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**Datasheet for the decision
of 7 February 2014**

Case Number: T 0761/10 - 3.2.01

Application Number: 02023717.8

Publication Number: 1306243

IPC: B60H1/00

Language of the proceedings: EN

Title of invention:

Air conditioner for vehicle and method for attaching the same

Patent Proprietor:

Japan Climate Systems Corporation

Opponent:

Behr GmbH & Co. KG

Headword:

Relevant legal provisions:

EPC Art. 100(c), 123(2)

RPBA Art. 13(1)

EPC 1973 Art. 56

Keyword:

Grounds for opposition - added subject-matter (yes) -
intermediate generalisation

Inventive step - auxiliary request I (no)

Late-filed request - admitted (no) -

auxiliary requests Ia and V

Amendments - added subject-matter (yes) - auxiliary request IV

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0761/10 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 7 February 2014

Appellant: Behr GmbH & Co. KG
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 18 March 2010
rejecting the opposition filed against European
patent No. 1306243 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: H. Geuss
D. T. Keeling

Summary of Facts and Submissions

- I. The appeal of the opponent is directed against the decision of the opposition division posted on 18 March 2010 to reject the opposition filed against European patent No. 1306243.

The opposition division decided inter alia that the subject-matter of claim 1 as granted did not go beyond the subject-matter of the application as originally filed. The opposition division decided furthermore that the invention as defined in claim 1 as granted was new in view of document

DE 100 60 105 A1 (**D5**)

and that it was not obvious to a person skilled in the art having regard to D5, combined with the skilled person's general technical knowledge.

- II. Oral proceedings were held on 7 February 2014.

The appellant (opponent) requested that the decision under appeal be set aside and that the European patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed and the patent maintained as granted (main request) or, in the alternative, that the patent be maintained on the basis of the claims according to auxiliary request I or Ia filed during the oral proceedings or auxiliary request IV filed with letter of 16 November 2009 or auxiliary request V filed during the oral proceedings.

Auxiliary requests I, II, III and V filed with letter of 16 November 2009 were withdrawn.

III. Claim 1 as granted reads as follows:

An air conditioner for a vehicle, comprising: an air conditioning unit (4) for providing conditioned air by a heat exchanger; a blower unit (3) for supplying an air to be conditioned to said air conditioning unit;

an instrument panel member (7) for reinforcing an instrument panel (2) of the vehicle that extends in the vehicle width direction when mounted, wherein said both units are attached to the instrument panel member so that the units are disposed side by side in the instrument panel when mounted;

a first connecting portion (46) disposed at the upper portion of said air conditioning unit, that is to be attached to said instrument panel member;

a second connecting portion (58) disposed at the upper portion of said blower unit, that is to be attached to said instrument panel member;

an air intake (21) for introducing the air from the blower unit into the air conditioning unit; and

a connecting portion (60, 61) for interconnecting said both units, which is disposed near said air intake (21).

IV. Claim 1 according to auxiliary request I reads as follows, (difference in respect to claim 1 as granted in bold):

An air conditioner for a vehicle, comprising: an air conditioning unit (4) for providing conditioned air by a heat exchanger; a blower unit (3) for supplying an air to be conditioned to said air conditioning unit;

an instrument panel member (7) for reinforcing an instrument panel (2) of the vehicle that extends in the vehicle width direction when mounted, wherein said both units are attached to the instrument panel member so that the units are disposed side by side in the instrument panel when mounted;

a first connecting portion (46) disposed at the upper portion of said air conditioning unit, that is to be attached to said instrument panel member;

a second connecting portion (58) disposed at the upper portion of said blower unit, that is to be attached to said instrument panel member;

an air intake (21) for introducing the air from the blower unit into the air conditioning unit, **the air intake (21) being provided at a frontside of the vehicle when mounted;** and

a connecting portion (60, 61) for interconnecting said both units, which is disposed near said air intake (21), **wherein said connecting portion (60,61) is disposed at the both of said air conditioning unit and blower unit, and the both units are connected by the connecting portion.**

- V. Claim 1 according to auxiliary request Ia reads as follows, (difference in respect to claim 1 of auxiliary request I in bold):

