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**Datasheet for the decision
of 6 May 2024**

Case Number: T 0534/22 - 3.2.01

Application Number: 16182788.6

Publication Number: 3127755

IPC: B60R21/013, B60R21/017,
B62J27/00

Language of the proceedings: EN

Title of invention:
IMPACT DETECTION DEVICE

Patent Proprietor:
Dainese S.p.A.

Opponent:
ALPINESTARS Spa

Headword:

Relevant legal provisions:
EPC Art. 100(a), 56
RPBA 2020 Art. 12(8), 15(1)

Keyword:

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 0534/22 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 6 May 2024

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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. 3127755 in amended form.**

Composition of the Board:

Chairman G. Pricolo
Members: A. Pieracci
A. Jimenez

Summary of Facts and Submissions

- I. An appeal was filed by the patent proprietor and by the opponent in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division to maintain the European patent No. 3 127 755 in amended form according to auxiliary request 1.
- II. The Board informed the parties of its preliminary opinion on the case with a communication pursuant to Article 15(1) RPBA, according to which the patent proprietor's appeal was likely to be allowed and the opponent's appeal was likely to be dismissed.
- III. In response to the Board's communication the opponent withdrew their appeal and subsequently the request for oral proceedings.
- IV. The Board then informed the parties that in view of the parties' submissions and of the Board's preliminary opinion it intended to cancel the oral proceedings, to decide on the case in written proceedings by setting aside the decision and remitting the case to the opposition division with the order to maintain the patent with claims 1 to 14 according to the main request filed with letter dated 1 June 2020, and the description and the drawings according to the patent specification.
The Board invited the parties to file observations, if any, before the time limit set with the communication.
- V. Having received no submissions from the parties within the time limit set, the Board cancelled the oral

proceedings and decided in written proceedings on the case pursuant to Article 12(8) RPBA.

VI. The patent proprietor's requests as submitted in the written proceedings are:

that the appealed decision be set aside
and that the patent be maintained as amended
according to the main request underlying the
appealed decision,
or in the alternative,
that the patent be maintained in amended version
according to auxiliary request 1 considered by the
opposition division to fulfill the requirements of
the EPC,
or in the further alternative,
that the patent be maintained on the basis of the
set of claims according to auxiliary requests 2 to
9 filed with the reply to the opponent's statement
setting out the grounds of appeal and further
auxiliary according to auxiliary requests 10 to
18 filed with letter dated 13 October 2023 and
further auxiliary according to auxiliary request 19
and 20, corresponding to auxiliary requests 10 and
11 filed with the reply to the opponent's statement
setting out the grounds of appeal.

VII. Before the withdrawal of their appeal, the opponent requested that the appeal of the patent proprietor be dismissed and the patent be revoked.

VIII. The following documents are referred to in the present decision:

D2: US2014/0111339 A1;

D3: US2005/0067816 A1.

- IX. The arguments of the parties are dealt with in detail in the reasons for the decision.
- X. Claim 1 of the patent as amended according to the main request reads as follows (feature numbering according to the appealed decision):
- "1.1) Impact detection device for detecting an impact condition or dangerous condition for a user of a means of transport, such as a vehicle, a two-wheeled vehicle or any other means of transport, such as a horse or other animal, sports equipment, such as a pair of skis or a bob, or similar means of transport,
 - 1.2) wherein the impact detection device is configured to avoid a direct and permanent power supply via the means of transport
 - 1.3) and wherein the impact detection device includes a closed body in the form of a casing or box and includes within the casing
 - 1.4.1) a sensor,
 - 1.4.2) a processing or logic unit configured to acquire and process a signal from the sensor and transmit an activation signal to an inflation device for an airbag,
 - 1.4.3) at least one communication interface or transmission module configured to send the activation signal to the inflation device,
 - 1.4.4) an electrical energy accumulation unit or an electrical charge accumulator or rechargeable battery for powering the impact detection device, and
 - 1.4.5) a wireless electric charging interface able to be associated occasionally or temporarily with

a respective interface of a wireless electric charging device for allowing electrical powering of the electrical energy accumulation unit."

Reasons for the Decision

1. As a consequence of the withdrawal of the appeal by the opponent, the opponent becomes respondent and the request to revoke the patent is deemed to be withdrawn. The sole request of the opponent as respondent is therefore that the appeal of the patent proprietor be dismissed.
2. Inventive step of the subject-matter of claim 1 in view of the combination of the teachings of D2 and D3 (Article 56 EPC)
 - 2.1 The opposition division found the subject-matter of claim 1 to lack an inventive step in view of the combination of the teachings of documents D2 and D3. The Board concurs with the patent proprietor contesting the finding of the opposition division that the appealed decision is wrong as discussed in the following.
 - 2.2 The Board concurs with the patent proprietor that even considering the disclosures of documents D2 and D3 the skilled person would not have combined the teaching of the two documents in such a way that they would have arrived at the invention according to claim 1 of the main request contrary to the finding the opposition division (see point 30.2 of the appealed decision, pages 10 and 11).

2.3 In view of this conclusion, the Board does not consider necessary to assess whether the patent proprietor is correct in arguing that D2 does not represent an appropriate choice of the closest prior art for the analysis of inventive step and whether the corresponding formulation of the objective technical problem in this respect is correct (see the patent proprietor's statement setting out the grounds of appeal, page 2, point 1.2.1 to page 5, seventh paragraph).

2.4 The opposition division (see the appealed decision, page 8, point 23) found that the subject-matter of claim 1 is distinguished from document D2 by features 1.4.2 and 1.4.3 (see the features analysis of point X above), namely:

- a processing or logic unit configured to acquire or process a signal from the sensor and transmit an activation signal to an inflation device for an airbag (feature 1.4.2),
- at least one communication interface or transmission module configured to send the application signal to the inflation device (feature 1.4.3).

2.5 The opposition division (see the appealed decision, page 9, point 26, second paragraph) also found that

"Document D3 addresses explicitly the improvement of protection of the user (...)", and that

"the skilled person, starting from the disclosure of document D2 and being confronted with the objective problem, would realize these features in the impact

detection device of D2 (meant is D3) and would hence arrive, without exercising an inventive activity, at the subject-matter of claim 1 of the main request".

The opposition division (see the paragraph bridging pages 10 and 11 of the appealed decision) also found that:

"D3 discusses in paragraph 117 the combination of passive protection ("...the fabric...quilted or to otherwise thicken so as to provide additional padding for the wearer..."). The opposition division is unconvinced that the skilled person would by necessity adopt the entirety of the teaching of D3 and abandon that of D2 when combining the documents - with reference to paragraphs 123-124 of D3 the teaching of D3 concerning the provision of features 1.4.2 and 1.4.3 is simply presented such that the skilled person would have no difficulty transferring the teaching of the device of D2 in order to arrive at a solution according to claim 1 of the main request."

2.6 The Board concurs with the patent proprietor that D2 and D3 relate to two different kind of devices.

As argued by the patent proprietor (see the statement setting out the grounds of appeal, page 5, sixth paragraph) in D2 the only protection is a passive protection provided by the pad or cushion elements, which do not interact with the sensors or the processing elements. The processing element of D2 detects an occurrence of a fall, it stores the data for a subsequent analysis and eventually for starting an emergency call (see the statement setting out the grounds of appeal of the patent proprietor, page 5,

third to fifth paragraphs; D2, paragraphs [0012], [0015] and [0021]).

- 2.7 As argued by the patent proprietor (see the statement setting out the grounds of appeal, page 7, fourth to seventh paragraph) document D3 shows an active protection garment comprising inflatable chambers 12 or compartments 60, a gas source 18, a battery 24, accelerometers 14 and a logic controller 22, wired to the other components, wherein the components may be in a removable chamber and the controller may include wireless communication. The inflatable chambers are inflated when the logic controller detects the appropriate conditions by analysing the data from the accelerometers. The wearer of the active protective garment is thereby protected when falling.
- 2.8 The Board concurs with the patent proprietor (see the statements setting out the grounds of appeal, page 7, the seventh and the last paragraph) that, should the person skilled in the art wish to improve the protection of the user as provided by D2 and consider the teaching of D3 with this aim, there is no indication to be found in D3 to extract and introduce only some elements of the active protection garment of D3 into D2 and thus arrive at the claimed device, but the person skilled in the art would in case introduce the complete system of D3 into the protection system of D2, thereby not arriving at the subject-matter of claim 1. In fact a wireless electric charging interface as required by claim 1 is not disclosed in combination with the active protective garment of D3.
- 2.9 The finding of the opposition division (see the appealed decision, page 11, lines 3 to 6), that

"with reference to paragraphs 123-124 of D3 the teaching of D3 concerning the provision of features 1.4.2 and 1.4.3 is simply presented such that the skilled person would have no difficulty transferring this teaching to the device of D2 in order to arrive at the solution according to claim 1 of the main request"

is not convincing since in paragraphs 123-124 there is no indication to specifically isolate any specific feature therein disclosed from their context.

Furthermore it is noted that it is not relevant whether to integrate the above features in the teaching of D2 is difficult or not, but rather whether there is an indication for doing so, which is not apparent.

- 2.10 Accordingly, the Board concurs with the patent proprietor that the opposition division erred in considering the subject-matter of claim 1 of the main request to be not inventive in view of the combination of the teaching of D2 with D3.
3. The respondent's only objection as regards the main request (as set out in the reply to the patent proprietor's statement of grounds of appeal) is lack of inventive step of the subject-matter of claim 1 on the basis of the above-mentioned combination of D2 with D3.

It is noted that in its communication pursuant to Article 15(1) RPBA, the Board also considered the objections of lack of inventive step raised by the opponent in their statement of grounds of appeal in respect of independent claims 1 and 9 of auxiliary request 1, which is the form considered allowable for by the Opposition Division. With the withdrawal of their appeal, the opponent no longer objected the

maintenance of the patent in the form as maintained by the Opposition Division. However, for the sake of completeness, and having regard to the fact that claim 1 of auxiliary request 1 is more limited than claim 1 of the main request and claim 12 of the main request is identical to claim 9 of auxiliary request 1, the Board notes that in any case these objections are not convincing for the reasons given in points 11, 12 and 13 of the Board's communication pursuant to Article 15(1) RPBA, to which the opponent has not reacted in substance.

4. The appeal of the patent proprietor shall therefore be allowed.

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 in the following version:

Description:

Paragraphs [0001] to [0044] of the patent specification

Claims

No. 1 to 14 of the main request filed on 1 June 2020

Drawings:

Figures 1 and 2 of the patent specification

The Registrar:

The Chairman:



M. Schalow

G. Pricolo

Decision electronically authenticated