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**D E C I S I O N**  
**of 21 February 2002**

**Case Number:** T 0833/00 - 3.2.1

**Application Number:** 95939732.4

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**IPC:** B60N 2/02, G05B 19/00, G05D 3/00

**Language of the proceedings:** EN

**Title of invention:**  
Optional plug-in memory pack for positioning control

**Patentee:**  
UNITED TECHNOLOGIES AUTOMOTIVE, Inc.

**Opponent:**  
Brose Fahrzeugteile GmbH & Co. KG

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 56, 108

**Keyword:**  
"Form of appeal - admissible (yes)"  
"Inventive step (no)"

**Decisions cited:**  
T 0105/87, T 0729/90, T 0563/91

**Catchword:**  
-



Case Number: T 0833/00 - 3.2.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.1**  
**of 21 February 2002**

**Appellant:** UNITED TECHNOLOGIES AUTOMOTIVE, Inc.  
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**Representative:** Fox-Male, Nicholas Vincent Humbert  
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**Respondent:** Brose Fahrzeugteile GmbH & Co. KG  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 13 June 2000  
revoking European patent No. 0 787 077 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** F. A. Gumbel  
**Members:** J. Osborne  
M. K. S. Aúz Castro

## Summary of facts and submissions

- I. The appeal is directed against the decision of the Opposition Division to revoke the European patent No. 0 787 077.
- II. The patent had been opposed on the grounds of lack of novelty and/or inventive step (Article 100(a) EPC).
- III. The decision of the Opposition Division was posted on 13 June 2000. Notice of appeal and payment of the fee for appeal were received on 14 August 2000. The statement of grounds of appeal was received on 12 October 2000. The only prior art documents which have played a role during appeal are:  
  
D1: DE-A-36 09 609  
D8: US-A-4 689 537.
- IV. The Opposition Division refused a main and two auxiliary requests, all to maintain the patent in amended form. In particular, it held in respect of the main request that the subject-matter of each of the independent Claims 1, 6, 12, 19 was rendered novel in comparison with D1 by the same single feature. However, whilst it found that the subject-matter of each of Claims 1, 6, 12 involved an inventive step, it held that the subject-matter of independent Claim 19 was obvious in the light of the disclosure of D1 in combination with the general knowledge of the skilled person.
- V. With the grounds of appeal the appellant filed a set of claims identical to those according to the main request considered by the Opposition Division except for the

deletion of Claim 19 and Claim 20 dependent thereon. In support of this set of claims the appellant stated that it re-iterated the points in the contested decision in favour of novelty and inventive step of Claims 1, 6, 12 together with the arguments for novelty and inventive step put forward in all letters filed during the opposition procedure, copies of which were again placed on file.

VI. In the oral proceedings held on 21 February 2002 the appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of Claims 1 to 18 filed with the grounds of appeal. The respondent requested that the appeal be rejected as inadmissible and by way of auxiliary request that it be dismissed.

VII. Claim 1 according to the appellant's request reads as follows:

"A component positioning control comprising:  
a. a motor control (41) for positioning a component;  
b. a universal control board (26) having a manual switch (22), and connections to communicate signals from said manual switch to said motor control; and  
c. said universal control board selectively receiving a plug-in memory pack (30), said memory comprising electrical circuitry for communicating memory signals through connections on said control board and to said motor control, such that said memory pack may be selectively connected to said control board when a memory option is desired, said memory pack including at least one switch (34,36,38) to allow storage of a desired location for the component, and also to provide a signal to said motor control to move the component to

said desired location."

The claims according to the appellant's request also contain independent Claims 6, 12.

VIII. The respondent firstly contended that the appeal was inadmissible and its arguments in this respect can be summarised as follows:

It is established case law that the grounds for appeal must analyse in detail the main reasons for the contested decision. An exception exists when the appellant deletes the basis of an objection upheld by the Opposition Division but this should be applied restrictively. In the present case the Opposition Division had stated in the contested decision that the subject-matter of each of Claims 1, 6, 12 and 19 differed from the disclosure of D1 by the same single feature. This difference had been found by the Opposition Division not to be obvious in respect of the subject-matter of Claims 1, 6, 12. However, as the result of further discussion and submission of arguments, the Opposition Division found the same feature to be obvious in respect of the subject-matter of Claim 19. In filing the grounds for appeal it was not sufficient for the appellant to merely delete Claim 19, on the basis of which the Opposition Division had revoked the patent, together with Claim 20. So doing failed to remove the reasons for the revocation of the patent by the Opposition Division because the same reasons would have applied also to Claims 1, 6 and 12. The requirement to analyse in detail the reasons for the contested decision rendered it necessary for the appellant to explain why the subject-matter of the remaining independent claims involved an inventive

step, despite the findings of the Opposition Division.

The respondent further submitted that the appeal was not well founded. In this respect it argued essentially as follows:

The subject-matter of Claim 1 in suit lacks an inventive step. D1 discloses the combination of a manual switch for adjustment of the exterior rear view mirror and an electrical seat adjustment with memory. The mirror adjustment is provided as standard equipment whilst the seat adjustment memory is optional. The subject-matter of Claim 1 in suit differs from that of D1 only in that the optional memory function is provided for the same component as is the manual switch. According to D1 additional circuitry in respect of optional features such as the seat adjustment memory is included in a module 22 which plugs into a connector housing 36. The module is the final element to be fitted before the cover and so constitutes a plug-in pack within the meaning of Claim 1 in suit. Moreover, the connector housing 36, its mounting frame and the manual switch together form a universal control board within the meaning of Claim 1 in suit. D1 furthermore discloses that additional switches associated with the optional equipment may be mounted on the module. In the light of D8 it is clear that it was known at the reference date to provide a memory function for the adjustment of exterior rear view mirrors. The skilled person wishing to include a memory for the exterior rear view mirror adjustment would automatically use the module 22 to carry any additional circuitry and switch, thereby arriving at the subject-matter of Claim 1 in suit.

IX. The appellant essentially countered that:

By deleting Claims 19, 20 it had overcome the only objection on which the contested decision was based. By so doing the reasoning of the Opposition Division had been accepted completely and there remained no negative finding which the appellant could analyse. Moreover, by referring to the newly filed copies of the arguments presented during the opposition procedure, the appellant had implicitly presented arguments why it considered the subject-matter of the remaining independent claims to be allowable.

The disclosure of D1 is restricted to details of the assembly shown and gives no hint of the idea upon which Claim 1 in suit is based, namely to add by means of a plug-in pack the additional features necessary for optionally providing memory in a component control. In particular, there is no disclosure of the purpose of module 22 other than housing decoding circuitry in the event of additional equipment such as seat adjustment memory being fitted. Indeed, the problem addressed by D1, relating to the ability to test the door as a sub-unit before its installation in the vehicle, could not be solved by providing in the module 22 features relating to seat adjustment. Even in respect of the explicit disclosure of seat adjustment memory, D1 is silent as regards the possibility of providing memory together with a manual control switch. The functions of the additional switches associated with the module 22 are not disclosed and, although a manual switch for adjustment of the exterior mirror is provided, there is no suggestion that a memory be provided in respect of this adjustment.

## Reasons for the decision

### 1. *Admissibility of the appeal*

1.1 Article 108, third sentence, EPC requires that the grounds of appeal be filed in a written statement. There is no requirement for a detailed analysis of the reasons for the contested decision. Whether this is necessary depends on the circumstances of the case.

1.2 In the contested decision the Opposition Division explicitly stated in respect of the main request that the subject-matter of each of Claims 1, 6 and 12 was considered to involve an inventive step. The decision to revoke the patent was based solely on the Division's finding that the subject-matter of Claim 19 of the main request was considered not to involve an inventive step. The only set of claims filed upon appeal differed from those of the opposition main request in that Claim 19 and Claim 20 dependent thereon had been deleted. By deleting Claim 19, the appellant had overcome the only objection in the decision which led to the appellant being adversely affected. An appeal in which a request overcomes the objections of a department of the first instance need not indicate why the contested decision is considered to be incorrect (see T 563/91, T 105/87 and T 729/90, none published). The appellant therefore carried no burden of analysing the reasoning in the decision relating to Claim 19 and explaining why this may have been considered to be incorrect.

1.3 The respondent argues that it should have been clear to the appellant that the Opposition Division's objection



to Claim 19 would apply equally to Claims 1, 6, 12. However, this view is contrary to the content of the contested decision and it is that which forms the basis of the appeal. Moreover, the deletion upon appeal of a claim which was the subject of an objection in the contested decision does not necessarily imply an acceptance of the reasoning given in the decision. This is particularly so when, as in the present case, the appellant repeats by reference to earlier submissions, copies of which were annexed to the statement of grounds of appeal, arguments which were used before the first instance in support of *inter alia* Claim 19. It follows that deletion of Claims 19, 20 in the present case does not imply that the appellant regarded the Opposition Division's assessment of Claims 1, 6, 12 as being incorrect and therefore in need of review. On the contrary, in the grounds of appeal the appellant explicitly requested that the part of the decision relating to Claims 1, 6, 12 be maintained, implying agreement with the reasoning contained therein. The Board therefore cannot agree that a condition for admissibility of the appeal in the present case is that the appellant should have addressed the question of inventive step in respect of Claims 1, 6, 12 despite the positive findings regarding these claims in the contested decision.

1.4 In view of the foregoing and since all formal requirements were met, the appeal is admissible.

## 2. *Patentability*

2.1 The Board agrees with both parties that the closest prior art is that disclosed by D1 which relates to a vehicle door including electrical components. D1

primarily addresses the problem of the complexity of wiring which results from providing controls on the door for the electrical actuation of various components including electrical seat adjustment, particularly in view of the requirement to allow for the optional specification of additional equipment. In the preferred embodiments electrical adjustment of the exterior rear view mirror mounted on the door is standard equipment whilst centralised door locking, electric window lifts and electrical seat adjustment with memory are optional equipment. According to the first embodiment, as shown particularly in Figures 3 to 5, an electronic assembly unit 12 comprises a frame 15 located between the interior skin 3 of the door and the door trim 10 and a central connector housing 36 mounted on the frame. Connector housings 37, 38 and a mirror adjustment switch 33, 52 associated with and mounted on the central connector housing are provided for mirror adjustment. Electrical connection between the central connector housing and the rear view mirror adjustment motor 7 is via cables 25. The electrical connections between the central connector housing and the mirror adjustment connector housings 37, 38 and mirror adjustment switch are made via pins d1, b3, d2, b1 (see Figures 4, 5). In the arrangement having only standard equipment five pins a, b, d, e, f (see Figure 5) remain unused. When additional, optional equipment is specified, an additional electronic module 22 is provided which is connected to the pins a, b, d, e, f and to further connector housings 40 to 42 which are in turn connected via cables sets 46 to 48 to the additional equipment. Additional switches 29, 30 associated with the additional equipment may be integrally mounted on the electronic module (column 7, lines 10 to 13). Pins e, f carry switching information

in respect of the additional equipment in response to which circuitry within module 22 connects the additional switches 29, 30 through the connector housings 40 to 42 to the corresponding components (column 6, lines 20 to 27).

2.2 D1 therefore discloses a component positioning control comprising a motor control 7 for positioning a component (exterior rear view mirror), a universal control board 15, 36 having a manual switch 33, 52 and connections 25 to communicate signals from the manual switch to the motor control. The universal control board selectively receives a plug-in pack 22 which may be selectively connected to the control board when an option is desired, the pack including at least one switch 29, 30.

2.3 It follows that the subject-matter of Claim 1 differs from that of D1 in that:

- the option is a memory for the component positioned by the manual switch, the memory comprising electrical circuitry for communicating memory signals through connections on the control board and to the motor control, the at least one switch acting to allow storage of a desired location for the component to provide a signal to the motor control to move the component to the desired location.

2.4 The features which differentiate the subject-matter of Claim 1 from that of D1 solve the problem of providing an optional memory function in the adjustment of the exterior rear view mirror with minimum complexity and maximum build flexibility of the control assembly. It is acknowledged in the patent specification that it was

already known at the reference date of the patent in suit to provide a memory in respect of the position of a vehicle component such as a mirror (specification column 1, lines 6 to 16). Moreover, D8 discloses such a feature in combination with a memory function for an electrical seat adjustment (column 2, lines 50 to 53). It therefore would fall within the normal activity of the skilled person to include a memory option for the rear view mirror adjustment in D1, particularly since a memory for the electrical seat adjustment is indicated in D1 as an option. In accordance with the teaching of D1 the skilled person would provide the additional circuitry within the module 22. Similarly, at least one switch acting to allow storage of a desired location for the mirror, which would be necessary in addition to the manual switch 33, 52 (see D8 Figure 7), would be provided on the module 22. As a result, the module would comprise electrical circuitry for communicating memory signals through connections (e, f) on the control board and to the motor control through a connector (40 to 42).

- 2.5 D1 does not clearly disclose that the connector housings 40 to 42 form a permanent part of the assembly 12, thereby being a part of the universal control board, or whether they are provided only together with optional equipment. However, according to Claim 1 in suit the plug-in pack communicates memory signals through connections on the universal circuit board "and to said motor control". It follows that Claim 1 does not require electrical connection only between the plug-in pack and the universal circuit board. Furthermore, since no additional external connections are necessary for the mirror adjustment memory in the

door of D1 the provision of such a memory in D1 is fully compatible with the desire stated therein to permit electrical testing of the door as a sub-assembly.

- 2.6 The Board therefore concludes that the subject-matter of Claim 1 in suit is obvious and that the claim fails due to lack of inventive step (Article 56 EPC). Following failure of Claim 1 consideration of the other independent Claims 6, 12 is unnecessary.

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel