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Datasheet for the decision of 13 September 2019

Case Number: T 1788/16 - 3.2.01

Application Number: 09156718.0

Publication Number: 2236364

IPC: B60S1/38

Language of the proceedings: EN

Title of invention:
Windscreen wiper device

Patent Proprietor:
Federal-Mogul S.A.

Opponent:
Valeo Systèmes d'Essuyage

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 123(2)

Keyword:
Novelty (yes)
Inventive step (yes)
Added subject-matter (no)

Decisions cited:

Catchword:

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Beschwerdekammern

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Case Number: T 1788/16 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 13 September 2019

Appellant: (Opponent)	Valeo Systèmes d'Essuyage Propriété Industrielle VSE 8, rue Louis Lormand Z.A. de l'Agiot 78321 Le Mesnil-Saint-Denis (FR)
Representative:	Callu-Danseux, Violaine Valeo Systèmes d'Essuyage Service Propriété Industrielle ZA L'Agiot 8 Rue Louis Lormand CS 90581 La Verrière 78322 Le Mesnil Saint Denis (FR)
Respondent: (Patent Proprietor)	Federal-Mogul S.A. Avenue Champion 6790 Aubange (BE)
Representative:	Hooiveld, Arjen Jan Winfried Arnold & Siedsma Bezuidenhoutseweg 57 2594 AC The Hague (NL)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted on 3 June 2016 rejecting the opposition filed against European patent No. 2236364 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chairman	G. Pricolo
Members:	C. Narcisi
	P. Guntz

Summary of Facts and Submissions

I. The opposition was rejected and the European patent No. 2 236 364 was maintained as granted by the decision of the Opposition Division posted on 3 June 2016. Against this decision an appeal was lodged by the Opponent in due form and in due time pursuant to Article 108 EPC.

II. Oral proceedings were held on 13 September 2019. The Appellant (Opponent) had already informed the Board with fax dated 30 August 2019 that it would not be represented at the oral proceedings and that it maintained the requests previously submitted in writing, i.e. to set aside the impugned decision and to revoke the patent. The Respondent (Patentee) requested that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form based on one of auxiliary requests 1 to 3 filed during opposition proceedings with letter dated 30 April 2015.

III. Granted claim 1 reads as follows:

"A windscreen wiper device (1) comprising an elastic, elongated carrier member, as well as an elongated wiper blade (2) of a flexible material, said wiper blade (2) comprising a wiping element (14) which can be placed in abutment with a windscreen to be wiped, which wiper blade (2) includes a central longitudinal groove (3), in which groove (3) a longitudinal strip (4) of the carrier element is disposed, which windscreen wiper device (1) comprises a connecting device (6) for an oscillating arm (7), wherein said oscillating arm (7) can be pivotally connected to said connecting device (6) about a pivot axis near one end thereof,

characterized in that said wiping element (14) is movable relative to said longitudinal strip (4) in a direction at least substantially perpendicular to a windscreen to be wiped, dependent on the pressure exerted by the longitudinal strip (4) on the wiper blade (2), wherein said groove (3) extends in downward direction beneath the longitudinal strip (4) for forming a longitudinal hollow channel (18) defined by said longitudinal strip (4) and a bottom (19) of said groove (3), wherein said bottom (19) is flexible, and wherein said wiping element is allowed to move in a direction perpendicular to a windscreen to be wiped, dependent on the pressure exerted by the longitudinal strip on the wiper blade, due to the resiliency of said bottom (19) in order to compensate differences in curvature of windscreens to be wiped, wherein said wiping element (14) is resilient between a first position facing away from the longitudinal strip (4) and a second position facing towards the longitudinal strip (4) and wherein said groove (3) extends in upward direction above the longitudinal strip (4) for forming a longitudinal hollow channel (21) defined by said longitudinal strip (4) and an upper surface (22) of said groove (3), characterized in that, said bottom (19) is provided with stop surfaces (20) on opposite sides of said wiping element (14), and wherein said stop surfaces (20) limit an oscillatory movement of said wiping element (14) by entering into contact with the wiping element in said second position."

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

The subject-matter of claim 1 extends beyond the content of the application as filed, since the features reading "said wiping element (14) is movable relative

to said longitudinal strip (4) in a direction at least substantially perpendicular to a windscreen to be wiped, dependent on the pressure exerted by the longitudinal strip (4) on the wiper blade (2)" (hereinafter designated as feature F) and "and wherein said wiping element is allowed to move in a direction perpendicular to a windscreen to be wiped, dependent on the pressure exerted by the longitudinal strip on the wiper blade, due to the resiliency of said bottom (19) in order to compensate differences in curvature of windscreens to be wiped" (hereinafter designated as feature I) were not originally disclosed. Feature F is not derivable from page 6, lines 19-23 of the application as filed, for these passages only mention that the wiping element is movable relatively to the windscreen, nothing being said about the wiping element in relation to the longitudinal strip. Moreover, it is evident from figure 3 and 5 that the wiping element is not movable in a perpendicular direction with respect to the longitudinal strip. Feature I is not derivable from page 2, lines 1-2 of the application as filed (in conjunction with page 1, lines 25-33 (see appealed decision, point 2.2.2)), contrary to the Opposition Division's view. Moreover, the resiliency of the groove's bottom is directly related to the specific structure of the wiping element including "tilting web grooves 15 defining a strip-like tilting web 16 between them", as well as to the downwardly extending wiping lip 17 on the tilting web 16, these features being essential for the movement of the wiper blade and of the wiping element. Nevertheless, they have been omitted.

The invention is not disclosed in a manner sufficiently clear and complete for the skilled person to put it into effect. Comparing figure 2 (wiping element in a

first position facing away from the longitudinal strip) with figure 4 (wiping element in a second position facing towards the longitudinal strip) the skilled person would not understand which portions of the wiper blade constitute the stop surfaces, since the wiping element in its first position likewise appears to contact the stop surfaces in an extreme position during its oscillatory movement, as shown in figure 3. Thus, it would be impossible to precisely define the configuration, the location and the technical object of said stop surfaces.

The subject-matter of claim 1 is not new over E1 (US-A-2007/002256), E2 (US-A-2008/0150193) and E3 (WO-A-2009/065648).
E1 discloses all of the features of claim 1, in particular aforesaid features F and I (see above). Also, features J (i.e. "wherein said wiping element (14) is resilient between a first position facing away from the longitudinal strip (4) and a second position facing towards the longitudinal strip (4)") and L (i.e. "said bottom (19) is provided with stop surfaces (20) on opposite sides of said wiping element (14), and wherein said stop surfaces (20) limit an oscillatory movement of said wiping element (14) by entering into contact with the wiping element in said second position") are clearly disclosed in E1, figure G7 showing the bottom of the groove being apt to deform to adopt a first and a second position in accordance with claim 1, stop surfaces limiting the oscillations of the wiping element being likewise provided.

E2 discloses all of the features of claim 1 including features J and L, contrary to the view of the Opposition Division. It is evident from figures 6a, 6b that the wiper blade (specifically the groove's bottom)

is apt to deform if a sufficiently high pressure acts on the longitudinal strip, said wiper blade being made of flexible rubber material and having a groove with appropriate dimensions, such that the wiping element is movable relatively to the longitudinal strip.

E3 discloses all of the features of claim 1, in particular features I, J, K (i.e. "and wherein said groove (3) extends in upward direction above the longitudinal strip(4) for forming a longitudinal hollow channel (21) defined by said longitudinal strip (4) and an upper surface (22) of said groove (3)") and L. Contrary to the Opposition Division's view, the spoiler in E3 can be regarded as forming the upper portion of said groove, as claim 1 does not exclude the wiper blade comprising a spoiler. Moreover, the application as filed (description page 4, line 12) discloses the spoiler in conjunction with and being a part of the wiper blade. Further, features I, J, L are likewise known from E3, as E3 clearly mentions the wiping element moving from a first to a second position in a direction perpendicular to the windscreen (E3, page 3, lines 9-14).

The subject-matter of claim 1 is not inventive over E2 and E5. Based on the assumption that E2 does not disclose features I, J, L (as decided by the Opposition Division), E2 represents the closest prior art having the fewest structural differences to claim 1. Features I, J, L contribute to reduce the noise produced by the wiper blade at the turning points of its oscillatory motion and therefore the object of the invention can be seen as aiming at reducing said noise. The skilled person would retain E5, which solves said technical problem by means of a flexible wall facilitating the motion of the wiping element from a

first to a second position, whilst providing stop surfaces limiting the wiping element's oscillatory motion. Hence, the skilled person would combine E2 and E5 in an obvious manner to solve the posed technical problem.

V. The Respondent's arguments may be summarized as follows:

The subject-matter of claim 1 does not extend beyond the content of the application as filed, features F and I not introducing any new technical information.

The disclosure of the invention is sufficiently clear and complete for the skilled person to be able to carry it out. The Appellant's arguments are merely based on objections relating to clarity, representing no obstacle for manufacturing the claimed wiper device.

The subject-matter of claim 1 is new over E1 (at least features F, H, I, L being not derivable from E1), over E2 (at least features F, H, I, L being not derivable from E2) and over E3 (at least features F, H, I, K, L not being derivable from E3).

The subject-matter of claim 1 is not rendered obvious by E2 and E5. Specifically, the Appellant did not detail how the skilled person would combine E2 and E5 to obtain the claimed subject-matter.

Reasons for the Decision

1. The appeal is admissible.

2. The subject-matter of claim 1 does not extend beyond the content of the application as filed, thus fulfilling the requirements of Article 123(2) EPC.

Disputed feature F (see above) is based on the characterizing portion of claim 1 as filed, merely differing therefrom in that the wording "relative to said longitudinal strip (4)" has been added. Nevertheless, contrary to the Appellant's view, feature F does not imply that the wiping element is movable in a direction perpendicular to the longitudinal strip, but only generally movable relatively to it. This is evidently disclosed in the application as filed (see e.g. figures 3, 5), for the longitudinal strip does not perform the same oscillatory motion as the wiping element.

Feature I is equivalent to feature F, albeit including the additional wording "due to the resiliency of said bottom (19) in order to compensate differences in curvature of windscreens to be wiped". Feature I is directly and unambiguously derivable from page 6, lines 19-23, in conjunction with page 1, line 33-page 2, line 4 of the application as filed. The combination of these passages is permissible since they both relate to the same and identical technical context.

The further Appellant's objections based on Article 123(2) EPC discussed in the appealed decision were not taken into consideration by the Board in the appeal proceedings pursuant to Article 12(1) and 12(2) RPBA (Rules of Procedure of the Boards of Appeal), for the Appellant in its statement of grounds of appeal solely generally referred to its previous submissions in opposition proceedings without laying out its arguments and the reasons why the appealed decision erred.

3. The invention is disclosed in a manner sufficiently clear and complete for the skilled person to be able to put it into effect (Article 83 EPC). The Appellant's reasons are unfounded, given that the position and configuration of the stop surfaces is clearly disclosed in the figures (see reference sign 20) and the corresponding part of the description, as indicated by the feature specifying that "said bottom (of the groove 19) is provided with stop surfaces 20 on opposite sides of said wiping element 14 to limit the oscillatory movement of said wiping element in said second position" (see application as filed, page 6, lines 27-30). The fact that said stop surfaces 20 apparently may serve to limit the oscillatory movement also in the first position (see figure 3) and not only in the second position (as claimed) would not prevent the skilled person from performing the invention. In particular it is obvious that under given circumstances, depending e.g. on the pressure applied on the longitudinal strip, the wiping element may adopt the position illustrated in figure 3, i.e. where the wiping element contacts the stop surface formed in the groove's bottom even in said first position.

4. The subject-matter of granted claim 1 is new over E1 and E2 (Article 54 (1), (2) EPC).

The subject-matter of granted claim 1 is not anticipated by E1, since at least features F, I , J and L (see above) in combination are not derivable therefrom. In effect, E1 in figures G5 and G7 shows a "stretched" position of the groove's bottom, thus not depending on "the pressure exerted by the longitudinal strip on the wiper blade" (features F, I). Furthermore, the deformation of the groove's bottom (through

pressure exerted by the longitudinal strip) depends on the thickness of the longitudinal strip disposed in said groove, the dimensions of the groove and elasticity of the rubber, the extent of deformation possibly being very limited (see e.g. figure A-4 in E1). Therefore it cannot be inferred from E1 that the above mentioned features are implicitly disclosed. Indeed, there is no clear and unambiguous evidence in E1 that it would be possible to deform the groove's bottom (in the embodiments of figures G4 to G7) to any significant extent (by applying pressure), as this would anyway also depend on the thickness of the longitudinal strip (not illustrated in figures G4 to G7) impairing the groove's bottom movement.

E2 does not disclose the subject-matter of claim 1, at least features F, I, J and L not being deducible therefrom. Similarly to E1, no explicit disclosure of aforesaid features is to be found in E2, the groove's shape (e.g. in figure 6a, 6b) being merely configured such as to improve the moulding method. Notwithstanding the fact that E2 discloses a rubber moulded windshield wiper (see [0006]) it is nevertheless not possible to clearly and unambiguously derive from E2 that pressure exerted by the longitudinal strip during operation would deform the groove's bottom to any significant extent (this extent depending on specific rubber elasticity and on specific groove configuration (e.g. groove's bottom thickness) and dimensions), as required by the aforementioned features.

The subject-matter of claim 1 is new over E3 (Article 54(1), (3) EPC), given at least feature A2 (i.e. "as well as an elongated wiper blade of a flexible material", see nomenclature in appealed decision, page 2) not being disclosed in E3.

The Appellant contends that the spoiler 22 in figure 5 of E3 can be considered as constituting an integral portion of the wiper blade 12, thus resulting (as it appears from figure 5) in the wiper blade including a central longitudinal groove, as required by claim 1. In the Board's judgement, based on this assumption, it has nonetheless to be concluded that feature A2 is not fulfilled by the wiper blade disclosed in E3, as the spoiler 22 is not disclosed in E3 as consisting of the same flexible material as that forming the remaining (lower) portion of the wiper blade. Since claim 1 only refers to the (whole) wiper blade being made "of a flexible material" all constituents forming part of such wiper blade must be made of this material.

5. The subject-matter of claim 1 is not rendered obvious in view of E2 and E5 (DE-A-10 2005 054 142) (Article 56 EPC).

The Appellant's arguments could not convince the Board, for even on the assumption that the skilled person would combine E2 and E5 to reduce noise produced by the wiper blade, this would not directly and immediately lead to the subject-matter of claim 1. In effect, according to E5 (see figures 1 to 4) the longitudinal groove allowing under pressure elastic deformation of the longitudinal strip is different and distinct from the groove including the longitudinal strip. Consequently, the skilled person adopting the solution to the noise problem proposed by E5, would in all likelihood translate this structure from E5 to E2, thus failing to obtain the claimed features. Thus, In order to obtain these features the skilled would have to go a step further, and provide only a single groove having the needed elastic deformation properties (as disclosed in E5) and also including the longitudinal strip. However, the Appellant did not give any reasons why the

skilled person would adopt this further step. The Board likewise does not see that these reasons would be obvious.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated