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**D E C I S I O N**  
**of 12 May 2003**

**Case Number:** T 0370/00 - 3.2.1

**Application Number:** 93104884.7

**Publication Number:** 0562581

**IPC:** B60Q 1/068

**Language of the proceedings:** EN

**Title of invention:**

Vehicle headlight

**Patentee:**

Magneti Marelli S.p.A.

**Opponent:**

Valeo Vision

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 56, 84, 100(b)

EPC R. 58(4)

**Keyword:**

"Clarity (yes)"

"Sufficiency of disclosure (yes)"

"Inventive step (yes)"

**Decisions cited:**

T 0237/86

**Catchword:**

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Case Number: T 0370/00 - 3.2.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.1  
of 12 May 2003

**Appellant:** Valeo Vision  
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**Representative:** Callon de Lamarck, Jean-Robert  
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**Respondent:** Magneti Marelli S.p.A.  
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**Decision under appeal:** Interlocutory decision of the Opposition Division  
of the European Patent Office posted 7 February  
2000 concerning maintenance of European patent  
No. 0 562 581 in amended form.

**Composition of the Board:**

**Chairman:** S. Crane  
**Members:** J. Osborne  
J. H. van Moer

## Summary of Facts and Submissions

- I. In its decision in respect of the opposition to European patent No. 0 562 581 the Division found that the patent and the invention to which it relates meet the requirements of the EPC when account was taken of the amendments made by the patent proprietor according to the fourth auxiliary request.
- II. The following evidence was taken into account during the opposition proceedings:
- D1: FR-A-2 379 402
- D2: FR-A-2 636 407
- D3: FR-A-2 666 867.
- III. In its notice of appeal the sole appellant (opponent) requested that the decision of the Opposition Division be set aside and that the patent be revoked because it failed to disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100(b) EPC), because an amendment made to Claim 1 resulted in a lack of clarity (Article 84 EPC) and because the subject-matter of the claims lacked an inventive step (Article 100(a) EPC). The grounds for appeal were duly communicated to the respondent (patent proprietor) in accordance with Article 110(2) EPC. No reply was received.

IV. In a communication pursuant to Article 12 RPBA the Board expressed its provisional opinion that none of the objections made by the appellant prejudiced maintenance of the patent in the form approved by the Opposition Division. Neither party filed any substantive response.

With a letter dated 8 October 2001 the respondent replied that it had "decided to let the application lapse". The appellant stated in a letter dated 14 November 2001 that it interpreted the respondent's reply as an indication that it had decided to abandon its application and that, in accordance with case law, particularly T 237/86, OJ EPO 1988, 261, this should be understood as a request to revoke the patent. With a letter dated 12 December 2001 the respondent stated that it had "decided to withdraw the application" but with a letter dated 17 January 2002 it stated that it did not request revocation of the patent.

With a communication pursuant to Rule 60(1) EPC the Board informed the appellant that the patent had been surrendered or had lapsed with effect for all designated Contracting States and that the appeal proceedings may be continued at the request of the appellant. The appellant replied with a letter dated 2 December 2002 that it wished the appeal proceedings to continue. It again requested revocation of the patent in its entirety and stressed that this should be an automatic consequence of the patent proprietor having abandoned the patent.

V. Claim 1 on which the final decision of the Opposition Division was based reads:

"A vehicle headlight (1) comprising a cup-shaped housing (2) having a lateral wall (4), a bottom wall (3), an adjustable reflector (6) fitted inside the housing (2) so as to rotate in relation to the same about at least a first axis (8); an externally operating adjusting means (10) for adjusting the angular position of the reflector (6) in relation to the housing (2) and at least about said first axis (8); the adjusting means (10) comprising a control member (11) extending partly inside the housing (2) through said opening (5) and connected to said reflector (6); said control member being rotatable about a second axis (13); securing means (24) for axially securing said control member (11) in relation to said housing (2) and in rotary manner about said second axis (13); fluidtight means (24) interposed between the housing (2) and the control member (11) and comprising an annular body (24); characterized by the fact that a step type retaining means (25) is interposed between the housing (2) and the control member (11), for discrete angular positioning of the control member (11) in relation to the housing (2), a lateral opening (5) is provided through said lateral wall (4); said securing means and said fluidtight means being comprised of a single common element and said common element being said annular body (24) interposed between said control member (11) and said housing; said annular body (24) being made of elastomeric material (2)."

Dependent Claims 2 to 6 define preferred embodiments of the subject-matter of Claim 1 and were not amended during the opposition procedure.

Claim 6 reads:

"A headlight as claimed in any one of the foregoing Claims, characterized by the fact that it comprises connecting means (12) for connecting said control member (11) to said reflector (6); said connecting means comprising a threaded rod (12) extending through said control member (11) and engaging an eccentric threaded hole (14); said rod (12) presenting one end connected to said reflector (6), and the opposite end projecting outwards of said control member (11), and being rotatable in relation to the control member (11) for adjusting the angular position of the reflector (6) about an axis (9) substantially perpendicular to said first axis (8)."

VI. The appellant essentially argued in respect of the subject-matter of dependent Claim 6 and in respect of the described embodiment that the eccentric engagement of the threaded rod in the control member creates a translational component in the movement of the threaded rod relative to a fixed pivot axis. This relative movement could not be accommodated by the rigid material of the reflector between the threaded rod and the pivot axis and the disclosure therefore was insufficiently clear and complete within the meaning of Article 100(b) EPC.

In respect of clarity of Claim 1 the appellant argued that the wording "said opening" in the preamble had no antecedent and preceded the apparent introduction of the term in the characterising portion.

The appellant's first argument in respect of inventive step was that D2 represented the closest prior art and disclosed, in addition to all features of the preamble of Claim 1, the feature of a step type retaining means.

The problem set out in the patent was solved by providing a single common element acting as both a securing element and a sealing element. Such a feature was well known in the art, particularly in D3. The appellant alternatively argued that the closest prior art was known from D3 and that the subject-matter of Claim 1 resulted in an obvious manner from a combination with the subject-matter of D2. According to a second alternative a similar argument applied to a combination of the subject-matter of D2 with the teaching from D1.

## **Reasons for the Decision**

### 1. *Requests of the parties*

1.1 The appellant has throughout the appeal proceedings requested revocation of the patent in its entirety, initially on the basis of substantive arguments and subsequently, with reference to decision T 237/86, on the basis of its interpretation of the respondent's statements. In T 237/86 it was decided that when it is made clear to a Board of Appeal that the appellant and the respondent are in agreement that a patent should be revoked the Board may exercise its power to do so. However, in the present case the respondent has clearly stated in the letter dated 17 January 2002 that its request is not to revoke the patent. The case law according to T 237/86 therefore is not relevant to the present case.

1.2 The statement by the respondent in the letter of 12 December 2001 that it had "decided to withdraw the application" is clearly without effect because the

procedure concerns a granted patent. Moreover, the statement is to be understood neither as a request to revoke the patent, in the light of the respondent's letter of 17 January 2002, nor as a request to abandon the patent since there is no provision under the EPC for doing so in opposition proceedings, that being a matter for the national authorities of the designated Contracting States (G1/90, OJ EPO 1991, 275).

2. *Clarity*

The first occurrence in Claim 1 of the term "opening" is in the preamble, in the wording "said opening (5)". The only other occurrence of the term is in the characterising portion where "a lateral opening (5)" is defined. It is apparent upon first reading that there is an error in the formulation of the wording of the claim because the term "said" is used without an antecedent. However, since there is only one other occurrence of the term and since in both cases the same reference numeral is used, the Board considers that this introduces no lack of clarity into the meaning of the claim, particularly since the description also refers to only one opening, also with the reference numeral "5". The Board therefore finds that the skilled person is left in no doubt as to the intended meaning of the claim and that the requirement of Article 84 EPC in respect of clarity is met.

3. *Sufficiency of disclosure*

3.1 The appellant's objection is principally directed at the disclosure in the description of a preferred embodiment and at the corresponding subject-matter of Claim 6 according to which the adjustment of the



reflector about the first pivot axis 8 is achieved by rotation of the control member 11 carrying a connecting rod 12 eccentrically mounted relative to axis 13. Rotation of the control member 11 to an adjacent one of the angular positions defined by the step-type retaining means will have the effect of moving the position of the rod 12 laterally relative to the housing within the plane of Figure 1. The Board agrees with the appellant's argument that the reflector would be substantially rigid and it follows, therefore, that provision must be made for accommodating this translational movement of the connecting rod. Any relative movement within the plane of the drawing of Figure 1 between the connecting rod and the axis 8 would accommodate this translational movement. In the description of the preferred embodiment no such accommodation is disclosed but also no constructional embodiment of the axis 8 is shown, it being designated merely as a centre-line. In particular, it is not disclosed whether the pivot axis 8 is fixed relative to the housing. In the Board's view it is within the ability of the skilled person to complete the teaching of the specification in order to provide for translational movement between the connecting rod and the axis 8, such as by providing for the axis 8 to be movable relative to the housing.

3.2 The Board therefore concludes that the ground for opposition according to Article 100(b) EPC does not prejudice maintenance of the patent in the form approved by the Opposition Division.

4. *Inventive step*

4.1 D2 relates to a vehicle headlight having an adjusting

mechanism which provides for a fine adjustment of the beam height to set it to its reference position and an additional, relatively coarse adjustment in order to cope with temporary variations in vehicle attitude due to, for example, load carried in the rear of the vehicle. The headlight comprises a cup-shaped housing 2 having a lateral wall 4, a bottom wall 5 and an adjustable reflector 7 fitted inside the housing so as to rotate in relation to the housing about a first axis defined by two spherical heads 12. An externally operated adjusting means is provided for adjusting the angular position of the reflector in relation to the housing about the first axis and is generally located in an attachment 16, 21 mounted on the bottom wall. Fine adjustment of the reference position is performed by rotation of an adjuster 54 located in a lateral opening 24 in the attachment and which, by engagement between two sets of teeth 55, 56 turns a portion 35 of a connecting member 34. Rotation of the portion 35 relative to a further portion 44 causes a threaded engagement between these two portions to vary the length of the connecting member 34 and so adjust the orientation of the reflector. The coarse adjustment of the orientation of the reflector is performed by rotating a threaded adjuster 31 having a step type retaining means 32, 33 and which, by virtue of a screw thread 30 undergoes an axial movement which is imposed on the connecting member 34. The axial movement removes the teeth 56 from engagement with the teeth 55, thereby preventing any fine adjustment when the reflector is displaced from its reference position. Fluid tight means comprising an annular body are interposed between the housing attachment and the portion 38 of the connecting member (page 5, lines 29 to 34; Figure 2). The connecting member 34 extends partly inside the

housing through an opening 22 and is connected to the reflector.

4.1.1 The Board concurs with the appellant that the threaded adjuster 31 forms the control member within the meaning of present Claim 1 and that it is equipped with a step type retaining means interposed between it and the housing. However, the threaded adjuster is axially displaceable relative to the housing and, together with the portion 35, is axially secured to the housing by the threaded engagement. It is the axial movement of the control member produced by the threaded engagement during coarse adjustment which causes the portion 35 to change the orientation of the reflector. By comparison, D3 discloses a vehicle headlight adjuster having a rotatable control member 15 extending through a housing 11. The location and sealing of the control member in the housing are not explained but it is implicit for the person skilled in the art when reading D3 that the control member is secured to prevent axial movement relative to the housing. The axial securing means of D3 therefore is fundamentally different from that of D2 and cannot be used in its place without a substantial re-design of the adjustment mechanism. It follows that, even if the skilled person would understand, as the appellant alleges, that the control member in D3 is secured and sealed in the housing by means of an annular elastomeric element, a combination of this teaching with the mechanism of D2 would not be obvious.

4.2 D1 discloses a vehicle headlight adjustment arrangement in which adjustment is achieved by rotating a control member 26 extending through a housing 11. The location and sealing of the control member in the housing are

not explained. However, even if the disclosure of D1 were to be considered a clear teaching that the control member is axially secured and sealed by an annular elastomeric member, a combination of D2 and D1 fails to render the subject-matter of Claim 1 obvious for the same reasons as already explained in respect of D2 and D3.

4.3 The appellant alternatively argues obviousness of the subject-matter of present Claim 1 when beginning from D3 as the closest prior art and in the light of D2. The Board agrees with the view of the appellant that the feature of present Claim 1 relating to the step type retaining means interposed between the housing and the control member is not disclosed in D3.

4.3.1 D2 primarily addresses the problem of ensuring that adjustment of the reference position is possible only when the coarse adjuster is in its zero position. Nevertheless, although the purpose of the step type retaining means is clearly disclosed it is employed on the coarse adjuster which is additional to, and does not form part of, a fine adjusting mechanism of the reference position such as is provided in D3. The skilled person would have no incentive to add the step type retaining means to the mechanism of D3 since that would change the character of the adjustment such that fine adjustment would be no longer available.

4.4 In conclusion, the Board therefore finds that the subject-matter of present Claim 1 involves an inventive step (Article 56 EPC).

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

S. Fabiani

S. Crane