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**Datasheet for the decision  
of 27 February 2024**

**Case Number:** T 0367/22 - 3.2.01

**Application Number:** 13789843.3

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**IPC:** B60R21/015, A63G7/00, B60R21/02

**Language of the proceedings:** EN

**Title of invention:**  
PASSENGER RESTRAINT DEVICE FOR AMUSEMENT RIDES

**Patent Proprietor:**  
Antonio Zamperla S.p.A.

**Opponent:**  
Mack Rides GmbH & Co. KG

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 56  
RPBA 2020 Art. 12(4), 12(6)

**Keyword:**

Novelty - main request (no)

Inventive step - auxiliary request 1, 1bis (no) - auxiliary request 1+ (yes)

Late-filed request - circumstances of appeal case justify admittance (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 0367/22 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 27 February 2024**

**Appellant:** Antonio Zamperla S.p.A.  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
21 December 2021 concerning maintenance of the  
European Patent No. 3003789 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** J. J. de Acha González  
A. Jimenez

## **Summary of Facts and Submissions**

- I. The appeals of the patent proprietor and of the opponent lie against the interlocutory decision of the Opposition Division, which found that the contested patent, as amended in accordance with the auxiliary request 1 filed during the oral proceedings, complied with the requirements of the EPC.
- II. The following documents are relevant for the present decision:
- E1: WO 01/74626 A1; and  
E4: WO 99/22830 A1.
- III. By communication under Article 15(1) RPBA the Board gave a preliminary view on the case. Among other things, the Board expressed its intention to admit auxiliary request 1+ in view of the new objection in appeal on inventive step of the opponent - E4 with common general knowledge - for the subject-matter of claim 1 in the version held allowable by the Opposition Division, which appeared to be well-founded.
- IV. Oral proceedings before the Board were held on 27 February 2024.

The appellant (patent proprietor) requested that the decision of the Opposition Division be set aside and that the patent be maintained as granted (main request), or, in the alternative, on the basis of any of auxiliary requests 1, 1bis, 1+, 1+bis, 2, 2+, 3, 3+, 4, 4+, 5, 5+, 6 or 6+.

The appellant (opponent) requested that the decision under appeal be set aside and the patent be revoked.

V. Independent granted claim 1 reads as follows (feature numbering according to the patent proprietor):

- M1:** *A passenger restraint device (1) for amusement rides*
- M2:** *comprising at least one restraint element (2)*
- M3:** *provided with at least one contact surface (3)*
- M4:** *to be placed in contact with at least one part (11) of the body of a passenger (6),*
- M5:** *said restraint element being movable between at least one open position in which the said restraint element (2) is not in contact with said passenger (6) and at least one closed position, in which said restraint element (2) is in contact with at least one part (11) of said passenger's body (6),*
- M6:** *wherein said restraint element (2) comprises at least one sensor (4) to detect a contact between the said restraint element (2) and at least one part (11) of said passenger's body (6),*
- M7:** *wherein said at least one restraint element (2) is mounted on at least one moveable bar (5) that can be moved between said open position and said closed position.*

Claim 1 of the auxiliary request 1 differs from granted claim 1 in that it further includes the following feature:

- M8:** *wherein said at least one sensor (4) detects a contact between the said restraint element (2) and the thighs (11) and/or the abdomen of said passenger (6).*

Claim 1 of auxiliary request 1bis is identical to claim 1 of auxiliary request 1.

Claim 1 of the auxiliary request 1+ differs from claim 1 of auxiliary request 1 in that it further includes the following feature:

**M9:** *wherein said at least one restraint element (2) is pivotally constrained to said at least one movable bar (5).*

### **Reasons for the Decision**

#### 1. *Main request - novelty*

1.1 The subject-matter of granted claim 1 is not new in view of E1 (Article 54 EPC).

1.2 The patent proprietor essentially argued that features M5 and M7 of claim 1 were not disclosed in the embodiment shown in figures 14 and 15 of E1 because according to claim 1 the movement between the open position and the closed position, in which the restraint element contacted the passenger, was provided by the movable bar, whereas in E1 there was allegedly no correspondence between the open/closed position of the bar and the closed/open position of the restraint element.

