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**Datasheet for the decision
of 19 June 2024**

Case Number: T 0088/22 - 3.2.01

Application Number: 13860227.1

Publication Number: 2928735

IPC: B60S9/08

Language of the proceedings: EN

Title of invention:
DUAL-SPEED AUTO-SHIFT LANDING GEAR

Patent Proprietor:
Jost International Corp.

Opponent:
SAF-HOLLAND GmbH

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 83, 123(2), 123(3)
RPBA 2020 Art. 12(4), 12(6)

Keyword:

Novelty - main request (no) - auxiliary request (yes)
Inventive step - auxiliary request (yes)
Sufficiency of disclosure - (yes) - clarity of disclosure
Amendments - allowable (yes) - added subject-matter (no) -
broadening of claim (no)
Amendment to case - need for procedural economy

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0088/22 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 19 June 2024

Appellant: Jost International Corp.
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Respondent: SAF-HOLLAND GmbH
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
24 November 2021 concerning maintenance of the
European Patent No. 2928735 in amended form.**

Composition of the Board:

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

Summary of Facts and Submissions

I. Both the patent proprietor and the opponent appealed the decision of the opposition division to maintain the patent in amended form based on then auxiliary request 4.

II. The opposition division decided that the subject-matter of this request was inventive over a combination of documents

D3 DE 10 2005 036 139 A1 and
D7 US 2 659 249.

With regard to the higher ranked requests relevant to this decision, the opposition division held that auxiliary request 1 lacked novelty over documents

D1 US 3 135 135 and
D2 EP 2 233 376 A1, respectively,

and that auxiliary request 2 lacked novelty over D2.

III. The appellant-patent proprietor requests that the decision under appeal be set aside and the patent be maintained in amended form based on the claims according to the main request, in the alternative based on the claims of one of auxiliary requests 1-3 (all requests being filed with the appellant-patent proprietor's statement of grounds of appeal).

These sets of claims shall be combined with a first version of the description filed with the appellant-patent proprietor's statement of grounds of appeal (main request and auxiliary requests 1 - 3), or with a

second version of the description filed on 25 July 2022 (auxiliary requests 4 - 7), or a third version of the description filed on the same day (auxiliary requests 8 - 11).

The appellant-patent proprietor also requests as auxiliary request 12 the dismissal of the appeal of the appellant-opponent, i. e. maintenance of the patent in the form found allowable by the opposition division (claims according to the then auxiliary request 4 filed on 7 October 2021 during the oral proceedings before the opposition division and the version of the description also filed during oral proceedings before the opposition division having the title "Auxiliary Request 4 and 5 filed 7 October 2021).

The appellant-patent proprietor further requests as auxiliary requests 13 - 15 that the patent be maintained on the basis of the claims found allowable by the opposition division together with the second version of the description filed on 25 July 2022, and as auxiliary requests 16 - 18 that the patent be maintained on the basis of the claims found allowable by the opposition division together with the third version of the description filed on 25 July 2022.

- IV. The appellant-opponent requests that the decision under appeal be set aside and the patent be revoked.
- V. Together with the summons for oral proceedings, the Board issued on 18 September 2023 a communication pursuant to Article 15(1) RPBA setting out the Board's preliminary opinion that the main request was not allowable for lack of novelty over D2, but the claims of auxiliary request 1, appeared allowable.

- VI. The appellant-opponent withdrew their appeal and their request for oral proceedings with letter dated 17 January 2024.
- VII. With communication dated 15 April 2024, the parties were informed that a decision on the maintenance of the patent in amended form in accordance with auxiliary request 1 could be taken in written proceedings if also the appellant-patent proprietor's request for oral proceedings was withdrawn.
- VIII. The appellant-patent proprietor as sole appellant withdrew their request for oral proceedings with letter dated 10 May 2024 on the condition that the Board maintained the patent on the basis of auxiliary request 1.
- IX. The scheduled oral proceedings were cancelled and the present decision was taken in written proceedings.
- X. The following further documents were cited by the parties:
- D4 US 2 464 890
D5 US 2004/0159827 A1
D8 DE 197 21 581 A1
D15 US 5 542 647
- XI. The independent claim of the **main request** reads as follows:
- "A multi-speed landing gear (30, 230), said landing gear (30, 230) comprising:
a housing (32, 232) and a telescoping leg member (34) connected with said housing (32, 232);*

a gear assembly (42, 242) configured to extend and retract said leg member (34), said gear assembly (42, 242) including a ring gear (46, 246) arranged to rotate about an axis that is transverse to the telescopic orientation of said leg member (34) with said gear assembly (42, 242) configured to operate in a high speed setting and a low speed setting, characterized in that it further comprises an actuator (56, 353), said actuator (56, 353) being operative to selectively prevent or allow rotation of said ring gear (46, 246) to enable said gear assembly (42, 242) to operate in the low speed setting or the high speed setting."

XII. The independent claim of the **auxiliary request 1** differs from the independent claim of the main request in that the designation of the claim "*A multi-speed landing gear (30, 230)*" was amended to read "*A multi-speed landing gear (30, 230) that automatically shifts between high speed and low speed settings*".

Furthermore, the expression "*a high speed setting and a low speed setting*" in the last line of the preamble was replaced by the expression "*the high speed setting and the low speed setting*".

XIII. The appellant's arguments (as far as they are relevant for the present decision) can be summarised as follows:

(a) The subject-matter of claim 1 of the **main request** was novel over D2 since the landing gear of D2 lacked an actuator that was operative to selectively prevent or allow rotation of the ring gear to enable the gear assembly to operate in the low speed setting or the high speed setting.

- (b) The invention according to claim 1 of the **auxiliary request 1** was disclosed in a manner sufficiently clear and complete for a skilled person to carry it out.
- (c) The amendments to page 12 of the description did not introduce new technical teachings and hence were allowable.
- (d) The amendments to page 20 of the description pursuant to auxiliary request 1 did not extend the scope of protection over the protection conferred by the granted patent.
- (e) The subject-matter of claim 1 was novel over D1 and D2, and based on an inventive activity when starting from either of D3, D4, D5 or D15, respectively.
- (f) Document D15 should not be admitted and any line of argument based on D15 should not be admitted either.

XIV. The respondent's arguments (as far as they are relevant for the present decision) can be summarised as follows:

- (a) Document D2 anticipated the subject-matter of claim 1 of the **main request**.
- (b) The invention according to claim 1 of the **auxiliary request 1** was not disclosed in a manner sufficiently clear and complete for a skilled person to carry it out since the leg member (34) shown in the figures is not a "*telescoping leg member*" as required by claim 1.

- (c) The amendments to the description introduced subject-matter that extended beyond the application as filed since a "*central portion*" (used in the patent) differed from a "*central location*" (used in the application as filed).
- (d) Omitting the term "*of actuators and/or receptacles*" on page 20 of the description introduced additional equivalents that lacked disclosure in the granted patent such that when taking this passage into consideration upon determining the scope of protection, the scope of protection of auxiliary request 1 was extended compared to the granted patent.
- (e) The subject-matter of claim 1 of the auxiliary request 1 was not novel over D1 and D2, respectively.
- (f) The subject-matter of claim 1 was furthermore rendered obvious by
 - (i) a combination of D3 with D7 or D8,
 - (ii) a combination of D4 with D7 or D8,
 - (iii) a combination of D5 with D7 or D8, and
 - (iv) D15 alone.
- (g) Document D15 and the attack on inventive step based on this document should be admitted since D15 was filed in opposition proceedings and hence known to the appellant before. The line of argument was not complicated.

Reasons for the Decision

Main request

1. The main request corresponds to auxiliary request 1 in opposition proceedings. The opposition division held that claim 1 of this request lacks novelty over D1 and D2 (reasons 2.3.2).

Novelty

2. The subject-matter of claim 1 pursuant to the main request lacks novelty over document D2 (Article 54 EPC).

- 2.1 It is undisputed that D2 discloses a multi-speed landing gear comprising:
 - a housing (11) and
 - a telescoping leg member (3) connected with said housing;
 - a gear assembly (cf. figure 2: input shaft 12A, planetary gear with planetary wheel 18A, sun gear/center wheel 102A and bearing 19A, output shaft 107A) configured to extend and retract said leg member.

The gear assembly includes a ring gear (bearing 19A) arranged to rotate about an axis that is transverse to the telescopic orientation of the leg member.

The gear assembly is configured to operate in a high speed setting ("top gear transmission") and a low speed setting ("bottom gear transmission").

- 2.2 The appellant argues that D2 lacks an actuator that can be operated to selectively prevent or allow rotation of the ring gear. Neither the gearshift sliding key

(106A), nor the sliding block (16A) could be considered as such an actuator.

2.2.1 The Board notes that claim 1 requires "*an actuator, said actuator being operative to selectively prevent or allow rotation of said ring gear*". The actuator hence must not be operated to switch between the two speed settings (in the sense of interfering with the ring gear to prevent it from rotating), but it must only be operative (in the sense of providing the effect that the ring gear does not rotate).

2.2.2 The input shaft (12A) of D2 can be axially displaced between the two kinds of transmission such that the gear shift sliding key (106A) engages the output shaft (107A). When sliding key (106A) engages the output shaft, the output shaft is directly coupled to the input shaft and the planetary gear is inoperative. In this position of the sliding key (106A) the planetary gear is disabled, i. e. the gears of the planetary gear including the ring gear do not rotate.

The gear shifting sliding key (106A) therefore can be considered as an actuator that is operative to selectively prevent or allow rotation of the ring gear of the planetary gear to enable the gear assembly to operate in the low speed setting or the high speed setting (see lower half of paragraph [0022], paragraph [0026] and [0027]).

2.2.3 Contrary to the appellant's argument, claim 1 does not refer to a rotation of the ring gear with regard to a global reference but the skilled person understands from claim 1 that the ring gear (and hence the entire planetary gear) shall be inoperative in the high speed setting such that the ring gear does not rotate

relative to the centre wheel of the planetary gear. This is the case in D2 as explicitly mentioned in lines 48 and 49 of paragraph [0026].

- 2.3 Document D2 hence anticipates the subject-matter of claim 1 of the main request.

Auxiliary request 1

3. The auxiliary request 1 corresponds to auxiliary request 2 in opposition proceedings. It requires in the independent claim additionally to the main request that the landing gear automatically shifts between high speed and low speed settings.

The opposition division held that claim 1 of this request still lacks novelty over D2 (reasons 2.4.3).

Novelty

4. The subject-matter of claim 1 according to the auxiliary request 1 is novel over **document D2** (Article 54 EPC).
- 4.1 In document D2, shifting between the speed settings is done by axially moving the input shaft such that the planetary gear is selectively blocked or unblocked (cf. paragraph [0027]). This axial movement must be initiated by a user and hence does not occur automatically.
- 4.1.1 The opposition division considered the shift to be an automatically occurring shift. They considered an automatic shifting to be "*a reaction to an input*

without the requirement of further intervention" (cf. reasons 2.4.3.3).

- 4.1.2 The Board disagrees to this definition of automatically shifting. A shift occurs automatically only when it takes place without involvement of a user providing a command for such a shift such that the point of time when shifting shall take place depends on a condition independent from any command given by the user (e. g. when the leg contacts ground). In D2, the input shaft is not operated without involvement of a user initiating the shifting but the user must decide when to cause the input shaft to move axially, thus changing the speed setting.
- 4.1.3 D2 therefore lacks a landing gear that automatically shifts between high speed and low speed settings and hence does not anticipate the subject-matter of claim 1 according to the auxiliary request 1.
- 4.2 The opposition division's finding with regard to novelty was hence not correct such that the decision is to be set aside.
- 5. The subject-matter of claim 1 according to the auxiliary request 1 is also novel over **document D1** (Article 54 EPC).
- 5.1 The respondent alleges that the gear box of D1 shifts between high speed and low speed settings automatically since after initiating the shifting no further intervention of a user is required.
- 5.2 As set out in paragraph 4.1.2 above, a gear shift initiated by a user is not an automatically shifting.

For this reason alone, the subject-matter of claim 1 is novel over D1.

Inventive Step

6. The subject-matter of claim 1 according to the auxiliary request 1 is based on an inventive step (Article 56 EPC).

7. The respondent argues in a first line of argument starting from **document D3 as closest prior art**.

7.1 It is undisputed that document D3 discloses a landing gear, said landing gear comprising:

- a housing (2) and a telescoping leg member (3) connected with said housing;
- a gear assembly (23) configured to extend and retract said leg member

whereby the gear assembly includes a gear arranged to rotate about an axis (22) that is transverse to the telescopic orientation of the leg member.

7.2 It is furthermore undisputed that document D3 does not disclose that the gear assembly can operate in different speed settings whereby shifting between high speed and low speed settings occurs automatically (cf. respondent's letter dated 22 July 2022, page 13, first and forth paragraph).

7.3 The subject-matter of claim 1 differs hence from the landing gear of D3 in that

- (a) the landing gear is a multi-speed landing gear automatically shifting between high speed and low speed settings; and
- (b) the gear assembly comprises an actuator which is operative to selectively prevent or allow rotation

of the ring gear to enable the gear assembly to operate in the low speed setting or the high speed setting.

7.4 The respondent alleges that it was part of the general knowledge of the skilled person in the field of landing gears to use different speeds to lower the leg whereby D8 suggested to the skilled person a suitable gear assembly with a ring gear (10) and an actuator ("Griffhülse" 14) being operative to selectively prevent or allow rotation of that ring gear. As soon as shifting is initiated, the shifting operation is automatically carried out.

7.4.1 Contrary to the appellant's argument that D3 and D8 stem from different technical areas, the Board is convinced that the skilled person indeed would consider using the gear assembly of D8 within the landing gear known from D3. A crank handle for operating a car jack is not significantly different from a crank handle for operating a landing gear.

7.4.2 However, the skilled person would not arrive at a multi-speed landing gear that automatically shifts between high speed and low speed settings.

(a) The gear assembly of D8 is operated with a crank handle whereby in the embodiment of figures 1 and 2 the user can displace the crank handle axially between a position in which a rotation of the crank handle is directly transferred to the output shaft 1 due to the gear 3 engaging the recess 19 (figure 1) and a position in which the rotation is transferred via planetary gear (sun gear 3, ring gear 10) with a gear transmission ratio to output shaft 1 (figure 2). The shifting between both

positions requires the user to press the crank handle against the force of spring 20, i. e. the shifting is not an automatic shifting but a user-operated shifting.

- (b) In the embodiment of figures 3 and 4, shifting between both speed settings is similar to the first embodiment and involves again an axial displacement of the handle crank by the user to engage and disengage coupling members 17 and 18, i. e. the shifting again is not an automatic shifting but user-operated.
- (c) In the embodiment of figures 5 and 6, shifting between both speed settings requires actuation of the lever 22. Again, this is done by the user and hence not an automatic shifting.
- (d) In this context, the Board does not follow the respondent's understanding of an automatic shifting (cf. paragraph 4.1.2 above).

7.5 The respondent also alleges that a further suitable gear assembly would be suggested by D7.

7.5.1 D7 discloses a gear assembly that can shift between two different speed settings. Shifting involves movement of a ferromagnetic actuator 44 that moves under the influence of a magnetic force resulting from energizing windings 49. As set out in column 3, lines 19 - 23, a current through the windings is controlled by suitable switching means.

7.5.2 The gear assembly of D7 thus requires electricity for shifting which is not available in D3. Albeit D3 discloses a sensor (7) providing a load signal, the

line (26) to this sensor cannot be used to power the windings of the actuator in D7, contrary to the respondent's argument. The current used to transmit the sensor signal in D7 is by far smaller than the current required to power the windings of D7 which is reflected by the power source of D3 being a conventional battery used to power a light bulb (cf. paragraph [0036] of D3).

The skilled person would hence recognize that the gear assembly of D7 is not suitable to be used within the landing gear of D3 without significant changes and therefore would refrain from combining D3 with D7.

- 7.5.3 Furthermore, even if the skilled person would consider using the gear assembly of D7 in D3, the switching between the different speed settings still would not occur automatically.

Column 3, lines 20 - 22 of D7 mentions "*switching means*" which appears to refer to a manually operated switch. D7 hence does not disclose - at least not clearly and unambiguously - that shifting from high speed to low speed settings may occur automatically.

Even if the skilled person would use the gear assembly of D7 within D3, this would hence still not result in a landing gear with automatic shifting.

- 7.6 The skilled person hence would in any case not arrive at the subject-matter of claim 1 of auxiliary request 1 when combining D3 with either D7 or D8, respectively.
8. The respondent argues in a second line of argument starting from **document D4 as closest prior art** and

alleges that a combination of D4 with either D7 or D8 would render the subject-matter of claim 1 obvious.

- 8.1 It is undisputed that document D4 discloses a multi-speed landing gear, said landing gear comprising:
- a housing (5) and a telescoping leg member (7) connected with said housing;
 - a gear assembly configured to extend and retract said leg member,
- with said gear assembly configured to operate in a high speed setting and a low speed setting (column 1, lines 3 - 6).

The gear assembly comprises a planetary gear and hence includes a ring gear (23) which has an axis that is arranged transverse to the telescopic orientation of the leg member (7).

The gear assembly further comprises an actuator (pin 29), said actuator being operative to selectively prevent or allow rotation of said ring gear to enable said gear assembly to operate in the low speed setting or the high speed setting.

Shifting between the speed settings is again initiated by the user displacing the crank handle axially.

- 8.2 The subject-matter of claim 1 hence differs from the landing gear known from D4 at least in that the landing gear automatically shifts between high speed and low speed settings.

- 8.3 As set out above with regard to the first line of argument on inventive step, neither D7 nor D8 disclose a shifting mechanism that operates automatically such that these documents cannot render it obvious to use a

landing gear that automatically shifts between high speed and low speed settings as required by claim 1 of auxiliary request 1.

9. The respondent argues in a third line of argument starting from **document D5 as closest prior art** and alleges that a combination of D5 with either D7 or D8 would render the subject-matter of claim 1 obvious.
 - 9.1 D5 discloses a landing gear with a design that is very similar to the landing gear of D4. In particular, the gear assembly of D5 can be shifted between two different speed settings by displacing the input axle with the crank handle (30) axially. Sun gear (50) of a planetary gear is thus displaced axially between a position in which the sun gear engages the planet gears (39a, 39b, 39c and 39d) and a position in which the axle is directly coupled to the output axle.
 - 9.2 The subject-matter of claim 1 hence differs from the landing gear of D5 at least in that the landing gear automatically shifts between high speed and low speed settings.
 - 9.3 As set out above, neither D7 nor D8 can render it obvious to amend a manually shifted gear assembly in such a way that the landing gear automatically shifts between high speed and low speed settings. The skilled person hence would not arrive at the subject-matter of claim 1 of auxiliary request 1 when combining D5 with either D7 or D8, respectively.
10. The respondent argues in a forth line of argument starting from **document D15 as closest prior art**.

10.1 The attack on inventive step starting from D15 as closest prior art was presented for the first time with the reply of the respondent to the statement of grounds of the appellant-patent proprietor. The respondent argues that D15 is known to the appellant since it was cited in proceedings of an US-application of the patentee.

The appellant requests to not admit document D15 and any line of argument based on this document.

10.2 Document D15 was filed during opposition proceedings, however only after expiry of the opposition period, in response to the communication of the opposition division dated 31 July 2019. The document was only relied upon as an indication of common general knowledge in respect of multi-stage or shiftable landing gears with planetary gears (see letter dated 2 December 2019, point A.I.4 a)). Whether the document was cited in addition in proceedings of another application before the USPTO is irrelevant since these proceedings are not related with the present appeal case.

10.3 The filing in appeal of an attack on inventive step starting from D15 as closest prior art represents an amendment to the respondent's case since this objection was not raised in the first instance proceedings whereas auxiliary request 1 in appeal was already on file as then auxiliary request 2. As D15 was filed during the proceedings before the opposition division, the opponent should have submitted a corresponding attack already at that stage, instead of merely relying on D15 as an indication of common general knowledge. Moreover, the respondent has not indicated what circumstances would justify admitting this new

objection at the appeal stage. Accordingly the objection of lack of inventive step is not admitted pursuant to Article 12(6) RPBA.

Sufficiency of disclosure

11. The invention according to the auxiliary request 1 is disclosed in a manner sufficiently clear and complete for a skilled person to carry it out (Article 83 EPC).
- 11.1 The respondent alleges that the description and the figures do not provide disclosure for a "*telescoping leg member (34)*" but only show a leg member that can be extended from and retracted into a housing. The leg member as such is not telescoping such that the skilled person is not aware of a possibility how to carry out the claimed "*telescoping leg*".
- 11.2 The Board disagrees. Figure 2 discloses a landing gear with two legs whereby the actuation of these legs is described in paragraph [0012] of the granted patent. Based on this information, the skilled person is able to reproduce a leg according to the invention.
- 11.3 The term "*telescoping*" is not to be confused with the term "*telescopic*". The respondent's argument appears to be based on the term "*telescopic*" which refers to a member having several sections which slide into each other. However, the term "*telescoping*" used in the patent in suit defines the leg's ability to extend from and retract into a surrounding housing such that the skilled person has a clear teaching at hand on how to put the leg into practice.

Amendments

12. Auxiliary request 1 does not contain subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).
- 12.1 The respondent alleges that the amendment on page 12, last paragraph ("*central portion*" was replaced by "*central location 105*") introduces new subject-matter. A central portion must necessarily be a part of the shift member, whereas a central location is a virtual point in space that need not be part of the shift member but can also be offset from the shift member.
- 12.2 The passage in suit refers to figure 7 and requires the actuator to include two arms 128 "*that are disposed about a central portion 105 of shift member 54*" (shown in figure 6A and 6b). Since the shift member is axially symmetrical, a central location and a central portion will in any case be both on the axis of the shift member and - seen in axial direction - in the middle of the shift member, such that the Board cannot recognize a difference in the technical meaning but considers in the present context both expressions to refer to the same place of connection of the arms 128.

The amendment hence does not introduce new technical information and hence is allowable.

Scope of protection

13. The amendments to page 20 of the description of auxiliary request 1 do not extend the scope of protection over the protection conferred by claim 1 of the granted patent.

13.1 The respondent argues that due to omitting the expression "*of actuators and/or receptacles*" the alternative configurations mentioned on page 20, second paragraph encompassed alternative configurations of other members being different to actuators and receptacles that were not covered by the patent as granted. Since the claims must be read under consideration of the description, the amendment also enlarges the scope of protection conferred by the claims.

13.2 The Board notes that this passage identifies just one particular alternative configuration (stop members on the circumferential exterior of the ring gear for engagement with a receptacle on the shaft member). This alternative configuration was already mentioned in the patent as granted.

Omitting the expression "*of actuators and/or receptacles*" only provides an indication that other configurations are possible but it does not add a configuration that was not disclosed in the patent as granted. No new technical information is hence added.

13.3 Furthermore, the amendment of this passage of the description does not influence the scope of protection of claim 1. Granted claim 1 refers to a gear assembly with an actuator, the actuator being operative to selectively prevent or allow rotation of the ring gear. The claim thus already covers any configuration suitable to selectively prevent or allow rotation of the ring gear and not only the configurations described on page 20 of the description.

13.4 The amendment thus does not extend the scope of protection.

14. None of the arguments raised by the respondent hence prejudices maintenance of the patent in suit based on auxiliary request 1.

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 in the following version:

Description:

Pages 1 - 29 as filed with the statement of grounds of appeal on 24 March 2022 having the title "Main Request, Auxiliary Request 1, Auxiliary Request 2, Auxiliary Request 3 filed 24.03.2022"

Claims:

No. 1- 18 of auxiliary request 1 as filed with the statement of grounds of appeal

Drawings:

Figures 1 - 26 of the patent specification

The Registrar:

The Chairman:



M. Schalow

G. Pricolo

Decision electronically authenticated