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- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 15 December 2021**

Case Number: T 0464/18 - 3.2.01

Application Number: 10152792.7

Publication Number: 2216590

IPC: F21S8/12

Language of the proceedings: EN

Title of invention:

Vehicle lamp

Patent Proprietor:

Koito Manufacturing Co., Ltd.

Opponent:

Valeo Vision SAS

Headword:

Relevant legal provisions:

EPC Art. 100(c), 100(b), 100(a), 123(2), 54, 113(1), 111(1)
RPBA 2020 Art. 13(2), 11
EPC R. 106

Keyword:

Main request - Grounds for opposition - added subject-matter
(no)

Main request - Grounds for opposition - insufficiency of
disclosure (no)

Main request - Grounds for opposition - lack of novelty (yes)

Remittal for examination of auxiliary requests 1 and 2 (no)

Auxiliary requests 1 and 2 - Amendments - extension beyond the
content of the application as filed (yes)

Right to be heard - opportunity to comment (yes)

Submission of new requests - Remittal - special reasons (yes)

Decisions cited:

G 0010/91

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0464/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 15 December 2021

Appellant: Valeo Vision SAS
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Respondent: Koito Manufacturing Co., Ltd.
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Representative: Cabinet Beau de Loménie
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 12 December
2017 rejecting the opposition filed against
European patent No. 2216590 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
A. Jimenez

Summary of Facts and Submissions

- I. The appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition filed against the patent in suit (hereinafter "the patent").
- II. The opposition division decided that:
- the subject-matter of the claims as granted did not extend beyond the content of the application as filed; and
 - the patent disclosed the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art; and
 - the subject-matter of the claims was novel inter alia over VAL 1 (ISAL'07, Darmstadt, ISBN: 978-3-8316-0711-2) and VAL 2 (US 2008 0007961 A1) and involved an inventive step in view of VAL 1 alone or VAL 2 alone.
- III. Oral proceedings before the Board took place on 15 December 2021.

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 or, in the alternative, that the patent be maintained on the basis of the first or second auxiliary requests filed with the reply to the statement of grounds of appeal. If the Board were to consider that the first and second auxiliary requests were not allowable, it requested that the case be remitted to the opposition division for ex-officio

examination of the compliance of these auxiliary requests with Article 123(2)EPC and/or for filing of new requests. The respondent (patent proprietor) added that, if the Board would take a final negative decision on the first and second auxiliary requests, it would consider that its right to be heard had been violated (Rule 106 EPC).

IV. Claim 1 of the main request, with the feature numbering introduced by the opposition division, reads as follows:

(A) A vehicle lamp (10) comprising a first lamp unit (20A) and a second lamp unit (20B), characterized in that
(B) the first lamp unit (20A) provides at least twice as much illuminance as the second lamp unit (20B),
(C) and in that the vehicle lamp (10) forms a sufficient and favorable low beam light distribution pattern (PL) by superimposing light irradiated only from the first lamp unit (20A) and from the second lamp unit (20B).

V. Claim 1 of auxiliary request 1 is based on claim 1 of the main request with the addition of the following feature:

"in that the cutoff lines (CL) formed by the first and second lamp units (20A, 20B) include an oblique line".

VI. Claim 1 of auxiliary request 2 is based on claim 1 of the main request with the addition of the following feature:

"in that a rear focal length of a second projection lens (34) of the second lamp unit (20B) is shorter than the rear focal length of a first projection lens (24) of the first lamp unit (20A)"

- VII. In this decision reference is also made to the following document, filed by the appellant with letter dated 24 April 2018:
Regulation 112, "Uniform provisions concerning the approval of motor vehicle headlamps emitting an asymmetrical passing beam or driving beam or both equipped with filament lamps and/or LED modules"

Reasons for the Decision

1. Main request

- 1.1 Added subject-matter - Article 100(c) EPC

The Board confirms the view of the opposition division holding that the subject-matter of claim 1 does not extend beyond the content of the application as originally filed.

- 1.1.1 The expression "more than" in claim 1 as originally filed was replaced by the expression "at least" in feature (B) of claim 1 of the main request. Feature (B), reading "*the first lamp unit (20A) provides at least twice as much illuminance as the second lamp unit (20B)*", is disclosed in the last sentence of paragraph [0040] of the A-publication.

- (a) The appellant was of the opinion that the replacement of the expression "more than" with the expression "at least" was contrary to the requirements of Article 123(2) EPC. The first lamp unit 20A providing at least twice as much illuminance as the second lamp unit 20B was disclosed in relation to a specific embodiment, where "*the rear focal length of the first*

projection lens 24 of the first lamp unit 20A is longer than the rear focal length of the second projection lens 34 of the second lamp unit 20B, and the lens diameter of the first projection lens 24 is larger than the lens diameter of the second projection lens 34" (paragraph [0040] of the A-publication). The above mentioned structural features of this specific embodiment were not introduced into claim 1 which led to an unallowable intermediate generalisation.

- (b) The Board disagrees. In the present disclosure the expressions "at least" (paragraph [0040]) and "more than" (paragraphs [0042] and [0044]) have been used interchangeably for the same exemplary embodiment. The difference between the use of the expression "at least" and "more than" lying in the end point (i.e. the first lamp unit (20A) providing twice as much illuminance as the second lamp unit (20B)) is not critical in the present invention. The skilled person is therefore not presented with new technical information with the use of the expression "at least" instead of "more than" in claim 1.

1.1.2 The amendments made to feature (C) of claim 1 compared to claim 1 as originally filed are highlighted in bold: *"the vehicle lamp (10) forms **a sufficient and favorable** low beam light distribution pattern (PL) by superimposing light irradiated **only** from the first lamp unit (20A) and from the second lamp unit (20B)".*

- (a) The appellant argued that the changes made to feature (C) led to an unallowable intermediate generalisation. The structural features of the exemplary vehicle lamp disclosed in paragraphs

[0020]-[0034] as well as paragraphs [0040]-[0047] leading to "a sufficient and favorable low beam light distribution pattern (PL)" were not introduced into claim 1. In the appellant's view these features could not be omitted from claim 1 as they were structurally and functionally linked to the amendments made to feature (C).

- (b) The Board does not agree. The changes made to feature (C) clarify that the low beam light distribution pattern is formed by superimposing the first lamp unit (20A) and the second lamp unit (20B) only (without the need for a third lamp section (40)) as disclosed in paragraphs [0047] and [0053]. Furthermore the qualification of the low beam light distribution pattern by the terms "*sufficient*" and "*favorable*", also disclosed in paragraph [0047], is relative and does not limit the low beam light distribution pattern further. The skilled person is therefore not presented with any new technical information that extends beyond the application as originally filed.

1.2 Insufficiency of disclosure - Article 100(b) EPC

The Board confirms the view of the opposition division holding that claim 1 defines the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

While feature (B) according to which "*the first lamp unit (20A) provides **at least** twice as much illuminance as the second lamp unit (20B)*" leads to ambiguities in the scope of the claim, the skilled person can carry out the invention defined by claim 1.

- (a) The appellant did not question that illuminance was a parameter that could be determined or that regulations defined certain conditions to measure it. However the appellant argued that such conditions were not enough to establish a method to obtain the relative illuminance of the lamp units. The patent did not provide any information as to whether the relative illuminance of the lamp units should be measured at a specific point like in regulation 112 (see point 6.2 and annex 3) and if so, at which point, or if the relative illuminance of the lamps units should be measured over an area and if so, how should the area be determined.
- (b) It is established case law (CLBA II. C. 8.2, version 2019) that what is decisive for establishing insufficiency of disclosure within the meaning of Article 83 EPC is whether the parameter, in the specific case, is so ill-defined that the skilled person is not able, on the basis of the disclosure as a whole and using his common general knowledge, to identify (without undue burden) the technical measures necessary to solve the problem underlying the patent at issue. Where a claim contains an ill-defined ("unclear", "ambiguous") parameter and where, as a consequence, the skilled person does not know whether he is working within or outside of the scope of the claim, this, by itself, is not a reason to deny sufficiency of disclosure as required by Article 83 EPC.

In the present case, the patent discloses a detailed way of carrying out the invention, whereby the first lamp unit provides at least twice as much illuminance as the second lamp unit.

While the measurement of the illuminance on a vertical screen disposed at 25 m forward of the headlamp is standard and disclosed in paragraph [0013] of the patent and figure 11 of VAL 1, the Board acknowledges that the size and the location of the area taken for the illuminance's measurement varies in the prior art (surface within a 0,4 lux illuminance in VAL 1 vs points at various location in Regulation 112) and is not defined in the patent.

However, the skilled person in the art knows how to select an area or a point at a location on the vertical screen to be able to make a meaningful comparison of the illuminance of the two light source units. While the selection of the point or the area may lead to variations in the measurements and the relative illuminance, leading to unclear boundaries of the claim, the variations are not such that the invention cannot be carried out by the skilled person in the art.

1.3 The admissibility of document "Regulation 112" raised by the respondent can be left open since the "Regulation 112" representing common general knowledge according to the appellant does not change the outcome on the question of sufficiency of disclosure.

1.4 Novelty of claim 1 over VAL 1

Contrary to the view of the Opposition Division, the subject-matter of claim 1 is not novel over VAL 1.

1.4.1 The respondent was of the opinion that feature (C) was not disclosed in document VAL 1. The vehicle lamp forming *"a sufficient and favorable low beam light distribution pattern"* in claim 1 did not only require

for the low beam light distribution pattern to conform with the legislation. The term "favorable" based on paragraphs [0044] and [0045] of the patent implied "an increased far zone illuminance as well as a lateral illuminance ensuring good visibility for the driver". Therefore it was not sufficient for the Xenon module of VAL 1 to comply with class C regulation to make it configured to form a sufficient and favorable low beam light distribution pattern.

The respondent referred to the left graph of figure 13 of VAL 1 and the first sentence in section 4.2.1.1 of VAL 1, "the systems can be used to create either a part of a passing beam or a supplementary beam for bends lighting" and argued that the Xenon light module could not be considered to form a favorable and sufficient low beam light.

Furthermore the respondent considered that feature (B) was not disclosed in VAL 1. The graphs of figures 11 and 13 of VAL 1 showed discrepant results which could not be compared. Figure 11 corresponded to simulated illuminance while figures 12 and 13 corresponded to measured illuminance. It could therefore not be concluded that the illuminance of the Xenon module alone (with a maximum measured illuminance of 50 lux, left graph of figure 13) provided at least twice as much illuminance as the three LED module (with a maximum simulated illuminance of 12 lux, middle graph of figure 11). The respondent further noted that the footnote of figure 13 disclosed that the measurements were made without the headlamp's outer lens.

- 1.4.2 The Board considers that the above interpretation of feature (C) is too narrow. "Sufficient and favorable" might possibly be interpreted on the basis of existing regulations for vehicle lamps, however a specific

limitation based on the description is not justified. The term "favorable" is a relative term, which does not provide a further technical limitation to the low beam light distribution pattern.

VAL 1 (second paragraph of chapter 1, chapter 3.1 and first paragraph of chapter 4.2.1.1) discloses a Xenon module and a supplementary 3 LEDs module forming the C class pattern with an additional side pattern.

Therefore the combination of the patterns of the two modules, the Xenon light module and the three LED module create "a sufficient and favorable low beam light distribution pattern".

Chapter 4.2.1.1. states that "*these systems can be used to create either a part of the passing beam or a supplementary beam for bends lighting*". The following sentence specifies that "*in the latter case, two different combinations were tested out: a 3LEDs module and a 5 LEDs system*". This second sentence implies that the 3 LEDs module and the 5 LEDs system, creating a supplementary beam for bends lighting are added to the passing beam created by the Xenon module. This is confirmed by figure 13 showing "*the 5 LEDs system combined to a Xenon low beam projector module (measure alone on the left-hand side)*". Therefore feature (C) is disclosed in VAL 1.

Furthermore, although figure 11 discloses 3 graphs corresponding to simulations whereas figures 12 and 13 disclose illuminance measurements, it can be concluded directly without ambiguity that the illuminance of the Xenon module is at least twice as much as the illuminance of the 3 LEDs module.

The first graph of figure 11 representing the simulated illuminance of a 1 LED system shows a maximum illuminance of around 6 lux while figure 12 representing measured illuminance of a 1 LED system

shows a maximum illuminance of 1 lux. Accordingly for a 1 LED system, the measured illuminance is lower than the simulated illuminance. The simulated illuminance of the three LED module depicted in the middle graph of figure 11 has a maximum simulated illuminance of 12.01 lux. In analogy to the system with one LED, the maximum measured illuminance will be lower than the simulated illuminance of 12.01 lux. The maximum measured illuminance of the Xenon being 50 lux is well above twice the maximum simulated illuminance of the 3 LED module (24 lux) and will be all the more at least twice the maximum measured illuminance.

1.5 Novelty of claim 1 over VAL 2

The subject-matter of claim 1 is not novel over VAL 2.

1.5.1 The respondent was of the opinion that VAL 2 did not anticipate feature (B). A unit was according to the respondent "the smallest set of elements configured to perform a certain function which cannot be further divided in sub-sets capable of performing the same function as the whole unit". The light source units LU1 and LU2 could not therefore be considered as the "first lamp unit" of claim 1. Similarly the lights units LU3 and LU4 could not be considered as "the second lamp unit" of claim 1.

1.6 The Board disagrees with the interpretation of the terms "lamp unit" made by the respondent. Claim 1 is drafted using very general terms i.e. "first lamp unit" and "second lamp unit" without defining the features present in these lamp units. The light source units LU1 and LU2 creating the light distribution pattern with a "kink" P1 and P2 and the light source units LU3 and LU4 creating the flat light distribution pattern P3 and P4

can be considered respectively as the first lamp unit and the second lamp unit as argued by the opponent. Considering the two light source units LU1 and LU2 and the two light source units LU3 and LU4 as lamp units is indeed justified in view of paragraph [0081] of VAL 2 disclosing an embodiment where *"the light source units LU1 and LU2 are connected to the ECU 100 by a single control line, and the light source units LU3 and LU4 are also connected to the ECU 100 by a single control line, so that the amount of light from each set is controlled uniformly"*.

2. Auxiliary requests 1 and 2

During the oral proceedings, the appellant stated that they intended to raise objections under Article 123(2) EPC and objections of lack of novelty against the auxiliary requests 1 and 2, and the respondent objected that these objections should be disregarded by the Board pursuant to Article 13(2) RPBA 2020.

Irrespective of the admissibility of the appellant's objections, at the oral proceedings the Board examined of its own motion (Article 114(1) EPC) whether claims 1 of auxiliary requests 1 and 2 complied with the requirements of Article 123(2) EPC and came to the conclusion that they introduce added subject-matter for the following reasons.

2.1 As compared to claim 1 as granted, claim 1 of auxiliary request 1 is amended by introducing the feature *"that the cutoff lines (CL) formed by the first and second lamp units (20A, 20B) include an oblique line"*. In the reply to the grounds of appeal under point 5, the respondent explained that the amendment fulfilled the requirements of Article 123(2) EPC as the added

features in claim 1 were recited in paragraphs [0024] and [0031] of the A-publication and that isolation of features relating to the cutoff line was admissible due to the general wording of paragraphs [0027] and [0034] and the structure of the shade being given as an example.

However, as disclosed in paragraphs [0024] and [0031] of the A-publication, the feature that *"the cutoff lines (CL) formed by the first and second lamp units (20A, 20B) include an oblique line"* is a direct consequence of the light emitting device 22/32 being reflected by the reflecting surface 26a/36a of the reflector 26/36 toward the focal point f2/f4, and entering the projection lens 24/34, and of the lamp unit 20A/20B being configured such that a part of the light is reflected by the horizontal surface 21b/31b which is on the rear side of the edge line 21c/31c of the shade 21/31.

The expression "so that" in front of *"the light is selectively cut to form the cutoff line CL, which includes an oblique line"* emphasises the direct link with the previous disclosed structural features. Paragraph [0027] and [0034] cannot form the basis for the intermediate generalisation as both paragraphs starting with the term "consequently" must be read with the previous paragraphs defining the specific structural features for achieving the cutoff line. Moreover paragraphs [0027] and [0034] themselves disclose the light being reflected by a reflector and entering a projection lens, forming distribution pattern Pa/Pb with a cutoff line according to figure 6. While the skilled person may envisage other ways to configure the lamp unit to form the cutoff lines including an oblique line, no other arrangement is disclosed in the application as filed apart from the

embodiment depicted in figures 1-5, where a lens, a reflector, and a shade are used in a specific configuration.

Hence, the amendment made to claim 1 of auxiliary request 1 results in an unallowable intermediate generalisation contrary to the requirements of Article 123(2) EPC.

- 2.2 As regards claim 1 according to auxiliary request 2, it is amended over claim 1 as granted by the introduction of the feature *"in that a rear focal length of a second projection lens (34) of the second lamp unit (20B) is shorter than the rear focal length of a first projection lens (24) of the first lamp unit (20A)"*. Under point 9 of the reply to the statement of grounds the respondent argued that the introduction of the above mentioned feature found its basis in paragraph [0028] of the A-publication.
- The Board takes the view that also this amendment results in an unallowable intermediate generalisation. After the description of the first lamp unit 20A of figure 4, paragraph [0028] of the A-publication describes the second lamp unit 20B of figure 5 comprising a lens 34, a reflector 36 which forwardly reflects light from the light source 32 to converge light towards the optical axis of the lens and a shade 31 to shield part of the light to form a cutoff line CL. The rear focal length of the first and the second projection lens are inextricably linked to the structural features of the lamp units 20A and 20B of figures 4 and 5. Indeed the position of the length and the rear focal length should be such that the focal point f_2 and f_4 are on or in the vicinity of the edge line 21c, 31c of the shade 21, 31.

3. Objection under Rule 106 EPC and remittal to the first instance.
- 3.1 During the oral proceedings, the respondent submitted that, since no objections were raised against the auxiliary requests 1 and 2 by the appellant in the written proceedings, the Board should allow at least the auxiliary request 1. As regards an examination of the requirements of Article 123(2) EPC by the Board of its own motion, the respondent submitted that since the Board did not raise any objections in the communication in preparation to oral proceedings, the respondent was not in a position to properly react to such an examination, and therefore a decision of the Board not allowing these requests for lack of compliance under Article 123(2) EPC constituted a violation of the right to be heard, in respect of which an objection under Rule 106 EPC was raised.
- 3.2 The Board agrees with the respondent that the appellant should have raised objections against the auxiliary requests well in advance of the oral proceedings. Indeed the appellant had sufficient time to raise objections at their disposal, considering that these requests were filed with the reply to the statement of grounds of appeal, dated 13 September 2018, and that the Board's communication pursuant to Article 15(1) RPBA was issued on 20 February 2020. In fact, at the oral proceedings the Board did not admit the objections of lack of novelty against the auxiliary requests, as the respondent did not provide cogent reasons for raising these objections only at such a late stage (Article 13(2) RPBA). However, the Board takes the view that under the circumstances of this case:
 - in which the appealed decision did not deal with the auxiliary requests (the opposition was rejected), and

- in which claim 1 of the the auxiliary requests is amended by introducing features taken from the description,
the mere fact that the respondent did not raise any objections in advance of the oral proceedings does not justify allowing these requests without the Board carrying out an examination of its own motion (Article 114(1) EPC) in respect of the requirements of Article 123(2) EPC.

During the oral proceedings, the respondent was given the opportunity to explain orally why the introduction of features in claim 1 of auxiliary request 1 and 2, respectively, did not result in an intermediate generalisation, even though the added features were disclosed in the description in combination with other features. Since the arguments of the respondent were not convincing, for the reasons given above, the Board concluded that it was justified to decide that the auxiliary requests were not allowable.

The respondent's argument that they were taken by surprise by the Board's examination of the requirements of Article 123(2) EPC of its own motion is not convincing. The respondent should have expected the issue of amendments to be discussed at the oral proceedings, in particular in view of the fact that the independent claims of the auxiliary requests were amended by introduction of features taken from the description (see also G10/91, points 19 of the reasons). Furthermore, although the Board did not raise objections in the communication pursuant to Article 15(1) RPBA, it drew the parties's attention (see point 7) to the fact that "depending on the outcome of the discussion regarding the main request, the first and the second auxiliary requests will be discussed during oral proceedings". Hence, a discussion of the auxiliary

requests was to be expected. Finally, the issue of intermediate generalisation was thoroughly discussed at the oral proceedings and it is not apparent why this discussion would have required an adjournment of the oral proceedings, or even a remittal, for the respondent to properly prepare to it.

Accordingly, the Board takes the view that no violation of the respondent's right to be heard (Article 113(1) EPC) has taken place when coming to the conclusion that auxiliary requests 1 and 2 are not allowable under Article 123(2) EPC. As a consequence, the objection under Rule 106 EPC is dismissed.

- 3.3 However, the fact that the respondent was only made aware for the first time during oral proceedings that the auxiliary requests were not allowable under Article 123(2) EPC justifies that the respondent be given a proper opportunity to prepare and file amended requests. In view thereof, and of the fact that the respondent requested remittal of the case to the opposition division and the appellant did not object, the Board takes the view that there are special reasons in the sense of Article 11 RPBA justifying remittal of the case to the department of first instance.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The case is remitted to the opposition division for further prosecution

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated