

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 1 October 2024**

Case Number: T 1485/21 - 3.2.06

Application Number: 16717466.3

Publication Number: 3268258

IPC: B62B3/00, B62D7/14, B62D13/04

Language of the proceedings: EN

Title of invention:
TRANSPORT TROLLEY WITH STEERING WHEELS

Patent Proprietor:
Tellure Rôta S.p.A.

Opponent:
Blickle Räder + Rollen GmbH u. Co. KG

Headword:

Relevant legal provisions:
EPC Art. 100(a), 100(b), 100(c)
RPBA 2020 Art. 12(6), 13(2)

Keyword:
Grounds for opposition - prejudicial (no)

Decisions cited:

G 0007/93

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

Case Number: T 1485/21 - 3.2.06

D E C I S I O N
of Technical Board of Appeal 3.2.06
of 1 October 2024

Appellant: Blickle Räder + Rollen GmbH u. Co. KG
(Opponent) Heinrich-Blickle-Straße 1
72348 Rosenfeld (DE)

Representative: Holzwarth-Rochford, Andreas
Jones Day
Nexttower
Thurn-und-Taxis-Platz 6
60313 Frankfurt am Main (DE)

Respondent: Tellure Rôta S.p.A.
(Patent Proprietor) Via Quattro Passi, 15
41043 Formigine (MO) (IT)

Representative: Mitola, Marco
Jacobacci & Partners S.p.A.
Piazza Mario Saggin, 2
35131 Padova (IT)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 25 June 2021
rejecting the opposition filed against European
patent No. 3268258 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman M. Harrison
Members: M. Hannam
J. Hoppe

Summary of Facts and Submissions

- I. An appeal was filed by the appellant (opponent) against the decision of the opposition division rejecting the opposition to European patent No. 3 268 258. In its grounds of appeal the appellant requested that the decision under appeal be set aside and the European patent be revoked or, as an auxiliary measure, that the case be remitted to the opposition division if the auxiliary requests 1 to 4 were to be considered.
- II. In its reply to the appeal, the respondent (patent proprietor) requested that the appeal be dismissed (main request) or, as an auxiliary measure, that the patent be maintained according to one of auxiliary requests 1 to 4, filed on 17 March 2022.
- III. The following documents, referred to by the appellant in its grounds of appeal, are relevant to the present decision:
- D1 EP-A-2 765 054
 - D2 EP-A-2 384 950
 - D5 Machine translation into English of the Italian application as filed
 - D7 GB 540 703
 - D17 Extract from Oxford-Paravia Italian Dictionary
 - D18 YouTube Video: 'Material Handling Cart Chain Steering System', www.youtube.com/watch?v=mMkaViPRfkA
 - D19 Screenshots from D18 video
- IV. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the grounds for opposition under Articles 100(b) and (c)

EPC appeared not to be prejudicial to maintenance of the patent as granted. It further indicated that D18 and D19 would likely not be admitted and that the inventive step attack starting from D1 and combining D7 with this would likely require discussion at oral proceedings.

V. Oral proceedings were held before the Board on 1 October 2024, during which the appellant filed two pages with drawings and withdrew its novelty objection to the subject-matter of claim 1 of the main request based on D2. At the close of oral proceedings the parties' requests were as indicated in points I and II above.

VI. Claim 1 of the main request reads as follows (with paragraph annotation added in bold as used by the opposition division in its decision):

"Transport trolley (4) comprising

- a frame (8) that extends from a front portion (12) to a rear portion (16), along a prevailing longitudinal direction (X-X), (**f. 1.1**)
- the front portion (12) being provided with a pair of front wheels, including a front steering wheel (20) about a steering axis (S-S) parallel to a vertical direction (Z-Z), perpendicular to a ground support (P) of the trolley (4), and a front idle wheel (24), pivoting about an axis parallel to said vertical direction (Z-Z), and a tiller (28), (**f. 1.2**)
- the rear portion (16) being provided with a pair of rear wheels, including a rear steering wheel (36) about a steering axis parallel to the vertical direction (Z-Z), and a rear idle wheel (40), pivoting about an axis parallel to said vertical direction (Z-Z), (**f. 1.3**)
- wherein the front and rear steering wheels (20, 36),

are arranged on the same side of the trolley (4) with respect to a centre plane (M-M) of the frame (8) parallel to the prevailing longitudinal direction (X-X), (**f. 1.4**)

- wherein the trolley (4) comprises transmission means (44) that kinematically connect the tiller (28) with said front and rear steering wheels (20, 36), (**f. 1.5**)

- the transmission means (44) comprise a front belt or chain (48) kinematically connected with the tiller (28) and with the front steering wheel (20), and a rear belt or chain (52) kinematically connected with the rear steering wheel (36), (**f. 1.6**)

- wherein said front and rear belts or chains (48, 52) are mechanically separated from each other and kinematically connected through the interposition of inversion of motion means (56), so as to command said front and rear steering wheels (20, 36), to rotate in directions opposite to each other, (**f. 1.7**)

characterised in that

- the rear portion (16) comprises a rocker (88) pivoting around a pivoting pin (92) that defines a pivoting axis (B-B) passing through the centre plane (M-M) of the frame (8) parallel to the prevailing longitudinal direction (X-X), (**f. 1.8**)

- said pivoting rocker (88) supporting the rear steering wheel (36) and the rear idle wheel (40) (**f. 1.9**)."

VII. The appellant's arguments relevant to the present decision may be summarised as follows:

Article 100(b) EPC

The invention according to claim 11 could not be carried out since the patent failed to teach the skilled person how to automatically recover any loss in tension of the rear belt or chain. Should this

objection not be persuasive, the same knowledge of the skilled person should be borne in mind when analysing the inventive step objections.

Article 100(c) EPC

The term 'rocker' in feature 1.8 was an incorrect translation from Italian. The correct translation was 'rocker arm' which was more limiting. This resulted in the subject-matter of claim 1 extending beyond the content of the application as filed.

Article 100(a) EPC

D18 and D19 should be admitted. The opposition division incorrectly interpreted feature 1.7 to conclude that this was *prima facie* not disclosed in D18 and D19. D18 and D19 were thus prejudicial to novelty of the subject-matter of claim 1.

D1 and D7

The subject-matter of claim 1 lacked an inventive step. Starting from D1, solely features f1.8 and f1.9 of claim 1 were not known. The objective technical problem thus involved modifying the trolley of D1 to keep all wheels in contact with uneven ground. The skilled person would consider D7 for a solution to this problem since it also specifically addressed keeping all wheels of the vehicle in contact with the ground. The entire rear portion 31 could act as a rocker. Even though the vehicle of D7 had two fixed axle wheels on the rear portion, the skilled person would see the rocker mechanism alone as being of importance for modifying D1. In order to incorporate the pivoting ability of the rear frame 19a of D7 into the rear portion 31 of D1, the skilled person would divide the rear portion 31 into two parts, a first part supporting housings from which a second part, incorporating the rear wheels, was

pivotaly mounted. This would allow the second part of the rear portion to act as a rocker maintaining rear wheel contact with the ground. The presence of a steering wheel and an idle wheel on the rear portion 31 of D1 would not present a problem.

Should fouling or rubbing of the crossing chains be of concern, the skilled person would locate the forward pivot of the rear portion 31 on the cross-member forming the forward-most portion of the rear portion 31 (marked in blue on the coloured copy of Fig. 9 submitted at oral proceedings). This would require a simple attachment of the pivot to the longitudinal frame elements 30 of D1 (marked in red on the coloured copy of Fig. 9 submitted at oral proceedings), this being a simple adaptation within the design capabilities of the skilled person. The longitudinal adjustment of the rear portion 31 would not be hindered by this modification due to the regular holes in the longitudinal frame elements 30, allowing positional adjustment of both the rear portion 31 and the pivot in the longitudinal direction.

D2 and common general knowledge

D2 disclosed feature 1.7. There had to be a difference in this feature between the mechanical and kinematic connection. The front chain in Fig. 13 could be considered located at pulley 112'', the rear chain at pulley 114''. These were thus 'mechanically separated' even if they were linked by the tension element 182''. Even if this feature were not known from D2, it could not provide the basis for an inventive step. An objection starting from D2 and combining the teaching of D1 with this should be admitted. Based on features f1.8 and f1.9, the technical problem could be seen as to provide improved access for the loading/unloading of the trolley. If the objective technical problem were to

be seen as to maintain ground contact of the wheels, starting from Fig. 8a of D2, the skilled person would move the rocker to the rear wheels of the trolley 100. This was a one-way street, insofar as no other logical modification would be made. The proprietor had also confirmed that the skilled person would know that providing a rocker at the rear wheels was desirable. Alternatively starting from a trolley 100''' with an H-shaped base (see paragraph [0082]) in an orientation suggested by the U-shaped arrangement of Fig. 17, the skilled person would also have the sole option of placing the rocker between the rear wheels of the base. This was further supported by paragraph [0031] of D2.

D2 and D1

This inventive step attack should be admitted as it also deprived the subject-matter of claim 1 of an inventive step.

D2 and D7

D7 would also guide the skilled person to modify the trolley 100''' of D2 by positioning the rocker to act on the rear wheels.

VIII. The respondent's arguments relevant to the present decision may be summarised as follows:

Article 100(b) EPC

The invention according to claim 11 was sufficiently disclosed. The patent itself disclosed how tension could be maintained in the chains and the skilled person was aware of alternative ways of achieving this from their common general knowledge.

Article 100(c) EPC

The term 'rocker' was correctly translated from Italian

so no extension of subject-matter resulted.

Article 100(a) EPC

This ground for opposition was not prejudicial to the patent as granted.

D1 and D7

The skilled person would not consider the fixed axle wheel rocker arrangement of D7 to modify the freely pivotable and steered pivotable wheel rear portion of D1. The trolley and pole wagon were from different technical fields. They were also of fundamentally different designs and the skilled person was not given any guidance as to a possible incorporation of the rocker arrangement of D7 into a trolley of the D1 type. Even if a combination were envisaged, paragraph [0061] of the patent indicated a further problem being addressed by the claimed invention, namely that of avoiding rubbing of the chains by the inversion of motion means of feature f1.7. This would still further dissuade the skilled person from trying to modify D1 with the known rocker arrangement.

D2 and common general knowledge or D7

D2 consistently disclosed the rocker arranged longitudinally on one side of the trolley, and provided no indication of linking the rear wheels with a rocker, particularly as at least one of these would be steered. Rubbing of the chains would again be a problem. D7 also provided no hint to the claimed solution since this disclosed a trolley with fixed axle rear wheels incompatible with D2.

D2 and D1

The appellant's new attack relating to obviousness of f1.7 from D1 should not be admitted.

Reasons for the Decision

1. *Article 100(b) EPC*

1.1 The patent discloses the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

1.2 The appellant argued that claim 11 could not be carried out since the patent failed to teach the skilled person how to automatically recover any loss in tension of the rear belt or chain. As also indicated under point 1 of the Board's communication under Article 15(1) RPBA, the skilled person, using their common general knowledge, would be able to compensate for tension loss in the chain/belt irrespective of the actual cause, *inter alia* through increasing the path of travel of the chain/belt by spring loading a pulley about which the chain/belt passes. Such is also described with respect to Figs. 3 and 4 and paragraphs [0046] to [0047] of the patent, with the rear chain/belt path length being adjusted by moving the pivoting rocker 88 with respect to the rear portion 16 of the frame 8. It follows, therefore, that the patent clearly discloses at least one way of carrying out the invention according to claim 11 which, in the present case where the skilled person is aware of variants of such mechanisms, is seen to be sufficient for the invention to be carried out across the scope of claim 11.

1.3 To this preliminary opinion, the appellant offered no further arguments in writing or at oral proceedings, other than to state that the skilled person must be credited with the same understanding in the technical

field when considering the inventive step objections.

1.4 Absent any counter-arguments to its preliminary opinion on this point, the Board confirms the same herewith. The ground for opposition under Article 100(b) EPC thus does not prejudice maintenance of the patent as granted.

2. *Article 100(c) EPC*

2.1 The subject-matter of claim 1 does not extend beyond the content of the application as filed.

2.2 As stated under point 2 of the Board's communication according to Article 15(1) RPBA, no proof has been provided by way of e.g. a certified translation that the term 'rocker' in feature f1.8 is, with any certainty, an incorrect translation from the originally filed Italian language application. The supplied machine translation (D5) of the application and a single dictionary extract (D17) do not provide any such certainty. It thus follows that no persuasive basis has been provided to show that the subject-matter of claim 1 extends beyond the content of the application as filed.

2.3 To this preliminary opinion, the appellant presented no counter-argument at oral proceedings so that the Board confirms its preliminary opinion herewith.

2.4 The ground for opposition under Article 100(c) EPC thus does not prejudice maintenance of the patent as granted.

3. *Article 100(a) EPC in combination with Article 56 EPC*

3.1 *D1 in combination with the teaching of D7*

3.1.1 It is uncontested between the parties that D1 discloses (see particularly Figs. 9 to 11) features f1.1 to f1.7 of claim 1 as follows:

Transport trolley (1) comprising

- a frame (30) that extends from a front portion (32) to a rear portion (31), along a prevailing longitudinal direction (see e.g. Fig. 10), (**f. 1.1**)

- the front portion (32) being provided with a pair of front wheels (see Fig. 11), including a front steering wheel (WL) about a steering axis parallel to a vertical direction, perpendicular to a ground support of the trolley (1), and a front idle wheel (WR), pivoting about an axis parallel to said vertical direction, and a tiller (20, 21), (**f. 1.2**)

- the rear portion (31) being provided with a pair of rear wheels, including a rear steering wheel (WL) about a steering axis parallel to the vertical direction, and a rear idle wheel (WR), pivoting about an axis parallel to said vertical direction, (**f. 1.3**)

- wherein the front and rear steering wheels (WL, WL), are arranged on the same side of the trolley (1) with respect to a centre plane of the frame (30) parallel to the prevailing longitudinal direction (see Fig. 11), (**f. 1.4**)

- wherein the trolley (1) comprises transmission means (10, 130, 60, 80) that kinematically connect the tiller (20, 21) with said front and rear steering wheels (WL, WL), (**f. 1.5**)

- the transmission means comprise a front chain (60) kinematically connected with the tiller (20, 21) and with the front steering wheel (WL), and a rear chain

(80) kinematically connected with the rear steering wheel (WL), (**f. 1-6**)

- wherein said front and rear chains (60, 80) are mechanically separated from each other (see Fig. 11) and kinematically connected through the interposition of inversion of motion means (9, 10, 130), so as to command said front and rear steering wheels (WL, WL), to rotate in directions opposite to each other (**f. 1.7**).

3.1.2 D1 thus fails to disclose solely the following features of claim 1:

- that the rear portion comprises a rocker pivoting around a pivoting pin that defines a pivoting axis passing through the centre plane of the frame parallel to the prevailing longitudinal direction, (**f. 1.8**); and
- said pivoting rocker supporting the rear steering wheel and the rear idle wheel. (**f.1.9**)

3.1.3 These features act together in helping to maintain rear wheel contact with non-planar floor surfaces (see e.g. col. 5, lines 40 to 52 and paragraph [0065] of the patent). The objective technical problem to be solved may thus be seen as 'how to assist in maintaining rear wheel contact with non-planar floor surfaces'.

3.1.4 The respondent's argument, with reference to paragraph [0061] of the patent, that a further problem was being addressed by the claimed invention, namely that of avoiding rubbing of the chains by the inversion of motion means of feature f1.7 is not accepted as objective. Features f1.8 and f1.9 are the sole features of claim 1 differentiating the claimed subject-matter over D1. These are thus the only features which can be considered for formulating the objective technical problem when using the problem-solution approach. Since

these two features have no function related to the avoidance of chain rubbing, a problem relating to avoiding rubbing of the chains is not objective.

- 3.1.5 Faced with the problem cited in point 3.1.3 above, the skilled person would be aware of D7 which is directed to solving just this problem (see page 2, lines 1 to 5 and page 3, lines 93 to 99). The Board thus finds that, contrary to the opinion of the respondent but in view of the posed problem, the skilled person would consider D7 in relation to the teaching of how to maintain rear wheel contact with the floor.
- 3.1.6 The Board finds, however, that based on the technical teaching in D7, the skilled person would not be guided to modify the transport trolley known from D1 in order to reach the claimed subject-matter without exercise of an inventive step. The reasons for this are as follows:
- 3.1.7 Firstly, the pole wagon disclosed in D7 (see Fig. 3 and page 3, lines 2 to 15) has fixed axle, non-steerable rear wheels. These wheels have a fixed orientation, always remaining in line with the longitudinal direction of the pole wagon. A rocker mechanism is provided for the rear frame 19a, rotating about a longitudinally oriented pivot 32 supported on the pole 11, which allows the rear wheels 56, attached to the rear frame 19a, to change their relative vertical positions in order to remain in contact with uneven ground. In contrast, the rear wheels of the transport trolley of D1 comprise a steering wheel WL on one side, and a freely pivotable idle wheel WR on the other side of the rear portion 31, both pivotable about a vertical axis (see paragraph [0028] of D1). When wishing to adopt the fixed axle wheel rocker arrangement of D7 into the steered and freely pivotable rear wheels on

the rear portion 31 of D1, the skilled person would question how to adapt the known rocker to compensate for the presence of the steering ability.

- 3.1.8 Even if, despite this concern as to how to adapt the rocker of D7 for a steered and freely pivotable wheel, the skilled person were to pursue this modification, the positioning of the pivot about which the rocker rotates would have to be considered. D1 lacks a single axial, longitudinally extending structural member, akin to the pole of D7, to which the rocker pivot can be fixed. Rather D1 has two, longitudinally extending frame members 30, neither of which sits on the longitudinal axis of the trolley. A modification of the frame structure 30 of D1 would thus additionally be required in order to provide, on the longitudinal axis of the trolley, a pivot about which the rocker could rotate. This is neither taught nor suggested by D7.
- 3.1.9 In association with providing a rocker for the steered arrangement of D1 the skilled person would then be faced with a still further hurdle to overcome, that of avoiding chain rubbing at the crossing point of the steering chains (see chain parts 130, 130a in Fig. 11). If the rear portion 31 of the trolley of D1 were allowed to rotate about a longitudinally oriented pivot, the chains 130 and 130a would skew relative to one another thus rubbing against each other unless means to mitigate this were introduced. Thus, even though avoiding chain rubbing does not form part of the objective problem to be solved (as explained above) when starting from D1, it does indeed play a role when it comes to considering how the skilled person might actually combine the teaching of D7 with D1.

- 3.1.10 It thus follows that, when starting from D1 and wishing to solve the objective technical problem, the skilled person would be faced with numerous and considerable obstacles when trying to incorporate the rocker arrangement of D7 into the trolley of D1, such that the claimed subject-matter would not be reached without exercise of an inventive step.
- 3.1.11 The appellant's argument, submitted exclusively in writing (see from the last paragraph on page 12 to the end of page 13 of its grounds of appeal), regarding dividing the rear portion 31 of D1 into two parts in order to pivot a section of the rear portion to which the wheels are attached relative to the remainder of the rear portion 31, lacks any clear teaching in D1 or D7. The entire rear frame 19a of D7 forms the rocker such that the skilled person would be guided to such a modification of the rear portion 31 of D1, rather than a modification subdividing it.
- 3.1.12 At oral proceedings the respondent, for the first time, argued that such a modification of D1 would also result in the chains rubbing at the crossing point of the steering chains 130 and 130a. The Board saw this as a development of its previously submitted arguments where it had explained in writing that this had been avoided in claim 1 by feature 1.7 (see the response to the grounds of appeal page 9, item 7a "Premise"), and which reflected the discussion at oral proceedings. Accordingly, these submissions are not to be regarded as an amendment so that Article 13(2) RPBA does not apply. Similarly, the appellant's new arguments in reaction to this situation were all seen as a development and appropriate response.

3.1.13 The appellant's contention that it would be obvious to a skilled person to position the necessary pivot at the crossing point of the belts in D1, thus avoiding any chain rubbing concerns, is not accepted. First, nothing in D7 teaches or suggests an adaptation of a pole wagon to a parallel member framework as in D1. Already inventive step considerations would be necessary to consider how to incorporate such a modification. And, even if the skilled person were to position the pivot on an additional cross-member of the frame 30 at the longitudinal crossing point of the chains (as essentially indicated by the blue pivot marking on the second page of the annotated figures submitted at oral proceedings), which in itself would be a modification not hinted at by D7, this would further require adapting the longitudinally extending portions 31L of the rear frame 31 which would otherwise prohibit the necessary rotation of the rear frame 31 about the pivot due to these portions 31L being supported directly in longitudinal (and sliding) contact with the frame elements 30. In order to overcome this restriction, still further modification of either the frame elements 30 or the structure of the rear frame 31 would be necessary to allow rotation of the rear frame 31 about the longitudinal pivot located on the added cross-member. Such multiple modifications of D1 required in order to incorporate the teaching of D7 to reach the claimed subject-matter involve an inventive step.

3.1.14 The appellant's contention that all the necessary modifications to D1 required to reach the claimed subject-matter were either suggested by D7 or within the usual design capabilities of the skilled person is also not accepted. As indicated in points 3.1.7 to 3.1.9, when incorporating the rocker of D7 into D1, the skilled person would have to consider how the rocker

could be combined with the steering and freely pivotable idle wheel, decide where to locate the pivot and consider the impact of chain rubbing. Moreover, they would have to significantly modify D1 with a cross member between the frame elements 30 to support the pivot and modify the rear frame 31 to allow it to behave as a rocker and rotate at all about the pivot (see point 3.1.13 above), also at the rear part of the frame. All these considerations and modifications combine to require the skilled person to have to exercise an inventive step in order to reach the claimed subject-matter.

3.1.15 In summary, therefore, starting from D1 and wishing to solve the posed objective technical problem, the skilled person would not be guided by D7 to the claimed subject-matter without exercising an inventive step.

3.2 *D2 in combination with common general knowledge*

3.2.1 As also found by the opposition division, it was uncontested by the parties that D2 discloses (see Figs. 7, 8a, 8b) features f1.1 to f1.6 of claim 1 as follows:

Transport trolley (100) comprising

- a frame (102) that extends from a front portion (see Fig. 8a, in vicinity of the tiller 106) to a rear portion (opposite end of frame 102), along a prevailing longitudinal direction (120),
- the front portion being provided with a pair of front wheels (112, 134), including a front steering wheel (112) about a steering axis parallel to a vertical direction, perpendicular to a ground support (P) of the trolley (100), and a front idle wheel (134), pivoting about an axis parallel to said vertical direction, and a tiller (106),

- the rear portion being provided with a pair of rear wheels (114, 154), including a rear steering wheel (114) about a steering axis parallel to the vertical direction, and a rear idle wheel (154), pivoting about an axis parallel to said vertical direction,
- wherein the front and rear steering wheels (112, 114), are arranged on the same side of the trolley (100) with respect to a centre plane of the frame (102) parallel to the prevailing longitudinal direction (120),
- wherein the trolley (102) comprises transmission means (110) that kinematically connect the tiller (106) with said front and rear steering wheels (112, 114),
- the transmission means (110; see Figs. 11d, 11e, 12) comprise a front chain (see Fig. 11d) kinematically connected with the tiller (106) and with the front steering wheel (112), and a rear chain (cf. Fig. 11b) kinematically connected with the rear steering wheel (114).

3.2.2 Contrary to the argument of the respondent, D2 does also disclose the second part of feature f1.7 i.e. that the front and rear chains are kinematically connected through the interposition of inversion of motion means (see e.g. Figs. 11b and 11c; the crossing of the chains inverting the motion of the steering wheels 112, 114), so as to command said front and rear steering wheels (112, 114), to rotate in directions opposite to each other. The respondent referred to paragraphs [0066] to [0070] of the patent to argue that the particular arrangement of chains in D2 is precisely that indicated to be avoided by the patent. Even if that is the case, claim 1 fails to differentiate its subject-matter from D2 in this regard. The chains of D2 are also kinematically connected through inversion of motion

means.

3.2.3 The appellant's argument that D2 additionally disclosed the first part of feature 1.7 i.e. also that 'the rear belts or chains are mechanically separated from each other' is, however, not accepted. Whilst the Board concurs with the appellant that a difference exists between the claimed mechanical and kinematic connection in feature f1.7, the Board finds the tension element 182'' depicted in e.g. Fig. 13 of D2 to mechanically link the front chain at pulley 112'' and the rear chain at pulley 114''. The mechanical connection is seen to exist both structurally, in that the tension element 182 structurally links the front and rear chain together, and functionally, in that the tension element 182 ensures that any motion of one chain is transferred to the other. The part of feature f1.7 that 'the rear belts or chains are mechanically separated from each other' is thus not known from D2.

3.2.4 D2 is thus found not to disclose solely the following features of claim 1:

- wherein said front and rear chains are mechanically separated from each other (**f. 1.7, part**);
- the rear portion comprises a rocker pivoting around a pivoting pin that defines a pivoting axis passing through the centre plane of the frame parallel to the prevailing longitudinal direction (**f. 1.8**); and
- said pivoting rocker supporting the rear steering wheel and the rear idle wheel (**f.1.9**).

3.2.5 Regarding the feature that the rear belts or chains are mechanically separated from each other (f.1.7), the appellant argued this not to be able to support recognition of an inventive step since D1 (see e.g. Fig. 11) disclosed just such a mechanical separation of

the front and rear chains. Such an attack was raised by the appellant for the first time at oral proceedings and its admittance thus falls under Article 13(2) RPBA. In view of the opposition division's finding that feature 1.7 was not known from D2 (see point 4.2.3 of its decision), the objection starting from D2 and combining the teaching of D1 with this should have been presented already in the appellant's grounds of appeal. No exceptional circumstances were argued by the appellant to justify the admittance of this new attack, nor can the Board see any. The Board thus decided not to take this new inventive step attack into account (Article 13(2) RPBA).

3.2.6 Based on the differentiating features f1.8 and f1.9 and D2 already disclosing a rocker, albeit longitudinally oriented, the objective technical problem to be solved can be formulated as 'to provide an alternative rocker arrangement'. The appellant's technical problem of 'how to improve the loading and unloading of the trolley' is not objective as there are no features differentiating claim 1 over D2 having any relevance to loading/unloading the trolley. Any disclosure of such an advantage in D2 itself (e.g. in paragraph [0085]) is of no relevance when formulating the objective technical problem, which is usually formulated based on the features differentiating claim 1 over the prior art forming the starting point of the inventive step attack.

3.2.7 When considering the trolley 100 of the Fig. 8a embodiment of D2 as the starting point, it is noted that the rocker would be oriented in the longitudinal direction of the trolley 100, linking the pair of idle wheels 134 and 154 on one side of the trolley (see e.g. paragraph [0062] of D2). This embodiment of D2 thus

solely discloses a rocker linking a pair of idle wheels such that no suggestion of using a rocker to link a steered wheel and an idle wheel anywhere on a trolley is disclosed. As already considered in relation to the modification of D1 in points 3.1.7 and 3.1.9 above, compensating for the rocker acting between a steered wheel and an idle wheel at the rear of the trolley 100 in addition to dealing with the chains rubbing at their crossing point would be issues the solution to which would demand an inventive step to be exercised by the skilled person. The appellant's suggestion that a 'one-way street' modification to D2 was apparent in view of the problem to be solved is not accepted, as there would still be the necessity for the skilled person to consider the above issues which would not be solved without their exercising an inventive step.

3.2.8 An alternative starting point argued by the appellant was the Fig. 17 embodiment of D2, albeit in the form of an H-shaped trolley base with user access from each side between the legs of the 'H'. As accepted by both parties, the features differentiating claim 1 over this embodiment are unchanged from those differentiating claim 1 over the Figs. 7, 8a, 8b embodiment considered above i.e. features f1.7 (part), f1.8 and f1.9. Nonetheless, the Fig. 17 embodiment fails to unambiguously include any rocker to assist any pair of wheels to remain in contact with the ground. The objective technical problem to be solved is thus the same as that considered when starting from the trolley of D1 in which no rocker was present, i.e. 'how to assist in maintaining rear wheel contact with non-planar floor surfaces'.

3.2.9 It is noted that, whilst D2 does disclose the incorporation of a rocker into the trolley in order to

assist in maintaining wheel contact with the floor, the sole disclosures of this relates to a longitudinally extending rocker, linking idle wheels (i.e. non-steered wheels) at the front and rear on one side of the trolley (see e.g. Figs. 6, 7 and 8a). This is further described in paragraph [0062] which confirms that the rocker ('Wippe 146') is located between the two idle wheels 134, 154 located on one side of the trolley 100. The skilled person therefore has no suggestion from D2 itself that anything but idle wheels on one side of the trolley can be mounted on a simple rocker. Even though such an arrangement is essentially impossible in the Fig. 17 H-shaped embodiment of the trolley due to user access to the trolley provided from the sides (unless, as the proprietor argued, a highly modified rocker arm were used, replacing the longitudinal rocker, with the two legs of the U extending along the legs of the H-shaped platform to wheels at the end thereof, and being joined by a central portion underneath the longitudinal central part of the H-shape) and, according to the appellant, the skilled person thus automatically placing the rocker between the rear wheels, the skilled person would be unsure how to incorporate the rocker to the rear wheels due to the need for the rocker arrangement to compensate for a steering wheel, rather than two idle wheels, and the associated problems of crossing chains and rubbing.

3.2.10 As to the appellant's allegation that the respondent had conceded that a rocker between the rear wheels was the obvious option for the skilled person, the Board understands the respondent's statement differently. Its argument that the rear wheels needed to be maintained in contact with the ground which thus led the skilled person to providing a rocker at the rear of the trolley was argued in direct relationship with the claimed

invention, rather than in relation to the skilled person thus being directly guided to such a modification of D2. As found above, even if the skilled person were to consider a rocker linking the two rear wheels of the trolley known from Fig. 17 of D2, the need to compensate for the presence of a chain driven steering for the steering wheel and the concern over crossing chains rubbing would necessitate the skilled person exercising an inventive step in order to reach the claimed subject-matter.

3.2.11 In summary, therefore, starting from either of the D2 embodiments and wishing to solve the posed objective technical problem, the skilled person would not be guided by their common general knowledge or any teaching in D2 to the claimed subject-matter without having to exercise an inventive step.

3.3 *D2 in combination with the teaching of D7*

3.3.1 Starting from either of the embodiments of D2, be that the trolley 100 of Fig. 6 or the trolley 100''' of Fig. 17, the technical teaching of D7 would not guide the skilled person to the claimed subject-matter without exercise of an inventive step. As already found when starting from D1 above, the pole wagon disclosed in D7 has fixed axle, non-steerable rear wheels. In contrast, the rear wheels of the transport trolleys 100 or 100''' of D2 are either a freely pivotable idle wheel or a steered pivotable wheel. When wishing to adopt the fixed axle wheel rocker arrangement of D7 into the steered and freely pivotable rear wheels of D2, the skilled person would question how to adapt the known rocker to compensate for the presence of the steering ability. With the further complication relating to avoiding rubbing of the crossing chains for the steered

wheel when incorporating the rocker, the skilled person would have to make multiple modifications which would require exercise of an inventive step.

- 3.3.2 To this preliminary opinion given in the Board's communication under Article 15(1) RPBA, the appellant declined to provide further arguments at oral proceedings.
- 3.3.3 It thus follows that, when starting from D2 and wishing to solve the objective technical problem, the skilled person would be faced with numerous obstacles when trying to incorporate the rocker arrangement of D7 into the trolley of D2, none of which were taught or hinted at by either document, such that the claimed subject-matter would not be reached without exercise of an inventive step.
- 3.4 *D18 and D19 - admittance*
 - 3.4.1 The appellant contends that the opposition division's discretionary decision not to admit D18 and D19 due to a *prima facie* lack of relevance was incorrect.
 - 3.4.2 In such cases where a department of first instance has exercised its discretion, it is not the function of a Board of Appeal to review all the facts and circumstances of the case as if it were in the place of the first instance department, in order to decide whether or not it would have exercised such discretion in the same way. Rather, its competence should normally be limited to establishing whether the first instance department has exercised its discretion in accordance with the right principles and that it has exercised its discretion in a reasonable way (see e.g. G7/93, point

2.6).

- 3.4.3 As also considered to be the case by the Board in its communication under Article 15(1) RPBA, the opposition division in the present case coherently argued why D18 and D19 should not be admitted, essentially based on a lack of *prima facie* relevance. Its reasoning for reaching such a *prima facie* conclusion is also found by the Board to be correct. The Board thus has no doubt that the opposition division exercised its discretion both in accordance with the right principles and in a reasonable way.
- 3.4.4 To the Board's preliminary opinion, the appellant submitted no counter-arguments at oral proceedings, stating instead that it relied on its written submissions. The Board thus has no basis on which to alter its preliminary finding and confirms that D18 and D19 are not admitted into the proceedings (Article 12(6) RPBA).
- 3.5 In summary therefore, none of the inventive step objections raised by the appellant put the presence of an inventive step in the subject-matter of claim 1 into doubt. The ground for opposition under Article 100(a) EPC thus does not prejudice maintenance of the patent as granted.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



D. Grundner

M. Harrison

Decision electronically authenticated