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**Datasheet for the decision
of 11 September 2023**

Case Number: T 2180/21 - 3.2.01

Application Number: 16185921.0

Publication Number: 3138745

IPC: B60S1/38, B60S1/40

Language of the proceedings: EN

Title of invention:

WIPER DEVICE FOR CLEANING VEHICLE WINDOWS

Patent Proprietor:

Valeo Systèmes d'Essuyage

Opponent:

Robert Bosch GmbH

Headword:

Relevant legal provisions:

EPC Art. 54, 56

RPBA 2020 Art. 12(5), 12(6), 13(2)

EPC R. 99(2)

Keyword:

Admissibility of appeal (yes)

Novelty - (yes)

Inventive step - (yes)

Discretion not to admit submission - requirements of Art.
12(3) RPBA 2020 met (no)

Late-filed objection - should have been submitted in first-
instance proceedings (yes)

Late-filed evidence - error in use of discretion at first
instance (no)

Amendment after summons - taken into account (no)

Decisions cited:

G 0007/93

Catchword:



Beschwerdekammern

Boards of Appeal

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Case Number: T 2180/21 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 11 September 2023

Appellant: Robert Bosch GmbH
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Respondent: Valeo Systèmes d'Essuyage
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 2 December 2021
rejecting the opposition filed against European
patent No. 3138745 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman G. Pricolo
Members: J. J. de Acha González
A. Jimenez

Summary of Facts and Submissions

I. The appeal of the opponent lies against the decision of the Opposition Division rejecting the opposition against the European patent n°3138745.

II. The following documents are relevant for the present decision:

D1: EP 1985513 A1,
E1: WO 99/06252 A1,
E2: DE 102011012245 A1,
E3: EP 0330458 A2,
E3': GB 2186021 A,
E5: DE 102013208576 A1,
E8: DE 60013387 T2,
E9: EP 3002168 A1, and
E10: DE 102007021333 A1.

III. In its decision the Opposition Division found among others that the subject-matter of granted claim 1 was new in view of E3 (E3') and E8 and involved an inventive step in view of the following combinations of prior art (Article 100(a) EPC):

- E2 with any of E1, E3, E5 or E8;
- E3 with E3' or E2;
- E8 with common general knowledge or E2;
- E1 with E2; and
- Any of E1 to E8 or D1 with common general knowledge.

The Opposition Division also did not admit E9 and E10 into the proceedings.

IV. Oral proceedings before the Board took place on 11 September 2023 as a videoconference with the consent of the parties.

The appellant (opponent) requested that the decision of the Opposition Division be set aside and the patent be revoked.

The respondent (patent proprietor) requested that the appeal of the opponent be rejected as inadmissible, or, in the alternative, that the appeal of the opponent be dismissed, or, further in the alternative, that the patent be maintained in amended form according to any of the auxiliary requests 1 to 4 filed with letter of 9 September 2020 during the opposition proceedings or the auxiliary request 3' filed on 19 July 2021 during the opposition proceedings, all refiled with the letter of 17 July 2023.

V. Claim 1 of the main request, i.e. as granted, reads as follows (feature numbering according to the contested decision):

- 11** *A wiper device (100) for cleaning vehicle windows, with
a wiper arm (10) and with a wiper blade (1),*
- 12** *which is fastened on the wiper arm (10) by means of a
fastening arrangement (2), and*
- 13** *with a cleaning arrangement (40), which has at least
one spray nozzle (42, 43, 47, 48) for a cleaning fluid,
wherein*
- 14** *the cleaning arrangement (40) is directly connected
with the wiper arm (10), and wherein*
- 15** *the fastening arrangement (2) is constructed as a
separate element from the cleaning arrangement (40),
characterized in that*
- 16** *the cleaning arrangement (40) is constructed to hold*

the fastening arrangement (2) for the wiper blade (1), and that

- 17** *on the fastening arrangement (2) and the cleaning arrangement (40) first and second guide means (65, 66), cooperating with one another, are provided,*
- 18** *which guide the fastening arrangement (2) on mounting on the cleaning arrangement (40) between an initial position (80) and a final position (81).*

Reasons for the Decision

1. *Admissibility of the appeal*
- 1.1 The objection to the admissibility of the appeal put forward by the respondent for the first time during the oral proceedings before the Board was not admitted under Article 13(2) RPBA 2020 (Rules of Procedure of the Boards of Appeal OJ EPO 2021, A35).
- 1.2 The respondent argued that the objection was not late filed but that it had already been raised with the reply to the statement of grounds of appeal. In particular, even if not explicitly stated, it derived implicitly from the content of the reply that the respondent also requested to reject the appeal as being inadmissible. The content of the reply explained that the appellant was not raising any new arguments to those already presented during the opposition proceedings, said arguments duly considered by the Opposition Division in the decision under appeal. Accordingly, the appellant failed to explain in the

statement of grounds of appeal why the Opposition Division was incorrect.

1.3 Under Article 13(2) RPBA 2020 any amendment to a party's appeal case made after notification of a summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

1.4 The Board holds that in the case at hand the objection to the admissibility of the appeal cannot be said to have been raised already and in an implicit manner with the reply of the respondent. In the reply the respondent merely argued that the appellant did not base their appeal on new lines of argumentation and treated the objections on the substance by analogously maintaining their own lines filed during the opposition proceedings. The respondent also makes a distinction in their reply between reasoning on admissibility issues (in regard of documents E9, E10 and E11, as well as auxiliary requests 3, 5 and 3") and reasoning in the substance of the issues. An objection to the admissibility of the appeal is accordingly not present either explicitly or implicitly in the reply. Consequently, the objection was raised for the first time during the oral proceedings before the Board and the provisions set out under Article 13(2) RPBA 2020 above apply.

Since there were no reasons put forward by the respondent for raising the objection only during the oral proceedings, the objection was not taken into account.

1.5 In any case, the Board finds that the appellant explained why the decision of the Opposition Division was incorrect in view at least of a newly raised objection on novelty for the subject-matter of granted claim 1 over document E5 (see point IV b) of the statement of grounds of appeal in which E5 is mistakenly referred to as E11 (this was acknowledged by the appellant during the oral proceedings). Accordingly, the requirements under Rule 99(2) EPC are met at least for this objection. Considering that the admissibility of the appeal can only be assessed as a whole, the appeal of the opponent is admissible already for this reason.

2. *Admissibility - evidence and new objection*

2.1 The documents E9 and E10 as well as the new novelty objection for the subject-matter of granted claim 1 over E5 were not admitted into the appeal proceedings.

2.2 The Opposition Division did not admit E9 and E10 into the opposition proceedings for being late filed and *prima facie* not relevant.

Under Article 12(6) RPBA 2020, first sentence, the Board shall not admit requests, facts, objections or evidence which were not admitted in the proceedings leading to the decision under appeal, unless the decision not to admit them suffered from an error in the use of discretion or unless the circumstances of the appeal case justify their admittance.

With the statement of grounds of appeal the appellant did not put forward any reasons as to why the Opposition Division erred in the exercise of its discretion or why the circumstances of the case

justified their admittance in the appeal stage. During the oral proceedings the appellant argued that E9 and E10 were *prima facie* relevant for the subject-matter of granted claim 1 by maintaining the same arguments put forward in front of the Opposition Division. In their view the Opposition Division erred in the *prima facie* assessment of the documents.

The criterion applied by the Opposition Division for exercising its discretion, i.e. *prima facie* relevance of the documents, is right and also not contested. The fact that the evaluation of the relevance of the documents of the appellant differs from that of the Opposition Division does not represent a sufficient reason to overturn the exercise of discretion. The application of the criterion from the Opposition Division in the decision is reasonable such that it does not exceed the proper limits of its discretion (see G 7/93, point 2.6).

- 2.3 In the statement of grounds of appeal the appellant put forward for the first time a novelty objection for the subject-matter of granted claim 1 over E5.

Under Article 12(6) RPBA 2020, second sentence, the Board shall not admit requests, facts, objections or evidence which should have been submitted, or which were no longer maintained, in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

E5 was already filed with the notice of opposition. However, the opponent objected to the novelty of the subject-matter of granted claim 1 only in view of E3 (E3') and E8 as a ground for opposition. Since the matter under discussion remains the granted patent, the

Board considered that the appellant should have raised such objection already at the outset of the opposition proceedings. Further, there is no circumstance during the opposition proceedings that could justify the filing of the objection only with the appeal.

3. *Novelty - Article 54 EPC*

3.1 The subject-matter of granted claim 1 is novel over E3 (E3') and E8.

3.2 Regarding E3 and E3' the appellant submitted that these documents should be considered together in view of the reference to E3' in col. 2, line 36 of E3, and that the aperture formed in the primary yoke of the wiper blade represented the fastening arrangement of claim 1.

According to features 15 and 16 of claim 1, the fastening arrangement - which fastens the wiper blade on the wiper arm - is constructed as a separate element from the cleaning arrangement, which is constructed to hold the fastening arrangement for the wiper blade. It follows therefrom that there is no direct connection between the wiper blade and the cleaning arrangement in the wiper device according to claim 1.

Consequently, the aperture (with or without pin 220, see figure 7 of E3') in the primary yoke of the wiper blade does fall under the fastening arrangement claimed since it allows a direct connection of the wiper blade (its primary yoke) to the cleaning arrangement (connector element 1). In E3 (and E3') a connector (i.e. the fastening arrangement) between cleaning arrangement 1 and the wiper blade (120, 122) is missing. The Opposition Division is therefore correct in its decision. The fastening arrangement is the connector 1 (or 101 in E3', which corresponds to the

cleaning arrangement) which attaches directly to the aperture (with or without pin 220) of the wiper blade. Consequently, E3 (E3') does not disclose features 15 to 18 of claim 1, even when considering the embodiment of figure 7 of E3' as being directly and unambiguously disclosed in E3.

3.3 As regards E8 the Opposition Division considered that feature 15 of claim 1 was disclosed therein. The appellant maintained that line of argumentation. According to the disclosure of the prior art with reference to paragraph [0016] and figures 1 to 6 of E8, the connector 1, which included the cleaning arrangement, presented a receiving passage 4, which enabled fastening/clamping thereof in position to a pin in a recess in a wiper blade mounting so that the connector could be pivoted with respect to the wiper blade. Said wiper blade mounting corresponded to the fastening arrangement construed as a separate element from the cleaning arrangement because the last sentence of paragraph [0016] suggested that the pin, even if not further described, was a separate body from the wiper blade and from the cleaning arrangement.

However and bearing in mind the explanations above for the claimed fastening arrangement, the view of the respondent is correct. E8 fails to show in figures 1 to 6 the wiper blade and the described mounting including the pin and recess. As argued by the respondent, such mounting could well be carried out directly in the wiper blade - e.g. in its primary yoke - like in the blade of E3. Consequently, it does not derive directly and unambiguously from the disclosure of the prior art in E8 that a direct connection between wiper blade and connector 1 is excluded. Feature 15 of claim 1 is thus

not disclosed in paragraph [0016] and figures 1 to 6 of E8.

4. *Inventive step - Article 56 EPC*

4.1 The appellant objected in the statement of grounds of appeal to inventive step of the subject-matter of granted claim 1 in view of the following combinations of prior art:

- E3 with E3';
- E10 with E1, E3, E5 or E8;
- E8 with common general knowledge;
- E1 with E2;
- E3 or E8 with E2; and
- Any of E1 to E8 or D1 with common general knowledge.

4.2 As explained above under point 2 document E10 was not admitted. Accordingly, it is not necessary to consider the objection starting from E10.

4.3 The remaining objections in the statement of grounds of appeal are merely a "copy and paste" of the objections submitted in the notice of opposition (see points VI.3 to VI.7 of the notice of opposition and points VI.1, VI.3 to VI.6 of the statement of grounds of appeal respectively).

Under Article 12(5) RPBA 2020 the Board has discretion not to admit any part of a submission by a party which does not meet the requirements in paragraph 3.

Paragraph 3 of Article 12 RPBA 2020 stipulates that the statement of grounds of appeal and the reply shall contain a party's complete appeal case. Accordingly, they shall set out clearly and concisely the reasons

why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the requests, facts, objections, arguments and evidence relied on.

Consequently, a verbatim repetition of the submissions presented in the proceedings before the Opposition Division is not sufficient to substantiate the grounds of appeal, as it does not identify the reasons why the appealed decision is incorrect, thus failing to comply with the requirements of Article 12(3) RPBA 2020 (see Case Law of the Boards of Appeal of the EPO, 10th Edition 2022, V.A.2.6.5).

Accordingly, the Board exercised its discretion under Article 12(5) RPBA 2020 and did not admit those parts of the submissions in the statement of grounds of appeal.

- 4.4 Finally, during the oral proceedings before the Board the appellant elaborated further the objection starting from the prior art identified in figures 1 to 6 of E8 in combination with common general knowledge of the skilled person by taking account of the reasons in the contested decision in this respect. In particular, the appellant argued why the subject-matter of claim 1 would indeed not involve an inventive step starting from E8. The appellant identified that the differences of the subject matter of claim 1 with respect to the prior art shown in figures 1 to 6 of E8 were the features related to the guiding elements, i.e. features 17 and 18 of claim 1, in line with the Opposition Division in its decision.

However and as explained under point 3.3 above, the subject-matter of claim 1 also differs from that prior

art cited in E8 on account of feature 15. Consequently, the objection of the appellant cannot succeed since it is based on the assumption that feature 15 is disclosed in E8. Accordingly, the combination of the prior art disclosed in E8 with common general knowledge as put forward by the appellant does not render the subject-matter of granted claim 1 obvious.

5. It follows from the above that the appeal of the opponent is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated