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**Datasheet for the decision  
of 10 June 2008**

**Case Number:** T 0382/06 - 3.5.03

**Application Number:** 03018128.3

**Publication Number:** 1394648

**IPC:** G05D 23/02

**Language of the proceedings:** EN

**Title of invention:**  
Thermostatic valve

**Applicant:**  
Honeywell Normalair-Garrett (Holdings) Limited

**Opponent:**  
-

**Headword:**  
Thermostatic valve/HONEYWELL

**Relevant legal provisions:**  
EPC Art. 54, 56, 116(1)  
EPC Rule 115(2)

**Relevant legal provisions (EPC 1973):**  
-

**Keyword:**  
"Novelty (main, first and second auxiliary request) - no"  
"Inventive step (third auxiliary request) - no"

**Decisions cited:**  
-

**Catchword:**  
-



Case Number: T 0382/06 - 3.5.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.03  
of 10 June 2008

**Appellant:** Honeywell Normalair-Garrett (Holdings) Limited  
Yeovil  
Somerset BA20 2YD (GB)

**Representative:** Lucking, David John  
FORRESTER & BOEHMERT  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 19 September 2005  
refusing European application No. 03018128.3  
pursuant to Article 97(1) EPC 1973.

**Composition of the Board:**

**Chairman:** A. S. Clelland  
**Members:** A. J. Madenach  
M-B. Tardo-Dino

## Summary of Facts and Submissions

I. The present appeal is against the decision of the examining division to refuse European patent application 03018128.3 on the basis of Article 97(1) EPC 1973 and on the ground of lack of novelty (Article 54 EPC) of the subject-matter of claim 1 having regard to the disclosure of the following document:

D1: US 3032058 A

II. A notice of appeal was filed on 25 November 2005. In a statement setting out the grounds of appeal, submitted on 24 January 2006, the appellant requested that the examining division's decision be set aside and a patent be granted on the basis of the claims on which the decision was based, i.e. claims 1-4 as submitted with the letter of 13 May 2005 and claims 5-16 as originally filed, alternatively on the basis of the claims of one of auxiliary requests 1 to 3 filed with the statement of grounds.

III. In a communication accompanying a summons to oral proceedings the board gave its preliminary opinion on the claims of each request and stated that the subject-matter of claim 1 of the main, first and second auxiliary requests did not appear to be novel (Article 54 EPC) having regard to the disclosure of D1, and that the subject-matter of claim 1 of the third auxiliary request did not appear to involve an inventive step (Article 56 EPC) having regard to the disclosure of D1 and taking into account the common general knowledge of a person skilled in the art.

IV. In a letter dated 22 May 2008 the appellant informed the board that it did not intend to take part in the oral proceedings. No substantive response was made to the communication.

V. Oral proceedings took place on 10 June 2008 in the absence of the appellant.

After deliberation the chairman announced the board's decision.

VII. Independent claim 1 according to the main request reads as follows:

"A temperature sensitive valve (10) including a body (11) affording a passageway (12) for fluid, a valve member (15) which is moveable relative to the body (11) between first and second positions to control the flow of fluid through the passageway (12), a retaining member (24, 24a, 24b) movable with the valve member (15) and being engageable with a holding device (21) to retain the valve member (15) in the first position whilst the temperature is below a threshold value, characterised in that a release actuator (30) is provided which is movable when the temperature is at the threshold value to disengage the retaining member (24, 24a, 24b) and holding device (21), to permit the valve member (15) to move from the first to the second position."

Independent claim 1 according to the first auxiliary request includes the additional feature that the release actuator is movable

"to move at least one of the retaining members (24, 24a, 25) and holding device (21)".

Independent claim 1 according to the second auxiliary request differs from that of the main request in that the feature "which is movable when the temperature is at the threshold value" is replaced by the feature:

"and in that the release actuator (30) includes a thermally sensitive substance which expands as the temperature increases towards a threshold temperature, to move a moveable part (32)".

Independent claim 1 according to the third auxiliary request includes, as compared with claim 1 of the main request, the additional feature:

"and in that the holding device (21) is a bifurcated holding element with resiliently deformable tangs, and the retaining member (24) is a headed pin, the head (25) of the pin being retained between the tangs of the holding element until disengaged therefrom by the action of the release actuator (30)."

## **Reasons for the decision**

### *1. Procedural questions*

- 1.1 The board considered it to be expedient to hold oral proceedings for reasons of procedural economy (Article 116(1) EPC). The appellant, which was duly summoned, had informed the board that it did not intend to take part in the oral proceedings and, indeed, was

absent. The oral proceedings were therefore held in the absence of the appellant (Rule 115(2) EPC, Article 15(3) RPBA).

- 1.2 In the communication accompanying the summons, objections under Article 54 EPC were raised in respect of claim 1 of the main, first and second auxiliary requests, and an objection under Article 56 EPC was raised in respect of claim 1 of the third auxiliary request. The appellant was thereby informed that at the oral proceedings it would be necessary to discuss these objections. In deciding not to attend the oral proceedings the appellant chose not to make use of the opportunity to comment but, instead, chose to rely on the arguments as set out in the written submissions, which the board duly considered below.

In view of the above and for the reasons set out below, the board was in a position to give at the oral proceedings a decision which complied with the requirements of Article 113(1) EPC.

2. *Claim 1 of the main, first and second auxiliary requests: Novelty (Article 54 EPC):*

- 2.1 The board agrees with the appellant's analysis, in the statements of grounds of appeal, of the teaching of D1. This documents shows a valve having the features of the preamble of claim 1, which is identical for all requests.

In particular, the board notes that the holding clip 9, 17 (see Figure 1 of D1) has been identified with the claimed holding device and the detent 10 has been identified with the claimed retaining member.

- 2.2 The point of contention is whether D1 can be said to show a release actuator which is movable when the temperature is at the threshold value to disengage the retaining member and holding device, to permit the valve member to move from the first to the second position.

The examining division identified the holding clip 9, 17, as constituting the release actuator, thus serving two functions, as both a release actuator and holding device.

The appellant contends that the wording of the claim requires that the release actuator is something in addition to (and thus different from) the retaining member and the holding device, since it has to be moveable to act to disengage the retaining member and holding device.

- 2.3 The board disagrees. The claim requires the release actuator to be movable when the temperature is at the threshold value. This undoubtedly applies to the holding clip of D1 (column 2, lines 54-56 and 59-63). The claim also requires that the release actuator permits the valve member to move from the first to the second position. This is also true for the holding clip of D1 (col. 2, line 60 - col. 3, line 7). The claim furthermore requires the release actuator to be movable to disengage the retaining member and holding device. This is also true for the holding clip of D1 (column 2, lines 59-63). As the holding clip of D1 fulfils all the functions of the claimed release actuator, and since the claim includes no feature which would distinguish the holding clip of D1 from the claimed release actuator,

all features of claim 1 of the main request are known from D1.

- 2.4 The further feature of claim 1 of the first auxiliary request requires that the release actuator is movable to move at least one of the retaining members and holding device.

This, however, is also the case in the device known from D1. The holding clip 9, 17 serving as the claimed release actuator is itself movable. By its movement, the detent 10 serving as the claimed holding device is released (col. 2, lines 60-66) and, thus, moved.

- 2.5 The further feature of claim 1 of the second auxiliary request, which corresponds in essence to the subject-matter of original claim 14, requires that the release actuator includes a thermally sensitive substance which expands as the temperature increases towards a threshold temperature, to move a moveable part. In D1, the holding clip serving as the claimed release actuator is in the form of a bi-metallic clip (col. 2, lines 55-57) which, by its very nature, comprises a thermally sensitive substance, namely one of the metal strips it is formed of, which expands as the temperature increases towards a threshold temperature. The holding clip of D1 furthermore moves a moveable part in that it basically moves itself and, in addition, by its movement, the detent 10 serving as the holding device is released (col. 2, lines 60-66) and, thus, moved.

- 2.6 Thus, the subject-matter of claim 1 of each the main, first and second auxiliary requests lacks novelty



(Art. 54 EPC). These requests are accordingly not allowable.

3. *Third auxiliary request: Inventive step (Article 56 EPC):*

3.1 According to the third auxiliary request the holding device is a bifurcated holding element with resiliently deformable tangs, and the retaining member is a headed pin, the head of the pin being retained between the tangs of the holding element until disengaged therefrom by the action of the release actuator.

This feature, which corresponds in essence to the subject-matter of original claim 7, is not present in D1. The known holding device (9, 17) is in the form of a bi-metallic strip without any apparent bifurcation. The known retaining member (10) is in the form of a hook acting as a detent over the holding element. The subject-matter of claim 1 of this request is accordingly novel.

In the device according to claim 1 of the third auxiliary request the known engagement of a detent with a holding element is replaced by a pin engagement between the tangs of a bifurcated holding strip.

3.2 The objective problem to be solved can only be seen in providing an alternative form of latch mechanism.

Latch mechanisms of various kinds are however well known in the art. In particular engagement and release mechanisms using a pin engagement between the tangs of a bifurcated holding strip would at the claimed priority date have been well known to the skilled person. An

implementation on the basis of a bi-metallic strip, e.g. by arranging a bifurcated bi-metallic strip in such a way that the two tangs thus formed move away from each other or from the pin when the temperature approaches the threshold value is a matter of ordinary workshop practice. The additional feature of claim 1 of the third auxiliary request would thus be considered by the skilled person as a non-inventive modification of D1.

3.3 As the additional feature of claim 1 of the third auxiliary request is held to be obvious to the skilled person, the subject-matter of claim 1 lacks an inventive step (Articles 52(1) and 56 EPC). Consequently, the third auxiliary request is not allowable.

4. Since none of the requests is allowable, the appeal must be dismissed.

## **Order**

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

The appeal is dismissed.

The Registrar

The Chairman

D. Magliano

A. S. Clelland