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Datasheet for the decision of 29 September 2022

Case Number: T 1359/21 - 3.2.01

Application Number: 16001666.3

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IPC: B60J1/20, B60J10/50

Language of the proceedings: EN

Title of invention:
AUTOMOBILE BELTLINE PORTION SOUND INSULATING STRUCTURE AND AUTOMOBILE DOOR GLASS

Patent Proprietor:
AGC Inc.

Opponent:
SAINT-GOBAIN GLASS FRANCE

Headword:

Relevant legal provisions:
EPC Art. 100(c), 54, 56

Keyword:
Grounds for opposition - extension of subject-matter (no)
Novelty - (yes)
Inventive step - (yes)

Decisions cited:

Catchword:

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Beschwerdekammern

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Case Number: T 1359/21 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 29 September 2022

Appellant: (Opponent)	SAINT-GOBAIN GLASS FRANCE Tour Saint-Gobain 12 place de l'Iris 92400 Courbevoie (FR)
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Respondent: (Patent Proprietor)	AGC Inc. 5-1, Marunouchi 1-chome, Chiyoda-ku Tokyo 100-8405 (JP)
Representative:	Müller-Boré & Partner Patentanwälte PartG mbB Friedenheimer Brücke 21 80639 München (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 21 June 2021 concerning maintenance of the European Patent No. 3135517 in amended form.**

Composition of the Board:

Chairman	G. Pricolo
Members:	J. J. de Acha González
	S. Fernández de Córdoba

Summary of Facts and Submissions

I. The appeal of the opponent lies against the interlocutory decision of the Opposition Division to maintain the European patent N° 3135517 in amended form according to the then auxiliary request 2.

II. The Opposition Division found among others that:

- the subject-matter of granted claim 1 did not extend beyond the content of the application as originally filed (Article 100(c) EPC);
- the subject-matter of claim 1 of the auxiliary request 2, identical to claim 1 as granted, was new over **D1** (JP2001-219738; including its machine-generated translation **D2**) and involved an inventive step in view of D1 taken together with common general knowledge of the skilled person.

III. Oral proceedings before the Board were held on 29 September 2022 in the form of a videoconference with the consent of the parties.

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 (main request), or, in the alternative, that the patent be maintained in amended form according to any of the auxiliary requests I to X filed with the reply to the statement of grounds of appeal.

IV. Claim 1 of the main request reads as follows (differences with respect to originally filed claim 1 highlighted by the Board; feature numbering according to the contested decision):

An automobile beltline portion sound insulating structure formed along a beltline of an automobile, comprising:

(**A**) *a door panel (2) having two panel boards (21, 22) facing each other, and*

(**B**) *a door glass (1) being freely openable and closable by being provided between the two panel boards (21, 22) in a liftable manner,*
the panel boards (21, 22) having

(**C**) *seal members (41, 42) sealing between the door panel (2) and the door glass (1) in regions along the beltline of facing surfaces respectively,*

(**B.1**) *the door glass (1) having a door glass main body (11) and*

(**D**) *a first viscoelastic member (31) in a lower portion of one main surface (11a) of the door glass main body (11),*

(**D.1**) *the first viscoelastic member (31) having a Young's modulus lower than that of the seal member (41) positioned on a surface of the panel board (21) facing to the one main surface (11a) of the door glass main body (11), and*

(**C.1**) *the seal member (41) positioned on the surface of the panel board (21) facing to the one main surface (11a) having at least two lip portions (411, 412) on a side of the door glass (1),*

characterized in that ~~wherein~~

(**D.2**) *the first viscoelastic member (31) is sandwiched*

~~positioned~~ between the two lip portions (411, 412) while abutting on at least a part of the seal member (41) positioned on the surface of the panel board (21) facing to the one main surface (11a), at the door glass closed time, to insulate sound between a door panel (2) and a door glass (1).

Reasons for the Decision

1. *Main request - Article 100(c) EPC*

1.1 The subject-matter of claim 1 does not extend beyond the content of the application as originally filed.

1.2 Claim 1 of the main request is identical to claim 1 as granted.

Claim 1 as granted differs from claim 1 as originally filed at least in that the wording "*positioned between*" is replaced by "*sandwiched between*".

1.3 The Board judges in line with the respondent's view, and in line with the normal reading of the term "sandwiched", that the wording "the first viscoelastic member is *sandwiched between* the two lip portions" implies a contact between the lip portions and the viscoelastic member (see in comparison para. 29, lines 6 to 11 and para. 33 for "*positioned*" and para. 31, 47 and 48 for "*sandwiched*" of the application as originally filed) but not necessarily that the viscoelastic member is completely covered by the two lip portions.

In the appellant's view the wording implied a positioning of the entire viscoelastic member between the lip portions without necessarily a contact as supported by paragraph [0034] of the patent (corresponding to paragraph [32] of the application as filed), which explicitly stated that the lip portions were not necessarily required to be in contact with the viscoelastic member. Further, paragraph [0033] of the patent (corresponding to paragraph [31] of the application as filed) could not help interpreting "*sandwiched between*" in feature D2 of claim 1 because in that paragraph the term "to sandwich" was used to refer to the viscoelastic member being sandwiched between the main surface 11a of the door glass main body and the surface 41a of the seal member parallel to said main surface 11a. The viscoelastic member was merely "between" the lip portions when the door glass was closed.

It must be noted that the paragraph [0034] of the patent cited by the appellant relates to an embodiment in which the viscoelastic member is not specified as being sandwiched between the lip portions but sandwiched between the main surface of the door glass main body and the surface 41a of the seal member which is parallel to the main surface (see precedent para. [0033] of the patent where the viscoelastic member is specified as being only positioned between the lip portions). Consequently, if no contact between the viscoelastic member and the lip portions is present, the viscoelastic member is not sandwiched therebetween. Regarding the submissions in relation to paragraph [0033] of the patent the Board cannot see why that passage of the patent cannot serve to interpret the term "*sandwiched*". That part of the patent specification refers to a sandwich of the viscoelastic

member between other parts of the structure than the lip portions. Nevertheless and as pointed out by the respondent, the meaning of the expression remains the same and it derives from that passage that a contact is meant when the viscoelastic element is sandwiched between two parts.
Finally, the appellant's interpretation that the viscoelastic member needs to be entirely placed between the lip portions when sandwiched is incorrect since according to said paragraph [0033] of the patent the viscoelastic member is specified as being sandwiched between the surface 41a and the lower portion of the interior side main surface 11a of the door glass main body but is however not located completely between both (see figure 2A of the patent).

1.4 The appellant's objection on inadmissible extension was based on the allegation that feature D.2 could not be derived from paragraph [0047] of the application as filed, because the latter left open which one, among the inner seal member 41 and the at least two lip portions, abutted a portion of the viscoelastic member 31.

However, given the above interpretation of the term "to sandwich", the passage of paragraph [0047] disclosing "the inner seal member has at least two lip portions positioned to sandwich the viscoelastic member 31 while abutting on at least a part of the viscoelastic member 31 at the door glass closed time" can only be understood as disclosing that the lip portions are in contact with the viscoelastic member. Accordingly, an interpretation of paragraph [0047] in which only the inner seal member 41 abuts the viscoelastic member 31 and the lips do not contact it, namely the first interpretation i) according to the statement of grounds

of appeal of the appellant, is not justified.

As regards the second interpretation ii) according to the statement of grounds of appeal, it is correct in the sense that the lips portions are in contact with the viscoelastic member. As correctly pointed out by the opposition division in the impugned decision, feature D.2 "*only further requests the viscoelastic member to abut on a least a part of the seal member positioned on the surface of the panel board facing to the one main surface when the door glass is closed. That is, the viscoelastic member must abut the seal (lip (411), lip (412), or vertical part (41a)) in order to close off a sound propagating gap*." This is definitely the case for interpretation ii). Accordingly, no new information is introduced by replacing the expression "positioned between" with "sandwiched between" in claim 1: claim 1 as filed generally required the viscoelastic member to abut on at least a part of the seal member whilst present claim 1 specifically requires the viscoelastic member to abut at least on the two lip portions, and this is disclosed in the application as filed, as explained above.

1.5 The appellant also objected, based on their above mentioned interpretation of claim 1, the fact that paragraph [0048] whose content was disclosed in combination with paragraph [0047] (basis for the amendment of "*sandwiched*") also disclosed that the lip portions sealed the door panel and the door glass in its closed position.

However, this feature is implicit from the wording of the claim . According to feature C.1, the lip portions are on a side of the door glass and part of the seal member facing to the main surface of the door glass.

Further, according to feature C, the seal member seals between the door panel and the door glass along facing surfaces. Consequently, the lip portions contribute to the sealing between the door panel and the door glass.

1.6 The appellant additionally objected that paragraph [0047] of the application as originally filed described only an inner seal member and not an outer seal member. Since claim 1 related generally to a seal member, the amendment resulted in an intermediate generalisation of the subject matter disclosed in the application as originally filed. Paragraph [0025] of the application as originally filed could not justify such a generalisation since the paragraph described that the configuration of the outer side may be similar (line 2), but was not necessarily the same (line 3). Additionally, the embodiment of paragraph [0047] described an embodiment of the invention in which the inner lips were a top lip and a bottom lip, which formed a vertical sandwich. However, claim 1 covered an embodiment not described in the patent application as originally filed, in which the sandwich could be, for instance, horizontal. Indeed, claim 1 did not define the direction of the arrangement of the lip portions and accordingly, the amendment resulted in an intermediate generalisation of the subject matter of the application as originally filed.

However, the last sentence of paragraph [0025] clearly specifies that "*the configuration of the automobile interior side of the following sound insulating structure (1) is also applicable to a case where the sound insulating structure of the present invention is configured to have the viscoelastic member only on the automobile interior side or on the automobile exterior*

side.". Consequently, the disclosure for the inner seal member applies analogously to the outer member.
For what relates to the vertical lip portions' objection and bearing in mind the features of claim 1 - the glass door is liftable between the two panel boards of an automobile beltline portion - it derives directly and unambiguously from that wording that the two lip portions are necessarily arranged in a vertical manner with respect to the glass door, as pointed out by the respondent.

2. *Article 54 EPC - novelty over D1*

2.1 The subject-matter of claim 1 is new over the disclosure of D1.

2.2 Considering the interpretation of "*sandwiched*" above as implying a contact between the parts, D1 does not disclose any sandwiched position of the insulating materials between two lip portions of the seal member. The subject-matter of claim 1 is accordingly new over D1 because D1 does not at least disclose feature D.2.

2.3 The appellant asserted that the embodiments shown in figures 2 and 3 of D1 showed a contact between the lips (31, 32) and the viscoelastic members (1a to 1d).

However, such a contact is neither disclosed on the description nor shown in any of the figures 2 and 3.

The appellant referred to paragraph [0012] of the machine-generated translation D2 disclosing that "*when the protrusions 3a to 3d are provided on the outer seal portion 20 and the inner seal portion 30, they are integrally formed of the same material as the outer seal portion 20 and the like*". This passage, however,

is general and only discloses a location of the protrusions on the outer seal portion (as in Fig. 2 for 3a, 3b, and as an embodiment alternative to that of Fig. 3 where 3c, 3d are on the door glass) but does not disclose a contact between lips and viscoelastic members 1a to 1d either.

3. *Article 56 EPC over D1*

3.1 The subject-matter of claim 1 is not rendered obvious by the automobile beltline portion sound insulating structure disclosed in D1 (figures 2 or 3) in combination with common general knowledge of the skilled person.

3.2 The subject-matter of claim 1 differs from the structures of figures 2 and 3 of D1 at least on account of feature D.2.

3.3 The appellant argued that bearing in mind this difference the problem to be solved could be formulated as to propose an alternative sound insulation structure. In this sense paragraph [0014] of D1 taught that it is desirable to increase the number of contact points with the glass in order to eliminate the vibrations of the door. Accordingly, no inventive effort would have been required to position the viscoelastic member 1b in figure 2 slightly higher, so that it was placed in the closed glass position completely between and in contact with the two lip portions 32 and 3b, and thus sandwiched. The same applied when starting from the structure of figure 3 where the skilled person prompted by paragraphs [0005] and [0012] to swap the protrusion 3d with the viscoelastic member 1d would find an obvious

alternative in which the viscoelastic member 1d would be sandwiched between the lip 32 and the protrusion 3d.

3.4 Paragraph [0014] of D1 however does not provide the teaching submitted by the appellant but merely states the technical effect of the invention disclosed in D1. In particular, the paragraph specifies that the number of locations that support the door glass increases with the elastic contact provided between the sound insulating members (1b, 1d) and the protrusions (3b, 3d) in the closed position of the glass and, accordingly, the vibration of the glass is suppressed. There is no hint that a further increase would provide any effects at all.Hence, the skilled person does not find any motivation in D1 nor in their common general knowledge that would suggest to sandwich - a contact being implied - the sound insulating material (1a to 1d) of any of the embodiments shown in figures 2 and 3 of D1 between two projections of the seal member 30 in the closed position of the door glass. The reasoning of the appellant is thus based on hindsight.

4. It follows from the above that the decision of the Opposition Division is to be confirmed.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

A. Vottner G. Pricolo

Decision electronically authenticated