BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [ ] To Chairmen
(D) [X] No distribution

Datasheet for the decision of 16 July 2009

Case Number: T 1616/07 - 3.2.01

Application Number: 00940907.9

Publication Number: 1251018

IPC: B60H 1/00

Language of the proceedings: EN

Title of invention:
Instrument panel module and air conditioner for car

Patentee:
Zexel Valeo Climate Control Corporation

Opponent:
Behr GmbH & Co. KG

Headword:
-

Relevant legal provisions:
EPC Art. 123

Relevant legal provisions (EPC 1973):
EPC Art. 54

Keyword:
"Novelty - Main Request, 1.-3. Auxiliary Request (no)"
"Amendments - added subject-matter - 4. Auxiliary Request (yes)"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 1616/07 **-** 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 16 July 2009

Appellant: (Patent Proprietor)	Zexel Valeo Climate Control Corporation 39, Aza Higashihara, Oaza Sendai, Konan-machi Osato-gun, Saitama 360-0193 (JP)
Representative:	Léveillé, Christophe VALEO SYSTEM THERMIQUE Branche Thermique Habitacle Service Propriété Industrielle 8, rue Louis Lormand BP 513 F-78321 Le Mesnil Saint Denis Cedex (FR)
Respondent: (Opponent)	Behr GmbH & Co. KG Intellectual Property, G-IP Mauserstr. 3 D-70469 Stuttgart (DE)
Representative:	-
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted 24 July 2007 revoking European patent No. 1251018 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: S. Crane
Members: H. Geuss
G. Weiss

Summary of Facts and Submissions

I. The appeal is directed against the decision posted 24 July 2007 revoking the European patent EP 1 251 018.

II. The patentee (appellant) requests that the decision under appeal be set aside and the patent maintained as granted (main request) or maintained in amended form on the basis of the first to fourth auxiliary requests as filed during the oral proceedings, held on 16 July 2009.

III. The opponent (respondent) requests that the appeal be dismissed.
He alleges lack of novelty and/or inventive step (Art. 100 (a), 54(2) and 56 EPC 1973) concerning independent claims 1, 12, 23 and 35 relying in its arguments in particular on documents

D1 (EP 0 808 736 A2) and
D3 (DE 44 45 380 A1).

IV. Claim 1 of the patent as granted reads as follows:

"An instrument panel module including:
an automotive air conditioner including a casing (1; 101; 201; 301; 401; 501; 601; 701; 801) having at least one of air-introducing means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means for distributing the cooled air or the heated air, and
an instrument panel (IP) adjacent to said automotive air

conditioner,
characterized in that said casing (1; 101; 201; 301; 401; 501; 601; 701; 801) is separable at least into an instrument panel-side part (Rp) arranged adjacent to said instrument panel (IP), and a fire panel-side part (Fp) arranged adjacent to a fire panel (Fi), and
wherein at least said instrument panel-side part (Rp) is integrally connected to said instrument panel (IP)."

Independent claim 12 of the patent as granted reads as follows:

"An automotive air conditioner including an instrument panel-side casing (Rp) having at least one of air-introducing means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means for distributing the cooled air or the heated air,
characterized in that said instrument panel-side casing (Rp) is integrally connectable to an instrument panel (IP), and is also connectable to a fire panel-side casing (Fp) having at least one of air-introducing means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means for distributing the cooled air or the heated air, thus allowing to form an instrument

panel module, said fire panel-side casing (Fp) being arranged to a fire panel (Fi) of a vehicle."

Independent claim 23 of the patent as granted reads as follows:

"An automotive air conditioner including a fire panel-side casing (Fp) having at least one of air-introducing means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means for distributing the cooled air or the heated air,
characterized in that said fire panel-side casing (Fp) is arranged to a fire panel (FI) of a vehicle, and is also connectable to an instrument panel-side casing (Rp) having at least one of air-introducing means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means for distributing the cooled air or the heated air, thus allowing to form an instrument panel module, said instrument panel-side casing (Rp) being integrally connected to said instrument panel (IP)."

V. Claim 1 of the first auxiliary request reads as follows (amendments vis-à-vis the main request emphasized in bold):

"An instrument panel module including:
an automotive air conditioner including a casing (1; 101; 201; 301; 401; 501; 601; 701; 801) having at least one of **air conditioner components including** air-introducing means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means for distributing the cooled air or the heated air, and an instrument panel (IP) adjacent to said automotive air conditioner,
characterized in that said casing (1; 101; 201; 301; 401; 501; 601; 701; 801) is separable at least into an instrument panel-side part (Rp) arranged adjacent to said instrument panel (IP), and a fire panel-side part (Fp) arranged adjacent to a fire panel (Fi) **for the maintainability (ease of maintenance) or the workability of mounting to the vehicle (ease of mounting to the vehicle),** and wherein at least said instrument panel-side part (Rp) is integrally connected to said instrument panel (IP)."

VI. Claim 1 of the second auxiliary request reads as follows (amendments vis-à-vis the main request emphasized in bold):

"An instrument panel module including:
an automotive air conditioner including a casing (1; 101; 201; 301; 401; 501; 601; 701; 801) having at least one

of **air conditioner components including** air-introducing means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means **(M1, M2, M3)** for distributing the cooled air or the heated air, and
and an instrument panel (IP) adjacent to said automotive air conditioner,
characterized in that said casing (1; 101; 201; 301; 401; 501; 601; 701; 801) is separable at least into an instrument panel-side part (Rp) arranged adjacent to said instrument panel (IP), and a fire panel-side part (Fp) arranged adjacent to a fire panel (Fi) **for the maintainability (ease of maintenance) or the workability of mounting to the vehicle (ease of mounting to the vehicle),** wherein at least said instrument panel-side part (Rp) is integrally connected to said instrument panel (IP) **and wherein a air mixing door (6) and the distributing means (M1, M2, M3) are assigned to the instrument panel-side part (Rp) and the cooling means (5) and the heating means (7) are assigned to the fire panel-side part (Fp)**."

VII. Claim 1 of the third auxiliary request reads as follows (amendments vis-à-vis the main request emphasized in bold):

"An instrument panel module **arranged within a compartment R** including:
an automotive air conditioner including a casing (1; 101; 201; 301; 401; 501; 601; 701; 801) having at least one of **air conditioner components including** air-introducing

means (4) for introducing air, blowing means (3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means **(M1, M2, M3)** for distributing the cooled air or the heated air, and
and an instrument panel (IP) adjacent to said automotive air conditioner,
characterized in that said casing (1; 101; 201; 301; 401; 501; 601; 701; 801) is separable at least into an instrument panel-side part (Rp) arranged adjacent to said instrument panel (IP), and a fire panel-side part (Fp) arranged adjacent to a fire panel (Fi) **partitioning an engine room ER and the compartment R, for the maintainability (ease of maintenance) or the workability of mounting to the vehicle (ease of mounting to the vehicle),** wherein at least said instrument panel-side part (Rp) is integrally connected to said instrument panel (IP) **and wherein a air mixing door (6) and the distributing means (M1, M2, M3) are assigned to the instrument panel-side part (Rp) and the cooling means (5) and the heating means (7) are assigned to the fire panel-side part (Fp)**."

VIII. Claim 1 of the fourth auxiliary request reads as follows (amendments vis-à-vis the main request emphasized in bold):

"An instrument panel module **arranged within a compartment R** including:
an automotive air conditioner including a casing (1; 101; 201; 301; 401; 501; 601; 701; 801) having air-introducing means (4) for introducing air, blowing means

(3) for blowing the air from said air-introducing means (4), cooling means (5) for cooling the air introduced by said blowing means (3) from said air-introducing means (4), heating means (7) for heating the air introduced by said blowing means (3) from said air-introducing means (4), and air-distributing means **(M1, M2, M3)** for distributing the cooled air or the heated air, and and an instrument panel (IP) adjacent to said automotive air conditioner,
characterized in that said casing (1; 101; 201; 301; 401; 501; 601; 701; 801) is separable at least into an instrument panel-side part (Rp) arranged adjacent to said instrument panel (IP), and a fire panel-side part (Fp) arranged adjacent to a fire panel (Fi) **partitioning an engine room ER and the compartment R,** wherein at least said instrument panel-side part (Rp) is integrally connected to said instrument panel (IP) **and wherein a air mixing door (6) and the distributing means (M1, M2, M3) are assigned to the instrument panel-side part (Rp) and the cooling means (5) and the heating means (7) are entirely arranged within the fire panel-side part (Fp), said fire panel-side part (Fp) being delimited by a connecting surface (1a) of the fire panel-side part (Fp) with the instrument panel-side part (Rp)**."

IX. The arguments of the appellant with regard to the objection of lack of novelty concerning the main request and the first to third auxiliary requests can be summarized as follows:

Document D1 does not disclose a casing but an upper and a lower part. Once mounted, these parts cannot be non-destructively separated for maintenance.
Additionally, the upper part of document D1 is not a part of the instrument panel, since it is integrated in

a cover.

"Easy maintainablilty" and "easy workability" are the supplementary features of the first auxiliary request to achieve novelty and inventive step. They would be immediately understood by an technical expert as to define respective well-known technical features to achieve theses goals; consequently a definition of a concrete technical measure achieving "easy maintainablilty" and "easy workability" is not necessary.

The second auxiliary request deals in addition with the assignment of the mixing door and the distribution means to the instrument panel-side part and the cooling means and heating means to the fire panel-side part. In particular, document D1 does not show the cooler clearly assigned to the lower part since it protrudes also into the upper part whereas the claim defines the cooler as being completely integrated in the fire panel-side part.

The third auxiliary request characterizes furthermore the fire panel partitioning the engine room and the compartment which clarifies that the heat exchanging devices (cooler and heater) are in the fire panel-side part casing.

The arguments of the appellant with regard to the disclosure of the supplementary feature of the fourth auxiliary request can be summarized as follows:

The feature that the cooling means and the heating means are entirely arranged within the fire panel-side part could be derived from the figures of the original

disclosure in which always both the heater an the cooler are below the line representing the casing.

X. The arguments of the respondent can be summarized as follows:

Document D1 clearly discloses an instrument panel as a casing for an air-conditioner with the features of claim 1 of the main request. This casing can be separated for filter maintenance into two parts. The upper part corresponds to the instrument panel-side part and the lower part is near to the fire panel, representing the fire panel-side part.

Also, in document D1 the air mixing door, the distribution means, the heating means and the cooling means are assigned to the respective instrument panel side part in the same manner as in claim 1 of the second auxiliary request.

The supplementary feature of the third auxiliary request is merely a well known definition of a fire panel which is the separation of the engine room and the compartment. A fire panel is shown in D1 too.

The "entirely arranged"-feature of the fourth auxiliary request is not originally disclosed. From none of the figures can be derived unambiguously that the heater and the cooler are below a connection surface between the relevant parts of the casing.

Reasons for the Decision

1. The appeal is admissible.

Main Request

2. The subject-matter of independent claims 1, 12 and 23 of the granted patent lacks novelty, Art. 54(2) EPC 1973.

2.1 Document D1 discloses:

An instrument panel module including:
an automotive air conditioner including a casing (the instrument panel itself forms the casing for the air-conditioner components, column 4, lines 25-34)

having at least one of air-introducing means for introducing air, blowing means for blowing the air from said air-introducing means, cooling means for cooling the air introduced by said blowing means from said air-introducing means, heating means for heating the air introduced by said blowing means from said air-introducing means, and air-distributing means for distributing the cooled air or the heated air (fig. 1, 2: Gebläse 10, Verdampfer 14, Heizkörper 15, Luftverteilungsraum 16 mit Düsen, column 3, lines 8 to 11), and

an instrument panel adjacent to said automotive air conditioner (abstract, fig. 1 and 2),

wherein said casing is separable at least into an instrument panel-side part arranged adjacent to said instrument panel, and a fire panel-side part arranged adjacent to a fire panel (in fig. 3 and 4 it is depicted

that the casing consists of two parts, an upper part (6), which corresponds to the instrument panel-side part and a lower part (7), corresponding to the fire panel-side part; column 5, lines 47 et seq. discloses that the lower part is removable for maintainability reasons: "… das untere Bauteil 7 als abnehmbares Bauteil ausgebildet …"), and

wherein at least said instrument panel-side part is integrally connected to said instrument panel (column 4, lines 34-44).

2.2 The appellant argues that D1 does not disclose a casing in the sense of the invention and refers to D1, column 1, lines 47 et seq. ("… ohne zusätzliche Bauteile, wie beispielsweise ein Gehäusebauteil ...").

Furthermore, the press-fit of the components in the upper and lower parts (column 2, lines 51 et seq.: "… Die Bauteile 6, 7 weisen jeweils Vertiefungen auf, in die die Komponenten der Klimaanlage 9 eingesetzt und … gehalten werden, vorzugsweise durch Preßsitz …") would imply that the casing cannot be separated non-destructively in two parts (Mémoire de recours, page 7).

The appellant also states that the passage of D1, column 5, lines 48 et seq. has to be understood with the skilled person’s knowledge; it would be unreasonable that the whole part 7 is removed only for a filter maintenance, rather it seems that a kind of trap is foreseen for this purpose. Moreover, in this passage a hinge is disclosed which contradicts the separation of the casing (Mémoire de recours, page 8, last paragraph).

Finally, in the assembly of D1 the upper part is

integrated in a cover part 34 (Abdeckbauteil 34) which is not a part of the instrument panel; therefore, the last feature of the claim is also not disclosed in D1 (letter of 16 June 2009, page 3, second paragraph et seq).

2.3 The Board does not follow these arguments for the following reasons:

The casing for the components of the air-conditioner components in D1 is formed by the upper and the lower parts 6 and 7 which is the same situation as for the assembly according to claim 1 of the patent: the instrument panel provides the housing for the components of the air-conditioner, irrespectively whether an *additional* casing ("… ohne *zusätzliche* Bauteile …", column 1, line 47) for these components is foreseen or not.

D1 discloses explicitly that lower part 7 can be removed, therefore, a non-destructive way of separation of the casing according to D1 is disclosed. Thus, it is not relevant if an *optional* hinge would lead to a separation of the parts in the sense of claim 1 ("… Zu diesem Zweck kann … durch ein Scharnier … verbunden sein ...").
It is also not relevant if a skilled person would immediately see a trap instead of removing the whole lower part for filter maintenance as a better technical solution since the disclosure of the corresponding passage is clear for the purpose of the evaluation of novelty: the removal of the lower part is expressly mentioned. The wording "… als abnehmbares Bauteil ausgebildet …" (column 5, line 50) is an explicit disclosure as long as no contradiction occurs with the rest of the disclosure or with the general technical

knowledge. The Board cannot identify any contradiction - either with the disclosure of D1 nor with the general technical knowledge - which would detract from the clear meaning of this passage.

Furthermore, the Board considers the part 34 (Abdeckbauteil 34) as a part of the instrument panel: The description of D1 teaches that upper part 6 and cover member 34 are connected with a cover skin 35, column 4, lines 9 et seq. and later that the assembly of the instrument panel is completed with the connection of the cover skin, column 4, lines 36 et seq. From these passages it follows that the cover member cannot be seen as a separate part which is independent from the instrument panel but as an integral part of it.

2.4 Independent claim 12 refers only to the instrument panel-side part (Rp) of the air-conditioner as claimed in claim 1; independent claim 23 is only directed to the fire panel-side part (Fp).

Hence, the subject-matter of theses claims is broader than the subject-matter of independent claim 1. In this regard, the *separable casing* feature of claim 1 is not part of claims 12 or 23. The respective casing in these claims is "connectable" to the corresponding casing, reference is made to the claims, col. 26, line 4 and column 28, line 34. As a matter of course, the parts 6 and 7 in D1 are connectable to each other as well.

Consequently the subject-matter of independent claims 12 and 23 lack novelty as well, Art. 54(2) EPC 1973.

First Auxiliary Request

3. Claim 1 of the first auxiliary request differs from claim 1 of the main request in particular in the feature that the casing is separable "… for the maintainability (ease of maintenance) or the workability of mounting to the vehicle (ease of mounting to the vehicle), …".

This feature is however not able to render the subject-matter of claim 1 novel, Art. 54(2) EPC 1973.

3.1 The passage in D1, column 5, lines 48 to 54 describes the maintenance of the carbon filter of the air condition. For this purpose part 7 can be removed. As already discussed in connection with the main request, the removability of part 7 is a separation of the casing in the sense of claim 1.

3.2 The appellant argues that it is clear for a skilled person what is meant by "easy maintainability" or "easy workability". An engineer would know which technical features would be involved to in order to achieve this goal. Therefore, these features - even though not mentioned in the claim - restrict its subject-matter and thereby render its subject-matter novel. In contrast, the instrument panel of D1 would not be easy to maintain or to mount.

3.3 The Board is not convinced by the appellant’s argument. "Easy maintainability" or "easy workability" is merely a rather vague definition of a goal; the claim contains no further technical features which support this goal. Since document D1 discloses the same features as defined in claim 1 of the first auxiliary request, the instrument panel of D1 must achieve the same results, in particular "easy maintainability" and "easy workability".

Even from the patent specification the skilled person does not get further information on how to design an "easy maintainability" or "easy workability" going beyond the disclosure of document D1.

Second Auxiliary Request

4. The supplementary features of the second auxiliary request vis-à-vis the first auxiliary request define the assignment of air-conditioner components to the fire panel-side part and instrument panel-side part: "… and wherein a air mixing door (6) and the distributing means (M1, M2, M3) are assigned to the instrument panel-side part (Rp) and the cooling means (5) and the heating means (7) to the fire panel-side part (Fp)."
The additional feature is disclosed in D1 as well, consequently, the subject-matter of claim 1 of the second auxiliary request also lacks novelty, Art. 54(2) EPC 1973.

4.1 D1 discloses cooling and heating means assigned to the lower part (*unteres Bauteil 7*), corresponding to the fire panel-side part, fig. 2 and col 4, lines 29 et seq. The mixing door 6 of the invention corresponds to the *Mischklappe 25* in D1, which is in D1 as well as the doors 20 and 23 (*Defrosterklappe 20, Mitteldüsenklappe 23*) assigned to the upper part 6, equivalent to the instrument panel-side part.

4.2 The appellant states that D1 does not disclose an assignment of the cooling means to the lower part since it can be seen from figs. 2 and 3 that the cooler protrudes in the upper part 6. This means that no clear assignment can be made. According to the invention, the heating and cooling means are singly assigned to the

lower part and completely integrated in the lower part of the casing.

4.3 The Board recognises that there may be a difference between the figures of D1 and the contested patent with respect to the grade of integration of the cooling means. However, this difference is not represented by a corresponding feature in the claim. The expression *assigned to* has to be interpreted in a broad manner and does not imply a complete spacial location of the cooler within the confines of the fire panel-side part.

Third Auxiliary Request

5. The third auxiliary request differs from the second auxiliary request in

- the instrument panel module being arranged within a compartment R; and
- the fire panel, partitioning an engine room ER and the compartment R.

The subject-matter of claim 1 of the third auxiliary request is also not new with respect to D1, Art. 54(2) EPC 1973.

5.1 D1 discloses a fire panel ("Spritzwand 36") which is used in the same manner as defined in the contested claim, ref. is made to column 4, lines 36 et seq., fig. 2, part 36.

5.2 The appellant states that the "… fire panel partitioning the engine room and the compartment …"-feature clarifies that the heat exchanging devices (cooler and heater) are in the fire panel-side part casing (letter of 16 June 2009, page 7, point 5).

5.3 In this regard the Board notes that neither the fire panel, nor the compartment or the engine room are parts of the instrument panel module to which the claim is directed. Therefore, the supplementary features of the third auxiliary request are not suitable for restricting the subject-matter of claim 1 to achieve novelty.

Fourth Auxiliary Request

6. The subject-matter of claim 1 of the fourth auxiliary request has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed, Art. 123(2) EPC.

6.1 The Board is of the opinion that the feature "… the cooling means (5) and the heating means (7) are **entirely arranged** within the fire panel-side part …" is not originally disclosed. The figures of the application (e.g. fig. 1 - 4) depict a side view of the fire panel-side part. In this figure the heater and the evaporator are shown below a line representing the casing (1). However, all figures of the application show only a specific side view of the fire panel-side part lying in a specific plane. It cannot be taken from these figures that the cooling and heating means are entirely arranged within the casing since it might be possible that the heater or the evaporator protrude from the enclosing casing in a view which is not shown.

6.2 The appellant admits that the description is quiet about this feature and the proof of disclosure is only given by the figures. The applicant states that in all figures the heating and cooling means are always shown within the enclosing casing. For a skilled person this means that the cooler and the heater are always entirely

arranged within the casing; otherwise, a respective figure would have been included.

6.3 These arguments cannot be followed for the reasons as mentioned above.
A single two dimensional representation of a three dimensional fire panel-side part causes inevitably a loss of information which cannot be added without an infringement of Art. 123(2) EPC: this information cannot be derived form the originally filed documents in a clear and unambiguous way.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

D. Sauter S Crane