An air conditioner for a vehicle, comprising:
an air conditioning unit (4) for providing conditioned air by a heat exchanger; a blower unit (3) for supplying an air to be conditioned to said air conditioning unit;

an instrument panel member (7) for reinforcing an instrument panel (2) of the vehicle that extends in the vehicle width direction when mounted, wherein said both units are attached to the instrument panel member so that the units are disposed side by side in the instrument panel when mounted;

a first connecting portion (46) disposed at the upper portion of said air conditioning unit, that is to be attached to said instrument panel member,

a second connecting portion (58) disposed at the upper portion of said blower unit, that is to be attached to said instrument panel member **at a position of the instrument panel member where it extends in a vehicle width direction from a left side wall to a right side wall of the instrument panel;**

an air intake (21) for introducing the air from the blower unit into the air conditioning unit, the air intake (21) being provided at a frontside of the vehicle when mounted; and

a connecting portion (60, 61) for interconnecting said both units, which is disposed near said air intake (21), wherein said connecting portion (60,61) is disposed at the both of said air conditioning unit and blower unit, and the both units are connected by the connecting portion.

VI. Claim 1 according to auxiliary request IV reads as follows, (difference in respect to claim 1 as granted in bold):

An air conditioner for a vehicle, comprising: an air conditioning unit (4) for providing conditioned air by a heat exchanger; a blower unit (3) for supplying an air to be conditioned to said air conditioning unit;

an instrument panel member (7) for reinforcing an instrument panel (2) of the vehicle that extends in the vehicle width direction when mounted, wherein said both units are attached to the instrument panel member so that the units are disposed side by side in the instrument panel when mounted;

a first connecting portion (46) disposed at the upper portion of said air conditioning unit, that is to be attached to said instrument panel member;

a second connecting portion (58) disposed at the upper portion of said blower unit, that is to be attached to said instrument panel member;

an air intake (21) for introducing the air from the blower unit into the air conditioning unit,
an air vent of said blower unit and the air intake (21) of said air conditioning unit being coupled; wherein said air intake (21) for introducing the air from the blower unit into the air conditioning unit is provided at a frontside of the vehicle when mounted; and

a connecting portion (60, 61) for interconnecting said both units, which is disposed near said air intake (21), **wherein said connecting portion (60,61) is disposed at the both of said air conditioning unit and**

blower unit, and the both units are connected by the connecting portion, and

wherein the blower unit (3) can be attached temporarily to the air conditioning unit (4) by the connecting portion, such that it can be fixed to said instrument panel member without any support of the blower unit by workers.

VII. Claim 1 according to auxiliary request V reads as follows:

A method for attaching an air conditioner to an instrument panel (2) for a vehicle including an air conditioning unit (4) for providing conditioned air by a heat exchanger and a blower unit (3) for supplying an air to be conditioned to said air conditioning unit, the air conditioner being disposed in the instrument panel (2) of the vehicle when mounted, the method comprising:

a step of sub-assembly in which respective upper portions of said air conditioning unit and said blower unit are attached to an instrument panel member (7) that extends in the vehicle width direction and is disposed in said instrument panel, out side of the vehicle; and a step of vehicle body assembly in which said sub-assembled instrument panel is carried in a vehicle body and attached to the vehicle body after said step of sub-assembly, wherein said step of sub-assembly comprises: a step of unit attachment in which said air conditioning unit and said blower unit are respectively attached to said instrument panel member;

a step of coupling in which an air vent of said blower unit and an air intake (21) of said air conditioning

unit are coupled during or after said step of unit attachment; and

a step of connection in which connecting portions (45, 68) disposed respectively at said air conditioning unit and said blower unit are interconnected during or after said step of unit attachment,

wherein said step of unit attachment is a step in which at first said air conditioning unit is attached to said instrument panel member, and then said blower unit is attached to said instrument panel member, and said step of connection is a step in which when said blower unit is attached to said instrument panel member in said step of unit attachment, said connecting portion (68) of the blower unit is connected to said connecting portion (45) of the air conditioning unit.

VIII. The appellant's submissions may be summarized as follows:

The subject-matter of claim 1 does not go beyond the content of the application as originally filed. In particular, the feature "an air intake (21) for introducing the air from said blower unit into said air conditioning unit" (feature h; see the structuring of features according to the decision of the opposition division, cf. page 2) is not in a functional or structural connection to the specification of the position of the air intake "at a front side of the vehicle" as defined in claim 12 as originally filed too. Therefore, it is not necessary that "at a front side of the vehicle" specifies the position of the air intake in claim 1. Furthermore, a skilled person would consider it as irrelevant where the air intake is.

Claim 1 of auxiliary request I further defines inter alia the feature that "the air intake (21) is being provided at a frontside of the vehicle when mounted". The subject-matter of claim 1 of auxiliary request I is new and inventive. The subject-matter of claim 1 differs from the air conditioning unit according to document D5 by the features that a connecting portion (58) is disposed at the upper portion of the blower unit (feature g) and that a connecting portion (60,61) for interconnecting the blower unit and the air conditioning unit is disposed near the air intake (feature i).

The connecting portion (60,61) according to feature i stabilizes the blower unit and the air conditioning unit during the manufacturing process. Thereby the blower unit and the air conditioning unit are temporarily attached to each other before mounting to the instrument panel member, such that the whole sub-assembly can be fixed to the instrument panel member without any mechanical support of the blower unit by workers.

Furthermore, according to D5, the blower unit is not mounted to the instrument panel member but to the sidewalls, which connect the instrument panel member to the vehicle body. As the instrument panel member is defined to extend in vehicle width direction, the sidewalls, extending in height direction, do not belong to the instrument panel member.

The problem to be solved by features i and g is to simplify the mounting process of the whole air conditioning assembly.

There is no reason for the skilled person to provide the connecting portion of the blower unit in the upper region of the blower unit. On the contrary, since the

heavy electrical motor is arranged at the bottom of the blower housing, a fixture of the blower unit at the upper portion cannot be realized without significant technical intervention, because the blower housing would have to be built completely differently. Due to the high weight of the electrical motor of the blower unit, the motor is typically screwed with the vehicle body.

The wording of claim 1 according to auxiliary request Ia clarifies that the blower unit is mounted at the part of the instrument panel member which extends in vehicle width direction. Although this feature is not literally taken from the description, it can be derived from paragraph [0096] and furthermore it is clearly disclosed in the figures of the application as originally filed. For this reason, the amendments made are clearly allowable and therefore the auxiliary request Ia should be admitted into the proceedings.

Claim 1 of auxiliary request IV defines inter alia the supplementary feature that the "blower unit (3) can be attached temporarily to the air conditioning unit (4) by the connecting portion, such that it can be fixed to said instrument panel member without any support of the blower unit by workers" which is disclosed in paragraph [0118] of the application as originally filed. In particular, in lines 57 et seq. it is explained that the blower unit is temporarily attached to the air conditioning unit and that the blower can be fixed at a predetermined position without any support of the blower unit by workers.

In claim 1 of auxiliary request V the feature defining that *the blower unit can be attached temporarily to the air conditioning unit by the connecting portion, such*

that it can be fixed to said instrument panel member without any support of the blower unit by workers has been deleted. Consequently, auxiliary request V responds to the objections of the Board in terms of claim 1 of auxiliary request IV and has therefore to be admitted into the proceedings, in particular, since resulting claim 1 of the auxiliary request V is a combination of claims 31 and 32 as granted.

IX. The respondent replied to the arguments as follows:

The subject-matter of claim 1 goes beyond the content of the application as originally filed. Claim 1 as granted is a combination of claims 1 and 12 as originally filed, whereby not all features of original claim 12 have been included in claim 1 in suit. In particular, the feature, that "an air intake (21) for introducing the air from said blower unit into said air conditioning unit" (feature h; structuring of features according to the decision of the opposition division, cf. page 2) is missing. Since this feature is structurally linked to the features added to claim 1, its omission infringes Article 123(2) EPC.

The sole difference between claim 1 of auxiliary request I and the air conditioning unit according to D5 is that the connecting portion (58) is disposed at the upper portion of the blower unit (cf. feature g). With respect to feature i, a connecting portion connecting the blower unit with the air conditioning unit is disclosed in D5, cf. the figures which represent both units in a connected state. Furthermore, the sidewalls belong to the instrument panel member, since the instrument panel member is fixed by the side walls to the vehicle body. The fact that the sidewalls extend in vertical direction is not contrary to the definition of

the instrument panel member in the claim, which specified a horizontal extension in the vehicle width direction. The main direction of extension of the instrument panel member is the vehicle width direction. Consequently this feature is also disclosed in D5.

The problem to be solved with feature g (the connecting portion (58) is disposed at the upper portion of the blower unit) is merely an alternative to the design as shown in D5 rather than a simplification of the mounting process.

This alternative does not involve an inventive step with regard to the general knowledge of a person skilled in the art. Even if the electrical motor is at the bottom of the blower housing, it would be a normal task for a skilled person, to consider alternatives to the connecting portion as shown in D5. In particular, it is unlikely in D5 that the motor of the blower is directly fixed to the sidewalls - as asserted by the patent proprietor, as such a design would forward the transfer of vibrations of the blower motor to the vehicle body.

Auxiliary request Ia should not be admitted into the proceedings. In particular, the added feature that the blower unit ... is attached ... "at a position of the instrument panel member where it extends in a vehicle width direction from a left side wall to a right side wall of the instrument panel" is not originally disclosed. The figures of D5 show that the blower unit is in the left half portion of the instrument panel member. However, the added feature leaves open at which position of the instrument panel member the blower unit is mounted.

The subject-matter of claim 1 of auxiliary request IV goes beyond the content of the application as originally filed since the additional feature that the "blower unit (3) can be attached temporarily to the air conditioning unit (4) by the connecting portion, such that it can be fixed to said instrument panel member without any support of the blower unit by workers" as such is not originally disclosed. Paragraph [0118] of the application as originally filed in which the function of the connecting portion is described, explains the mounting process in a very specific manner, namely that ... "the blower unit 3 can be fixed at a predetermined position by applying nuts to the bolts 51 and 59 respectively, without any support of the blower unit 3 by workers". However, nuts and bolts are functional features which are in a close connection to the feature in suit and which are missing in claim 1.

Auxiliary request V should not be admitted into the proceedings. Claim 1 of auxiliary request V, filed during the oral proceedings, differs from claim 1 of auxiliary request V, filed with letter of 16 November 2009, by the deletion of the "worker"-feature, namely that that the "blower unit (3) can be attached temporarily to the air conditioning unit (4) by the connecting portion, such that it can be fixed to said instrument panel member without any support of the blower unit by workers". However, according to the patent proprietor's arguments in opposition proceedings, this feature has been introduced in order to ensure that the combination of features of claims 31 and 32 involves an inventive step. Therefore, it is not apparent why the combination of only the features of claims 31 and 32 as originally filed would lead to an inventive subject-matter of present claim 1.

Reasons for the Decision

1. The appeal is admissible.
2. The subject-matter of the patent in suit extends beyond the content of the application as originally filed (cf. Article 100(c) EPC).

- 2.1 Claim 1 as granted is a combination of the features of claim 1 as originally filed and selected features of claim 12 as originally filed. The features taken from claim 12 as originally filed are "an air intake (21) for introducing the air from said blower unit into said air conditioning unit" (feature h; structuring of features according to the decision of the opposition division, cf. page 2) and that the connecting portion for interconnecting said both units, "is disposed near the air intake (21)" (part of feature i).

However, with respect to the feature relating to the "air intake", claim 12 as originally filed further defines that "the air intake for introducing the air from the blower unit into the air conditioning unit is provided at a front side of the vehicle".

The feature "at a front side of the vehicle" defines the position of the air intake and is therefore a structural feature of the air intake.

- 2.2 The respondent argues that there is no close functional or structural relationship between the feature that the air intake is "at a front side of the vehicle" and the other features of claim 12 as originally filed, thus it is not necessary to include this feature in the claim.

Finally, it is argued that a skilled person would consider it as irrelevant where the air intake is positioned.

- 2.3 The Board holds that the fact that the feature "at a front side of the vehicle" is missing, leads to a non-disclosed subject-matter in that it is an intermediate generalisation of the subject-matter defined by claim 12 as originally filed. Since claim 12 as originally filed defines that the connecting portion is disposed near the air intake and that the air intake is provided at a front side of the vehicle, it follows that claim 12 as originally filed discloses that the connecting portion is disposed near the front side of the vehicle.

Accordingly, it is clear that there is a structural relationship between the position of the air intake at a front side of the vehicle and the other features of claim 1, in particular the feature relating to the connecting portion. In fact, by introducing in claim 1 the features of claim 12 relating to the air intake and to the connection portion between the air intake and the blower unit without specifying that the air intake is at a front side of the vehicle, as originally disclosed, claim 1 includes new technical information not disclosed in the application as filed, namely that the connecting portion may well be disposed at any position that is not near the front side of the vehicle.

3. Claim 1 of auxiliary request I differs from claim 1 as granted by an amendment in feature h ("the air intake (21) being provided at a front side of the vehicle when mounted") and a further amendment in feature h ("wherein said connecting portion (60,61) is disposed

at both of said air conditioning unit and blower unit, and the both units are interconnected by the connecting portion").

The invention, as defined in claim I of auxiliary request I, filed during the oral proceedings, is not considered to involve an inventive step, having regard to document D5 in combination with the general knowledge of a person skilled in the art (cf. Article 56 EPC 1973).

- 3.1 It is undisputed between the parties that features a, b, c, d, e, f and h of claim 1 are disclosed in document D5.

A subject of discussion was whether the following features g and i are disclosed in D5:

- a connecting portion (58) disposed at the upper portion of said blower unit, which is to be attached to said instrument panel member (**feature g**); and
- a connecting portion (60,61) for interconnecting both units, which is disposed near said air intake (**feature i**).

- 3.1.1 The appellant submits that the connecting portion according to **feature i**) is implicitly disclosed in D5. D5 shows the air conditioning unit and the blower unit as a completely assembled device (cf. the figures). Thus, both units are interconnected according to the definition of the claim.

- 3.1.2 The Board does not follow the respondent's argument that a connecting portion in accordance with the claim has to be interpreted as a connecting portion which is capable of supporting the mounting process by

mechanically stabilizing the object during the sub-assembly process of blower unit and air conditioning unit in such a way that it can be fixed to the instrument panel member without any support of the blower unit by workers.

The reason is that claim 1 does not define technical features that allow a mechanical stabilisation of the blower unit while mounting the sub-assembly to the vehicle. So it remains open in the claim by which means the temporary fixing of the blower unit to the air conditioning unit is achieved. In particular it is not defined in the claim that blower unit and air conditioning unit are connected together outside the vehicle and mounted as a sub-assembly to the instrument panel member. Thus, since D5 shows an assembly in which a blower unit and an air conditioning unit are connected together, a connecting portion according to the meaning of feature i) of claim 1 is disclosed.

3.1.3 The respondent argues with respect to feature g) that in D5 the blower unit is not mounted on the instrument panel member but on the side walls supporting the instrument panel member. According to the definition of claim 1 the instrument panel member extends in the vehicle in width direction when mounted. However, the side walls 44 and 45 do not extend in vehicle width direction, but in vertical direction, consequently the side walls 45 and 44 do not belong to the instrument panel member.

3.1.4 According to the description of D5, the side walls 44, 45 are attached to the instrument panel member by melting or welding and serve to fix the instrument panel member 40 to the vehicle body, cf. D5, column 7, lines 26 to 47. Thus, the Board is of the opinion that

side walls 44 and 45 are integral parts of part 40, which serves to reinforce the instrument panel, i.e. the side walls are integral parts of the instrument panel member. Also in the disputed patent, the instrument panel member can provide the stability effect only if it is connected with the structure of the vehicle body.

3.1.5 Consequently, the sole difference between the air conditioner according to D5 and the subject-matter of claim 1 of auxiliary request I is that the second connecting portion is disposed at the upper portion of the blower unit (first part of feature g).

3.2 The problem to be solved by feature g) as defined by the respondent is to simplify the mounting process of the whole air conditioner.

The Board considers the problem to be solved as providing an alternative fixation of the blower unit to the instrument panel member. The respondent's view, that the problem solved is to simplify the mounting process of the air conditioner cannot be followed. The Board recognizes that the manufacturing process described in the description of the disputed patent could lead to a simplified mounting process. However, the claim does not define technical features that have the direct technical effect of simplifying the mounting process (cf. above, 3.1.2).

3.2.1 During the oral proceedings, the respondent submitted that the provision of a connecting portion at an upper portion rather than at a lower portion of the blower unit as in D5 would be advantageous as the instrument panel member and the blower unit could be connected, during the mounting process, in an upside-down

configuration. Since the respondent failed to explain what advantages would be provided by such configuration, this submission must be regarded as unsubstantiated.

3.3 The Board does not follow the respondent's view that a skilled person would not consider disposing the connecting portion at the upper portion of the blower unit.

3.3.1 It would be obvious for the skilled person to consider other manners of attaching the blower unit 31 to the instrument panel member 40 of D5, because the panel member of D5 would, in practice, have to be adapted to meet given vehicle specifications, which, in view of in particular space and rigidity constraints, might well require a different configuration of the side wall 44 and its attachment to the blower unit 31. Considering that there is no reason for the skilled person to assume that a connection of the instrument panel member to the blower unit at a portion thereof other than the lower portion as shown in D5 (Fig. 1) would not be suitable, the skilled person would regard it as a normal design option to provide the connection also at such other portions, e.g. at the upper portion of the blower unit. During the oral proceedings, the respondent referred to the passage on column 10, lines 41 to 50 of document D5, according to which the known device effectively suppresses vibrations transmitted to the steering mechanism, in particular because the side wall 44 is firmly attached to the car body. However, when modifying the connection of side wall 44 to the blower unit 31, such as to connect it at an upper portion thereof, the side wall 44 would still be firmly attached to the car body, thereby suppressing the transmission of vibrations to the steering mechanism.

- 3.4 Even if the Board were to share the respondent's view that the motor is located at the bottom of the blower unit and a fixing to the upper portion would require a redesign of the blower housing for stability reasons, the resulting amendments to the housing of the blower unit in order to solve the technical problem are clearly predictable for the skilled person and technically feasible without any inventive step. In this regard, it is irrelevant whether or not the motor is directly screwed to the vehicle body, since such attachment is also possible for a connecting portion in the upper half of the blower unit without a fundamental change in the design of the blower housing.
4. Auxiliary request Ia, filed during the oral proceedings of the Board of Appeal is not admitted into the proceedings (cf. Article 13(1) RPBA).
- 4.1 According to Article 13(1) RPBA, any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject matter submitted, the current state of the proceedings and the need for procedural economy.
- 4.2 Claim 1 of auxiliary request Ia differs from claim 1 of auxiliary request I by the supplementary feature that the blower unit is attached to the instrument panel member "at a position of the instrument panel member where it extends in a vehicle width direction from a left side wall to a right side wall of the instrument panel". The respondent submits that this feature is disclosed in paragraph [0096] and the drawings of the original application.

- 4.3 The Board is of the opinion that this amendment raises complex questions which cannot be appropriately answered at this state of the proceedings. In particular, the inserted feature is not literally revealed from the description so that questions of clarity (Article 84 EPC) and added subject-matter (Article 123(2) EPC) would have to be discussed.
5. Claim 1 of auxiliary request IV defines subject-matter which extends beyond the content of the application as originally filed (cf. Article 123(2) EPC).
- 5.1 Claim 1 defines additionally amongst other things that "the blower unit (3) can be attached temporarily to the air conditioning unit (4) by the connecting portion, such that it can be fixed to said instrument panel member without any support of the blower unit by workers".
- 5.2 The respondent submits that this feature is disclosed in paragraph [0118] of the description of the application as filed (published version), in particular, in lines 54 et seq.

The Board is of the opinion that the passage of paragraph [0118] explains the mounting process in a very specific manner, namely that ... "the blower unit 3 can be fixed at a predetermined position by applying nuts to the bolts 51 and 59 respectively, without any support of the blower unit 3 by workers".

Therefore, since in the application as filed the feature added to claim 1 is disclosed in a specific context only, involving in particular applying nuts to bolts 51 and 59, and since there is no basis in the

application as filed to infer that the intended effect of avoiding any support of the blower unit by workers can be obtained by other means, the amendment made results in an unallowable generalisation of the specific disclosure of the application as filed. Accordingly, the amendment made infringes Article 123(2) EPC.

6. Auxiliary request V, filed during the oral proceedings before the Board of Appeal, is not admitted into the proceedings (cf. Article 13(1) RPBA).
- 6.1 Claim 1 of auxiliary request V as filed during the oral proceedings is based on claim 1 of auxiliary request V, filed with letter of 16 November 2009, with a deletion of the feature defining that the blower unit can be attached temporarily to the air conditioning unit such that it can be fixed to said instrument panel member without any support of the blower unit by workers.
- 6.2 The respondent argues that the deletion of the "worker" feature is a reaction to the opinion with regard to added subject-matter of claim 1 of the auxiliary request IV, and such an amendment should always be allowed, in particular since the resulting claim 1 is a combination of claims 31 and 32 as granted.
- 6.3 Claim 31, which was directed to a method, was attacked when the notice of opposition was filed with the arguments that the subject-matter of the claim lacked novelty and inventive step. As a consequence the patent proprietor filed, with letter of 16 November 2009, an auxiliary request V with an amended independent method claim 1. The patent proprietor argued at that time that the "worker" feature, which had been introduced in the combination of granted claims 31 and 32, rendered the

subject-matter of claim 1 inventive. Arguments as to why features of granted dependent claim 32 contributed to the inventiveness of independent claim 31 were not brought forward by the patent proprietor during the opposition proceedings.

- 6.4 Since during the whole proceedings - opposition and appeal - such arguments have not been submitted previously, the Board and the appellant would be hearing these arguments for the first time in the oral proceedings before the Board of Appeal.

In order to avoid this situation, which would represent a substantial amendment to the respondent's case at a very late stage of the appeal proceedings, the Board exercises its discretion provided for in Article 13(1) RPBA not to admit the auxiliary request V.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated