

BESCHWERDEKAMMERN
DES EUROPÄISCHEN
PATENTAMTS

BOARDS OF APPEAL OF
THE EUROPEAN PATENT
OFFICE

CHAMBRES DE RECOURS
DE L'OFFICE EUROPEEN
DES BREVETS

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen

D E C I S I O N
of 20 November 1997

Case Number: T 0230/96 - 3.2.1

Application Number: 90201526.2

Publication Number: 0409295

IPC: B60J 7/04, B60J 3/02

Language of the proceedings: EN

Title of invention:
Sliding roof for a vehicle

Patentee:
Vermeulen-Hollandia Octrooien II B.V.

Opponent:
Webasto Karosseriesysteme GmbH

Headword:
-

Relevant legal provisions:
EPC Art. 56

Keyword:
"Inventive step (no)"

Decisions cited:
-

Catchword:
-



Case Number: T 0230/96 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 20 November 1997

Appellant: Webasto Karoseriesysteme GmbH
(Opponent) Kraillinger Strasse 5
D-82131 Stockdorf (DE)

Representative: Wiese, Gerhard
Patentanwalt
Kraillinger Strasse 5
82131 Stockdorf (DE)

Respondent: Vermeulen-Hollandia Octrooien II B.V.
(Proprietor of the patent) Küppersweg 9-15
NL-2031 EA Haarlem (NL)

Representative: de Bruijn, Leendert C.
Nederlandsch Octrooibureau
P.O. Box 29720
2502 LS Den Haag (NL)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 17 January 1996
rejecting the opposition filed against European
patent No. 0 409 295 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: F. Pröls
Members: M. Ceyte
G. Davies

Summary of Facts and Submissions

- I. The respondent is the proprietor of European patent No. 0 409 295 (application No. 90 201 526.2).
- II. The patent was opposed by the appellant on the grounds of lack of inventive step.

The following state of the art was cited *inter alia* in the opposition proceedings:

D1: DE-A-3 248 413

D3: DE-A-2 923 904.

The Opposition Division rejected the opposition in a decision posted on 17 January 1996.

- III. On 7 March 1996 the appellant filed a notice of appeal against this decision and paid the appeal fee. The statement setting out the grounds of appeal was filed on 18 May 1996.
- IV. In a communication dispatched on 26 May 1997, the Board expressed its preliminary view, that the subject-matter of the granted claim 1 did not apparently involve an inventive step in the light of the prior art and common general knowledge.
- V. In a response to the Board's communication, the respondent filed on 25 September 1997 an amended claim 1 which reads as follows:

"1. Sliding roof for a vehicle having an opening (2) in its fixed roof (1), comprising a panel (5) being displaceable between a closed position in which it closes the opening (2) in the fixed roof (1), and an

open position in which it has been slid from the closed position backwardly under the fixed roof (1) thereby at least partially opening the roof opening (2); a plate-shaped sun shade (6) being movable below the panel (5) between a closed position under the roof opening (2) and a backwardly displaced position under the fixed roof (1); said sun shade being provided with a transverse stiffening (12) at the front edge; and a carrier device (7, 8) for moving the sun shade (6) at least backwardly along with the panel (5), said carrier device including an edge (7) provided under the panel (5) and a coupling means (8) mounted to the sun shade, characterised in that the coupling means (8) of the carrier device (7, 8) is adjustable between an operative coupling position and an inoperative uncoupling position such that, in the backwardly slid position of the panel (5), the sun shade (6) is movable forwardly beyond the panel (5) to its closed position, the stiffening (12) of the sun shade projecting downwardly from the plane of the sun shade (6)."

Amended claim 1 differs from claim 1 as granted by the addition of the feature "plate-shaped" before the terms "sun shade" in the pre-characterizing part of the claim and by replacing the incorrect reference signs "(13)" by "(12)".

- VI. The appellant (opponent) requested that the decision under appeal be set aside and that the patent be revoked in its entirety.

- VII. The respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained on the basis of amended claim 1 filed on 25 September 1997.

In support thereof, essentially the following submissions were made:

The claimed invention concerns a sliding roof for motor vehicles of the type disclosed in document D3. The panel as well as the sunshade are slidably mounted under the vehicle roof between a position in which they close an opening in the vehicle roof and a position in which such opening is exposed. In this known device the sunshade is automatically opened during the opening sliding movement of the panel by means of a so-called carrier device. However, there is no possibility to close the sunshade if the panel is in its open position.

The claimed invention seeks to overcome this disadvantage. Furthermore it is desirable to obtain a built-in height which is as small as possible without having nevertheless the transverse stiffening of the sunshade in engagement with the carrier member of the panel.

Document D1 neither teaches nor suggests the claimed solution. The sliding roof disclosed therein is not of the specific type of the claimed invention: the panel does not extend below but above the vehicle roof when in its open position. Therefore, this citation is not concerned with the problem of minimum overall thickness with the panel disposed below the vehicle roof in its open position. In the embodiment of Figures 8 to 11, the sunshade is in the form of a pleated sheet, which is, in its folded or closed position, relatively bulky in the vertical direction, considering the small thickness of the plate-shaped sunshade according to the invention. However, since the associated panel lies above the vehicle roof, the problem of having a small built-in height does not actually arise.

The combination of the documents D1 and D3 cannot lead in any way to the claimed solution, given that none of them either suggests or discloses the positioning of the transverse stiffening of the sunshade on its underside.

Reasons for the Decision

1. The appeal is admissible.
2. *Novelty*

The Board is satisfied that the subject-matter of claim 1 is novel over the documents D1 and D3.

Since this was never disputed during the appeal proceedings, there is no need for further detailed substantiation of this matter.

3. *Inventive step*
 - 3.1 Claim 1 is correctly based in its pre-characterising part on the disclosure of document D3. It is not disputed that this document represents the closest prior art.

In this known sliding roof device, the underside of the panel is provided near its front edge with a projection serving as carrier member arranged to come into engagement with a protruding coupling member formed on the upper side of the sunshade.

In this manner the sunshade is automatically opened during the opening sliding movement of the panel. However, there is no possibility to close the sunshade without displacing the panel from its open position,

since the carrier member of the panel protrudes downwards to such an extent that it is lying in the path of the coupling member of the sunshade when moving the sunshade forward to its closed position, with the result that the panel is carried along by the sunshade.

- 3.2 Therefore the technical problem to be solved by the present invention is to provide a sliding roof of the type stated in the pre-characterising part of claim 1 which overcomes this disadvantage, i.e. which increases the possibilities or uses of the known sliding roof. Furthermore it is desirable to obtain a small built-in height without the problem of having the transverse stiffening of the sunshade in engagement with the carrier member of the panel.

These two problems are in essence solved by the following features defined in the characterising part of claim 1:

- (i) the coupling means of the carrier device is adjustable between an operative coupling position and an inoperative coupling position such that in the backwards slide position of the panel, the sunshade is movable forwards beyond the panel to its closed position,
- (ii) the stiffening of the sunshade projects downwards from the plane of the sunshade.

- 3.3 The subject-matter of document D1 is a so-called spoiler roof for a motor vehicle. It is true that the panel in its open position is not disposed below the vehicle roof. However, the sliding roof disclosed therein comprises a panel which is displaceable between a closed position in which it closes an aperture in the

vehicle roof and an open position adjacent to said aperture, as well as a sunshade which is moveable below the panel between a closed and an open position.

The underside of the panel is also provided with a carrier member which is engageable with a retractable coupling member mounted on the sunshade (see Figures 8 to 11).

The sunshade can be thus automatically opened during the opening sliding movement of the panel by virtue of engagement between the retractable coupling member of the sunshade and the carrier member of the panel, and there is also the possibility to close the sunshade without displacing the panel from its open position, by moving the coupling member in its retracted or disengaged position.

Thus the characterising feature (i) is known in the same specialised field i.e. that of the sliding roofs for motor vehicles and solves in essence the same problem. Accordingly, the skilled person confronted with the problem at hand would be led by document D1 to provide the sunshade of the known sliding roof according to document D3 with a retractable coupling member, so that in its retracted position, the sunshade is able to move forward beyond the panel in its open position.

- 3.4 Furthermore, no inventive contribution can be seen in positioning the transverse stiffening of the sunshade on its underside, since the skilled person knows that it is highly desirable to have a built-in height of the sliding roof which is as small as possible. Any skilled person would readily recognise that for this purpose the sunshade should be as close as possible under the panel, and if there should be provided a transverse stiffening at the front edge of the sunshade, then this

transverse stiffening should be formed on the underside of said sunshade so that it is outside the path of the carrier device movable along the upper side of the sunshade.

Thus the positioning of the transverse stiffening of the sunshade on its underside in place of its upper side so that it projects downwards from the plane of the sunshade represents merely an indispensable and obvious constructional measure, which is lacking in inventive merit.

3.5 It is true that in document D1 the problem of having a small, built-in height is not so crucial as in a sliding roof where the panel extends under the vehicle roof when in its open position. However, as already stated, the skilled person would also recognise that without any transverse stiffening protruding on the upper side of the sunshade, the panel and the sunshade could be brought closer together, and as a result the built-in height of the sliding roof device could be reduced.

3.6 The argument put forward by the respondent that the sunshade of document D1 is a pleated sheet which is relatively bulky in the vertical direction when in its folded position, whereas the claimed sunshade is plate-shaped is irrelevant, since this feature is already known from the closest prior art document D3. Even if the sunshade according to document D1 is a pleated sheet, this citation nevertheless clearly teaches the skilled person of the possibility of moving the sunshade from its open to its closed position without displacing the panel from its open position, thanks to a retractable coupling member.

3.7 Accordingly, in the Board's judgement the subject-matter of claim 1 lacks an inventive step as required by Article 56 EPC. Therefore, claim 1 is not allowable.

4. As a party's request must be decided as a whole, granted claims 2 to 3 must share the fate of claim 1. The decision of the Opposition Division rejecting the opposition must be therefore set aside and the European patent must be revoked.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The European patent No. 0 409 295 is revoked.

The Registrar:



S. Fabiani

The Chairman:



F. Pröls

