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D E C I S I O N
of 29 November 1994

Case Number: T 0680/93 - 3.2.1

Application Number: 86102178.0

Publication Number: 0195268

IPC: B60R 22/46

Language of the proceedings: EN

Title of invention:

A seat belt pre-tensioning device

Patentee:

Autoliv Development Aktiebolag

Opponent:

- 01) Adam Opel Aktiengesellschaft
02) HS Technik und Design Technische Entwicklungen GmbH

Headword:

Relevant legal provisions:

EPC Art. 100(c), 123

Keyword:

"Opposition grounds - extension of subject-matter (yes)"

Decisions cited:

T 0201/83, T 0194/84, T 0260/85, T 0017/86, T 0397/89,
T 0157/90, T 0691/90, T 0770/90, T 0288/92

Catchword:

Case Number: T 0680/93 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 29 November 1994

Appellant: Autoliv Development Aktiebolag
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Decision under appeal: Decision of the Opposition Division of the European
Patent Office given on 11 May 1993 and issued in

writing on 26 May 1993 revoking European patent
No. 0 195 268 pursuant to Article 102(1) EPC.

Composition of the Board:

Chairman: F. Gumbel

Members: S. Crane

B. Schachenmann

Summary of Facts and Submissions

- I. European patent No. 0 195 268 was granted on 31 July 1991 on the basis of European patent application No. 86 102 178.0.
- II. The patent was opposed by the first and second Respondents (Opponents 01 and 02) on the basis that its subject-matter lacked novelty and/or inventive step with respect to the state of the art (Article 100(a) EPC) and extended beyond the content of the application as filed (Article 100(c) EPC).
- III. By its decision given at oral proceedings on 11 May 1993 and issued in writing on 26 May 1993 the Opposition Division revoked the patent.

The reasons given for the decision were that the respective Claim 1 of both the main and auxiliary requests then on file contained subject-matter extending beyond the content of the application as filed (Article 100(c) EPC) and were also unclear (Article 84 EPC).

In the decision it was also stated that in the opinion of the Opposition Division the subject-matter of a suitably amended Claim 1 would both be novel and involve an inventive step.

- IV. The Appellants (Proprietors of the patent) filed a Notice of Appeal against this decision on 22 July 1993 and paid the appeal fee at the same time. The Statement of Grounds of Appeal was filed on 24 September 1993.

With the Statement of Grounds were filed new sets of claims and correspondingly amended pages of the description according to a main and auxiliary request on the basis of which, and the remaining pages of the description and drawings as granted, maintenance of the patent in amended form was requested.

V. In a communication pursuant to Article 11(2) RPBA dated 22 June 1994 the Board expressed its opinion that the respective Claims 1 of both the main and auxiliary requests submitted with the Statement of Grounds, insofar as they envisaged force applying means of unidentified form as constituting the means "movable ... in response to a deceleration" appeared to contain subject-matter which extended beyond the content of the application as filed. The Board further confirmed the appreciation of novelty and inventive step made by the Opposition Division in the contested decision.

VI. Oral proceedings before the Board were held on 29 November 1994.

The first Respondents (Opponents 01), who had taken no active part in the appeal proceedings, stated in a letter of 18 November 1994 that they would not be attending the oral proceedings, which in accordance with Rule 71(2) EPC were held without them.

VII. At the oral proceedings the Appellants requested that the respective Claims 1 of the main and auxiliary requests submitted with the Statement of Grounds be amended by the replacement in line 12 of "applies a force to a movable element 28" by "incorporates a

movable element (28), and the force applying means applies a force to the movable element".

The respective Claims 1 read as follows:

Main request:

"A vehicle seat belt pre-tensioning device comprising means (1) to mount the device in the vehicle, means (12) to receive part of the seat belt, means (23) adapted to apply a force to move the seat belt receiving means (12) to apply tension to the seat belt and means (28,19) which normally prevent the force applying means from moving the seat belt receiving means, but which are responsive to a predetermined deceleration, to actuate said force applying means to permit the force applying means to apply the force to move the seat belt receiving means, characterised in that the said force applying means (23) incorporates a movable element (28), and the force applying means applies a force to the movable element which normally engages a stop (19) which, by preventing movement of said movable element (28) prevents the force applying means moving the seat belt receiving means, the force applying means (23) being movable relative to said mounting means in response to a deceleration in excess of a predetermined deceleration, because of the momentum of the force applying means as the vehicle decelerates, such movement of the force applying means (23) causing the movable element (28) which normally engages the stop (19) to move relative to said stop (19) whilst remaining in engagement with said stop until said movable element (28) becomes disengaged from the stop (19) so that the stop (19) no longer prevents

movement of said movable element (28) and the movable element (28) is thus permitted to move, thus causing movement of the seat belt receiving means under a force from said force applying means (23)."

Auxiliary request:

"A vehicle seat belt pre-tensioning device comprising means (1) to mount the device in the vehicle, means (12) to receive part of the seat belt, means (23) adapted to apply a force to move the seat belt receiving means (12) to apply tension to the seat belt and means (28,19) which normally prevent the force applying means from moving the seat belt receiving means, but which are responsive to a predetermined deceleration, to actuate said force applying means to permit the force applying means to apply the force to move the seat belt receiving means, characterised in that the said force applying means (23) incorporates a movable element (28), and the force applying means applies a force to the movable element in the form of a control lever, part (30) of which normally engages a stop (19) to prevent the force applying means moving the seat belt receiving means, the force applying means (23) being movable relative to said mounting means by its momentum if the vehicle decelerates with a deceleration in excess of a predetermined deceleration, movement of the force applying means (23) causing the control lever (28) which normally engages the stop (19) to be disengaged from the stop (19), the control lever being biased so that when the control lever (28) will rotate, movement of the control lever causing movement of the seat belt receiving means (12) under a force from said force applying means (23)."

Dependent Claims 2 to 5 of the main request and dependent Claims 2 to 4 of the auxiliary request relate to preferred embodiments of the vehicle seat belt pre-tensioning device as defined in the respective Claim 1.

VIII. The arguments of the Appellants in support of their requests can be summarised as follows:

As stated in point 3 of the decision T 201/83 (OJ EPO 1984, 481) the well understood purpose of Article 123(2) was to avoid amendments which would enable the applicant to claim subject-matter which was not supported by the application as filed. That approach had been confirmed by decision T 691/90 (EPOR 1994, 51). In the present case there could be no suggestion that Claim 1 of the main request was not supported by the original disclosure since every feature of the claim had a counterpart in the embodiment of Figures 1 to 3.

Furthermore, it was not a case here of the excision of an essential feature from the broadest originally filed claim, as dealt with in decision T 260/85 (OJ EPO 1989, 105), or the generalisation of a feature in such a claim, as was the case considered in decision T 194/84 (OJ EPO 1990, 59). In the present case Claim 1 of the main request fell squarely within the ambit of the originally filed Claim 1 none of the features of which had been excised or generalised in any way. In the terms of the test suggested in point 2.4 of T 194/84 no subject-matter had therefore been generated by the amendments made. It could thus not be seen how the claim could contain subject-matter extending beyond the content of the application as filed.

In fact, Claim 1 of the main request clearly identified the four essential components of the device defined in original Claim 1 and with respect to the "force applying means" used the same terminology found there. With respect to the original Claim 1 the present claim had been limited by a definition of the structure of the means which normally prevented the force applying means moving the seat belt receiving means and by the requirement that it was movement of the force applying means in response to a deceleration which freed the force applying means for action to tension the seat belt. This arrangement had been clearly described with reference to Figures 1 to 3. It was true that in the embodiment of those Figures the force applying means were constituted by a torsion bar but the original application made it clear that a torsion bar was merely a preferred form of force applying means so that the skilled man would immediately recognise that the torsion bar used in this embodiment was purely exemplary and could be replaced by any other suitable form of force applying means.

In Claim 1 of the auxiliary request the movable element had been stated as being in the form of a control lever thus even more clearly tying the subject-matter of the claim to the embodiment of Figures 1 to 3.

There was no requirement in the EPC which made it necessary for an applicant, on limiting an originally filed main claim, to include in the claim all the features of a particular embodiment. Taken to its logical conclusion this approach would require that the claim effectively be replaced by the equivalent passage

of the particular description, which would be clearly unjust.

- IX. In reply the Respondents supported their request for dismissal of the appeal with essentially the following arguments:

The originally filed application contained only one embodiment, that of Figures 1 to 3, where the "force applying means" also acted as "deceleration responsive means". In that embodiment the "force applying means" was constituted by a torsion bar arranged in a particular way, this arrangement being the subject of original dependent Claim 4 which was specifically and exclusively limited to the use of a torsion bar in this context. There was nothing in the original disclosure which could suggest to the skilled man that the torsion bar was not an essential element of any device in which the force applying means also acted as deceleration responsive means and could, as now covered by the respective Claims 1 of the main and auxiliary requests, be replaced by a force applying means of any unidentified form.

Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is, therefore, admissible.

2. According to the wording of Article 100(c) EPC an opposition may be filed on the ground that "the subject-matter of the European patent extends beyond

the content of the application as filed". In other words it is a ground of opposition that the application in contravention of Article 123(2) had been amended in pre-grant proceedings to extend its subject-matter in this way. In view of the identity of wording of the relevant parts of Articles 100(c) and 123(2) EPC it is evident that the considerable body of case law of the Boards of Appeal concerned with the application of Article 123(2) EPC is also equally relevant to the situation, as is the case here, when a patent is opposed, *inter alia*, under Article 100(c) EPC.

It belongs to the established jurisprudence of the Boards of Appeal (see for example T 194/84 and T 691/90, *supra*) that to determine whether an amendment offends against Article 123(2) EPC it is necessary to examine if the overall change in the content of the amended document results in the skilled man being presented with information which is not directly and unambiguously derivable from the application as originally filed.

3. It is therefore necessary as a first step to consider in detail what the originally filed application in the present case taught the skilled man.

That application starts by way of introduction with a description of the difficulties involved with adequately protecting by means of a seat belt the occupants of a vehicle involved in an accident. It is explained that it would be advantageous if the occupant could always be strapped in tightly, with the seat belt under significant tension at all times. This is however not possible if inertia reels are used, as is

conventional. There then follows a statement of invention in these terms:

"According to this invention there is provided a vehicle seat belt pre-tensioning device comprising means to mount the device in the vehicle, means on the device to receive part of the seat belt, means adapted to apply a force to move said seat belt receiving means to apply a tension to the seat belt and means, responsive to a predetermined deceleration, to actuate said force applying means."

In the paragraph bridging pages 2 and 3 it is stated that:

"Said force applying means may comprise a spring, but preferably said force applying means include a torsion bar."

This statement is then immediately followed by the statement that:

"Advantageously said torsion bar forms part of the said means responsive to a predetermined deceleration. This avoids the necessity of providing a separate deceleration sensor."

There then follow a number of statements setting out in generalised form the preferred arrangements of the particular embodiments. There are three embodiments particularly disclosed. In the first of these, according to Figures 1 to 3, a torsion bar is arranged to act via a control lever on the seat belt receiving device but the control lever is normally prevented from

moving to tension the belt by a stop. In the event of an accident involving sudden deceleration of the vehicle the inertia of the torsion bar carries this forward and displaces the associated control lever from the stop, thus enabling tensioning of the seat belt. In the second and third embodiments a pendulum-like stop member is provided, sudden deceleration of the vehicle causing the stop member to swing and free the torsion bar to tension the seat belt.

Claim 1 of the application as filed is in similar terms to the statement of invention quoted above, except that it is clarified that there are means which normally prevent the force applying means from moving the seat belt receiving means.

Dependent Claim 2 sets out in more detail how the force applying means, seat belt receiving means and deceleration responsive means interact.

Claim 3, which is dependent on Claims 1 to 2, states that the force applying means include a torsion bar.

Claim 4, dependent on Claim 3, indicates how the torsion bar is arranged so as to act as the deceleration responsive means, as described with reference to Figures 1 to 3.

Claims 5 and 6 relate to preferred features of the embodiment of Figures 1 to 3.

Claims 7 to 10, dependent directly or indirectly on Claim 2 relate to preferred features of the second and third embodiments.

Lastly, Claim 12, which is dependent on any one of Claims 2 to 11, relates to a preferred feature of all three embodiments.

4. Turning now to Claim 1 of the main request it can be seen that this imposes no limitation on the form of the "force applying means" and effectively embraces all possibilities of arranging any force applying means to act concomitantly as the deceleration responsive means which, via movement of the movable element away from the stop, free the force applying means to tension the seat belt. Thus all such arrangements belong to the subject-matter of the patent as it is sought to be amended.

The question that needs to be addressed is therefore whether the possibility of arranging any force applying means and not just a torsion bar in this way was disclosed as a matter of substance in the application as filed. It is apparent from the summary of the contents of the application given above that any explicit instructions concerning the use of the force applying means as deceleration responsive means were restricted to the one case where the force applying means is constituted by a torsion bar. In this respect the Appellants rely on the paragraph bridging pages 2 and 3 as being a positive indication that a torsion bar was only a preferred form of force applying means. That is however true only to the extent that within the broad framework of the invention as originally presented, which was not dependent on the force applying means and the deceleration responsive means effectively being one and the same, other forms of force applying means apart from springs, and in

particular a torsion bar, could be envisaged. The paragraph referred to by the Appellants is in fact immediately followed by a statement which emphasises that an advantage of using a torsion bar is that this can form part of the deceleration responsive means. That this statement cannot by implication be extended to all force applying means of whatever form is self-evident.

Furthermore, the Board can also not accept the contention of the Appellants that the skilled man on reading the application would recognise that the restriction of the force applying means to a torsion bar if the force applying means were to act as the deceleration responsive means was arbitrary and insignificant and that he would accordingly distil a general principle of operation applicable to other types of force applying means. This view of the Board is based on the fact that a torsion bar has certain characteristics (mass, length, cantilever-fashion mounting) which make it suitable for the intended dual purpose. Equal suitability of other forms of force applying means is not immediately evident. It might well be that the skilled man, when specifically set the task of coming up with workable arrangements which do not use a torsion bar, would be able to find suitable solutions, but that is not equivalent to those arrangements having been implicitly originally disclosed.

The Board therefore comes to the conclusion that the patent as sought to be amended on the basis of the main request contains subject-matter which extends beyond

the content of the application as filed, so that the request must be refused.

5. The above considerations apply with equal force to the auxiliary request, Claim 1 of which, although being limited with respect to the main request as concerns the movable element being in the form of a control lever, still refers to "force applying means" in general terms. The auxiliary request must also therefore be refused.

6. The Appellants have argued that the objection under Article 100(c) EPC is misguided since the subject-matter of the respective Claims 1 of their main and auxiliary requests falls within the scope of Claim 1 as originally filed and these claims are supported by the original disclosure in the sense that this fully describes a device falling within their scope. This defence is however based on a narrow interpretation of the type of amendment which Articles 100(c) and 123(2) EPC are intended to prevent, this interpretation being inconsistent with that adopted consistently by the Boards of Appeal, see decisions (not published in OJ EPO) T 397/89, T 157/90, T 770/90, referring to inadmissible generalisations, and T 288/92, point 3.1 of the reasons concerning the introduction of new technical information. Although the decisions T 194/84 and T 260/85 (supra) relied upon by the Appellants in this respect did in fact deal with the deletion of an essential feature from an independent claim, this is manifestly not the only type of amendment which can lead to an inadmissible amendment under Article 123(2) EPC. An analogous argument of the Appellants, quoting decisions T 201/83 and T 691/90 (supra) is that an

amended claim should be seen as conforming with Article 123(2) if it is "supported" by the original disclosure in the sense that this contains subject-matter falling within the scope of the claim. There is however no basis in the quoted decisions themselves that the term "support" used therein is meant to be understood in that restricted way.

The Appellants have also contended that the requested amendments would pass the "novelty test" proposed in T 194/84 (supra). Although the Board, for the reasons clearly expressed in decision T 288/92, point 3.2 of the reasons (supra) has serious reservations about the need for and suitability of the "novelty test" to decide the issue in question it should be added for completeness that the documents according to the requests of the Appellants would clearly fail the test as explained in T 194/84, since the subject-matter generated by the amendments, i.e. arrangements with force applying means other than a torsion bar acting as deceleration responsive means, is novel with respect to the application as originally filed.

Lastly, the argument of the Appellants that there is nothing in the EPC which imposes the requirements on an applicant when limiting an originally filed main claim to a preferred embodiment of the invention to include all features of that embodiment in the claim is of course correct and consistent with the case law of the Boards of Appeal, see for example T 201/83 (supra) and

T 17/86 (OJ EPO 1989, 297). However, as is clear from points 4 and 5 above such a misconceived requirement is not the basis for the objections against the amendments proposed by the Appellants.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel