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Datasheet for the decision of 16 January 2012

Case Number: T 1450/08 - 3.2.01

Application Number: 00940908.7

Publication Number: 1266777

IPC: B60H 1/00

Language of the proceedings: EN

Title of invention:
Air conditioner for car and instrument panel module

Patentee:
Valeo Thermal Systems Japan Corporation

Opponents:
Ford-Werke GmbH
Behr GmbH & Co. KG

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)(3)
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):
EPC Art. 84

Keyword:
"Extended scope of protection (main request: yes)"
"Clarity (subsidiary requests 1 and 2: no)"
"Admissibility (subsidiary request 3: no)"
"Extended subject-matter (subsidiary request 4: yes)"

Decisions cited:
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Catchword:
-

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Case Number: T 1450/08 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 16 January 2012

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted 15 July 2008 revoking European patent No. 1266777 pursuant to Article 101(3)(b) EPC.**

Composition of the Board:

Chairman: G. Pricolo
Members: C. Narcisi
D. T. Keeling

Summary of Facts and Submissions

I. The European patent No. 1 266 777 was revoked by the decision of the Opposition Division posted on 15 July 2008. Against this decision an appeal was filed by the Patentee on 23 July 2008 and at the same time the appeal fee was paid. The statement of grounds of appeal was filed on 18 November 2008.

II. Oral proceedings took place on 16 January 2012. The Appellant (Patentee) requested that the decision be set aside and the patent be maintained in amended form in accordance with the main request, filed with letter of 16 December 2011, or subsidiary request 1, filed with letter of 10 December 2010, or subsidiary request 2, filed with letter of 10 December 2010, or subsidiary request 3, filed during the oral proceedings, or subsidiary request 4, filed with letter of 18 November 2008. The Respondents (Opponents 1 and 2) requested that the appeal be dismissed.

Claim 1 of the main request reads as follows:

"An automotive air conditioner comprising: a casing (1) having at least an air-introducing means for introducing air, air conditioner components including a cooling means, a heating means and an air-distributing means, characterized in that: a steering member support part space portion (2) is formed in said casing (1) for arranging therein a steering member support part (S) extending in a right-left direction of a vehicle, wherein said steering member support part space portion is a hole (TH) extending through said casing in the right-left direction of the vehicle, wherein said hole

(TH) is formed by a hollow cylindrical portion, and in that said casing is divided at least into an instrument panel-side part adjacent to an instrument panel and a fire panel-side part adjacent to a fire panel, wherein division into said instrument panel-side part and said fire panel-side part is effected using said steering member support part space portion as a boundary, the air cooled by the cooling means is divided by the hollow cylindrical portion into upper and lower streams."

Claim 1 of subsidiary request 1 reads as follows:

"An automotive air conditioner comprising: a casing (1) having 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 an air-distributing means for distributing the cooled air or the heated air, characterized in that: a steering member support part space portion (2) is formed in said casing (1) for arranging therein a steering member support part (S) extending in a right-left direction of a vehicle, wherein said steering member support part space portion is a hole (TH) extending through said casing in the right-left direction of the vehicle, wherein said hole (TH) is formed by a hollow cylindrical portion, and in that said casing is divided at least into an instrument panel-side part adjacent to an instrument panel and a fire panel-side part adjacent to a fire panel, wherein division into said instrument panel-side part and said

fire panel-side part is effected using said steering member support part space portion as a boundary, the air cooled by the cooling means is divided by the hollow cylindrical portion into upper and lower streams."

Claim 1 of subsidiary request 2 reads as follows:

"An automotive air conditioner to be received in a space defined by an instrument panel (IP), a cowl (Ca), a fire panel (Fi), and a floor panel (Fl), said fire panel (Fi) divides between an engine room (ER) and a compartment (R), while the floor panel (Fl) forms the floor of the compartment (R), said automotive air conditioner and the instrument panel (IP) are located within the compartment (R), said automotive air conditioner comprising:
a casing (1) having 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 an air-distributing means for distributing the cooled air or the heated air, characterized in that: a steering member support part space portion (2) is formed in said casing (1) for arranging therein a steering member support part (S) extending in a right-left direction of a vehicle, wherein said steering member support part space portion is a hole (TH) extending through said casing in the right-left direction of the vehicle, wherein said hole (TH) is formed by a hollow cylindrical portion, and in that said casing is divided at least into an instrument

panel-side part adjacent to an instrument panel and a fire panel-side part adjacent to a fire panel, wherein division into said instrument panel-side part and said fire panel-side part is effected using said steering member support part space portion as a boundary, the air cooled by the cooling means is divided by the hollow cylindrical portion into upper and lower streams."

Claim 1 of subsidiary request 3 reads as follows:

"An automotive vehicle comprising a fire panel (Fi) that divides between an engine room (ER) and a compartment room (R), an automotive air conditioner, an instrument panel and a steering member support part (S) having a circular section extending in a right-left direction of the vehicle are located within the compartment (R), said automotive air conditioner comprising:
a casing (1) having at least an 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, air-distributing means for distributing the cooled air or the heated air characterized in that a steering member support part space portion (2) is formed in said casing (1), for arranging therein a steering member support part (S) extending n a right-left direction of the vehicle, wherein said steering member support part space portion is a hole (TH) extending through said casing in the right-left direction of the vehicle, wherein said hole

(TH) is formed by a hollow cylindrical portion of said casing
and in that said casing is divided at least into an instrument panel-side part adjacent to the instrument panel and a fire panel-side part adjacent to the fire panel,
wherein air conditioner components including the cooling means (5), the heating means (7), and the air-distributing means (M1,M2) are systematically classified into groups, and wherein ones of said air conditioner components belonging to a first group are assigned to said instrument panel-side part, and ones of said air conditioner components belonging to a second group are assigned to said fire panel-side part, wherein said ones belonging to said first group is said air distributing means (M1,M2), wherein said one belonging to said second group are said cooling means (5) and said heating means (7), wherein said air-distributing means comprises a mode door for opening and closing an air outlet opening of said casing and a drive mechanism for driving said mode door, and wherein said cooling means (5) and said heating means (7) are both heat exchangers".

Claim 1 of subsidiary request 4 reads as follows:

"An automotive vehicle comprising a fire panel (Fi) that divides between an engine room (ER) and a compartment (R), an automotive air conditioner, an instrument panel and a steering member support part (S) extending in a right-left direction of the vehicle are located within the compartment (R), said automotive air conditioner comprising: a casing (1) having at least an air introducing means for introducing air,

characterized in that said casing is divided at least into an instrument panel-side part adjacent to the instrument panel and a fire panel-side part adjacent to the fire panel, said air conditioner comprises a rigid portion formed integrally with said casing (1) and forming part of the steering member support part, said rigid portion in the form of a meshed hollow cylinder made of a synthetic resin is integrally formed with the fire panel-side part of the casing."

III. The Appellant's arguments may be summarized as follows:

The appeal is admissible since granted claim 1 included the wording "An automotive air conditioner comprising: a casing 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" which has been amended in all the requests filed with the statement of grounds of appeal by removing the term "at least one of", which gave rise to the objections based on Art. 83 EPC leading to the revocation of the patent according to the decision of the Opposition Division (see Reasons, 12., 12.1). Moreover, following a suggestion made in said decision (see Reasons, 12.2), the claims presenting the deficiencies mentioned in the decision were amended, as submitted with the statement of grounds of appeal, such as to recite "a casing having at least an air introducing means for introducing air", wherein "blowing means", "heating

means", "cooling means" and "air distributing means" were removed from claim 1 and included into the dependent claims (see for instance claim 1 of subsidiary request 2). Consequently there clearly is a direct causal relation between the grounds for revocation indicated in the decision of the Opposition Division and the requests as filed with the statement of grounds of appeal. Thus the appeal is admissible.

It is acknowledged that in the Board's opinion the subject-matter of claim 1 of the main request infringes upon Art. 123(3) EPC, in particular the cancellation of the wordings "for cooling the air introduced by said blowing means from said air-introducing means" and "for heating the air introduced by said blowing means from said air-introducing means" whereby the "blowing means" were omitted. This omission appears to extend the scope of protection beyond that afforded by granted claim 1.

Claim 1 according to the subsidiary request 1 meets the requirements of Art. 123(2) EPC and Art. 84 EPC. The replacement of the term "steering member", employed throughout all the claims and the description of the application as filed (see published patent application, hereinafter designated as EP-A), by the term "steering member support part" in the granted patent (see published patent, hereinafter designated as EP-B) does not go beyond the content of the application as filed. This amendment is exclusively based on the specific technical purpose and function fulfilled by the mentioned construction element as it emerges from the disclosure of the invention as a whole.
The features of claim 1 reciting (i) "wherein division into said instrument panel-side part and said fire

panel-side part is effected using said steering member support part space portion as a boundary" are clear (Art. 84 EPC). In particular, these features state that the housing of the air conditioner is divided into two parts and that the "steering member support part space portion" is located on the boundary formed between said two parts of the housing. Obviously, this feature should not be understood as meaning that the boundary itself is defined only by said steering member support part space portion. Moreover, the above feature is based on granted claim 13 and according to the case law of the Boards of appeal clarity objections to granted claims should not be admitted. Similarly, the feature stating (ii) "the air cooled by the cooling means is divided by the hollow cylindrical portion into upper and lower streams" is clear enough, in view of the fact that both alternatives implying the two air flows remaining divided or not, downstream of the hollow cylindrical portion, are covered by said feature. The same arguments hold true for subsidiary request 2.

Claim 1 of subsidiary request 3 seeks to define the steering member support part in a more precise manner based on the disclosure of EP-A and in particular of the figures, in order to comply with the requirements of Art. 123(2) EPC. Further, through the cancellation of the aforesaid feature (i) the mentioned objections on the grounds of Art. 84 EPC are overcome. Thus this request meets the criteria for admissibility.

Claim 1 of the subsidiary request 4 complies with Art. 123(2) and (3) EPC as well as with Articles 83 EPC and 84 EPC. In the first place, the omission of "blowing means" is justified by the fact that this

claim is based on independent claim 37 as originally filed (see EP-A) and claim 35 as granted (see EP-B), in which the presence of "blowing means" is purely optional and is moreover not necessary, for this claim is in respect of a different aspect of the invention. The remaining features are based on paragraph [0173] of EP-B (see paragraph [0179] of EP-A) relating to the embodiment of figures 23 and 24. The issue concerning the replacement of "steering member" by steering member support part" has been already addressed previously. As to the objections based on Art. 123(3) EPC these are unfounded, since given that claim 1 is directed to "An automotive vehicle comprising.. an automotive air conditioner" the scope of protection has been further limited. Finally, the objections under Article 83, relating to the omission of "blowing means", and under Article 84 EPC, relating to the "rigid portion in the form of a meshed hollow cylinder made of a synthetic resin ..integrally formed with the fire panel-side part of the casing" are also unfounded. In effect, it was already set out above that the "blowing means" play no role and do not enter into the specific aspect of the invention involved by granted claim 35 on which claim 1 is based, therefore no necessity arises for the inclusion of said "blowing means". Similarly, a synthetic resin has sufficient strength for being used in a structure including a casing integrally formed with said rigid portion.

IV. The Respondents' arguments may be summarized as follows:

The appeal is inadmissible since the reasoning included in the statement of grounds of appeal is insufficient. The reasons for specific amendments to the independent

claims were scarcely set out, if at all, and moreover the fundamental deficiency relating to the insufficiency of disclosure (Art. 83 EPC) leading to revocation of the patent was not addressed at all. Indeed, claim 1 of the main request as filed with the statement of grounds of appeal still does not comprise "blowing means", although this was indicated in the decision as the origin of the mentioned deficiency.

Claim 1 of subsidiary request 1 contravenes the requirements of Article 123(2) EPC since the replacement of "steering member" by "steering member support part" is not supported by the disclosure of the application as filed (see EP-A). Likewise, no basis is to be found in EP-A for the omission of "blowing means" in claim 1, for all the disclosed embodiments include this feature. Claim 1 also does not comply with Article 84 EPC since the aforementioned features (i) and (ii) are unclear. Feature (i) lacks any specification as to the structural and constructional features of said "support part space portion" which according to the claim is merely an empty space bearing no relation to the outer walls of the casing and of said "instrument panel"- and "fire panel-side parts". Finally, it remains unclear how a division of the air flow can occur by means of said "hollow cylindrical portion" and what is meant by "upper and lower streams" in the context of claim 1.
Analogous objections apply to claim 1 of subsidiary request 2.

Claim 1 of subsidiary request 3 is inadmissible since this request was submitted only during the oral proceedings, without any justification, and therefore

it has to be considered as late filed. Furthermore, it is prima facie by no means apparent that the amendments made to claim 1 overcome the objections under Article 123(2) EPC, insofar as the introduced amendments seemingly do not provide a definition of "steering member support part", the term itself having no support in EP-A.

In claim 1 of subsidiary request 4 the replacement of "steering member" with "steering member support part", as well as the omission of "blowing means" infringe upon Article 123 (2) EPC. Similarly, the amendments to claim 1 constitute only part of the specific embodiment disclosed in EP-A (see paragraph [0179]), this separation being arbitrary and likewise infringing upon Article 123 (2) EPC. Finally, concerning the feature "rigid portion in the form of a meshed hollow cylinder made of a synthetic resin is integrally formed with the fire panel-side part of the casing" it is unclear how the meshed hollow cylinder can form a seal for the air flow in the casing.

Reasons for the Decision

1. The appeal is admissible since in the view of the Board a causal link can be established between the reasons given in the decision (Reasons, 12, 12.1) and the requests submitted with the statement of grounds of appeal. In claim 1 of the main request, for instance, the term "at least one of" has been removed and the subsequent features, including a list of components of the air conditioner, have been amended, both these aspects being identified in the decision (Reasons, 12,

12.1) as being the origin of the non-compliance with Article 83 EPC. There is no statement in the contested decision, as alleged by the Respondents, to the extent that the "blowing means" should be regarded as an indispensable feature of the claim. Quite to the contrary and strangely enough, the decision apparently suggests (Reasons, 12.2) that an appropriately worded claim could include only "air introducing means" and could omit "blowing means", "cooling means", "heating means" and "air-distributing means". Be that as it may, the inclusion of "blowing means" in the claim does not emerge by any means as indispensable from the contested decision and the amendments filed with the statement of grounds bear an evident link to the reasoning of the contested decision in accordance with Article 108, third sentence, EPC.

2. The scope of protection as implied by claim 1 of the main request extends beyond that afforded by granted claim 1. Indeed, granted claim 1 includes the features "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" whilst in present claim 1 merely "heating means" and "cooling means" are included, thereby omitting "blowing means" which were clearly linked to both aforementioned features. Hence, the scope of protection is extended contrary to Article 123(3) EPC.

3. Claim 1 of subsidiary request 1 lacks clarity (Art. 84 EPC). In the first place it is noted that an objection based on Article 84 is admissible in this case, given that the claim was amended by introducing features

taken from the description of EP-B (see for instance "wherein said hole is formed by a hollow cylindrical portion") and which additionally are directly related to said contested features (i) and (ii) (see section III above). The Board concurs with the opinion of the Respondents, in that it remains unclear how the "support part space portion" can form the boundary between said "instrument panel-side part" and said "fire panel-side part", for the "support part space portion" is no more than a "hole" (see claim 1) or an empty space portion. The further specification that this "hole" has a cylindrical shape does not imply any structural or constructional elements which bear a link or any kind of connection to the outer walls of the casing, thereby rendering unclear in which manner the boundary is formed. In much the same way the aforesaid feature (ii) is ambiguous, since it does not define a clear technical teaching. More specifically it would be impossible for the skilled person to derive from claim 1 how a separation into a lower and an upper air stream is achieved since a necessary prerequisite would be that the disposition of the hollow cylindrical portion within the casing and with regard to its outer walls and to the boundary of said two "side-portions" be clear (see feature i), such that at the very least an air stream delimited by an air flow channel be defined. However, features (ii) and (i) evidently fail to do so. In addition a "hollow cylindrical portion" does not define an upper and a lower direction nor can it lead to division of an air stream into two distinct portions.

For the same reasons, as it also includes said features (i) and (ii), claim 1 according to the second subsidiary request contravenes Article 84 EPC.

4. The subsidiary request 3, filed during the oral proceedings, was held to be inadmissible by the Board since the Appellant did not provide any justification as to why this request was filed at such a late stage of the proceedings and since prima facie the subject-matter of claim 1 of this request did not overcome the objections based on Article 123(2) EPC. Indeed, the term "steering member support part" is a general and broad definition which encompasses any kind of support part for the steering member. The further amendments introduced into the claim do not appear to succeed in further defining said term in an unambiguous manner which is at the same time disclosed in the application as originally filed (EP-A). Hence the Board exercised its discretionary power pursuant to Article 13(1) RPBA (Rules of procedure of the Boards of Appeal) and decided not to admit the subsidiary request 3 to the proceedings.

5. The subject-matter of claim 1 of the subsidiary request 4 infringes Article 123 (2) EPC. In particular the feature "said rigid portion in the form of a meshed hollow cylinder made of a synthetic resin is integrally formed with the fire panel-side part of the casing" is literally based on lines 33-35 in paragraph [0179] of EP-A. Nevertheless said feature was isolated in an arbitrary way from the context of the embodiment described in said paragraph. Indeed, the further features as set out in lines 42-45 of said paragraph constitute an integral part of said "rigid portion" according to this embodiment. The arbitrary extraction of a part of said features leads to a generalization of the content of the application as originally filed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner G. Pricolo