



FEDERAL SUPREME COURT
IN THE NAME OF THE PEOPLE
JUDGMENT

X ZR 15/21

Delivered on:
January 17, 2023
Schönthal
Judicial Employee as
Clerk of the Court

in the patent nullity case

The X. Civil Senate of the Federal Supreme Court, at the oral proceedings on January 17, 2023, by the Presiding Judge Dr. Bacher, the Judge Dr. Deichfuß, the Judges Dr. Kober-Dehm and Dr. Marx, and the Judge Dr. Rensen

ruled:

The appeal against the judgment of the 1st Senate (Nullity Senate) of the Federal Patent Court of October 15, 2020, is dismissed at the defendant's expense.

By law

Facts of the Case:

1 The defendant is the owner of European patent 2 291 568 (patent in suit), which was granted with effect for the Federal Republic of Germany, was filed on May 26, 2009, claiming a German priority of June 13, 2008, and relates to a locking device.

2 Patent claim 1, to which nine claims are referred back, reads:

Locking device (1) comprising at least one locking mechanism (2) with a rotary latch (3), a swiveling first pawl (4) as well as a second pawl (5) with which the swiveling of the first pawl (4) can be blocked, characterized in that the locking device (1) also contains a motor-driven actuator (6) moving at least one release lever (7) in such a way that the release lever (7) interacts successively with both pawls (4, 5) during its movement.

3 Claim 11 protects a motor vehicle in which the seat has a foldable backrest which is lockable with such a locking device.

4 The plaintiff re 1) attacked the patent in suit in its entirety, the plaintiff re 2) only to the extent of claims 1 and 2 and claims 6 to 8, insofar as these relate back to these claims. Both plaintiffs have asserted that the subject-matter under attack is not patentable.

5 The defendant defended the patent in suit with one main request and 47 auxiliary requests in amended versions.

6 The Patent Court declared the patent in suit to be invalid. In its appeal against this decision, the defendant defends the patent in suit in the version of its main request at first instance and, in the alternative, with 16 of its auxiliary requests at first instance as well as in eight further amended versions. The plaintiffs oppose the appeal.

Reasons for Decision:

7 The appeal is admissible but is unsuccessful on the merits.

8 I. The patent in suit concerns a locking device with two pawls and a motor-driven actuator.

9 1. According to the statements in the patent in suit, locks in motor vehicle doors are frequently fitted with locking mechanisms in which the pawl is supported or blocked by a blocking lever (often also referred to as a second pawl). The purpose of the blocking lever is usually to prevent unwanted opening, for example by break-in. In the case of other locking mechanisms with two pawls, the focus is on the fact that these enable low-noise opening and avoid a so-called opening bang (para. 2).

10 In the case of motor vehicle locks, it is also known that the pawl is lifted out by motorized and usually electric motor power to open the locking mechanisms (para. 3). Locking systems with a locking mechanism are generally also used for motor vehicle flaps other than doors, for example for tailgates, fuel filler flaps and the like (para. 4). In contrast to locking systems for motor vehicle doors, the development of which was far advanced, locking devices for other motor vehicle flaps had been kept as simple as possible because of their frequently difficult accessibility, in order to achieve a long service life even with frequent operation (para. 5).

11 2. Against this background, the patent in suit concerns the technical problem of providing a locking device which at least partially solves the problems known from the prior art, ensures convenient and safe actuation, takes safety criteria into account and has a small installation space, low noise development and

a fast reaction time. In particular, locking devices are considered which can be used for locking and unlocking the backrests of motor vehicle seats (para. 6).

12 3. For solution the patent in suit proposes in patent claim 1 in the version defended with the main request a locking device, the features of which can be structured as follows (changes compared to the granted version are highlighted):

1. The locking device (1) comprises
2. at least one locking mechanism (2) with
 - 2.1 a rotary latch (3),
 - 2.2 a swiveling first pawl (4), as well as
 - 2.3 a second pawl (5),
 - 2.3.1 with which the swiveling of the first pawl (4) ~~be~~ is blocked for secure locking of the rotary latch (3);
3. a motor-driven actuator (6);
4. at least one release lever (7),
 - 4.1 which is moved by the actuator (6),
 - 4.2 in such a way that it interacts successively with both pawls (4, 5) one after the other during his movement,
 - 4.3 and is made of plastic.

13 4. Some features require further discussion.

14 a) The protected locking device (1) comprises at least one locking mechanism (2), a motor-driven actuator (6) and at least one release lever (7).

15 Figures 1 and 3 of the patent in suit, reproduced below, show the structure of a locking device according to the invention with a locking mechanism in closed position (Figure 3 without the parts of the actuator, in order to provide a view of the second pawl (5)):

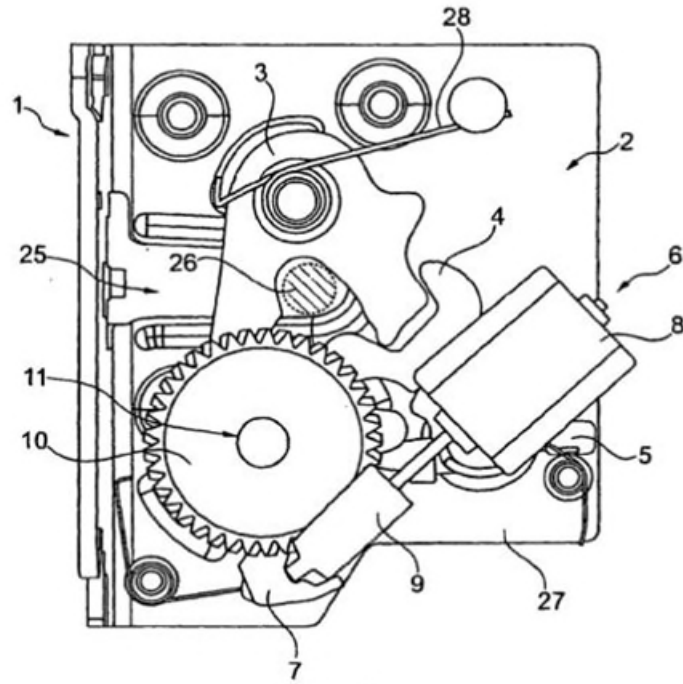


Fig. 1

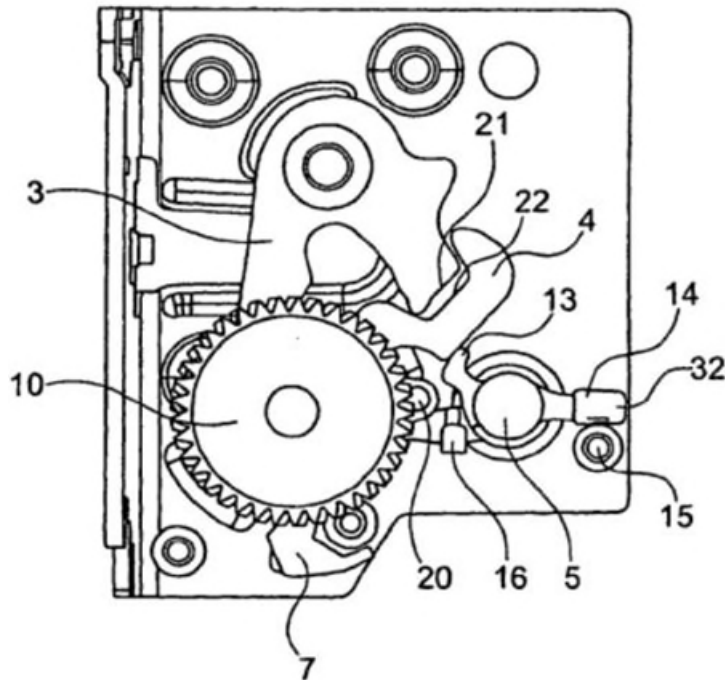


Fig. 3

16 b) Feature group 2 provides for a rotary latch (3) and two pawls (4, 5) as
mandatory components of the locking mechanism belonging to the locking device.

17 According to feature 2.3.1, the second pawl can block swiveling of the first
pawl. In this position, it has the function of a locking lever, as already mentioned
in the description of the prior art.

18 c) Patent claim 1 does not specify for which purposes the locking device
must be suitable.

19 aa) As has already been explained above, the patent specification in
dispute distinguishes between closing devices for motor vehicle doors and closing
devices for other motor vehicle flaps when describing the prior art.

20 Neither this distinction nor the consideration of locking systems for locking or
unlocking seat backrests emphasized in the problem definition have found
expression in patent claim 1. There, not even the suitability for use in motor
vehicles is mandatory.

21 bb) Contrary to the view of the appeal, the fact that neither the patent claim
nor the embodiments provide for a pre-latching position in which the device is not
yet completely closed, but is already secured against reopening, does not lead to
any further conclusions with regard to the intended uses in question.

22 It can be left open whether a locking device without a pre-latching position is
suitable for use on motor vehicle doors. Even if this were to be negated, it could
not be deduced from this that the subject-matter of patent claim 1 includes only
locking devices for other elements. Patent claim 1 does not necessarily provide

for a pre-latching position. However, it does not preclude the device from having further functions and any additional components required for this purpose. This may also include components that enable a pre-latching position, such as is disclosed in German Offenlegungsschrift 102 36 282 (E9), which is dealt with in detail by the appeal.

23 cc) Contrary to the opinion of the appeal, it is also not mandatory to infer from patent claim 1 that the blocking effect provided for in feature 2.3.1 must be present in every locking position.

24 It only follows from feature 2.3.1 that there must be at least one position in which this effect exists.

25 dd) The safety standards cited by the appeal also do not lead to a different assessment.

26 Neither the description nor patent claim 1 mandatorily provide for compliance with such provisions.

27 ee) Due to the additional requirement in patent claim 11 that the locking device is installed in the seat back of a motor vehicle, locking devices according to this claim must be spatially and physically configured in such a way that these are suitable for this purpose.

28 This restriction does not lead to a different result under the aspects relevant for the assessment of the nullity action.

29 It may follow from the purpose described that a pre-latching position is not absolutely necessary. However, this does not necessarily rule out the possibility of the locking device comprising this function.

30 d) Feature group 4 provides, as a further mandatory component, a release lever which is moved by the motor-driven actuator provided in feature 3 and interacts in sequence with the two pawls.

31 aa) In the embodiments described in the patent specification, the release lever moves the second pawl during the opening process. This removes the blocking of the first pawl and allows it to move to an opening position. For this purpose, the restoring torques of a spring connected to the rotary latch and a padding or seal attached to the relevant vehicle parts can be used. If this is not sufficient, the release lever can also move the first pawl into the open position after a time delay (para. 33).

32 In this respect, feature 4.2 merely provides for the possibility of successive interaction with the two pawls. In which sequence and for which purposes this occurs is not specified in patent claim 1.

33 bb) Whether it follows from these specifications that the release lever must be designed to be mechanically separate from the two pawls does not require a final decision.

34 Even if the question were to be answered in the affirmative, this would in any case apply only to the functional context provided for in patent claim 1, i.e., to the operating situation in which the second pawl blocks the first pawl and to the situation in which the release lever interacts with the two pawls in succession. Even under this aspect, however, it is not excluded that said components have a different function in other positions not addressed by patent claim 1.

35 e) According to feature 4.3, the release lever must be made of plastic.

36 According to the description, this has the advantage that the locking device
can be operated with low noise (para. 19).

37 This does not result in any further specifications regarding the selection of
the material. It is therefore sufficient for feature 4.3 to be fulfilled if at least the
components of the lever that are essential for the release function are made of
plastic.

38 II. The Patent Court gave the following main reasons for its decision,
insofar as these are of interest for the appeal proceedings:

39 The defense of the patent in suit in the version of the main request was
admitted. However, the subject-matter of the patent in suit in this version was not
based on inventive step, since it had been suggested to the skilled person, a
university engineer specializing in automotive engineering, who was involved in
the development and configuration of motor vehicle locks and had several years
of professional experience in this field, by the international patent application
2008/061491 (E4) in conjunction with technical knowledge of the skilled person
documented, for example, in the German Offenlegungsschrift 10 2004 042 966
(E14).

40 E4 discloses a lock unit for motor vehicles with a rotary latch, a first pawl (3),
a second pawl (6) and a blocking lever (5). The blocking lever (5) functions as a
second pawl within the meaning of the patent in suit and the pawl (6) as a release
lever. To open the locking device, a release pin (10) on the pawl (6) first comes
into contact with the slotted link of the blocking lever (5) and moves it into the
release position. If the application of the restoring torque of the rotary latch (2) to
the first pawl (3) is not sufficient to disengage this pawl from the rotary latch (2), a
driver (26) on the pawl (3) engages in a recess (25) in the pawl (6) and pivots the

pawl (3) into a release position. The proposed material for the pawl (6) was metal and/or plastic. E4 thus discloses feature 1, feature group 2 and features 4, 4.2 and 4.3. Contrary to the defendant's view, there was no prejudice against the teaching to manufacture the release lever from plastic, nor was the skilled person discouraged from doing so because of any concerns regarding technical feasibility.

41 Features 3 and 4.1 are not disclosed, however. E4 does teach the use of a motor-driven actuator. However, as an electromotive aid, this merely supports the rotational movement of the rotary latch into an overtravel position. At the time of priority, the skilled person was familiar with the use of actuators for electrified locking devices in motor vehicles. Given the task at hand and the general trend toward automation, it had seemed obvious to use a motor-driven actuator to operate locking devices. This was evidenced by E 14, which even gave the skilled person a concrete suggestion for automated actuation of a release lever for opening a motor vehicle lock. This citation discloses a motor vehicle lock with a lock latch and a pawl. The lock latch can assume three different positions, including a pre-latching position and a main latching position. The pawl is lifted out of one of these latching positions by an opening drive which is acted upon by a motor and which, in the event of a wish to open, rotates an actuating element with a control contour which engages in a driver of the pawl and thus moves the latter into the release position. Since the control contour functions as a release lever within the meaning of feature 4.1, the person skilled in the art was able to take from E14 the teaching to automate the locking device of E4 for simplified handling by means of a motor-driven actuator.

42 The subject-matter defended by auxiliary requests I to VIII and Ia to VIIIa was also not based on inventive step.

43 III. This assessment withstands appellate review.

44 The Patent Court rightly decided that the subject matter of the patent in suit
in the version defended by the main request, starting from E4, is not based on
inventive step.

45 a) E4 discloses a lock unit having a rotary latch, two pawls and a blocking
lever.

46 aa) Figure 1 below shows the lock unit in the locked state.

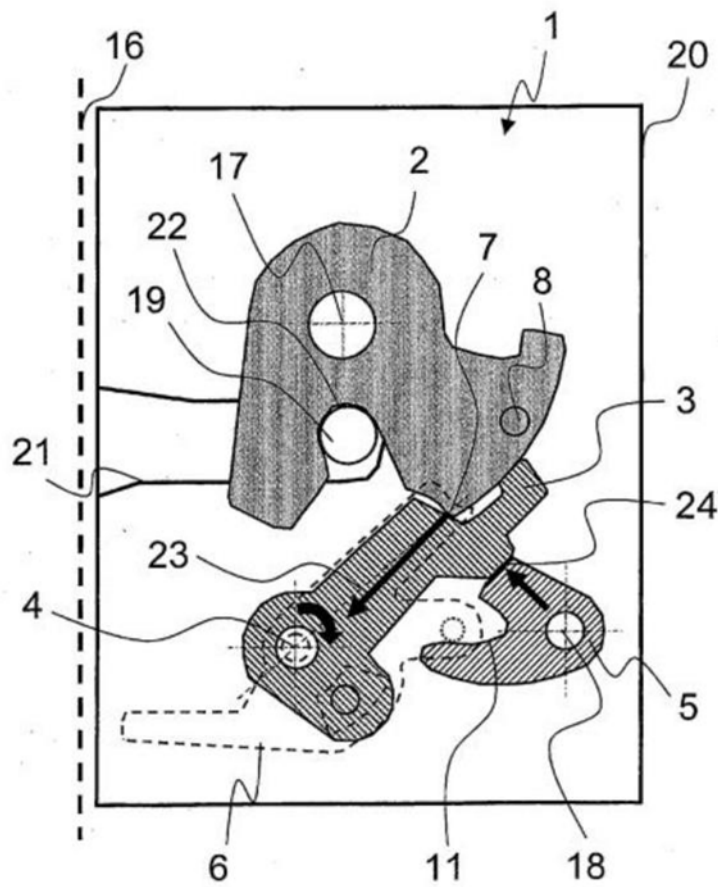


FIG. 1

- 47 During the locking process, the locking bolt (19) is inserted into the inlet (21) and received in the indentation (22) of the spring-loaded rotary latch (2), which can be pivoted about the rotary latch axis (17). In the locked state, the rotary latch (2) introduces a pivoting moment into the first pawl (3), which is fixed by means of the blocking lever (5). A second pawl (6) is mounted on the axis of rotation (4) of the first pawl and can be engaged with the blocking lever and the rotary latch (p. 2 lines 22-28).
- 48 In the preferred embodiment shown in Figure 1, the rotary latch (2) has a main latch (7) and a pre-latch (8). The first pawl (3) can be engaged with the main latch and the second pawl (6) with the pre-latch (p. 4 lines 25-28).
- 49 To prevent the rotary latch (2) from rotating (clockwise) due to its spring bias and the locking mechanism from opening as a result, a blocking lever (5) is provided on the side of the first pawl (3) opposite the rotary latch (2), which lever can be pivoted about an axis of rotation (18) and forms a stop (24) for the first pawl (3) so that it is securely fixed to the main latch (7) of the rotary latch (2) (p. 8 line 19 to p. 9 line 3).

50 bb) The movement sequences for opening the lock unit are shown in Figure 3 reproduced below.

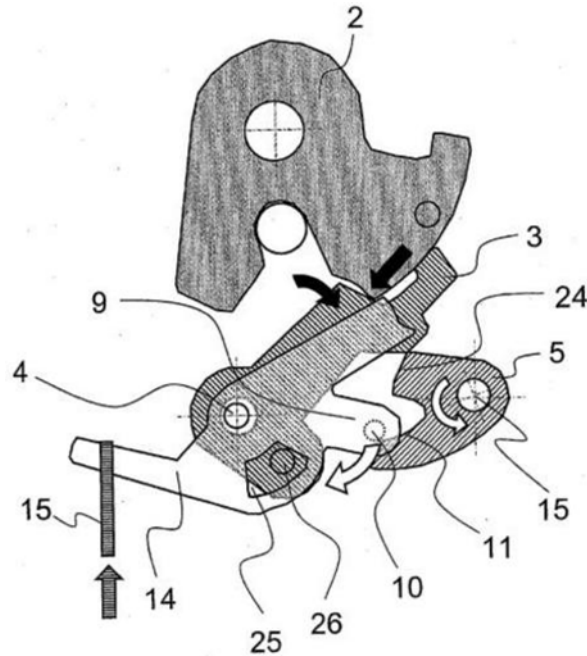
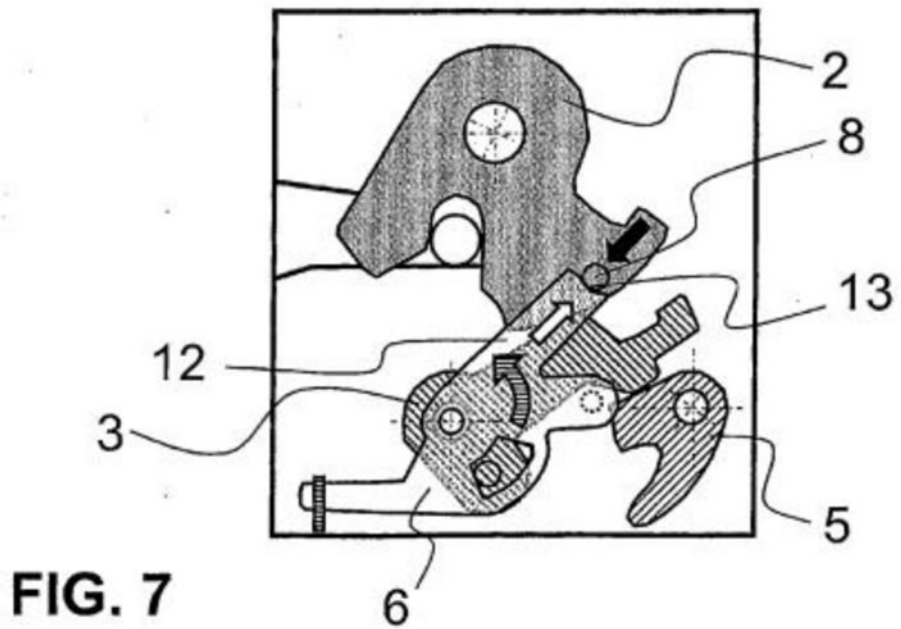
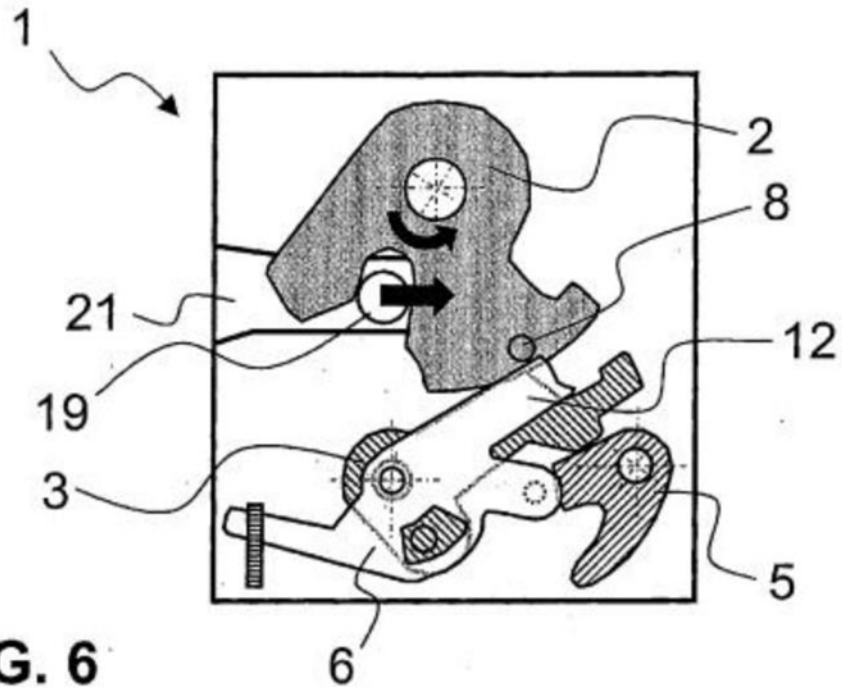


FIG. 3

51 To unlock the locking mechanism, the second pawl (6), which has a locking arm (12), a release arm (9) and an actuating arm (14), can be pivoted about the axis of rotation (4) by means of the actuating lever (15) engaging the actuating arm (p. 9 lines 13-16; lines 19-21). By moving the actuating lever (15) in the direction of the arrow, the release pin (10) of the release arm is brought into contact with the slotted link (11) of the blocking lever (5) and the latter is pivoted counterclockwise. This causes the stop (24) to move away from the first pawl (3) so that it is released and the rotary latch (2) swivels in the direction of the open position (p. 10 lines 10-17; lines 22-24).

52 cc) Figures 6 and 7 reproduced below show an embodiment in which the locking arm (12) of the second pawl (6) rests directly against the pre-latch (8) of the rotary latch (2).



53 If the pre-latch (8) has swept over the locking arm (12) during a locking movement, the second locking pawl (6) swivels counterclockwise so that the locking arm (12) forms a support point for the pre-latch (8) with its receptacle (13). In this position, the rotary latch (2) is prevented from opening again without the lock unit being actuated again. Starting from this position, electromotive aids can be used, if necessary, to further rotate the rotary latch (2), for example, to cause rotation of the rotary latch into a so-called overstroke position. This is to ensure that the pawl, which is to be brought into contact with a main latch (7), engages securely (p. 12 lines 7-16).

54 b) Thus, as the defendant also does not doubt, features 1 to 2.3 are disclosed.

55 As the Patent Court correctly pointed out, the blocking lever (5) corresponds to a second pawl within the meaning of feature 2.3 with regard to arrangement and function.

56 c) Feature 2.3.1 is also disclosed in E4.

57 As the Patent Court correctly pointed out, this results from the fact that the blocking lever (5) in the main latching position shown in Figure 1 prevents the first pawl (3) from swiveling and in this way locks the rotary latch (2).

58 Contrary to the opinion of the appeal, it is irrelevant that the blocking effect in the pre-latching position is generated by the second pawl (6). As already explained above, the effect provided for in feature 2.3.1 need not be present in every latching position.

59 The objection asserted by the appeal that E4 does not show a self-opening but a self-closing tendency is irrelevant, if only because patent claim 1 does not necessarily provide for such effects. Irrespective of this, the device disclosed in E4 - as the appeal does not fail to recognize in its approach - exhibits a self-closing tendency only in the pre-latching position. In the main latching position, on the other hand - as in the embodiments of the patent in suit - a self-opening mechanism acts, which must be blocked via the first pawl by means of the blocking lever (p. 4 lines 1-2).

60 d) Contrary to the view of the appeal, feature 4 is also disclosed.

61 As the Patent Court correctly pointed out, the second pawl (6) corresponds to a release lever within the meaning of feature 4 when released from the main detent.

62 The fact that the second pawl (6) in the pre-latching position assumes the function of a pawl within the meaning of the patent in suit and thus a different function than in the main latching position is irrelevant, if only because patent claim 1 - as explained above - does not exclude that the device has further functions such as a pre-latching position and that these are (also) assumed by the components provided according to the claim.

63 Accordingly, feature 4 is to be regarded as disclosed even if patent claim 1, as the appeal asserts, presupposes a mechanical independence of the release lever from the pawls. As has also been explained above, it is sufficient in any case if the functions of the two pawls and the release lever are taken over by three mechanically separate components in one of the possible operating situations. This requirement is fulfilled for E14 with regard to the main latching position. Whether such separation also exists in other situations, such as a pre-latching position, is irrelevant.

64 e) Disclosed is also feature 4.2.

65 As the Patent Court correctly pointed out, the second pawl (6), which acts as a release lever, first moves the blocking lever (5) during the opening process and then moves the first pawl (3) as required.

66 Contrary to the view of the appeal, it is irrelevant in this respect that the second and first pawls (6 and 3) only interact if the spring tension of the rotary latch (2) and the door seal forces are not sufficient to disengage the first pawl (3) from the rotary latch (2). It is sufficient that such interaction occurs at least in certain operating situations. The fact that the interaction depends on how strong the other restoring forces are is also described in the patent in suit.

67 It is likewise irrelevant that the recess (25) is not implemented on the release arm (9) but in the central region of the second pawl (6). It is sufficient that the recess (25) forms part of the second pawl (6), which in its entirety functions as a release lever within the meaning of feature 4. It is also irrelevant in this context that the second pawl (6) has other functions in other operating situations.

68 f) Contrary to the view of the defendant, feature 4.3 is also disclosed.

69 According to the explanations in E4, the second pawl (6), which corresponds to the release lever of the patent in suit, is designed as a flat molded part and comprises in particular metal and/or plastic (p. 6 lines 20-21). As the Patent Court correctly assumed, this also discloses an embodiment made solely of plastic.

70 It can be left open whether plastics were available on the priority date that could ensure that the second pawl (6) could absorb the forces occurring in motor vehicle doors. It is true that E4 deals primarily with door locks. However, the citation already points out at the beginning of the description that lock units of this type can also be used for flaps or other vehicle parts (p. 1 lines 7-9) where lower forces occur.

71 g) As the Patent Court also correctly pointed out, features 3 and 4.1 are not disclosed in E4.

72 E4 discloses the use of electromotive means only for the purpose already mentioned above, to cause a rotation of the rotary latch into an overtravel position (p. 12 lines 10-16). Regarding the actuating lever, it is only explained that it can be designed in the manner of a linkage or Bowden cable (p. 6 lines 13-14).

73 It does not follow clearly and directly from this that the linkage or the Bowden cable is driven by means of a motor.

74 It is true that a prior publication may also disclose that which is not expressly mentioned in the patent claim and in the description but which, from the point of view of a person skilled in the art, is self-evident for the implementation of the protected teaching and therefore does not require special disclosure but is "read in" (BGH, judgment of 18. March 2014 - X ZR 77/12, GRUR 2014, 758 para. 39 - Proteintrennung; judgment of December 16, 2008 - X ZR 89/07, BGHZ 179, 168 = GRUR 2009, 382 para. 26 - Olanzapin). However, these requirements are not met in the case in dispute.

75 The mention of a linkage or Bowden cable may not rule out the use of a motor to operate them. However, in order to come to this conclusion, it was necessary to draw on expert knowledge.

76 h) The Patent Court also correctly decided that equipping the lock unit disclosed in E4 with a motor-driven actuator according to features 3 and 4.1 was suggested by the technical knowledge documented in E14, for example.

77 aa) E14 discloses a motor vehicle lock comprising a lock latch (1) and a pawl (2) and comprising an open position, a main latching position, and a pre-latching position (claim 1).

78 An example of an embodiment is shown in Figures 1 and 2 reproduced below.

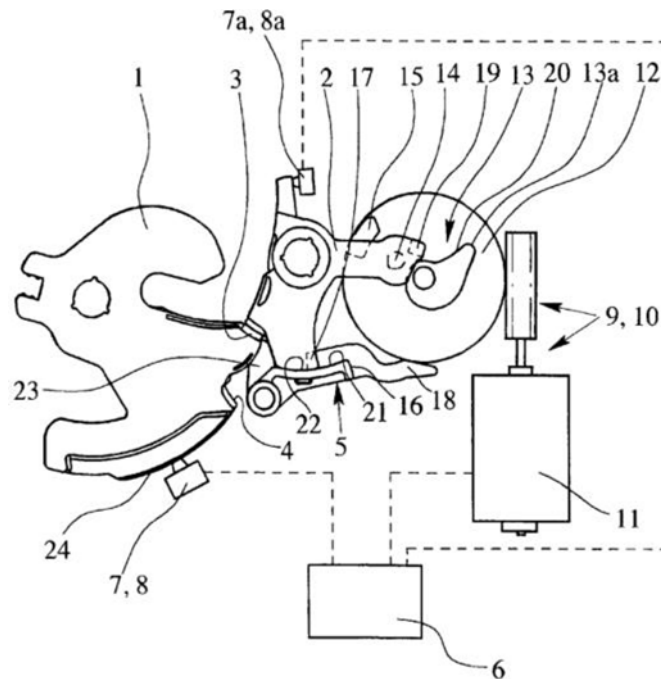


Fig. 1

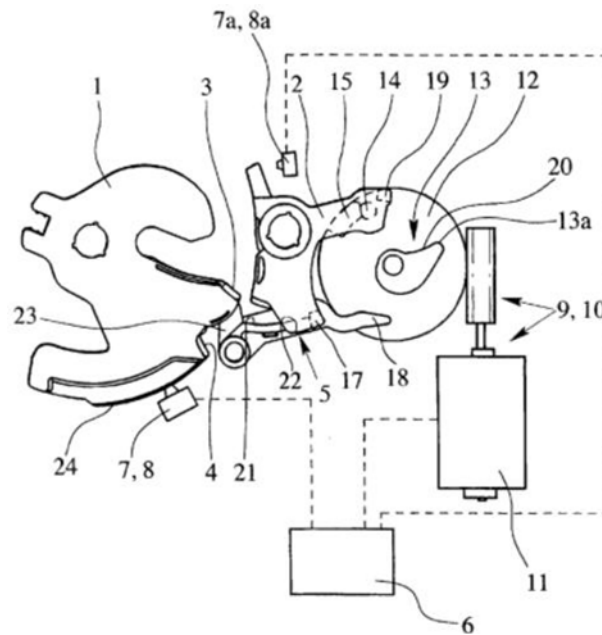


Fig. 2

79 The lock latch (1) is preferably pretensioned in the direction of its open position - counterclockwise in the example shown in Figure 1. It has a main latch (3) and a pre-latch (4). The pawl (2) can be moved to a retracted position shown in Figure 1 and to a raised position shown in Figure 2. To lift out the pawl (2), the actuator (12) is turned clockwise from the position shown in Figure 1 until the control contour (13) engages with the driver (14) and pivots the pawl counterclockwise into the release position. This is done by the opening drive (10), which drives the actuator (12) with the motor (11) (par. 36).

80 bb) In view of the expertise thus documented, there was reason to also provide the mechanisms disclosed in E4 for opening the device with a motor drive.

81 E14 proves that a motor drive in locks for car doors can be considered not only for certain functions, but for basically any function and that this also applies in particular to triggering an opening process.

This gave rise to the suggestion that the second pawl (6) disclosed in E4, which functions as a release lever within the meaning of the patent in suit, should also be driven by a motor.

82 2. The subject matter of patent claim 1 as amended by the auxiliary requests was also obvious.

83 a) According to auxiliary request Ia, the following feature is to be added to patent claim 1 as amended by the main request:

4.4 The release lever (7) is separate and distinct from the two pawls (4, 5) and can be rotated about an axis.

84 As already explained above and also correctly seen by the Patent Court, this feature is disclosed in E4 because the second pawl (6), which functions as a release lever in the sense of patent claim 1, is rotatable about an axis and, moreover, is separate and distinct from the first pawl (3) and the blocking lever (5), which are the counterpart to the first and second pawls of the patent in suit. The fact that the second pawl assumes a different function in the pre-latching position is also irrelevant in this context.

85 b) According to auxiliary request Id, the following feature should be added to patent claim 1 as defended by auxiliary request Ia:

4.5 The release lever (7) does not interact with the rotary latch (3).

86 aa) It follows from this feature that the release lever acts on the two pawls but not directly on the rotary latch.

87 Like the other features of claim 1, this specification does not preclude the components of the device from having additional functions in a different context.

Interaction between the release lever and the rotary latch is therefore only necessarily ruled out in those operating situations in which the release lever interacts with the two pawls in the manner provided for in feature 4.2.

88 bb) Against this background, feature 4.4 is disclosed in E4.

89 In the device disclosed in E4, the second pawl (6) does interact with the rotary latch (2) in the pre-latching position. However, only the function of the second pawl (6) in the main latching position is decisive for the assessment. In this context, there is no interaction with the rotary latch (2).

90 c) According to auxiliary request I, the following feature is to be added to the version of patent claim 1 defended by the main request:

5. The pivot points of the rotary latch (3), first pawl (4) and second pawl (5) essentially form a triangle.

91 As the Patent Court correctly held, this feature is disclosed in E4.

92 The pivot points of the rotary drop pivot axis (17), the ratchet pivot axis (4) and the blocking lever pivot axis (18), which correspond to the pivot points mentioned in feature 5, also form a triangle.

93 d) The additional features provided for in auxiliary requests Ia and Id do not lead to a different assessment, for the reasons already explained above, also in connection with auxiliary request I and all further auxiliary requests.

94 e) According to auxiliary request II, the following feature is to be added to patent claim 1 in the version of auxiliary request I:

6. wherein the movement of the release lever (7) is initiated by an electric motor (8) as a component of the motor-driven actuator (6), which is controlled

accordingly to realize an opening request.

95 As the Patent Court correctly pointed out, this feature is disclosed in E14 and
thus suggested for the same reasons as features 3 and 4.1.

96 f) According to auxiliary request III, claim 1 in the version of auxiliary
request II shall be supplemented by the following feature (M7, M7.1 and M7.2 in
the outline of the Patent Court):

7. wherein the lock (2) is arranged in a first plane (17), the release lever (7) is
arranged in a second plane (18) and the actuator (6) is arranged in a third
plane (19).

97 This feature was suggested starting from E4.

98 As the Patent Court correctly pointed out, the mode of operation disclosed in
E4 requires that the rotary latch (2), the first pawl (3) and the locking lever (5) are
positioned in one plane. It is further disclosed that the second pawl (6) is positioned
on a plane further upstream (p. 9 lines 8-10).

99 Against this background, the Patent Court correctly assumed that it was
obvious to arrange the actuator on a third level.

100 Contrary to the opinion of the appeal, the fact that E4 provides for the
application of a force to an arm of the second pawl provided for this purpose did
not result in the mandatory consequence of arranging an electric motor used for
the drive on the same plane as the second pawl. The movement of the motor can
also be transmitted to the pawl if it is arranged in a different plane. The choice
between these alternatives was at the professional's discretion.

101 g) According to auxiliary request IV, the following feature is to be added to patent claim 1 in the version of the main request:

8. wherein the second pawl (5) comprises a blocking leg (13) for the first pawl (4), a stop leg (14) for a swiveling restrictor (15) for defining the exact position of the blocking leg (13) relative to the first pawl (4), and a tappet leg (16) for the release lever (7).

102 This feature is disclosed in E4, as the Patent Court correctly pointed out.

103 The blocking lever (5) has contours with the stop (24) and the link (11) that correspond to those provided in feature 8.

104 Contrary to the opinion of the appeal, it does not follow from feature 8 that the three legs must be arranged on three different arms. The example of an embodiment described in the patent in suit does indeed show such an arrangement. However, this arrangement is not reflected in feature 8.

105 h) The auxiliary requests V, VI and VII provide for a combination of the additional features from auxiliary request IV with those from auxiliary requests I, II and III.

106 No different assessment results for these combinations.

107 i) According to auxiliary request VIIIId, patent claim 1 shall contain the following feature in addition to the features from auxiliary requests VII, Ia and Id:

- 7.1 the three planes (17, 18, 19) each have a parallel and spaced alignment to each other.

108 Such a design was also suggested for the reasons set out under auxiliary request III.

109 j) According to auxiliary request VIII, the following features (M9 and M9.1 in the Patent Court's outline) should be added to patent claim 1 as amended by the main request:

9. wherein the actuator (6) is equipped with an electric motor (8) with an output shaft (9) and a drive wheel cooperating with the output shaft (9) (10) is executed

9.1 and the drive wheel (10) is made in one piece with the release lever (7).

110 This feature is also suggested to the skilled person on the basis of E4, as the Patent Court correctly pointed out.

111 IV. The decision on costs is based on Sec. 121 (2) Patent Law and Sec. 97 (1) ZPO.

Bacher

Deichfuß

Kober-Dehm

Marx

Rensen

Lower court:

Federal Patent Court, decision of 15.10.2020 - 1 Ni 8/19 (EP)