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Aktenzeichen / Case Number / N^o du recours : T 345/88 - 3.2.1

Anmeldenummer / Filing No / N^o de la demande : 84 308 217.3

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 145 402

Bezeichnung der Erfindung: Vehicle with load conscious brake pressure reducing valve
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : B60T 8/18, B60T 8/26

ENTSCHEIDUNG / DECISION

vom / of / du 17 November 1989

Anmelder / Applicant / Demandeur : LUCAS INDUSTRIES

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 123(2)

Schlagwort / Keyword / Mot clé : Objection of added subject-matter overcome by amendment - remittal for further examination

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 345/88 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 17 November 1989

Appellant : LUCAS INDUSTRIES public limited company
Well Street, Birmingham BI9 2XF (GB)

Representative : Goodenough, Nigel et al,
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Decision under appeal : Decision of Examining Division 078
of the European Patent Office
dated 09.12.87 refusing European
patent application No. 84 308 217.3
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : F. Gumbel

Members : P.R. Alting v. Geusau
J.-C. Saisset

Summary of Facts and Submissions

- I. European patent application No. 84 308 217.3 filed on 27.11.84 and published on 19.06.85 was refused by a decision of the Examining Division dated 09.12.87.
- II. The decision was based on Claims 1 to 7 filed on 13.01.87 with letter of 08.01.87.

The reason given for the refusal was that amended Claim 1 included added subject-matter, in particular in the characterising part of Claim 1, contrary to Article 123(2) EPC.

- III. An Appeal was lodged against this decision on 08.02.88 together with payment of the appeal fee.

The Statement of Grounds of Appeal was submitted on 11.04.88. The Appellant expressed the opinion that Claim 1 did not contain added subject-matter and therefore maintained Claims 1-7 filed on 13.01.87.

- IV. In a communication dated 18.07.89 the Board gave a preliminary opinion in that not only Claim 1 contained in its characterising part a reference to failure of the position sensing spring, which was not contained in any of the original claims nor in the description, but also that Claim 1 was unacceptably broadened by deletion of features. For both these reasons, Claim 1 did not appear to comply with Article 123(2) EPC. The Board further drew attention to the fact that, as originally presented, the application essentially deals with avoidance of unwanted pressure reduction to the rear wheel(s) of a vehicle due to load transfer influences during braking and that in order to achieve such an effect essential features were missing from

Claim 1. Therefore, Claim 1 did also not appear to meet the requirements of Article 84 EPC.

The Appellant was informed that if a formally acceptable Claim 1 be filed the application would probably be transferred to the Examining Division for further substantive examination.

- V. With letter of 18.08.89 the Appellant filed counter-arguments with respect to the question of added subject-matter and also filed a new Claim 1, the text of which is as follows:

"1. A brake pressure control system in a vehicle having a sprung part supported on a plurality of unsprung parts by way of a plurality of suspension assemblies, the system comprising: at least one brake pressure reducing valve (10) having an inlet (16) connected to a source of hydraulic brake fluid, an outlet (17) connected to a rear brake operating cylinder, and a control piston (12) which has a first area (A_1) exposed to the pressure prevailing at the inlet (16) and a second area (A_2) exposed to the pressure prevailing at the outlet and which is moveable in a first direction to interrupt communication between the inlet and the outlet; a position sensing spring which applies to the control piston (12) at all times when the vehicle is in use a force (S) which is determined by the relative position of the sprung and unsprung parts of the vehicle; and a bias spring (18) which applies to the control piston (12) a substantially constant force (K) which tends to move the control piston in the first direction and which opposes the force (S) applied to the control piston by the position sensing spring, characterised in that the area ratio $A_1:A_2$ is such that upon an increase in brake input pressure (P_1) the factor P_1A_1 will always increase by more than the resulting decrease in the difference ($S-K'$) between the

position sensing spring force (S) and the force (K') of the bias spring (18)."

- VI. Notwithstanding his arguments concerning the objection of added subject-matter, the Appellant requested that the appeal procedure be suspended without prejudice pending consideration by the Examining Division of the proposed amended Claim 1.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. The formal admissibility of the claims under consideration has been investigated as results from the following observations.
 - 2.1 Claim 1 finds its basis in original Claim 1 in conjunction with page 7, lines 2-10 of the original description.

It is noted that present Claim 1 defines the subject-matter for which protection is sought in terms of a brake pressure control system in a vehicle which formulation is now substantially identical to the definition used in the original Claim 1.

Further, present Claim 1 no longer includes a functional statement with respect to failure of the position sensing spring which reference was considered contrary to Article 123(2) EPC.

It is observed that present Claim 1 now includes the features of page 7, lines 2-10 of the original description

which, as originally presented in the application are essential for achieving the desired effect of the application that unwanted pressure reduction to the rear wheel(s) of the vehicle due to load transfer influences during braking is avoided. Present Claim 1 thus also meets the requirement of Article 84 in conjunction with Rule 29(3) EPC that it should contain all essential features. It is noted that in Claim 1 in line 17 "(K)" should read "(K')".

- 2.2 Valid Claims 2-7 filed on 13.1.87 are unchanged in relation to original Claims 2-7.
- 2.3 All claims are thus formally acceptable.
3. The Examining Division has refused the application in suit for reasons of added subject-matter in the previous Claim 1 without expressing a final opinion with respect to the other requirements of the EPC, for which it had no reason to do so in the light of their findings.

Even less has the Examining Division had an opportunity to examine the present claim of which Claim 1 differs widely from the previous Claim 1.

Further, if the present claims should be found allowable, adaptation of the description would still be necessary.

For all these reasons, the Board considers it appropriate to remit the case to the Examining Division for further examination, making use of its power given by Article 111(1) EPC.

Order

For these reasons, it is decided that:

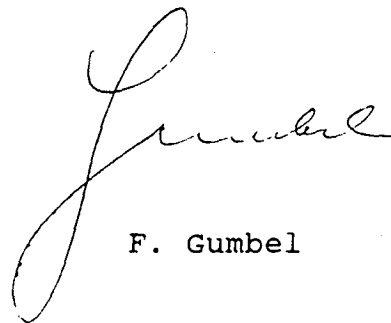
1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further examination on the basis of Claim 1 filed on 24.08.89 and Claims 2-7 filed on 13.01.87.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel