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**Datasheet for the decision
of 16 June 2016**

Case Number: T 0710/15 - 3.2.01

Application Number: 05111926.1

Publication Number: 1795406

IPC: B60S1/40

Language of the proceedings: EN

Title of invention:

A windscreen wiper device

Patent Proprietor:

Federal-Mogul S.A.

Opponent:

Valeo Systèmes d'Essuyage

Headword:

Relevant legal provisions:

EPC Art. 114(2), 111(1), 100(c), 100(a), 56, 54(3)

Keyword:

Arguments submitted late (Article 114(2) EPC not applicable)
Substantial procedural violation (no)
Remittal to the department of first instance - (no)
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

G 0005/91, G 0004/92, T 1002/92, T 0039/93, T 0395/00,
T 0131/01, T 0187/01, T 0604/01, T 0597/07

Catchword:



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Case Number: T 0710/15 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 16 June 2016

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Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 27 February 2015 rejecting the opposition filed against European patent No. 1795406 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: W. Marx
P. Guntz

Summary of Facts and Submissions

- I. An appeal was filed by the opponent against the decision of the opposition division rejecting the opposition to European patent No. 1 795 406.
- II. In its decision the opposition division held *inter alia* that the ground for opposition according to Article 100(c) EPC did not prejudice the maintenance of the patent as granted and that the subject-matter of claim 1 as granted was new in view of the following documents:
- E1: WO 2005/039944;
 - E2: WO 2006/069648 (under Article 54(3) EPC).

An objection of lack of inventive step in view of the combination of E1 with E23 (JP 2003312451), raised in the opponent's letter dated 17 November 2014 within the time limit set out under Rule 116(1) EPC, was considered to be a new fact and therefore late-filed, on the ground that it had not been substantiated in the notice of opposition. As a consequence, document E23 filed on 17 November 2014 was also considered to be late-filed. After applying the criterion of *prima facie* relevance, document E23 and the objection of lack of inventive step in view of E1 and E23 were not admitted into the proceedings under Article 114(2) EPC.

The letter filed on 17 November 2014 also mentioned an objection of lack of inventive step in view of document E1 alone, and it was the opponent's intention to explain this objection during oral proceedings. The objection made in writing was not considered by the opposition division on the ground that it was not substantiated (see contested decision, 2.3.2.2.4.1). The opponent's intention to substantiate it during oral

proceedings was seen as a late-filed fact (not made in response to any amendment, new facts or arguments), and the objection was considered to be not *prima facie* relevant and was not admitted under Article 114(2) EPC (see contested decision, 2.3.2.2.4.2 and 2.3.2.2.4.3).

III. Oral proceedings took place before the board on 16 June 2016.

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.

IV. Claim 1 as granted reads (additions to claim 1 according to the application as filed are underlined, deletions are marked by strike-through):

"A windscreen wiper device (1) comprising an elastic, elongated carrier element, as well as an elongated wiper blade (2) of a flexible material, which can be placed in abutment with a windscreen to be wiped, which wiper blade (2) includes opposing longitudinal grooves (3) on its longitudinal sides, in which grooves spaced-apart longitudinal strips (4) of the carrier element are disposed, wherein neighbouring ends (5) of said longitudinal strips (4) are interconnected by a respective connecting piece (6), which windscreen wiper device (1) comprises a connecting device (7) for an oscillating arm (8), wherein said oscillating arm (8) is can be pivotally connected to said connecting device (7) about a pivot axis near one end, with the interposition of a joint part (12), ~~characterized in that~~ wherein said connecting device (7) comprises a

first part (9) connected to said longitudinal strips (4), as well as a second part (9') connected to said first part (9), wherein said second part (9') and said joint part (12) are provided with mutually cooperating pivot means for pivotally connecting said joint part (12) to said second part (9') , wherein second part (9') is detachably connected to said first part (9) in such a way that said first part (9) is a flat base part and is arranged to be connected to different types of said second part (9') for different types of interconnection between the wiper blade (2) and the oscillating arm (8), wherein said joint part (12) is subsequently connected to said second part (9') **characterized in that** said joint part (12) is connected to said second part by pivotally engaging protrusions (10) of said second part (9'), at the location of said pivot axis, in recesses (11) provided in said joint part (12), and wherein the oscillating arm (8) can be subsequently connected to said joint part (12)."

V. The appellant's arguments relevant to the present decision can be summarised as follows:

The oral proceedings before the opposition division held on 17 December 2014 had not been conducted in an objective and independent manner. Due to the questionable behaviour of the same chairman in a parallel case with the same parties (concerning European patent No. 2 143 602, on which oral proceedings had taken place one week prior to those in the present case), the patentee had asked that he be replaced for the oral proceedings in the present case. This request had not been granted by the director of the opposition division concerned, which seemed to have regarded it as an act of intimidation. That had influenced the course of the oral proceedings in the

present case; they had not been perceived as impartial, and had given the impression that the aim was to achieve some balance in relation to the decisions taken in the preceding oral proceedings. As regards the general attitude of the opposition division in comparison to previous proceedings, no questions had been asked by the technical members, e.g. as to the technical effects of the distinguishing features over the prior art when reaching their assessment of inventive step.

The partiality of the chairman of the opposition division had become clear on reading the contested decision:

- When discussing the facts with regard to Article 100(c) EPC, a new argument relating to the feature "arranged to be connected to different types of said second part ..." (see contested decision, point 1.3) had been put forward and discussed, but not admitted into the proceedings because it was regarded as a late-filed fact. However, there was no disclosure in the application as filed about how the second part was modified.
- As to the opponent's letter dated 17 November 2014, the requirements of Rule 116 EPC had been met. The objection with regard to lack of inventive step had been presented in reaction to the preliminary opinion of the opposition division. Since claim 1 defined three parts and E1 only showed two parts, E23 had been filed also in reply to that opinion. E23 showed the division of one part into two parts. However, the opponent had not been given sufficient opportunity to argue on *prima facie* relevance. Moreover, the division's reasoning on this issue ("this new fact has nevertheless not been raised in

response to amendments to claim 1") was not correct.

The opponent's right to be heard had not been respected because E23 filed with letter dated 17 November 2014 and the arguments presented therein should not have been considered late-filed. Submitted within the time limit set under Rule 116(1) EPC, they could not have surprised the other party. The opponent's right to be heard had also been violated because it had not been permitted to explain the *prima facie* pertinence of document E23, which the opposition division had disputed without giving any reasons (see point 2.3.1.2, paragraph 4 in the contested decision). Having regard to the right to fair proceedings, remittal to the opposition division was requested, for an assessment of the validity of the arguments submitted in the letter of 17 November 2014 and a discussion about admitting document E23.

Claim 1 as granted resulted from the combination of claims 1, 2 and 5 as originally filed and passages stemming from the description, as indicated by the patent proprietor in its letter dated 7 May 2008 and its letter of 1 June 2010. The patent proprietor had picked out certain elements without taking into account the features which were described in combination. The feature "first part has a flat shape" (from page 2, line 18) was disclosed in combination with the way the first part was connected to the wiper blade, i.e. "fixedly connected to the longitudinal strips through a welding, brazing ("soldering"), glueing or clamping operation", and also to the second part (see page 3, first paragraph"; also page 8, mentioning clamping means in the form of resilient legs C, as opposed to a fixed connection e.g. by welding). The amendments

resulting from page 9, line 21 to page 10, line 8, and from page 12, lines 4 to 21, in combination with Figures 2 and 3 on the one hand and Figures 4 to 6 on the other hand, referred to mounting steps of the claimed device. These mounting characteristics were disclosed in precise connection with technical elements which could not be generalised (Figures 3A to 3C: "tongue 13" situated in "hole 14"; Figures 5A to 5C: "protrusions 22" hooked behind "protrusions 23"; page 12, Figure 2A: connection between second part 9' and joint part 12).

The feature "said first part (9) ... is arranged to be connected to different types of said second part (9') for different types of interconnection between the wiper blade (2) and the oscillating arm (8)" (see pages 2 and 8 of the description) simply stated the result to be achieved and was not disclosed in the description, which did not show how the second part changed. It was also not consistent with the embodiments described, which always showed the same second part, common to all types of wiper arms, as was also the case for the first part (see Figures 2B and 4B: only the joint part 12 changed). Different first and second parts (depending on the type of wiper arm) were not required because they never co-operated with the oscillating arm. In particular, a feature relating to the core of the invention had to be unambiguously disclosed, and this was not the case here.

The subject-matter of granted claim 1 was not new with regard to document E2. Since E2 concentrated on the central structure connecting wiper arm and wiper blade, E2 did not have to show explicitly that neighbouring ends of the longitudinal strips were interconnected by a respective connecting piece. However, when reading document E2 the skilled person would certainly

understand that well-known connecting pieces were present on the extremities of the wiper blade. Without these pieces, the wiper blade would not be able to ensure effective wiping under normal conditions, due to separation of the longitudinal strips and detachment of the wiper blade (see the explanations given in the letter dated 25 January 2016 in respect of a wiper blade having a structure identical to that of the wiper blade according to E2). Connecting pieces as claimed were required and therefore implicitly disclosed in E2. The skilled person could not imagine a windscreen wiper without said elements, as confirmed by the documents cited by the respondent. The application as filed even mentioned an embodiment in which the connecting pieces were of one piece with the strips, forming transverse bridges for the strips (page 7, lines 26 to 30). Moreover, this technical feature was related to the structure of the wiper blade and had no impact on the realisation of the claimed invention.

As regards inventive step, arguments had been presented in the notice of opposition and in the letter of 17 November 2014. In particular, E1 showed a joint part 38 and only one single piece attached to the wiper blade. Identifying a first part 92 and a second part 44 in E1, the second part was not detachably connected to said first part as required according to claim 1, which took into account modifications of the second part. Solving the problem of simplifying the construction of the wiper device, in particular with regard to the production process (e.g. the mould), the skilled person would consider simply separating the single piece known from E1 into two parts. This was also obvious in view of E23 which showed two separated pieces in Figures 7 and 12.

VI. The respondent essentially argued as follows:

The complaint about the conduct of oral proceedings in a previous case had not been intended to intimidate anybody and had had no effect on the final result.

The opponent had already filed 22 documents with the notice of opposition, but only relied on a few of them in its argumentation. A wiper device comprising two or three parts had always been an issue in examination and opposition, and E23 had been known to the patentee for years, so it was late-filed. However, E23 had been discussed during the oral proceedings, and the opponent had been given the opportunity to discuss its relevance (see minutes, paragraph [24]). In fact, the combination of E1 and E23 was not *prima facie* relevant. Although E1 had only been argued as novelty-destroying, the three-piece feature was an issue that had been in the proceedings for years, i.e. the substance of the case had not changed. The opposition division had not taken a surprising position. The attack with respect to inventive step was therefore not in response to the preliminary opinion, but a new line of attack that should have been presented with the notice of opposition (principle of fair play and equal weapons).

It was in the patentee's legitimate interest, to avoid further costs and delay, that the case not be remitted; it was ready to be decided.

The first part was generally described to have "preferably" a flat shape (page 2, line 18), and in relation to a preferred embodiment a "first flat base part" was shown (page 8, line 3). In both cases, the first part was also described as being a universal connection part. The alleged inconsistency with regard

to the second part was an argument under Article 84 EPC or Article 83 EPC (not Article 123(2) EPC). Moreover, the two embodiments (see Figures 2 and 4) indeed showed different second parts.

Document E2 failed to disclose, either explicitly or implicitly, the claimed feature of connecting pieces. E2 described a wiper blade and associated connectors in great detail, also the configuration of the strips (page 9, lines 17 to 25). For connecting the strips, it was described that a considerably rigid linking support 120 kept the flexible profile and the two spines solidly attached. There was no technical need for any additional connecting means at the extremities of the wiper blade, particularly if the wiper blade were relatively short (e.g. when used in airplanes). Wiper blades without end caps functioned properly, were known from additional patent publications provided with letter dated 9 November 2015, and had been sold by the opponent in 2004. The use of connecting pieces as claimed, requiring an extra piece of hardware, therefore did not follow unequivocally from E2. The tests performed by the appellant were not part of the disclosure of E2.

In contrast to the three-piece construction according to the claimed invention, E1 only showed a two-piece construction. According to the contested patent (see paragraph [0005], line 5: first part was a universal part), it solved the problem of providing an improved wiper device which was easier and cheaper to manufacture. Normally, the skilled person would consider reducing the number of parts for easier manufacturing. He would not consider document E23, which was not concerned with the problem stated above, but dealt with the elimination of needless components.

Moreover, part 2b in E23 was already the joint part ("arm connecting member"), and there was no teaching to have it connected to two pieces. Even assuming that part 2b was the second part and the joint part was represented by the axis 44 within part 2b in E23, the feature in claim 1 that the joint part was subsequently connected to the second part would be missing.

Reasons for the Decision

1. *Alleged partiality of chairman of opposition division*
 - 1.1 The objection of partiality fails, for the reasons explained below. The board does however consider that the opposition division committed errors of judgement in not admitting some of the opponent's submissions.
 - 1.2 The generally accepted principle that nobody should decide a case in respect of which a party may have good reasons to assume partiality applies also to the members of EPO first-instance departments taking part in decision-making activities affecting the rights of any party (see "Case Law of the Boards of Appeal of the European Patent Office", 7th edition 2013, page 636). This reflects a basic principle of procedural law in the EPC contracting states (cf. Article 125 EPC), namely that all the members of a tribunal must be above any suspicion of bias. As held by the Enlarged Board of Appeal in G 5/91 (OJ EPO 1992, 617, Reasons, point 6), the question whether or not an objection of suspected partiality is justified can only be decided in the light of the particular circumstances of each individual case.

1.3 The fact that the patentee had asked for the replacement of the chairman, and that this request was not granted by the latter's director, does not constitute, in the board's view, a sufficient reason for assuming that the opposition division, and in particular its chairman, were unable to act without bias. Furthermore, the fact that no questions were asked by the members of the opposition division at the oral proceedings cannot be taken as an indication of misconduct, as this is normal practice when the facts and arguments have been presented by the parties in a sufficiently clear and exhaustive manner.

1.4 The appellant also alleged that the partiality of the opposition division became evident by the decisions taken in the course of the oral proceedings, in particular:

1.4.1 A new argument with respect to Article 123(2) EPC in relation to granted claim 1 (basically an objection under Article 100(c) EPC) was put forward and discussed, with regard to a feature in granted claim 1 which had not been submitted before in writing (see contested decision, point 1.3). The opposition division considered this objection to be a new and late-filed fact, and did not admit it under Article 114(2) EPC.

Article 114(2) EPC confers on the opposition division the discretionary power not to admit **new facts or evidence** when "not submitted in due time by the parties concerned". It is **not** a basis to disregard **arguments** not submitted in due time (see Case Law of the Boards of Appeal of the European Patent Office, 7th edition, III.B.2.3.1, III.C.4.4, IV.C.1.4.4; see also G 4/92). Raising during oral proceedings a new objection under a

ground for opposition previously validly invoked might be belated. However, the issue at stake is whether the opponent has raised a new argument or a new fact, i.e. whether in the present case the opposition division was right to invoke Article 114(2) EPC when not admitting the allegedly late-filed objection.

New arguments are generally understood as new reasons based on the facts and evidence which have already been put forward. The board endorses the view taken in case T 604/01 (see point 6.1 of the Reasons) or T 395/00 (see point 11 of the Reasons) with regard to amendments under Article 123 EPC, namely that the fact and evidence necessary in order to examine whether or not the patent and claims comply with the requirements of Article 123(2) EPC are the amendment as such in view of the application as filed and the patent as granted, i.e. the evidence available when filing the opposition.

In the present case, the ground for opposition under Article 100(c) EPC raised in the notice of opposition was discussed during oral proceedings with regard to two features of granted claim 1 (contested decision, points 1.1 and 1.2), one of which related to the "first part" being a "flat base part". However, the amendment in claim 1 as granted which further specifies the "first part" reads "...in such a way that **said first part (9) is** a flat base part **and is** arranged to be connected to different types of said second part (9') for different types of interconnection between the wiper blade (2) and the oscillating arm (8)", i.e. it combines two features ("and"), the second of which was objected to under Article 123(2) EPC for the first time during oral proceedings. The board considers that in this case the same "amendment" is concerned, namely which features have to be included when further

specifying the first part on the basis of features taken from the description (e.g. on the basis of page 2 of the application as filed), which raises the question of whether an intermediate generalisation is considered to be admissible. This issue was already mentioned in the notice of opposition (see page 3, point 1.2.1). It is noted that the case at hand differs from T 187/01, where an objection under Article 100(c) EPC raised for the first time in appeal against a granted feature which had not been contested before was considered to be a new fact and therefore disregarded.

Therefore, the board finds that the new objection does not introduce new facts or evidence, but merely a new argument under a ground of opposition already validly raised. Thus, the opposition division was wrong in invoking Article 114(2) EPC when dismissing this new objection. Such an error of judgement does not however prove the partiality of the chairman or the opposition division.

- 1.4.2 The opposition division considered document E23 and the objection of lack of inventive step over E1 combined with E23 to be a late-filed fact and therefore also document E23 to be late-filed, although submitted on the final date for written submissions set under Rule 116(1) EPC (contested decision, point 2.3.1.2).

However, the legal and factual framework of opposition proceedings is defined in principle by the notice of opposition, as set out in Rule 76(c) EPC (former Rule 55(c) EPC 1973). As concluded in decision T 1002/92, late-filed facts, evidence and related arguments which go beyond the "indication of the facts, evidence and arguments" presented in the notice of opposition pursuant to Rule 55(c) EPC 1973 in support

of the grounds of opposition should only exceptionally be admitted into the proceedings if, *prima facie*, there are clear reasons to suspect that such late-filed material would prejudice the maintenance of the patent. Rule 116(1) EPC (former Rule 71a EPC 1973) should therefore not be construed as an invitation to file new evidence or other material departing from the legal and factual framework of issues and grounds pleaded (see T 39/93, headnote). Also, the fact that the opposition division expressed a preliminary opinion in its communication annexed to the summons of oral proceedings does not necessarily justify the filing of new evidence, unless this is in reaction to new aspects raised in the communication. Such new aspects have not been substantiated by the appellant.

Thus, the board sees nothing wrong, and in particular no indication of partiality, in the way the opposition division exercised its discretion under Article 114(2) EPC by not admitting late-filed document E23 and related arguments, taking into consideration the criterion of *prima facie* relevance.

The appellant also alleges in this context that the basis of the reasoning was not correct as it refers to amendments made to claim 1. The contested decision states (page 10, last paragraph) that "this new fact has nevertheless not been raised in response to amendments to claim 1". This passage does not refer to "amendments" as the basis of the reasoning given, but implies that filing new documents and further objections might be justified if filed in response to amendments to claim 1.

The board also finds that the opponent had ample opportunity to argue on the *prima facie* relevance of

document E23, since the minutes of oral proceedings explicitly state (see points 23 to 25) that document E23 had been "sufficiently substantiated" in writing, and that the parties were also given the opportunity to exchange their views with regard to document E23 during the oral proceedings. The opponent explained e.g. the basic teaching of E23 (point 25: "that different types of arms can be connected with the blade in E23") in response to the patent proprietor disputing the relevance of E23. Moreover, as can be derived from the contested decision (see point 2.3.1.2), in its letter dated 17 November 2014 the opponent had substantiated an objection of lack of inventive step over E1 in combination with E23, which included arguments relating to the *prima facie* relevance of E23. Therefore, also the opponent's right to be heard had been respected.

- 1.4.3 As to the alleged lack of inventive step in view of document E1 alone, submitted in writing within the time limit set under Rule 116(1) EPC, the board notes that lack of novelty over document E1 was already substantiated in the notice of opposition (lack of inventive step was argued with regard to different prior art). Under these circumstances, a specific substantiation of the ground of lack of inventive step starting from E1 in the notice of opposition was not necessary - or indeed generally possible after arguing lack of novelty over E1 (in this respect, see e.g. T 597/07, or T 131/01). It is true that in its reply to the notice of opposition the patentee had identified the features distinguishing the subject-matter of granted claim 1 from E1. However, considering that oral proceedings had been requested by the opponent and thus further action by the opposition division was in any case to be expected, there was no objective reason for the opponent to reply immediately with an objection of

lack of inventive step starting from E1.

Accordingly, the board finds that the opposition division was wrong in judging that an objection of lack of inventive step in view of E1 should have been raised at an earlier stage of the proceedings and in therefore not considering this line of argument (see contested decision, point 2.3.2.2.4.1). The same applies to its refusal to admit a substantiation of this inventive-step objection during oral proceedings as late-filed under Article 114(2) EPC (see contested decision, points 2.3.2.2.4.2 and 2.3.2.2.4.3). Again, however, such errors of judgement do not indicate that the chairman or the opposition division was partial.

1.5 It follows from the above that the decision of the opposition division not to admit the new argument based on Article 123(2) EPC and the objections of lack of inventive step over E1 alone and E1 combined with E23 must be set aside. The above argument and objections are thus introduced into the proceedings.

2. *Not remitting the case to the department of first instance*

2.1 According to Article 111(1) EPC, the board may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution. It is established case law (see Case Law of the Boards of Appeal, 7th edition 2013, IV.E.7.6.1) that there is no absolute right to have an issue decided upon by two instances and that e.g. the general interest in bringing the proceedings to a close

within an appropriate period of time has to be taken into account.

- 2.2 Considering that the new argument in respect of Article 123(2) EPC does not per se justify a remittal and that the opposition division has already commented, in the contested decision, on the new objections of lack of inventive step (see page 11, stating that
- "separation of parts of the connecting device are contrary to the teaching of E1" and
 - "E23 comprises a totally different construction of ... the connecting device, ... which hampers prima facie a combination with the wiper of E1"),
- the board in exercising its discretion conferred by Article 111(1) EPC has decided not to remit the case to the department of first instance, but to take a decision on the merits of the case.

3. *Amendments (Article 100(c) EPC)*

- 3.1 Claim 1 of the patent has not been amended in such a way as to contain subject-matter which extends beyond the content of the application as filed.
- 3.2 The appellant asserts that the feature "first part is a flat base part" introduced in granted claim 1 is disclosed only in combination with further features in the application as filed. The relevant passage on page 2 (lines 18 ff) recites that the "first part preferably has a flat shape and acts as a base part, wherein the first part is preferably fixedly connected to the longitudinal strips through welding, ...". The features describing the way the first part is connected to the longitudinal strips are explicitly characterised, by using the term "preferably", as

optional features relating to preferred embodiments, i.e. not inextricably linked to the first part being a flat base part as claimed. Also further features describing the connection between the first part and the second part in the application as filed (page 3, lines 6 to 9: "second part may be connected to said first part through a welding, ... or clamping operation") are related, due to the word "may be", to optional embodiments comprising fixed connections (e.g. realised by welding) and detachable connections (through a clamping operation). There is no contradiction in mentioning optional embodiments which are not compatible with each other, or in describing further specific embodiments (pages 8 ff in the application as filed) mentioning e.g. "clamping means in the form of resilient legs C".

Therefore, the board finds that the general disclosure on pages 2 and 3 of the application as filed already provides a basis for amending the feature of the first part to be a "flat base part", irrespective of further passages on its page 9 or 12 as cited by the appellant. In particular, the omission of further features optionally mentioned in connection with the first part does not amount to an inadmissible intermediate generalisation.

- 3.3 As regards the second feature further specifying the first part ("said first part ... is arranged to be connected to different types of said second part (9') for different types of interconnection between the wiper blade (2) and the oscillating arm (8)"), the appellant (conceding that this wording was to be found on page 2 or page 8 of the application as filed) objected that it was not consistent with the teaching provided by the description and the drawings.

However, the board takes the view that it is clearly expressed in the description (see e.g. page 2, lines 21 to 24) that the essence of the invention is that the first part is a universal part for each type of interconnection between the wiper blade and the oscillating arm, which implies that it should match different types of the second part. Moreover, as clearly visible in the embodiments shown in Figures 2B and 4B, relating to different ways of connecting the oscillating arm to the joint part (12), modifications of the joint part (12) also result in different second parts (9') being provided. The board therefore cannot follow the appellant's argument that the amendment was not unambiguously disclosed or not consistently described in the application as filed.

As regards the appellant's argument that pages 2 and 8 only stated the result to be achieved, such an objection might be considered when assessing clarity of the claims. However, clarity is not a ground for opposition and cannot be invoked against granted claims.

4. *Novelty (Article 100(a) EPC, Article 54(3) EPC)*
- 4.1 Document E2 is prior art under Article 54(3) EPC, which is not prejudicial to the novelty of the subject-matter of claim 1.
- 4.2 The sole issue between the parties was whether or not the windscreen wiper device known from E2 exhibited the feature that neighbouring ends of the longitudinal strips are interconnected by a respective connecting piece. The appellant conceded that this feature was not

explicitly shown in E2, but argued that the skilled person would understand that well-known connecting pieces were needed and necessarily provided on the extremities of the wiper blade.

- 4.3 The board cannot share the appellant's view that connecting pieces were implicitly disclosed in E2. According to the established case law, a prior-art document anticipates the novelty of claimed subject-matter if the latter is directly and unambiguously derivable from that document, including any features implicit to a person skilled in the art, i.e. any features he would unequivocally gather from the overall context of the cited prior art.

The wording of claim 1 "interconnected by a respective connecting piece" suggests that an extra piece of hardware is required to interconnect the ends of the longitudinal strips. Since the contested patent also mentions an embodiment in which the connecting pieces are of one piece with the strips, the connecting pieces as claimed might also be assumed to be pieces formed integrally with the longitudinal strips. However, even assuming that broader interpretation of the feature under dispute, such integrally formed connecting piece has to fulfil the claimed function of interconnecting the ends of the longitudinal strips.

The board agrees with the appellant that detachment of the longitudinal strips from the wiper blades must be prevented to ensure effective functioning, i.e. the skilled person would assume that also in E2 measures are foreseen in this regard. However, there are many ways to prevent detachment of the longitudinal strips, e.g. by providing extra elements at the ends, by providing means to fix the strips somewhere within the

flexible wiper blade, by using longitudinal strips of a certain geometry, material or with built-in pretension, and so on. Under certain conditions, e.g. if wiper blades are short, or if a considerably rigid linking support is provided for mounting to the oscillating arm, there might be no need to provide any additional connecting means at the extremities of the wiper blade.

Therefore, the board concludes that an element interconnecting the ends of the longitudinal strips is not the one and only solution for providing the required wiping function of the claimed windscreen wiper device, no matter whether such elements are provided as an extra piece or formed integrally with the longitudinal strips. As a consequence, the feature under dispute cannot be assumed to be unequivocally derivable from and therefore implicitly disclosed in E2 when read with the eyes of the skilled person.

5. *Inventive step (Article 100(a) EPC, Article 56 EPC)*

5.1 The subject-matter of claim 1 as granted also involves an inventive step (Article 56 EPC).

5.2 Assuming that the closest prior-art document E1 already discloses three parts as specified in claim 1 (a first part 92, a second part represented by the pivot axis 44 provided on the first part, and joint part 38), it at least fails to show - as conceded by the appellant - a second part detachably connected to the first part.

The board has difficulties to see how separating the pivot axis 44 and the first part 92 in E1, which are fixedly connected, would lead to a simplified construction or production tooling. This is merely an

unsubstantiated assertion by the appellant. In fact, providing a detachable second part located between the first part which is connected to the longitudinal strips and the joint part establishing the connection to the oscillating arm allows for more flexibility in adapting to different vehicles and types of oscillating arms. In particular, when using a universal connection part for the first part, a unit consisting of wiper blade and first part connected to the longitudinal strips can be manufactured for each and every type of interconnection between the wiper blade and the oscillating arm, while only a cheaply and easily manufactured second part has to correspond to the specific type of interconnection, as stated in the contested patent. The problem to be solved may therefore be seen in providing a windscreen wiper device improved with regard to manufacturing and costs.

- 5.3 Starting from the windscreen wiper device known from document E1, basically comprising two pieces (part 92 with axis 44, joint part 38) for interconnecting the wiper blade and the oscillating arm, there is no reason why the skilled person would be tempted to separate part 92 with its fixed pivot axis 44 into two separate parts. The board is not convinced that any advantages in the production process (e.g. moulding) could be achieved, as argued by the appellant, because part 92 is already a component of rather simple construction. Moreover, increasing the number of parts is hardly the obvious solution when thinking about how to improve a given device.

Document E23, which solves the problem of allowing easy, firm attachment to eliminate needless components (see abstract), would have prompted the skilled person only to reduce the number of parts. In particular, E23

only shows a two-piece design, comprising parts 2a and 2b interposed between the wiper blade and the oscillating arm, irrespective of whether part 2b is considered as representing the joint part or the second part (with axis 44 integrally formed with part 2b then forming the joint part). Therefore, the skilled person might only be prompted to replace the two-piece design known from E1 with the two-piece design known from E23, i.e. joint part 38 with joint part/second part 2b and first part 92 with first part 2a. However, this would not lead to a windscreen wiper device within the meaning of claim 1, which requires three pieces (first part, second part, joint part) to be connected to each other.

6. In view of the above, the board comes to the conclusion that the subject-matter of claim 1 does not extend beyond the content of the application as filed and is patentable under Article 52(1) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated