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Datasheet for the decision of 18 July 2025

Case Number: T 0608/23 - 3.2.08

Application Number: 14896254.1

Publication Number: 3161346

IPC: F16H7/18, B60K25/00, F02B67/06, F16H7/12

Language of the proceedings: EN

Title of invention:
ORBITAL TENSIONER ASSEMBLY

Patent Proprietor:
Litens Automotive Partnership

Opponent:
WijnstraWise Patents B.V.

Relevant legal provisions:
EPC Art. 54(3), 84, 123(2)
RPBA 2020 Art. 12(4)

Keyword:
Novelty - (no)
Claims - clarity - auxiliary request (no)
Amendments - extension beyond the content of the application as filed (no)
Amendment to case - amendment admitted (yes)

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Case Number: T 0608/23 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 18 July 2025

Appellant: (Patent Proprietor)	Litens Automotive Partnership 730 Rowntree Dairy Road Woodbridge, ON L4L 5T9 (CA)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Appellant: (Opponent)	WijnstraWise Patents B.V. Talbotstraat 166 1087 DM Amsterdam (NL)
Representative:	Wijnstra, Reinier WijnstraWise Patents B.V. Noordsche Bosch 6 1151 DB Broek in Waterland (NL)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 12 January 2023 concerning maintenance of the European Patent No. 3161346 in amended form.**

Composition of the Board:

Chairman	G. Buchmann
Members:	M. Foulger
	K. Kerber-Zubrzycka

Summary of Facts and Submissions

I. The Opposition Division decided at the oral proceedings held on 13 October 2022 that the patent and the invention to which it related in the form according to the then valid fifth auxiliary request met the requirements of the EPC. The Opposition Division found that claim 1 of the main request and auxiliary requests 1 - 3 lacked novelty with respect to D1: WO 2014/100894 A, further that the subject-matter of auxiliary request 4 went beyond the content of the application as originally filed contrary to Article 123(2) EPC.

II. The patent proprietor (Litens Automotive Partnership) and the opponent (WijnstraWise Patents B.V.) both filed appeals against this decision.

III. The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted, or in the alternative, maintained in amended form according to one of auxiliary requests 1 to 12 as filed with the statement setting out the grounds of appeal, or according to new auxiliary request 10 filed with letter of 30 June 2025, inserted in the order before auxiliary request 10.

IV. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked. Moreover, they requested that auxiliary requests 1 to 12 not be admitted into the proceedings and, more particularly, that auxiliary requests 2, 4, 6, 8, 10 and 11, filed with the statement setting out the grounds of appeal not be admitted.

They further requested that the new auxiliary request 10 submitted with letter of 30 June 2025 not be admitted into the appeal proceedings.

V. Claim 1 as granted reads:

F1 A tensioner for tensioning an endless drive member (914) that is engaged with a rotary drive member on a shaft of a motive device, the tensioner comprising:
F2 a base (12) that is mountable to the motive device;
F3 a ring (14) that is rotatably supported by the base (12) in surrounding relationship with the shaft of the motive device and which is rotatable about a ring axis (AR); and
F4 a second tensioner pulley (20) that is rotatably mounted at least indirectly to the ring (14), wherein the second tensioner pulley (20) is biased towards a second span of the endless drive member (914) on another side of the rotary drive member,
and characterized in that
F6 a tensioner arm (16) is pivotally mounted to the ring (14) for pivotal movement about an arm pivot axis, and in that
F7 a first tensioner pulley (18) is rotatably mounted to the tensioner arm (16), wherein the tensioner arm (16) is biased towards a first span of the endless drive member (914) on one side of the rotary drive member; and in that
F8 the ring (14) is rotatable in response to hub loads in the first and second tensioner pulleys (18, 20) that result from engagement with the first and second spans of the endless drive member (914), and in that
F9 a force (F4) generated by a spring member (30) on a bushing (26) that supports the ring (14) on the base (12) is selected to resist a tilting force that results from the belt force on the pulleys (18, 20) during

operation of the tensioner."

VI. The auxiliary requests are as follows:

Auxiliary request 1 -
in this request the claims have not been amended but the description has been modified.

Auxiliary request 2 -
in this request the claims have not been amended but the description has been modified.

Auxiliary request 3 -
the feature "such that no tilting of the bushing (26) occurs," has been added.

Auxiliary request 4 -
the claims are the same as for auxiliary request 3, the description has however been modified.

Auxiliary request 5 -
the following feature is added "wherein the force (F4) generated by the spring member (30) generates a moment (M2) greater than and opposing a moment (M1) generated by the tilting force (F3)."

Auxiliary request 6 -
the claims are the same as for auxiliary request 5, the description has however been modified.

Auxiliary request 7 -
the following feature is added "wherein the spring member has a resilient flange (89) having a cant in a rest position or has a wave ring."

Auxiliary request 8 -

claim 1 of auxiliary request 7 is modified by adding "selected upward" before cant

Auxiliary request 9 -
has the following underlined features added
"in that a force (F4) generated by a spring member (30) on two ring bushings (26, 128) that supports the ring (14) on the base (12) is selected to resist a tilting force that results from the belt force on the pulleys (18, 20) during operation of the tensioner,
wherein the ring bushings (26, 128) are engaged with the ring (14) to dampen movement of the ring (14),
wherein the first ring bushing (26) is a first ring damping member that is positioned between the ring (14) and the base (12) and engages a first face of the base (12), and wherein the second ring bushing (128) is a second ring damping member and is connected to the ring (14) and engages a second face of the base (12), and
the tensioner further comprises a clamping member (30) having a flange (89), the clamping member (30) being connected to the ring (14) such that the clamping member (30) cooperates with the ring (14) to clamp the base (12) and the first and second damping members (26, 128) while still permitting sliding movement of the ring (14) relative to the base (12),
wherein the spring member is a separate spring member, such as a wave ring, or wherein the flange (89) has a selected upward cant in a rest position and is resilient and is the spring member."

New auxiliary request 10 submitted with letter of 30 June 2025 -
the following feature of auxiliary request 9 is deleted
"wherein the spring member is a separate spring member, such as a wave ring" and the following feature is added
"or instead of the flange (89) being formed as the

spring member to apply the spring force (F4) on the ring bushings (26, 128), the clamping member comprises a separate spring member, such as a wave ring, wherein the separate spring member applies the spring force (F4) on the ring bushings (26, 128)."

Auxiliary request 10 -
the following feature of auxiliary request 9 is deleted "or wherein the flange (89) has a selected upward cant in a rest position and is resilient and is the spring member".

VII. The essential arguments of the parties are summarised below in the "Reasons for the Decision".

Reasons for the Decision

1. Main request - Novelty

D1 is prior art according to Article 54(3) EPC because it was published on 3 July 2014, i.e. after the filing date of the contested patent 26 June 2014, and was filed on 23 December 2023, i.e. before the said filing date.

D1 discloses (references in parenthesis refer to D1):
F1 A tensioner for tensioning an endless drive member (914) that is engaged with a rotary drive member on a shaft of a motive device, the tensioner comprising:
F2 a base (12) that is mountable to the motive device;
F3 a ring (14) that is rotatably supported by the base (12) in surrounding relationship with the shaft of the motive device and which is rotatable about a ring axis (AR); and

F4 a second tensioner pulley (20) that is rotatably mounted at least indirectly to the ring (14), wherein the second tensioner pulley (20) is biased towards a second span of the endless drive member (914) on another side of the rotary drive member,
and wherein
F6 a tensioner arm (16) is pivotally mounted to the ring (14) for pivotal movement about an arm pivot axis, and in that
F7 a first tensioner pulley (18) is rotatably mounted to the tensioner arm (16), wherein the tensioner arm (16) is biased towards a first span of the endless drive member (914) on one side of the rotary drive member; and in that
F8 the ring (14) is rotatable in response to hub loads in the first and second tensioner pulleys (18, 20) that result from engagement with the first and second spans of the endless drive member (914), and in that
F9 a force generated by a spring member (30 - see paragraph [0027] - "be shaped to apply a spring force on the damping member 26") on a bushing (26) that supports the ring (14) on the base (12).

The appellant (patent proprietor) argued that feature F9 was not known from D1; making reference to the patent description paragraphs [0050] - [0052], it was clear that the spring force (F4) ensured that no tilting occurred in the bushing. According to G1/24, the description had to be consulted when interpreting the claims, thus the claim had to be read in the context of these paragraphs of the description. D1 did not contain any such disclosure. According to the appellant (patent proprietor) this meant that the subject-matter of claim 1 was not known from D1.

The Board considers that the spring member 30 of D1

applies a spring force which does resist a possible tilting of the bushing. Whether the spring force is sufficient to prevent any tilting, depends on the magnitude of the tilting force which is a function of the use of tensioner when it is installed. It is not a feature of the tensioner as presently claimed.

Moreover, the description cannot be relied upon to read into the claim a feature not suggested by the explicit wording of the claim because as stated in G1/24, Order, the claims are the starting point and the basis for assessing the patentability of an invention.

Therefore, the subject-matter of claim 1 is not new.

2. Auxiliary requests 1 and 2

Claim 1 of these requests is identical to that of the main request. The subject-matter of these claims is also not new for the reasons set out above.

3. Auxiliary requests 3, 4, 5, 6, 9 and new auxiliary request 10

Claim 1 of auxiliary requests 3 and 4 has been modified by adding the following feature "such that no tilting of the bushing (26) occurs."

This feature relates the force exerted by the spring member to the fact that no tilting of the bushing occurs. The required force depends on the tilting force on the bushing which in turn depends on the use to which the tensioner is put and how much force is transmitted by the belt being tensioned. Thus, the claim defines the object to be claimed in terms of the use to which it is to be put and is thus not clear in

the sense of Article 84 EPC.

Claim 1 of auxiliary requests 5 and 6 has been modified by adding the following feature "wherein the force (F4) generated by the spring member (30) generates a moment (M2) greater than and opposing a moment (M1) generated by the tilting force (F3)."

Again this feature relies on the magnitude of the tilting force and, for the reasons set out above, is not clear.

Claim 9 includes the feature that the flange has "a selected upward cant in a rest position". This feature only makes technical sense when the tensioner is installed, otherwise simply turning the flange over would mean that the "upward" cant would become downward.

The appellant (patent proprietor) argued that the skilled person with the benefit of the drawings of the patent would understand what was meant, i.e. that the flange was not installed and simply placed on a flat surface.

The Board is not persuaded by this argument because a "tensioner" is claimed which can be mounted in any desired orientation. The term "upward" thus depends solely on the use of the tensioner. Furthermore, it is not persuasive that the flange should be considered in an uninstalled state because the claim is directed to a tensioner in which the flange is installed. Hence, the term "upward" renders claim 9 unclear.

New auxiliary request 10 also includes the feature of "a selected upward cant". As discussed above, the term

"upward" is unclear. For those reasons i.e. lack of clarity (Article 84 EPC), claim 1 of this request is also not allowable.

Claim 1 of auxiliary requests 3, 4, 5, 6, 9 and new auxiliary request 10 is therefore not clear and thus not allowable.

4. Auxiliary requests 7 and 8

The appellant (patent proprietor) has added the feature, "wherein the spring member has a resilient flange (89) having a cant in a rest position or has a wave ring", to claim 1 of these requests.

This formulation implies that the wave ring is a part separate to the spring member, i.e. that there is a spring member which then has a wave ring. This contradicts the disclosure of the application as filed in which the wave ring is the spring member.

Consequently the subject-matter of claim 1 of these requests extends beyond the subject-matter of the application as originally filed.

5. Auxiliary request 10

5.1 Admittance - Article 12(4) RPBA

The appellant (opponent) argued that this request was late-filed as it should have been filed in the proceedings before the opposition division and should not be admitted into the proceedings.

In the present case, the amendment to claim 1 deletes one of the alternatives within claim 1 of auxiliary

request 9 which was already in the proceedings as it corresponded to auxiliary request 5 which the opposition division found allowable. Moreover, the alternative now claimed was clearly new. Given the circumstances of the appeal case, the Board admitted the request.

5.2 Article 123(2) EPC

The appellant (opponent) argued that there was no basis in the application as filed for "a force (F4) generated by a spring member (30) on two ring bushings (26,128)" in combination with the feature "the spring member is a separate spring member". According to paragraph [0046], it was the flange 89 (not being a separate spring member) which applied a selected force F4 on the bushings 26 and 128. According to paragraph [0048], the spring member applied a force to only one bushing 26. A separate spring member applying a force on two ring bushings 26, 128 was not disclosed.

Paragraph [0048] however discloses that "instead of forming the flange 89 to apply a spring force on the bushing 26, it is alternatively possible to provide a separate spring member." This is a clear reference to paragraph [0046]. It is correct that paragraph [0048] mentions only one bushing, but it is unambiguously derivable that the alternative using a separate spring member has the same function as the flange.

Thus, the Board considers that the contested feature was originally disclosed and that the subject-matter of the amended patent does not extend beyond the content of the application as filed.

5.3 Article 83 EPC

The appellant (opponent) argued that the patent gave the skilled skilled person no information on how to mount the wave ring. This meant that the skilled person could not carry out the invention claimed.

The Board considers that the skilled person, being someone having normal workshop skills, would have no difficulty in placing the wave ring in the tensioner and then realising that a retaining ring was necessary so that the integrity of the assembly was assured. This is within the capability of the skilled person and consequently the invention as defined in claim 1 can be put into practice.

6. Description

The appellant (opponent) argued that paragraph [0056] of the description still mentioned the flange applying a force on the bushing. This was inconsistent with claim 1 and could cause a broader interpretation of the claim.

Paragraph [0056] refers however to Figures 25-32, none of which shows the claimed separate spring member. Also the description of these Figures consistently refers to the assembly using a flange and no separate spring member. Therefore, it is clear for the reader that paragraph [0056] does not describe the claimed assembly.

Hence, the unamended paragraph [0056] - in combination with amended claim 1 - does not cause a lack of clarity.

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: Columns 1 to 14 filed with the letter of 22 May 2023
   - Claims: No. 1 to 9 according to auxiliary request 10 filed with the letter of 22 May 2023
   - Drawings: Figures 1 to 32 of the patent specification.

The Registrar: The Chairman:

C. Moser G. Buchmann

Decision electronically authenticated