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Datasheet for the decision of 22 February 2019

Case Number: T 1768/16 - 3.2.01

Application Number: 09170439.5

Publication Number: 2168796

IPC: B60H1/32

Language of the proceedings: EN

Title of invention:
Air conditioning system for a car

Patent Proprietor:
Valeo Klimasysteme GmbH

Opponent:
MAHLE Behr GmbH & Co. KG

Headword:

Relevant legal provisions:
EPÜ Art. 54(1)
EPC Art. 83, 111

Keyword:
Novelty - (yes)
Remittal to the department of first instance

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 1768/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 22 February 2019

Appellant: (Patent Proprietor)	Valeo Klimasysteme GmbH Werner-von-Siemens-Strasse 6 96476 Rodach (DE)
Representative:	Croonenbroek, Thomas Jakob Innovincia 11, avenue des Tilleuls 74200 Thonon-les-Bains (FR)
Appellant: (Opponent)	MAHLE Behr GmbH & Co. KG Mauserstr. 3 70469 Stuttgart (DE)
Representative:	Grauel, Andreas Grauel IP Patentanwaltskanzlei Wartbergstrasse 14 70191 Stuttgart (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 9 June 2016 concerning maintenance of the European Patent No. 2168796 in amended form.**

Composition of the Board:

Chairman	G. Pricolo
Members:	H. Geuss
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The appeal is directed against the interlocutory decision of the Opposition Division of the European Patent Office posted on 9 June 2016 concerning maintenance of the European Patent No. 2168796 in amended form.

II. In the notice of opposition the opponent objected, inter alia, lack of novelty of the subject-matter of claim 1 in view of documents D5 (US 2006/053818 A1) and D6 (DE 10 2004 060 130 A1).

III. The decision of the opposition division with respect to the patent as granted is based on lack of novelty of the subject-matter of granted claim 1 in view of document D6. Further, document D2 (DE 103 50 193 A1), was found to disclose all the features of claim 1 according to the second auxiliary request (point 57 of the contested decision).

The opposition division further held that the invention is sufficiently disclosed (Article 100 (b) EPC).

IV. Oral proceedings were held on 22 February 2019.

The appellant (patent proprietor) requested that the decision under appeal be set aside and that the patent be maintained as granted (main request); in the alternative that the decision under appeal be set aside and that the patent be maintained according to one of the 1st to 6th auxiliary request, as filed with the statement of grounds of appeal; in the further alternative, that the appeal of the opponent be dismissed.

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

V. Claim 1 as granted reads as follows (the structure of features in bracket has been inserted by the Board):

Air conditioning system (10) for a car comprising a housing (12), at least one evaporator (14) and an outlet path for condensation water that condenses on the evaporator (14) **[M1],**
wherein the outlet path consists of a condensation water collection area (16) and a condensation water removal section (18) **[M2],**
the condensation water collection area (16) is an collecting bowl (20) **[M3],**
the collecting bowl (20) is limited on one side by a collection wall (22) **[M4],**
the condensation water removal section (18) comprises at least one condensation water removal canal (40) **[M5]** extending from the collecting bowl (20), beneath the collection wall (22) or through at least one opening (39) arranged within the collection wall (22), to at least one water outlet opening (42) **[M6],**
characterized in that
the collection wall (22) has two openings (39) **[M7]** that are arranged in the y-direction of the vehicle**[M8]** and in that the condensation water removal canal (40) comprises two coalescing branches **[M9]**
extending from the openings (39) to the one water outlet opening (42) **[M10].**

VI. The patent proprietor's (appellant's) submissions as relevant to the present decision may be summarized as follows:

D6, in particular, does not disclose two condensation water removal canals with coalescing branches. In D6 condensation water flows through the openings (10) to the single water outlet (6). There are no walls or barriers to orientate the water flow in the area under the cover (7).

Even assuming that in document D2 the right most wall 42b (Verstärkungsrippe) corresponds to the collection wall of the invention and further assuming that the area at the bottom right side of the evaporator represents the water collection area, D2 does not disclose two coalescing branches, acting as two canals extending from the openings 42c (in the right most reinforcement rib, see Fig. 5) to the water outlet 81, 82.

The description of the invention is clear enough for a skilled person to be carried out. In particular, the orientation of the system of co-ordinates is generally known in the automotive field, cf. paragraph [0050] of the description.

Remittal of the case to the first instance department is considered appropriate having regard to the discussion on novelty over D5.

VII. The rebuttal of the opponent (appellant) was essentially the following:

In D6, the area on the left hand side (cf. figure 1) of the cover 7 corresponds to the condensation water collection area and the area under the cover is the condensation water removal section in terms of the contested invention. The feature M7 is represented by

the two openings in the cover (7) and the ribs (9). Since there is a single water outlet (6), two coalescing branches of water flow extend from these openings to the water outlet due to gravity. Further technical measures to channel water flow are not foreseen or necessary.

A similar situation is shown in D2. The condensation water collection area is at the right hand side at the bottom of the evaporator (cf. figure 4). The collection wall is represented by the rightmost wall 42b having openings 42c. The area between the walls 42b forms two coalescing cannels according to feature M9.

Furthermore, the invention is not sufficiently disclosed such as to be carried out by a person skilled in the art. In particular it is not clear for the skilled person how the collection wall is limiting the collection bowl.
In addition it is not explained appropriately what is meant by the y-direction of the vehicle.

It is also considered appropriate to remit the case to the first instance department having regard to the discussion on novelty over D5..

Reasons for the Decision

1. The subject-matter of claim 1 as granted is novel over documents D6 and D2, Article 54(2) EPC.

1.1 D6 does not disclose a condensation water removal canal extending from the collecting bowl through at least one opening arranged within the collection wall to the one water outlet (M5; M6), comprising two coalescing

branches extending from the openings to the one water outlet opening (M9; M10).

The opponent argues, analogously as the Opposition Division in the appealed decision (page 5, point 22), that the water flow from the openings must necessarily converge before "going through the outlet opening, as there is one single opening. Even if condensation water removal canals are not mentioned explicitly in D6, the function of a canal is indeed present, as the parts leading from the openings (10) to the outlet opening (6) constitute de facto two canals. These two canals are necessarily coalescent, as they reach a common opening (6)".

The Board judges that there are no design measures (walls, bounderies, recesses) in the condensation water removal section (which corresponds in D6 – beyond dispute – to the area under the cover 7) that would function so as to "channel the flow of water" in any way. The path that the water takes through the condensation water removal section is only influenced by gravity and thus dependent on the orientation of the housing of the air conditioning system. However, the skilled person would understand the term "canal" as implying a technical measure that has the function of orientating water flow, independently of (some) exterior influencing factors. Such interpretation is in accordance with the disclosure of the patent in suit, which shows in Fig. 7, in particular, a canal 40 that starts at openings 39 (cf. [0052] of the patent), comprises side walls, and has a closed cross section since it is provided with a cover 66 (cf. [0053] of the patent).

1.2 A similar situation arises in connection with D2, having particular regard to figures 4 and 5.

The opponent submits that the area representing the collecting bowl is at the right side under the evaporator in figure 4 and the rightmost wall 42b (Verstärkungsrippen 42b) corresponds to the collection wall. The water outlet opening is embodied by parts 81, 82. The reinforcement ribs 42b have openings and the space between these three ribs can be seen as two canals in the sense of the invention.

The Board disagrees for the following reasons. Figure 5 does not disclose two coalescing branches extending from the openings to the one water outlet opening, which is the part with the reference sign 82. Even if the area between the reinforcement ribs would be regarded as forming two coalescing branches, they do not extend from the openings 42c in the rightmost wall in Fig. 4 to the water outlet 82. In the Board's view it is clear from the wording of claim 1 that each branch extends from the opening to the water outlet.

Thus, D2 does not disclose features M5, M6, M9 and M10.

2. The invention is disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Article 100 (b) EPC).

2.1 In this respect the Board follows the decision of the opposition division in its full extent.

2.2 In particular, the Board is convinced that a skilled person would be able to reproduce the apparatus which is shown in the figures of the patent and thereby arriving at the combination of features as defined in

claim 1.
With respect to the opponent's argument that it is not clear for the skilled person what is meant by the y-direction of the vehicle the Board refers to paragraph [0050] of the patent description where it is explained that the y-axis coincide with the lateral axis of the vehicle.

3. The case is remitted to the first instance department in order to continue the opposition proceedings with the question of novelty over D5 and inventive step with respect to the state of the art on file, Article 111 EPC.

3.1 With the notice of appeal the opponent objected lack of novelty also in view of document D5. This objection has been confirmed with the opponent’s statement of grounds of appeal.

3.2 Considering that the decision of the opposition division does not reflect findings with respect to D5, that the arguments raised by the appellant (opponent) in this respect cannot be immediately dismissed and as such require further discussion, that the situation in respect of the main request is now substantially different from the one in accordance with the contested decision (as novelty is acknowledged by the Board over both D2 and D6), and that the parties gave their approval to the remittal, the Board judges it as appropriate to remit the case to the first instance department.

Order

For these reasons it is decided that:

- The decision under appeal is set aside.

- The case is remitted to the department of first instance for further prosecution.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated