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**Datasheet for the decision  
of 12 August 2024**

**Case Number:** T 1753/21 - 3.2.01

**Application Number:** 13848638.6

**Publication Number:** 2913257

**IPC:** B62K5/08, B62K25/08

**Language of the proceedings:** EN

**Title of invention:**  
SUSPENSION DEVICE

**Applicant:**  
Yamaha Hatsudoki Kabushiki Kaisha  
KYB Corporation

**Headword:**

**Relevant legal provisions:**

EPC Art. 113(1), 111  
EPC R. 103(1)(a)

**Keyword:**

Right to be heard - substantial procedural violation (yes)  
Reimbursement of appeal fee - appealed decision sufficiently  
reasoned (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 1753/21 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 12 August 2024**

**Appellant:** Yamaha Hatsudoki Kabushiki Kaisha  
(Applicant 1) 2500 Shingai  
Iwata-shi, Shizuoka 438-8501 (JP)

**Appellant:** KYB Corporation  
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Tokyo 105-6111 (JP)

**Representative:** Grünecker Patent- und Rechtsanwälte  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 26 May 2021  
refusing European patent application No.  
13848638.6 pursuant to Article 97(2) EPC.

**Composition of the Board:**

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

## **Summary of Facts and Submissions**

- I. The appeal was filed by the appellant (applicant) against the decision of the examining division refusing the patent application in suit.

In the decision under appeal the examining division did not admit a "*new main request*" filed at the oral proceedings, found that neither the previous main request nor the auxiliary request 1, both filed on 4 March 2021, met the requirements of Article 123(2) EPC and thus refused the application.

- II. With their statement of grounds of appeal the appellant requested that the decision under appeal be set aside and that a patent be granted according to the main request or, in the alternative, according to the first auxiliary request underlying the decision under appeal. As a further auxiliary measure oral proceedings were requested.

With a communication of the Board dated 31 May 2024, the appellant was informed that the Board intended to set aside the decision under appeal, to remit the case to the first instance department for further prosecution and to reimburse the appeal fee under Rule 103(1)(a) EPC for the reasons of a substantial procedural violation. Furthermore, the appellant was informed that in the event that the request for oral proceedings was withdrawn within a delay of 2 months of notification of the communication, the Board intended to issue a written decision according to the above preliminary opinion.

With a letter dated 26 July 2024, the appellant

expressed their agreement with the proposal of the Board and withdrew their request for oral proceedings.

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

*"A vehicle having a vehicle body (1002), one or two rear wheels (1004), a pair of left and right front wheels (1003) comprising a first front wheel (1031) disposed on a left side in the vehicle width direction and a second front wheel (1032) disposed on a right side in the vehicle width direction, the vehicle body frame (1021) includes a head pipe (1211), steering mechanism (1007) and a link mechanism (1005), a steering shaft (1060) of the steering mechanism (1007) is rotatably inserted into the head pipe (1211), handlebar (1023) connected to an upper part of the steering shaft (1060), the head pipe (1211) supports the link mechanism (1005), and the steering mechanism (1007) includes a steering force transmission mechanism (1006), the steering force transmission mechanism (1006) includes a steering member (1028), a tie rod (1067), the first bracket (1317) and the second bracket (1327), a first suspension device first shock absorber (1033) and a second suspension device second shock absorber (1034), wherein the first front wheel (1031) is supported by the first suspension device first shock absorber (1033) and the second front wheel (1032) is supported by the second suspension device second shock absorber (1034), each suspension device comprises:*

*a first telescopic element (1331, 1341) including a first outer portion (1331a, 1341a) and a first inner portion (1331b, 1341b) of which one end part is inserted into the first outer portion (1331a, 1341a), and being capable of extending/contracting in a*

*extension/contraction direction of the first telescopic element (1331, 1341) by relative movement of the first inner portion (1331b, 1341b) with respect to the first outer portion (1331a, 1341a);*

*a second telescopic element (1332, 1342, 1332A, 1342A) including a second outer portion (1332a, 1342a, 1332a1, 1332a2) which is connected to the first outer portion (1331a, 1341a) and a second inner portion (1332b, 1342b, 1332b1, 1342b2) of which one end part is inserted into the second outer portion (1332a, 1342a, 1332a1, 1332a2) and which is connected to the first inner portion (1331b, 1341b), and being capable of extending/contracting in a extension/contraction direction of the second telescopic element (1332, 1342, 1332A, 1342A) by relative movement of the second inner portion (1332b, 1342b, 1332b1, 1342b2) with respect to the second outer portion (1332a, 1342a, 1332a1, 1332a2); a wheel support portion (1333, 1343) capable of supporting the front wheel (1031, 1032) on one of an outer element (1033a, 1034a) including the first outer portion (1331a, 1341a), the second outer portion (1332a, 1342a, 1332a1, 1332a2) and an outer connection portion (94A, 96A) for connecting the first outer portion (1331a, 1341a) and the second outer portion (1332a, 1342a, 1332a1, 1332a2) and an inner element (1033b, 1034b) including the first inner portion (1331b, 1341b), the second inner portion (1332b, 1342b, 1332b1, 1342b2) and an inner connection portion (1317, 1327, 1317A, 1327A) for connecting the first inner portion (1331b, 1341b) and the second inner portion (1332b, 1342b, 1332b1, 1342b2);*

*and a vehicle body support portion (1317, 1327, 1317A) capable of supporting the other one of the outer element (1033a, 1034a) and the inner element (1033b,*

1034b), on the vehicle body (1002) of the vehicle (1001), wherein the second outer portion (1332a, 1342a, 1332a1, 1332a2) is formed to be smaller than the first outer portion (1331a, 1341a) and connected to the first outer portion (1331a, 1341a) using a plurality of the outer connection portions (94A, 96A) arranged in the extension/contraction direction of the second telescopic element (1332, 1342, 1332A, 1342A), the second inner portion (1332b, 1342b, 1332b1, 1342b2) is formed to be equal to or smaller than the first inner portion (1331b, 1341b) and connected to the first inner portion (1331b, 1341b) using at least one inner connection portion (1317, 1327, 1317A, 1327A), and the second telescopic element (1332, 1342, 1332A, 1342A) is: viewed from a rotation axis direction of the wheel (1031, 1032) supported on the wheel support portion (1333, 1343), disposed at a position in which the extension/contraction direction of the second telescopic element (1332, 1342, 1332A, 1342A) is in parallel with the extension/contraction direction of the first telescopic element (1331, 1341), and viewed from any one direction vertical with respect to the rotation axis of the wheel (1031, 1032) supported on the wheel support portion (1333, 1343), disposed at a position in which the second telescopic element (1332, 1342, 1332A, 1342A) is overlapped with at least part of the first telescopic element (1331, 1341).

Independent claim 1 according to the auxiliary request 1 comprises following additional features:

"the link mechanism (1005) is equipped with a first cross member (1051), a second cross member (1052), a first side member (1053) and a second side member (1054)"

## Reasons for the Decision

### Substantial Procedural Violation

1. With their appeal the appellant contested the conclusion of the examining division that the amendments in claim 1 of both the main and first auxiliary requests resulted in an unallowable intermediate generalisation of the specific embodiments presented in paragraphs [0049], [0051] to [0053], [0060], [0065] and [0066] of the description as originally filed infringing Article 123(2) EPC.
  - 1.1 The Board takes the view that the decision under appeal is not substantiated as regards the sole ground for refusal, namely the above mentioned lack of compliance with the requirements of Article 123(2) EPC, this deficiency amounting to a substantial procedural violation pursuant to Article 113 EPC. The reasons are the following:
    - 1.2 Under points 15. and 17. of the decision relating to the main and first auxiliary requests respectively the examining division listed the features extracted in isolation from the embodiment described in par. [0049]-[0073], shown in Figures 1-8 and introduced in independent claim 1. Thereafter, the examining division listed a plurality of components of this specific embodiment, all of which were however present in claim 1, and stated that these components were only disclosed in combination with "*other features*" that assured the tilting of the vehicle in response to operation of the handlebar.
    - 1.3 The decision is however completely silent regarding the nature of said "*other components*" that in the examining

division's view were inextricably linked to the features added to claim 1, the omission of which caused the objected unallowable intermediate generalisation which in turn led to the refusal of the application. The Board takes the view that this missing information, i.e. which the omitted *"other features"* are, cannot be ascertained even by reading the minutes of the oral proceedings or the communications of the examining division issued before the decision. Accordingly, the appellant's request *"to provide a specific statement concerning the difference between the entire combination of all of the features of the related embodiment and the content of the application documents as originally filed in order to allow an objective judgment of the related features"* is justified. The Board is of the opinion that by not clearly and specifically identifying any of the allegedly unallowably omitted features shown in combination with the features introduced in claim 1 and by not giving reasons why the absence in claim 1 of these features resulted in the subject-matter of the claim to extend beyond the content of the application as filed, the examining division failed to properly indicate the logical chain of arguments leading to the conclusion that the requirements of Article 123(2) EPC were not met, thereby not issuing a reasoned decision in the sense of Rule 111(2) EPC. Moreover, the examining division did not provide either in the previous communications nor in the decision any detailed counter-arguments with respect to the appellant's arguments in support of the view that independent claim 1 of both the main and first auxiliary requests represented an allowable limitation of the specific embodiment disclosed in paragraphs [0049], [0051] to [0053], [0060], [0065] and [0066] of the description as originally filed. By doing so the examining decision

violated the appellant's right to be heard (Article 113(1) EPC).

1.4 These deficiencies in the proceedings leading to the decision under appeal and in the decision itself amount to substantial procedural violations justifying the remittal of the case to the first instance for further prosecution and the reimbursement of the appeal fee pursuant to Rule 103(1) (a) EPC.

1.5 Finally, the decision under appeal also refers to an alleged lack of compliance with the requirements of Article 84 EPC for claim 1 according to the main request and auxiliary request 1 *"even if independent claim 1 had not extended beyond the content of the application as filed"* (see points 15.2 and 17.2 of the decision). Accordingly, this objection is rather to be seen as an obiter dictum and not as a ground for the refusal. In any case, there is no indication in the file that the appellant was at any point in time made aware of this objection. Accordingly, if the decision were also based on a lack of compliance with Article 84 EPC, this would constitute a further procedural violation.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance department for further prosecution.
3. The appeal fee is reimbursed.

The Registrar:

The Chairman:



C. Vodz

G. Pricolo

Decision electronically authenticated