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Datasheet for the decision of 12 March 2026

Case Number: T 0424/23 - 3.4.03

Application Number: 16745726.6

Publication Number: 3329242

IPC: G01M17/007

Language of the proceedings: EN

Title of invention:
APPARATUS TO SIMULATE DRIVING A LAND VEHICLE

Patent Proprietor:
VI-grade GmbH

Opponent:
McLaren Racing Limited

Headword:

Relevant legal provisions:
EPC Art. 100(a), 111(1), 54(1), 56
RPBA 2020 Art. 12(3), 12(5)

Keyword:
Grounds for opposition - lack of novelty (no) - insufficiency of disclosure (no) - lack of inventive step (no)
Patent maintained as granted
Remittal to the department of first instance - (no)

Decisions cited:

Catchword:
In the context of the problem-solution-approach, the document to be combined with the closest prior art does not need to state explicitly that it solves the objective technical problem for it to be considered by the skilled person. It suffices that the skilled person is able to recognise that it does so, once the combination document has been found by the skilled person. However, the skilled person still needs a reason to take such a document into consideration (see points 16 to 18 of the Reasons).

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Case Number: T 0424/23 - 3.4.03

D E C I S I O N
of Technical Board of Appeal 3.4.03
of 12 March 2026

Appellant: (Patent Proprietor)	VI-grade GmbH Im Tiefen See 45 64293 Darmstadt (DE)
Representative:	Petraz, Davide Luigi GLP S.r.l Viale Europa Unita, 171 33100 Udine (IT)
Appellant: (Opponent)	McLaren Racing Limited McLaren Technology Centre Chertsey Road Woking Surrey GU21 4YH (GB)
Representative:	Slingsby Partners LLP 1 Kingsway London WC2B 6AN (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted/ electronically transmitted on 20 December 2022 concerning maintenance of the European Patent No. 3329242 in amended fo rm.**

Composition of the Board:

Chairman	T. Häusser
Members:	M. Papastefanou
	T. Bokor

Summary of Facts and Submissions

I. Both the opponent and the patent proprietor appealed the interlocutory decision of the opposition division maintaining European patent EP 3 329 242 B1 in amended form.

II. The opposition was based on the grounds for opposition of insufficient disclosure (Article 100(b) EPC), lack of novelty (Articles 100(a), 52(1) and 54(1) EPC) and lack of inventive step (Articles 100(a), 52(1) and 56 EPC). In the decision under appeal, the opposition division came among others to the conclusions that the subject-matter of claim 1 as granted was sufficiently disclosed and new, but did not involve an inventive step. A first auxiliary request filed during the written opposition procedure was also found to lack inventive step, while a second auxiliary request filed during the oral proceedings was found to meet the requirements of the EPC and the patent was maintained on that basis.

III. Reference is made to the following documents:

D1: Kijuno et al., *"Vehicle Simulation System: Controls and Virtual-reality-based Dynamics Simulation"*, J Intell Robot Syst (2008), vol. 52, p. 79-99;

D2: Robert L. Williams II, *"Cable-suspended vehicle simulation system concept"*, presented 4-7 Sept. 2007 at ASME 2007 IDETC/CIE, Las Vegas, USA;

D4: US 5,148,716 A;

D5: Robert L. Williams II et al., *"Planar translational cable-direct-driven robots"*,

Journal of Robotic Systems, 1 March 2003, vol. 20, no. 3, p. 107-120;

D6: WO 2013/114179 A1;

D7: D. Chablat et al., *"A Comparative Study of 4-Cable Planar Manipulators Based on Cylindrical Algebraic Decomposition"*, presented 28-31 Aug. 2011 at ASME 2011 IDETC/CIE, Washington, DC, USA;

IV. At the end of the oral proceedings before the board the parties' requests were as follows:

- Appellant I/opponent ('**opponent**') requested that the decision under appeal be set aside and the patent be revoked in its entirety. They also requested remittal of the case to the opposition division for further prosecution after the board concluded that claim 1 as granted was new and not obvious in view of the combination of document D6 with document D4.

- Appellant II/patent proprietor ('**proprietor**') requested as a main request that the decision under appeal be set aside and the patent be maintained as granted. As auxiliary measure, the proprietor requested that the patent be maintained according to one of the following auxiliary requests: first auxiliary request, first auxiliary request bis, second auxiliary request, second auxiliary request bis, third auxiliary request, and third auxiliary request bis.

V. **Claim 1 as granted** is worded as follows (features' numbering as in the impugned decision; reference signs of apparatus components are omitted):

[1.1] *Apparatus to simulate driving a land vehicle comprising*

[1.2] *a fixed base platform provided with a flat support surface,*

[1.3] *a mobile platform disposed above said base platform,*

[1.4] *sliding means associated with the mobile platform and configured to allow said mobile platform to slide on said support surface,*

[1.5] *a drive station that at least partly reproduces the cabin of the land vehicle and is associated with the mobile platform, and*

[1.6] *movement means associated with the base platform and with the mobile platform configured to*

[1.6.1] *allow the translation of said mobile platform on said support surface in a first direction (X) and a second direction (Y) coordinated with the first direction (X), and*

[1.6.2] *at least a rotation around a third direction (Z) normal with respect to said support surface and coordinated with respect to the first direction (X) and the second direction (Y),*

[1.7] *wherein said movement means comprise a plurality of cables connected with a first end to said mobile platform and with a second end, opposite the first end, to respective actuation members configured to move said cables and to vary the distance between the connection zone of each cable to said mobile platform and the connection zone of each cable to said actuation members and to determine a movement of said mobile platform with respect to said base platform.*

Method **claim 11 as granted** corresponds to apparatus claim 1.

VI. The wording of the claims of the auxiliary requests is not relevant for this decision.

VII. The parties' arguments can be summarised as follows:

- The **opponent** argued that the term "sliding means" in claim 1 had to be interpreted broadly and that the mobile platform of D6 comprised such sliding means. The skilled person starting from D6 would consider D4 and find a solution to the formulated technical problem of how to increase the amplitude of the yawning rotation of the mobile platform. In addition, claim 1 was not sufficiently disclosed, lacked novelty over D1 and D2 and did not involve an inventive step when D1 or D2 were taken as starting points for the assessment of inventive step. Regarding the request for remittal, the opponent argued that the opposition division had not decided on the attacks of lack of inventive step starting from D1 or D2. D1 was a highly relevant document and the opponent was entitled to have these issues decided in two instances in order for its right to be heard to be respected. Therefore, a remittal to the opposition division for further prosecution was justified.

- The **proprietor** argued that D6 did not disclose any "sliding means" in the sense of claim 1. The skilled person would not have combined document D6 with document D4. Moreover, claim 1 was sufficiently disclosed, new over D1 and over D2, and not obvious when D1 or D2 were taken as starting points for the assessment of inventive step. Regarding the opponent's request for remittal, the objections of lack of inventive step starting from D1 and D2 had been discussed during

the opposition procedure and the opposition division had given an opinion on them. There was no reason for the remittal.

Reasons for the Decision

The invention

1. The invention relates to a driving simulation apparatus for land vehicles (e.g. cars, trucks, buses) that combines planar motion and rotation of a mobile platform. It comprises a mobile platform carrying a driver station that moves over a fixed base surface. The movement is generated by a cable-driven system with actuators, enabling controlled translations in two directions and rotation (yaw) around an axis perpendicular to the plane of the base surface.

2. Compared to conventional simulators, the use of cables allows larger motion ranges and longer exposure to acceleration forces, resulting in a more realistic reproduction of vehicle dynamics and thereby improved perception of vehicle movement for the driver.

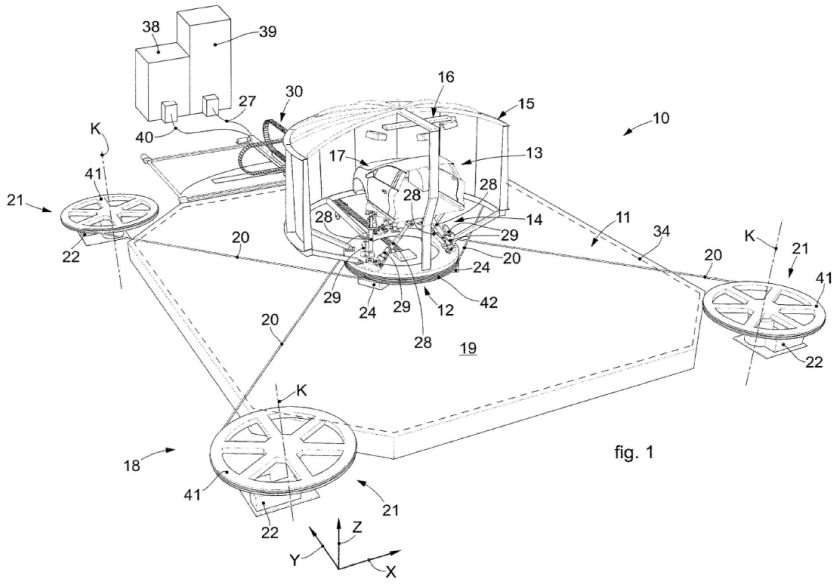

fig. 1

Figure 1 of the patent

Patent as granted, inventive step, combination D6 with D4

3. In the decision under appeal the opposition division concluded that the subject matter of claim 1 as granted did not involve an inventive step in view of the combination of documents D6 and D4 (see point 5 of the Reasons).

4. It is common ground that D6 discloses features [1.1] to [1.6.2] of claim 1, while D4 discloses feature [1.7].

5. It is also uncontested that the teaching of D6 corresponds to the starting point of the claimed invention in the contested patent. D6 recognises the problems with existing simulation apparatuses using telescopic actuators in a hexapod structure when used for simulating land vehicles (see page 1, line 11 to page 2, line 7). D6 solves these problems by introducing a moving platform which is moved by three linear actuators (see Figures 2 and 5 to 10). D6 is also mentioned in the background section of the

contested patent (paragraph [0010]). In the apparatus of claim 1 as granted, the linear actuators are replaced by cables (feature [1.7]; see Figure 1 of the patent), which is the feature distinguishing the subject-matter of claim 1 from document D6.

6. The parties agreed that the technical problem solved by this distinguishing feature [1.7] could be formulated as "how to increase the movement and travels (the area of movement) and the amplitude of yawning rotation of the mobile platform of the system described in D6". This corresponds to the technical problem mentioned in the patent (see paragraph [0020]).

7. Document D4 has the title "Plane Motion Mechanism" and aims at improving a plane motion mechanism. The starting point is a known orthogonal coordinate system which comprises joints and movement axes placed on one another. This results in motion mechanisms that have considerable thickness and high power consumption, and cannot achieve sufficient speeds. Other mechanisms, such as horizontal multiple joint robots have a smaller size but cannot provide the rigidity and accuracy of the orthogonal coordinate systems (see column 1, lines 12 to 56). D4 seeks "*to provide a plane motion mechanism which can occupy only a small or narrow area and which requires only an extremely thin structure or construction, so that the plane motion mechanism can withstand further high speed, high accuracy and high load*" (see column 1, lines 60 to 65). The solution proposed comprises a mechanism in which a moving platform is moved within a plane (support) surface by belts (see Figure 1 of D4).

8. The parties agreed that the belts of D4 corresponded to the cables of granted claim 1. In the following,

reference is made interchangeably to belts or cables moving the mobile platform.

9. The opponent referred to Figures 5 and 6 of D6, pointing out that in the mechanism of D6, *"the base platform can complete a yawning angle Θ, with respect to the second direction Y, with an amplitude comprised between ± 20°"* (page 12, lines 11 to 13). According to the opponent, this was an additional indication that the skilled person starting from D6 would have sought to increase the amplitude of yawning rotation of the mobile platform.

10. The opponent referred to the following passage of D4 (column 6, lines 33 to 41; see also Figure 1):

"If the belt 1 extends about the outer peripheral side surface 92 of the table 20 through at least one turn or revolution along groove 61, the table 20 can be moved angularly further through one turn or revolution. The peripheral side surface of each of the cylindrical elements 11, 12, 13 and 14, which is formed therein with the grooves 71, 72, 73 and 74, is rotatable about its axis 93, 94, 95 or 96."

11. According to the opponent, the skilled person, an expert in motion mechanisms, when seeking to increase the amplitude of yawning rotation in the mechanism of D6, would find the solution in this passage of D4. Consequently, the skilled person would combine the teaching of D4 to use belts (or cables) as movement actuators in the mechanism of D6 and arrive at the claimed invention in an obvious manner. The opposition division reasoned in the same way in the decision under appeal (see the Reasons of the impugned decision,

points 5.3 to 5.9).

12. The proprietor disagreed with the opponent's definition of the skilled person. It argued that the definition of the technical field of "planar mechanisms" was too general. D6 and D4 related to different technical contexts. D6 (and the patent) described a vehicle simulator, which was a bulky and heavy device. The focus of the mechanism was on acceleration so that the experience of the user could be as close as possible to driving a real vehicle. In contrast, D4 described a much smaller motion mechanism where high speed and accuracy were of importance (see D4, column 1, lines 60 to 65 and column 2, lines 19 to 25). Acceleration was not mentioned at all in D4. So, even if both D4 and D6 described motion mechanisms, it was evident that these mechanisms were different both structurally and functionally. Therefore, it could not reasonably be said that there was one skilled person covering the entire technical field of motion mechanisms but more specialisation was necessary. The skilled person of D6 was not the same as the skilled person of D4. When starting from D6 the skilled person, a specialist in motion mechanisms for vehicle simulators, seeking to increase the amplitude of the yawning rotation of the mobile platform of the vehicle simulator would not have considered D4.

13. Regarding the cited passages of D4, the proprietor observed that increasing the rotation amplitude in that particular context related to a specific way of connecting the belts to the moving platform. This was a secondary effect. In other words, it related to a technical problem that had arisen after the actuators of the prior art in D4 had been replaced with belts. However, there was no reason or motivation for the

skilled person to replace the linear actuators of the simulator of D6 with belts in the first place.

14. The board does not consider the definition of the skilled person decisive in the present context. Even if the opponent's general definition is followed, the skilled person would readily recognise that D6 and D4 describe different motion mechanisms relating to different contexts and different applications.

- D6 describes a vehicle simulator with a bulky and heavy mobile platform, which simulates a real world experience (driving a vehicle) to the user, who is sitting on/in it. The focus is on the acceleration of the movements so that the user can experience comparable inertia to the one they experience when driving a vehicle. Speed and accuracy of movements do not play an important role.

- D4 describes a moving platform used in machining processing, assembling, measuring, etc. An object is placed on the platform and is moved around. The motion mechanism is destined for a workshop application and the accurate determination of the position of the moving platform as well as the speed of moving from one position to another are of crucial importance. Acceleration does not play any role in this context.

15. Accordingly, the board agrees with the proprietor that the skilled person seeking to improve the amplitude of yawning rotation of the mobile platform of the vehicle simulator of D6 would not consider D4.

16. During the written procedure, it was argued that in D4 the belts were introduced to solve different technical

problems (increasing speed and accuracy of the movement of the mobile platform, as well as the load the platform can carry) than the technical problem the skilled person starting from D6 was seeking to solve (increasing the amplitude of travels and of the yawning rotation of the mobile platform). Therefore the skilled person would not have considered D4 (see also the board's communication under Article 15(1) RPBA, points 3.1.8 and 3.1.9). The opponent argued that in the context of the so-called "problem-solution approach", the document to be combined ("secondary document") with the closest prior art did not need to state explicitly that it solved the formulated technical problem of the closest prior art ("primary document"). It was sufficient that the skilled person would have recognised that it did so (see e.g. opponent's letter dated 9 January 2026, page 2, third paragraph to page 3, third paragraph).

17. The board agrees with the opponent that there is no need for the "secondary document" to state explicitly that it solves the formulated technical problem. However, the skilled person seeking to solve this problem needs a reason to consider the specific "secondary document" before they can be in the position to recognise that it solves the problem. The skilled person does not find the "secondary document" by chance and then looks into it and finds a solution to the problem they seek to solve. The case law refers to the so-called "could-would" approach (see *Case Law of the Boards of Appeal of the European Patent Office*, 11th edition 2025, section I.D.5), in other words, the relevant question is whether or not the skilled person starting from the closest prior art (D6 in the present case) and seeking to solve the technical problem of increasing the amplitude of the yawning rotation of the

mobile platform *would* consider D4.

18. In the board's view the question is to be answered in the negative. The skilled person would have to recognise that the features providing an improved speed and accuracy in the movement of the mobile platform in apparatus of D4 (i.e. the belts) also solve the problem of increasing the amplitude of the yawning rotation of the mobile platform in the vehicle simulator of D6. In the absence of any relevant indication in D4 the board's view is that only with hindsight the skilled person would have arrived at such a conclusion.

19. Regarding the passage of D4 describing how to obtain an additional rotation of the mobile platform (see point 10. above), the board agrees with the proprietor that this passage presupposes that the mobile platform is already being moved by belts. In the context of the problem-solution approach, before considering this particular way of connecting the belts to the mobile platform in order to increase the amplitude of rotation, the skilled person needs to have replaced the linear actuators of the mobile platform of the vehicle simulator of D6 with such belts (or cables) before they look into D4. A reason or motivation to do so is not to be found in D6. Consequently, the board cannot follow this argument of the opponent (and the opposition division).

20. For the sake of completeness, the board observes that, even if the skilled person tried to apply the teaching of D4 in the mobile platform of the simulator of D6, additional modifications of the mechanism of D6 would have been necessary. It is highly questionable whether adding a complete rotation (360°) of the mobile platform of a vehicle simulator is desirable at all.

Additional measures may have been necessary to limit the amplitude of the rotation of the mobile platform for the vehicle simulator to operate. In the board's view, such measures would go beyond what could be considered obvious for the skilled person.

21. In an alternative line of argumentation first presented in the letter of 9 January 2026, the opponent argued that the teachings of D6 and D4 could be seen as alternative solutions to the same technical problem. The technical problem was to provide a motion mechanism that could provide movement in x and y directions, as well as yawning rotation to a mobile platform. D6 described a first solution, where the platform was being moved by linear actuators. D4 described an alternative solution whereby the platform was being moved by belts. Starting from D6 the skilled person would have sought for an alternative solution for providing a motion mechanism for the mobile platform. They would find such a solution in D4 and apply it in the simulator of D6 in an obvious manner.

22. The board cannot follow this argument of the opponent, either. The concept of alternative solutions to the same technical problem does not apply here. This concept applies when there is no difference between the two alternative solutions, i.e. neither solution provides any technical effect over the other. In this case, however, the replacement of the linear actuators with belts provides a technical effect, as explained previously.

23. The board's conclusion is, therefore, that the subject-matter of claim 1 as granted is not obvious to the skilled person in view of the combination of document D6 with document D4. The same conclusion holds for

method claim 11 as granted.

24. The opponent raised other objections against the patent as granted, which are discussed in the following.

Patent as granted, sufficiency of disclosure

25. In the decision under appeal, the opposition division concluded that the opposed patent disclosed the claimed invention in a manner sufficiently clear and complete for it to be carried out by the skilled person. The point of contention related to the implementation of features [1.6], [1.6.1] and [1.6.2] of claim 1 and in particular whether the skilled person would be able to implement the defined movement means so as to achieve all the possible positions and movements of the mobile platform (including rotation). The opposition division referred to page 13, lines 13 to 20 of the application as filed (see application as published which is taken to correspond to the content of the application as filed; the cited passage corresponds to paragraphs [0100] to [0101] of the patent specification) and held that the mentioned motion cueing algorithms and their use were within the common general knowledge of the skilled person (see impugned decision, point 3 and sub-points).

26. The opposition division also considered documents D5 and D7, which were cited by the opponent, as illustration of the fact that such motion algorithms were part of common general knowledge before the priority date of the opposed patent (*ibid.*, point 3.4).

27. In its statement setting out the grounds of appeal, the opponent essentially made reference to its arguments presented in the "Grounds of Opposition" (i.e. the

notice of opposition) dated 28 February 2020 (see opponent's statement of grounds of appeal, page 3, second paragraph under point 1).

28. In addition, the opponent argued, although it did not contest that the algorithms described in D5 and D7 were part of the skilled person's common general knowledge, that the opposition division "failed to address":
- whether the skilled person would have found D5 and D7 without undue burden;
- even if the skilled person had found D5 and D7 whether, without undue burden, they would have recognised D5 and D7 as being relevant to the implementation of the claimed invention (*ibid.*, page 2, third paragraph under point 1).

29. After the board issued its preliminary opinion, the opponent did not present any other arguments relating to this ground for opposition.

30. Regarding the reference to the notice of opposition, the board adheres to established case law and practice according to which references to submissions in the first instance proceedings do not suffice to substantiate objections raised in appeal proceedings. The opponent did not argue further on this aspect and the board does not need to refer to the arguments in the notice of opposition.

31. Regarding common general knowledge, the board is of the view that when something is considered part of the skilled person's common general knowledge, it is inherently known to the skilled person. The skilled person does not need to "search for it" or "find it" in the state of the art. The skilled person knows it and is able to apply it without any need for a reference to

any particular document of the state of the art.

32. In the board's understanding, the opposition division referred to documents D5 and D7 to demonstrate that such motion algorithms, which were also mentioned in the patent, were part of the common general knowledge. Contrary to the opponent's arguments, therefore, the skilled person neither needs to "find" D5 and D7 nor to "recognise them as being relevant to the implementation of the claimed invention" because their content is part of their general knowledge. The opponent did not submit any other arguments on this matter.

33. Consequently, the board agrees with the opposition division that the patent discloses the claimed invention in a sufficiently clear and complete manner for the skilled person to carry it out. Accordingly, the ground for opposition under Article 100(b) EPC does not prejudice the maintenance of the patent as granted.

Patent as granted, novelty

Over D1

34. In the impugned decision, the opposition division came to the conclusion that the subject-matter of claim 1 as granted was new over document D1 because D1 did not disclose feature [1.4] ("*sliding means associated with the mobile platform and configured to allow said mobile platform to slide on said support surface*"), see the Reasons of the impugned decision, point 4.1 and sub-points.

35. The opponent argued that the terms "sliding means" and "configured to allow" were to be interpreted broadly. The term "means" was "just a label" that defined no

technical limitation. The same was valid for the term "configured to" as there was no particular technical limitation associated to it. The skilled person's understanding was that the means were merely providing the function of sliding. In addition, the sliding means did not play any role in the rest of the features of claim 1, in particular there was nothing to indicate that they were used when the platform was moving.

36. Regarding the question whether the platform of D1 could contact the floor, the opponent pointed first to Figure 2 and argued that there was nothing preventing the platform to contact the floor. Figure 6 showed the working space of the platform (see also page 84, section 4, first three lines; page 86, second paragraph under equation (4)). According to Figure 6, the prismatic workspace of the platform included the plane z=0, in other words the platform could be translated on the floor. D1 therefore included the teaching that the platform could slide on the floor. The opponent pointed out that D1 described two different simulations and in the first one, the platform was only translated and not rotated (see also page 86, page 86, third paragraph under equation (4)).

37. The term "sliding means" was to be understood as means improving the ability of something to slide on flat surface (like a glass on a table) or something that allows a sliding motion between parts. The platform shown in Figure 2 had a flat base, which, when the platform was lowered on the floor, would allow the platform to slide on the floor, i.e. that base corresponded to the sliding means of feature [1.4].

38. The board does not find these arguments convincing.

39. The board agrees with the proprietor that "sliding means" is not merely "a label" in feature [1.4]. The patent gives concrete examples of such sliding means (see paragraphs [0065] to [0071]), such as pneumostatic blocks, ball bearings or magnetic suspension bearings. In the present context, therefore, the base of the platform in D1 cannot be considered to correspond to the sliding means of feature [1.4].

40. In addition, according to feature [1.4], the sliding means are associated with the mobile platform, so when the mobile platform is being translated (feature [1.6.1]) or rotated [feature [1.6.2]) the associated sliding means allow those movements of the mobile platform. In contrast, Figure 2 of D1 shows no such sliding means associated with the mobile platform.

41. Regarding the question of whether the mobile platform of D1 slides or can slide on the floor, the board agrees with the proprietor that it does not and cannot do so. As it can be seen in Figure 2, the platform is suspended by nine cables (L1 to L9), three of which are anchored to the floor. None of the embodiments described in D1 includes less than those nine cables, in particular does not include cables L7 to L9 (see also Figures 21 and 22 where the tension of the nine cables during the simulations is shown).

42. In addition, claim 1 of the patent defines that the mobile platform can be translated and rotated. So, the first simulation in D1 referred to by the appellant, does not correspond to the claim, since the mobile platform does not rotate. In the second simulation of D1, where the mobile platform rotates, the working space is "significantly" reduced (see page 86, fourth paragraph under equation (4) and Figure 7). Moreover,

as D1 describes, during that simulation the platform height was fixed to 1200 mm, i.e. the plane z=0 (the floor) was excluded (see page 94, first full paragraph under Figure 19).

43. The board therefore agrees with the opposition division that the subject-matter of claim 1 of the patent as granted is new over D1. The same conclusion holds for method claim 11 as granted.

Over D2

44. In the decision under appeal the opposition division came to the conclusion that claim 1 as granted was new over document D2, see point 4.2 and sub-points of the Reasons.

45. In its statement of grounds of appeal, the opponent made again reference to the arguments presented in the notice of opposition. As mentioned previously, according to established case law and practice such references to submissions during the opposition procedure are not sufficient to substantiate an objection raised in appeal proceedings. This is mainly because they fail to indicate where the opposition division erred in its conclusions in the impugned decision.

46. In any case, given that the disclosure of D2 is very similar to the one of D1, the opponent's objection is based on its interpretation of the terms "slide" and "configured to allow" as discussed above with respect to D1. Since the board does not follow the opponent's interpretations, and in the absence of any other relevant arguments, it concludes that claim 1 is new over D2, as well. The same conclusion holds for method

claim 11 as granted.

47. Accordingly, the board agrees with the opposition division that the claimed subject-matter of the patent as granted is new and the ground of lack of novelty (Articles 100(a), 52(1) and 54(1) EPC) does not prejudice the maintenance of the patent as granted.

Patent as granted, inventive step, other objections

Starting from D1

48. It is common ground that granted claim 1 differs from D1 by feature [1.4], i.e. the "sliding means".

49. The opponent argued that the skilled person reading D1 was taught that there was a risk of the ceiling mounted cables of the suspended mobile platform interfering with (e.g. impinging on) the driver in the cockpit (see page 81, lines 5 and 4 from the bottom). The skilled person was also taught that in simulations of automotive vehicles it was appropriate to fix the height of the mobile platform such that its movement was limited within a horizontal plane (page 94, first full paragraph after Figure 19). The skilled person would thus seek to reduce the risk of the cables interfering with the cockpit in the automotive simulator of D1.

50. The opponent referred to document D5, which had one author in common with D1 and was also cited in it (see citation 12 on the last page). D5 described a planar cable direct driven robot (CDDR) in which a mobile platform was moved on a flat surface by four cables (see Figure 1). The skilled person starting from D1 and seeking to reduce the risk of the cables interfering

with the cockpit would have considered D5 and applied the simpler solution, with motion mechanism comprising four cables instead of nine (in D1). Since the movement of the platform in D1 was limited to one horizontal plane at a height of 1200 mm the platform could be set on the floor when applying the teaching of D5 to the mechanism of D1.

51. The opponent pointed out that D5 mentioned "negligible friction" in the movement of the robot (platform) on the floor (see page 8, second line below equation (1)). Considering that feature [1.4] of granted claim 1 did not define any particular technical limitation for the sliding means other than allowing the platform to move on the support surface, the mobile platform of D5 comprised such sliding means, since there was almost no friction at all.

52. The board does not find these arguments persuasive, either.

53. Regarding the understanding of the term "sliding means", as discussed in the context of novelty (see point 39. above), the board is of the view that it implies more than only an indirect disclosure of a mobile flat surface that might slide on a support surface. Consequently, the mere mention of negligible friction cannot be considered to anticipate the sliding means of feature [1.4].

54. The board also agrees with the proprietor that it is questionable whether the skilled person starting from D1 would consider D5. D5 is older than D1 and is limited to planar CDDRs (see Abstract, 6th line from the bottom). Document D1, describing CDDR moving in 3D, represents apparently an evolution of the planar CDDR

(2D) of D5. Replacing the nine cables of the moving platform of D1, which give it six degrees of freedom, with the four cables of the mechanism of D5 and losing three degrees of freedom, seems rather counter-intuitive to a skilled person, even if the general desire for reducing complexity mentioned by the opponent is taken into account.

55. In addition D5 does not provide any solution to the technical problem of reducing the risk from cable interference with the cockpit. D5 states explicitly that "*[t]he potential exists for interference between cables and workspace items and/or humans, but this problem can be minimized by design ...*" (see page 6, first full paragraph, last sentence).

56. Summarising, the skilled person starting from D1 and seeking to solve the identified technical problem, would have no reason to consider D5, and even it they did, they would not find in D5 any solution to the problem or the distinguishing feature.

57. Accordingly, the board concludes that the subject-matter of granted claim 1 is not obvious when when D1 is taken as a starting point of the inventive step assessment. The same conclusion holds for method claim 11 as granted.

Starting from D2

58. Besides references to the notice of opposition, the opponent did not bring forward any arguments for this attack of lack of inventive step (see opponent's statement of grounds of appeal, points 2.1.6 and 2.1.7 on page 13).

59. As stated previously, references to submissions in the first instance proceedings are not considered sufficient to substantiate attacks in the statement of grounds of appeal. The board thus considered the attacks of lack of inventive step starting from D2 to be not sufficiently substantiated and did not take them into account under Article 12(3) and (5) RPBA. The opponent did not argue further on this matter.

60. Accordingly, the board comes to the conclusion that the claimed subject-matter of the patent as granted involves an inventive step. The ground for opposition of lack of inventive step (Articles 100(a), 52(1) and 56 EPC) does not prejudice the maintenance of the patent as granted.

Request for remittal to the opposition division

61. During the oral proceedings, after the board had concluded that the claimed subject-matter of the patent as granted was new and not obvious with respect to the combination of D6 with D4 and the invention was sufficiently disclosed the opponent requested remittal of the case to the opposition division for further prosecution. The opponent pointed out that the opposition division had not decided on the attacks of lack of inventive step starting from D1 or D2 in the impugned decision. According to the opponent, D1 was a highly relevant starting point and the opponent was entitled to a decision in two instances in order to have its right to be heard respected.

62. The proprietor did not agree with a remittal. It pointed out that the opposition division did not need to decide on these attacks because it had already concluded that the subject-matter of claim 1 as granted

did not involve an inventive step in view of the combination of D6 with D4. However, the objections of lack of inventive step starting from D1 or D2 had been discussed during the opposition procedure and the opposition division had formed an opinion on them, as communicated in preparation to the oral proceedings. Moreover, the request for remittal was submitted late and it should not be admitted by the board because it should have been submitted at an earlier stage.

63. The board does not see any need for a remittal of the case to the opposition division. Even if not decided upon in the impugned decision, the opposition division provided a preliminary opinion on these objections. The parties provided extensive arguments regarding these objections during the written appeal procedure but did not put forward any new arguments that might justify a need for the opposition division to assess the case anew. It is established case law that parties do not have a right to have all issues decided upon by two instances. Consequently, the board decided to make use of the powers conferred by Article 111(1) EPC and decide on these issues and rejected the request for remittal. The question of admittance of this request can be left open.

64. It appears thus that the grounds for opposition invoked by the opponent do not prejudice the maintenance of the patent as granted. Therefore the decision under appeal is to be set aside and the opposition is to be rejected, and the patent to be maintained as granted.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar: The Chairman:

S. Sánchez Chiquero T. Häusser

Decision electronically authenticated