1.3 However, and as pointed out by the opponent and in line with the decision of the Opposition Division, these features do not preclude an initial adaptation to a passenger, for example to the height of the passenger, which is accompanied by a further movement of the restraining element, as described in E1 (see page 11,

paragraph before last), but which can also take place according to the teaching of the contested patent, as shown in paragraph [0057]. In other words, depending on the size of the passenger, the mere closing of the restraining bar in E1 can also lead directly to a final position which does not require any further adjustment of the restraint elements 39 in order to contact the passenger.

2. *Auxiliary request 1 - inventive step*

2.1 The subject-matter of claim 1 of auxiliary request 1 does not involve an inventive step in view of E4 in combination with common general knowledge of the skilled person (Article 56 EPC).

2.2 The patent proprietor disputed that the passenger restraint device shown in figures 1A to 1E of E4, together with its description on page 5, disclosed features M6 and M8 of claim 1. In particular, E4 did not disclose the location of the sensor, let alone that it detected a contact between the restraint element and the passenger's thighs and/or abdomen. In this respect, the transition between the passenger's torso and the upper legs referred to in E4 did not correspond to the thighs or abdomen.

The technical effect of these differentiating features was to provide reliable information about how securely the passenger was being held in the device. The objective technical problem could therefore be formulated as providing a simpler restraint device that reliably and effectively restrained the passenger regardless of size.

In order to arrive at the claimed subject-matter, starting from the device of E4, the skilled person had to make several choices, namely:

- select a "sensor" instead of an "operator" in order to check whether the hip securing part was correctly secured,
- once the option of providing a "sensor" was chosen, selecting the type of sensor, and
- once the type of sensor had been chosen, positioning it in the restraint element.

The person skilled in the art was not guided by their common general knowledge to make such choices in an obvious manner.

The Opposition Division held that E4 did not disclose feature M6 of claim 1 because there was no disclosure in E4 of a sensor detecting a contact between the restraint element and a part of the passenger's body (see point 3.2.2 et seq. of the contested decision).

2.3 According to page 5 of E4, the hip bar 11 is pivoted by the person until it abuts against the person at the transition between said person's torso 25 and his upper legs 23 (lines 11 to 15).

The hip bar which abuts against a passenger at said transition when sitting as shown in figures 1A to 1D of E4 effectively contacts the thighs and/or abdomen of the passenger.

Consequently, in its final (closed) position, the hip bar touches the person's thighs and/or abdomen.

Later (lines 26 to 30 of page 5) it is disclosed that the hip bar is locked after it has been verified by means of sensors whether the hip securing part correctly secures the person in position. At this point, the Board notes, as also explained by the opponent, that the closest prior art taken into account for assessing the inventive step is the alternative disclosed in E4, in which sensors are used for the

verification instead of a manual check. Accordingly, contrary to the patent proprietor's argument, the skilled person does not have to make any kind of choice, since the embodiment which constitutes the starting point for the assessment of inventive step is the one using the sensors for the verification.

Such verification for the hip securing part corresponds therefore to checking that the position of the hip bar is such that the hip part abuts against (is in contact with) the passenger at the transition between the torso and the upper legs (thighs). Consequently, the sensor should be capable of detecting such an abutment. It follows that the sensor should at least be a sensor capable of detecting said contact between the hip bar and the passenger. It should be noted that feature M6 defines "*a sensor to detect a contact*" and not a "*contact sensor*" as specified in paragraph [0018] of the patent.

The type of sensor used (optical, visual, force...) is left open in the claim.

E4 does not, however, directly and unambiguously indicate the location of such a sensor in the arrangement of figures 1A to 1E. Said location needs not necessarily be in the hip bar 11 (restraint element).

Accordingly, the subject-matter of claim 1 differs from this embodiment of E4 only in that the location of the sensor is not specified. As a consequence, the line of argumentation of the patent proprietor cannot persuade.

When starting with E4, the only problem is to provide a location for the sensor that will verify the correct abutment position of the hip bar when the skilled

person carries out the teachings of E4, i.e. a "filling in the gap" problem, as such a location is unspecified in E4. Placing such a sensor directly in the hip bar 11 is one of the possibilities that would readily occur to the skilled person. In other words, it is one of the obvious alternatives for the skilled person.

3. Since claim 1 of auxiliary request 1bis is identical to claim 1 of auxiliary request 1, the subject-matter of claim 1 of auxiliary request 1bis does not involve an inventive step for the same reasons as presented above.

4. *Auxiliary request 1+*

- 4.1 *Admissibility*

- 4.1.1 The Board exercising its discretion under Article 12(4) and (6) RPBA admitted auxiliary request 1+ in the appeal proceedings.

- 4.1.2 The auxiliary request 1+ was filed for the first time with the reply to the statement of grounds of appeal of the opponent. It is therefore to be regarded as an amendment within the meaning of Article 12(4) RPBA.

Claim 1 is a combination of granted claims 1, 7 and 9, i.e. claim 1 of auxiliary request 1 with the additional feature of granted claim 9 (feature M9).

- 4.1.3 The opponent argued that the request should not be admitted because it had been late filed and because the patent proprietor had filed it in response to the arguments of the opponent in the reply to the statement of grounds of appeal of the patent proprietor, which did not address the the new objection to the inventive step of auxiliary request 1 starting from E4 in

combination with common general knowledge of the skilled person. This new objection can thus not be seen as a valid reason justifying the filing of the request.

- 4.1.4 Under Article 12(4) RPBA the Board has a discretion to admit this request. The Board shall exercise its discretion in view of, *inter alia*, the complexity of the amendment, the suitability of the amendment to address the issues which led to the decision under appeal, and the need for procedural economy. The party shall also clearly identify each amendment and provide reasons for submitting it in the appeal proceedings. In the case of an amendment to a patent application or patent, the party shall also indicate the basis for the amendment in the application as filed and provide reasons why the amendment overcomes the objections raised.

In the present case, the patent proprietor provided reasons for submitting it in the appeal proceedings, also indicated the basis for the amendment (granted claim 9) and gave reasons why the amendment overcame the objection raised: the only objection to the feature (M9) of granted claim 9 in appeal being that it was allegedly disclosed in E1 (see statement of grounds of the opponent, page 16). This was incorrect since the restraint element in E1 (see figures 14 and 15) allowed only an translation with respect to the movable bar and not a pivoting.

Furthermore, the amendment by adding feature M9 of granted claim 9 is not complex and is also suitable to address the objections of the opponent (see below under novelty and inventive step), thus leading to procedural economy since it provides a suitable basis for the maintenance of the patent in amended form.

- 4.1.5 Under Article 12(6) RPBA the Board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

In the present case, the patent proprietor "could" but not "should" have filed auxiliary request 1+, since the auxiliary request 1 was found allowable by the Opposition Division and the objection to inventive step starting from E4 together with common general knowledge of the skilled person against the auxiliary request 1 was raised by the opponent for the first time in appeal and therefore did not form part of the grounds of the contested decision.

4.2 *Novelty and inventive step*

The opponent did not object to the subject-matter of claim 1 of auxiliary request 1+. In particular, they conceded during the oral proceedings before the Board that none of the documents at hand disclosed the additional feature M9 and that it was not obvious to the person skilled in the art.

In the statement of grounds of appeal, the opponent argued that feature M9 was disclosed in E1 by the common pivoting movement of the bar 10 with the pads 39.

However, this movement is not the one recited in the added feature, but the pivoting of the restraint element with respect to the movable bar. Accordingly, the feature of granted claim 9 (feature M9) is not disclosed in E1.

The Board therefore has no reason to question the novelty and inventive step of the subject-matter of claim 1 of the auxiliary request 1+.

4.3 The claims of auxiliary request 1+ form therefore a suitable basis for the maintenance of the patent in amended form.

4.4 The parties considered that the description needed adaptation. As neither party objected to remittal of the case for adaptation of the description, and as the Board considered that this could be more expediently dealt with before the Opposition Division, the case is remitted to the Opposition Division for adaptation of the description.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to maintain the patent as amended with the following claims and a description to be adapted thereto:

Claims 1 to 17 of the auxiliary request 1+ filed with the reply of the appellant (patent proprietor) on 20 September 2022.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated