no)

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

Decisions cited:

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 2046/20 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 30 November 2022

Appellant: TK Holdings Inc.
(Patent Proprietor) 2500 Takata Drive
Auburn Hills, MI 48326 (US)

Representative: Fischer, Uwe
Patentanwalt
Moritzstraße 22
13597 Berlin (DE)

Respondent: Valeo Schalter und Sensoren GmbH
(Opponent) CDA-IP
Laiernstrasse 12
74321 Bietigheim-Bissingen (DE)

Representative: Valeo Schalter und Sensoren GmbH
CDA-IP
Laiernstrasse 12
74321 Bietigheim-Bissingen (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
22 October 2020 concerning maintenance of the
European Patent No. 2723625 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: V. Vinci
S. Fernández de Córdoba

Summary of Facts and Submissions

I. The appeal filed by the appellant (patent proprietor) is directed against the interlocutory decision of the opposition division to maintain the European patent No. 2 723 625 in amended form.

II. In its decision the opposition division found that the ground for opposition under Article 100(b) in combination with Article 83 EPC was prejudicial to the maintenance of the patent as granted and decided to maintain the patent in amended form according to the auxiliary request 2f filed at the oral proceedings.

III. With the communication according to Article 15(1) RPBA dated 10 September 2021 the Board informed the parties of its preliminary assessment of the case.

Oral proceedings pursuant to Article 116 EPC were held before the Board on 30 November 2022 by videoconference.

IV. The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted (main request) or, as an auxiliary measure, according to anyone of the auxiliary requests 1 to 5 corresponding to the auxiliary requests 1, 2, 2c, 2b and 2d respectively as filed during the opposition proceedings.

The respondent (opponent) requested that the appeal be dismissed as inadmissible or unfounded.

V. Independent claim 1 as granted reads as follows (labelling of the features introduced by the Board):

[1.1] *"A sensor system for a steering wheel (120) of a vehicle, comprising: a first sensor (S1) disposed within a first portion of the steering wheel (120) and configured to detect contact with a front left side surface of the steering wheel (120);*

[1.2] a second sensor (S2) disposed within a second portion of the steering wheel (120) separate from the first portion and configured to detect contact with a front right side surface of the steering wheel (120); and

[1.3] a third sensor (S3) disposed within a third portion of the steering wheel (120) to detect contact with a back surface of the steering wheel (120),

[1.4] wherein the first, second and third sensors (S1, S2, S3) are configured to respectively detect contact by the operator of the vehicle with the front left side, front right side, and rear surfaces;

[1.5] wherein the sensor system further comprises control circuitry configured to use signals from the first, second and third sensors (S1, S2, S3) to indicate a hand grasp to the steering wheel (120) made by an operator of the vehicle versus another body part contact to the steering wheel (120) made by the operator of the vehicle; and

[1.6] when the first and second portions are being contacted by a hand grasp of the operator the first, second and third sensors (S1, S2, S3) output a signal of a first signal strength, and

[1.7.1] when the first and second portions are being contacted by another body part of the operator

different than a hand grasp or

[1.7.2] that the first, second and third portions are not being contacted by the operator

[1.7.3] the first, second and third sensors (S1 , S2, S3) output a signal of a second signal strength less than the first signal strength."

Reasons for the Decision

ADMISSIBILITY OF THE APPEAL

1. The respondent (opponent) objected to the admissibility of the appeal. It was argued that no requests were attached to the statement of grounds of appeal of the appellant (patent proprietor) as required by Art. 12(3) RPBA 2020, this circumstance rendering the appeal unsubstantiated and thus inadmissible. At the oral proceedings the respondent (opponent) additionally put forward that the renumbering of the auxiliary requests 1, 2, 2c, 2b and 2d underlying the contested decision as auxiliary requests 1 to 5 resulted in an unclear definition of the content of the auxiliary requests actually at stake. It was argued that, for the sake of clarity, the appellant (patent proprietor) should have attached at least the renumbered auxiliary requests 1 to 5 to the statement of grounds of appeal.
- 1.1 The arguments submitted by of the respondent (opponent) in support of the alleged inadmissibility of the appeal are not convincing for the following reasons:

The Board observes that with their notice of appeal and statement of grounds of appeal the appellant (patent

proprietor) clearly states their main request, namely to set aside the interlocutory decision of the opposition division and to maintain the patent as granted. At the oral proceedings the appellant (patent proprietor) correctly pointed out in this respect that as the patent as granted was published, no doubt could be raised regarding the actual content of the main request. Furthermore, the Board concurs with the appellant (patent proprietor) that even though no claims are attached to the statement of grounds of appeal, the latter clearly indicates the correspondence between the sets of claims according to the auxiliary requests 1 to 5 to be considered in appeal and the respective sets of claims of the auxiliary requests underlying the contested decision, whereby no doubt regarding the content of the auxiliary requests at stake arises either. Finally, the Board notes that the statement of grounds of appeal of the appellant (patent proprietor) complies with the requirements of Article 12(3)(a) RPBA according to which all documents referred to shall be "attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;" (emphasis added) as is indeed the case here because the set of claims to be considered in appeal are either published (main request) or submitted during the opposition proceedings (auxiliary requests).

- 1.2 The objections of the respondent (opponent) do not affect the admissibility of the appeal.

MAIN REQUEST: PATENT AS GRANTED

Article 100(b) in combination with Article 83 EPC

2. Contrary to the assessment of the opposition division in the contested decision the patent as granted meets the requirements of Article 83 EPC.

3. With their appeal the appellant (patent proprietor) contested the conclusion of the opposition division that the ground for opposition under Article 100(b) EPC in combination with Article 83 EPC was prejudicial to the maintenance of the patent as granted.
 - 3.1 In the decision under appeal (see point 1.1) the opposition division followed the view of the respondent (opponent) that, in the very often recurring situation in which the user contacted the first and second portions on the front of the steering wheel only by the hand palms, which were considered to fall under the expression "*another body part of the operator different than a hand grasp*" of feature 1.7.1 of claim 1, the sensors (S1) and (S2) disposed therein outputted a signal of relatively high signal strength (reference was made in this respect to the description, paragraph [0019], lines 19-21), while the back sensor (S3), due to the missing grasping action performed by the fingers, outputted a signal of a lower signal strength. It was consequently alleged that when this very often recurring situation covered by feature 1.7.1 of claim 1 occurred (i.e. no hand grasp but only palm contact with the front of the steering wheel), feature 1.7.3 requiring that all three sensors outputted "*a signal of a second signal strength less than the first signal strength*" could never be fulfilled at the same time as instead required by claim 1, thereby rendering the

invention as defined in claim 1 unworkable. Furthermore, the respondent (opponent) objected that the contested patent did not contain sufficient information enabling the person skilled in the art to select and manufacture the sensors required by the functionality defined in claim 1 as granted.

3.2 The Board cannot share the view of the opposition division and the respondent (opponent) for the following reasons:

As convincingly put forward by the appellant (patent proprietor), the conclusion of the opposition division and the respondent (opponent) is based on the uncorrect assumption that also the hand palm falls under the expression *"another body part of the operator different than a hand grasp"* of feature 1.7.1. The Board observes beforehand that this expression is somehow unclear because a *"hand grasp"* is not a *"body part"*, but rather a configuration/gesture of the hand wherein, in particular in the technical context of claim 1, the hand palms contact the first and second portions on the front surface of the steering wheel while, at the same time, the fingers contact the third portion disposed on its back surface. Having said that, the Board, contrary to the view of the opposition division and the respondent (opponent), follows the view of the appellant (patent proprietor) that it does not make any technical sense in the context of the patent to consider the palm, which represent the largest portion of the hand involved together with the fingers in a grasp action, as *"another body part of the operator different than a hand grasp"*. In other words a hand grasp always presuppose a palm contact. Furthermore, the Board observes that in case of a mere palm contact with the first and second portions of the steering

wheel, the output signal of the sensors (S1) and (S2) disposed therein would remain essentially unchanged compared to the signal outputted by the same sensors when the first and second portions are subjected to a *"hand grasp"* as defined in feature 1.6. For these reasons the Board shares the view of the patent proprietor (appellant) that the skilled person understands under a contact by *"another part of the body of the operator different than a hand grasp"* a contact by any possible body part different than the hand palm. Given this interpretation, the person skilled in the art experiences no difficulties to carry out the invention because features 1.7.1 and 1.7.3 are not in contradiction and do not functionally exclude each other as instead incorrectly assumed by the opposition division.

3.3 Furthermore, contrary to the respondent's (opponent's) view, the Board does not see any undue burden for the person skilled in the art regarding the selection/manufacture of the appropriate sensors. In fact, the principle underlying the contested patent, as clearly presented in the whole disclosure which is to be considered when assessing compliance with Article 83 EPC, is based on the measurement of the variation of the complex impedance. As a matter of fact complex impedance sensors suitable for detecting such a variation are well known electronic components commonly employed in the relevant state of the art for this purpose.

3.4 At the oral proceedings the respondent (opponent) alleged that even by following the interpretation adopted by the Board in respect of the expression *"another body part of the operator different than a hand grasp"*, other possible situations of *"non-palm*

contact" were imaginable, like for example the user contacting the front of the steering wheel with the elbow or the chest, in which the sensors (S1) and (S2) would still output a signal of a strength comparable with the first signal strength as defined by feature 1.6, with the consequence that features 1.7.1 and 1.7.3 could not be met at the same time. However, this allegation was not convincingly substantiated and the Board, in agreement with the appellant (patent proprietor), does not see why the person skilled in the art should not be able to select and locate the sensors in such a way that a contact of *"another body part of the operator different than a grasp"* with the first and second portions results in output signals with a signal strength according to features 1.7.3.

4. In view of all the above the decision of the opposition division regarding compliance with Article 83 EPC is uncorrect and cannot be confirmed.

Remittal of the case

5. The opposition division dismissed the main request (patent as granted) only on the ground of opposition pursuant to Article 100(b) in combination with Article 83 EPC without deciding on the other grounds for opposition. The Board, in the exercise of their discretion provided by Article 111 EPC, considers this circumstance to represent the *"special reasons"* in the meaning of Article 11 RPBA 2020 justifying the remittal of the case to the department of first instance. The appellant (patent proprietor) explicitly agreed with the remittal of the case, while the respondent (opponent) did not wish to comment on this point.

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 for further prosecution.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated