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File Number: T 621/92 - 3.2.1
Application No.: 87 105 639.6
Publication No.: 0 246 450
Title of invention: Automotive radiator cap

Classification: B65D 51/00

D E C I S I O N
of 12 March 1993

Applicant: Nippondenso Co., Ltd.

Headword:

EPC Art. 54(3), Art. 111(1)

Keyword: "Novelty (yes)"
"Remittal to first instance"

1944

1945

1946

1947



Europäisches
Patentamt

European
Patent Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : T 621/92 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 12 March 1993

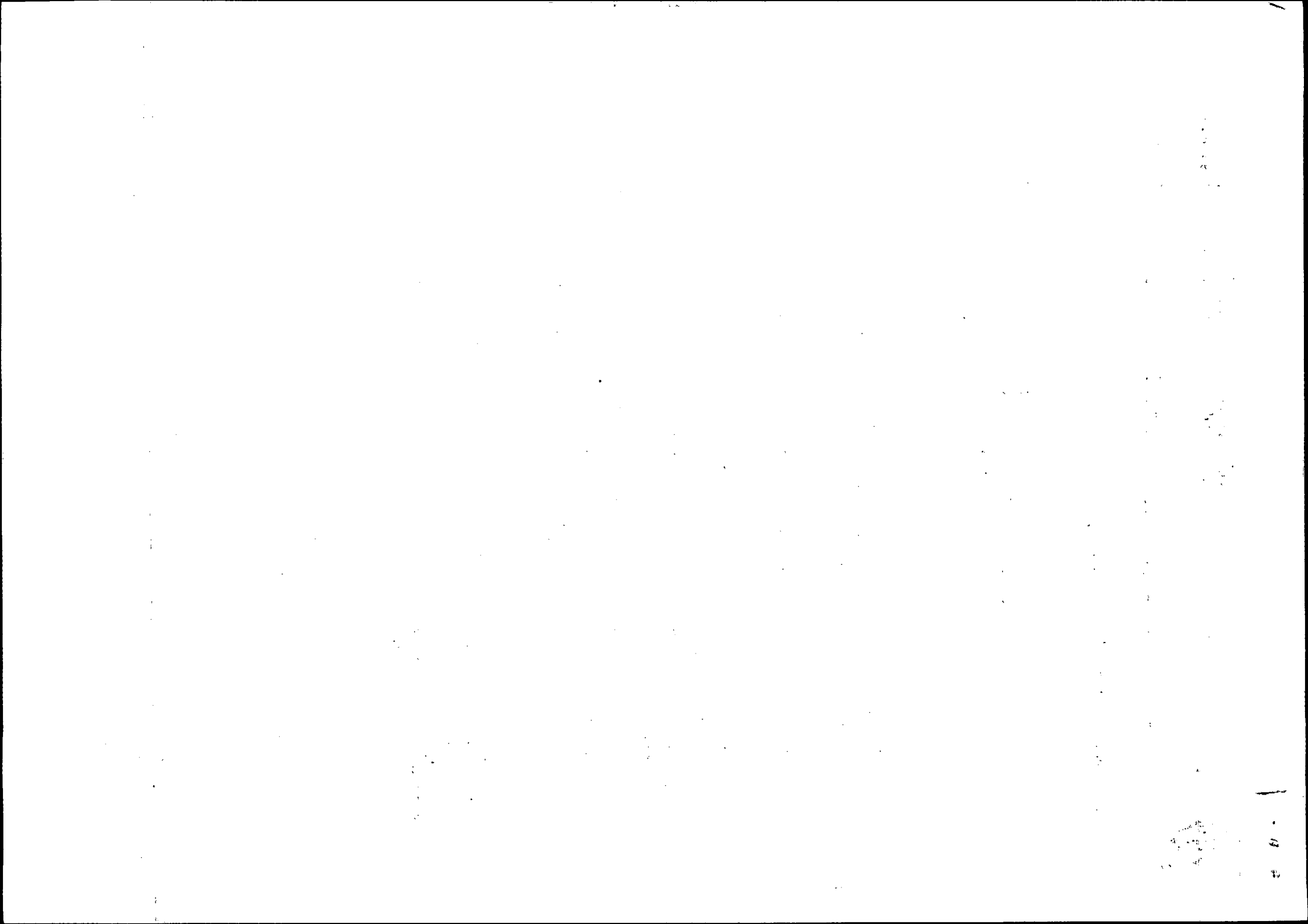
Appellant : Nippondenso Co. Ltd.
1, 1-chome, Showa-cho
Kariya-shi Aichi-ken (JP)

Representative : Klingseisen, Franz, Dipl., Ing.
Patentanwälte
Dr. F. Zumstein
Dr. E. Assmann
Dipl.-Ing. F. Klingseisen
Bräuhausstrasse 4
W-8000 München 2 (DE)

Decision under appeal : Decision of the Examining Division 2.3.08.082 of
the European Patent Office dated 6 February 1992
refusing European patent application
No. 87 105 639.6 pursuant to Article 97(1) EPC.

Composition of the Board :

Chairman : F. Gumbel
Members : P. Alting van Geusau
W.M. Schar



Summary of Facts and Submissions

- I. European patent application No. 87 105 639.6, filed on 16 April 1987 and claiming priorities of 18 April 1986 (JP 90994/86), 21 July 1986 (JP 171294/86 and JP 171295/86) and 8 October 1986 (JP 239976/86) was refused by the Examining Division with decision of 6 February 1992.
- II. The decision was based on Claims 1 to 8, as filed on 2 January 1991 with letter of 28 December 1990 of which Claim 1 reads as follows:

"1. An automotive radiator cap (100) for a vertically oriented filler neck (9) provided on a tank of an automotive radiator, comprising
an outer cap member (101) connectable to said filler neck;
an inner cap member (107) provided on the inner side of said outer cap member and connected rotatably with said outer cap member;
a pressure valve (120) connected with said inner cap member (107) for axial movement, said pressure valve having a seal portion (131) facing away from said inner cap member for sealing said filler neck;
a pressure modulating valve (140) functionally connected with said pressure valve (120) for closing and opening a connecting hole (150) which connects both sides of said pressure valve and
a coil spring (137) between said inner cap member (107) and said pressure valve (120) biasing said pressure valve off said inner cap member,
wherein
the point of abutment between said coil spring (137) and said pressure valve (120) is located lower than the

connecting point between said sealing portion (131) of said pressure valve (120) and said filler neck (9)".

- III. The reason for the refusal was that the subject-matter of Claim 1 of the application was considered to lack novelty when compared to the disclosure of EP-A-0 233 654 (D1) of which in particular Figures 1 to 3 were considered to show in addition to the features of the first part of Claim 1 also the dimensions defined in its last part. Since those figures are identical with the corresponding figures of its priority document JP 35564/86 with filing date of 20 February 1986 and in view of the fact that the designated Contracting States of D1 and the present application are identical, D1 forms a novelty destroying prior art in accordance with Article 54(3) EPC for all the designated Contracting States.

It was further pointed out that Claim 5 of D1 refers to all the embodiments disclosed in this older patent, the drawings of Figures 1, 3, 6 and 8 being identical as far as the features of Claim 5 are concerned.

- IV. An appeal was lodged against this decision on 6 April 1992 with payment of the appeal fee on the same day. The Statement of Grounds of Appeal was filed on 16 June 1992.

The Appellant requested that the European patent application be fully maintained and, auxiliarily, oral proceedings be held.

In support of his request the Appellant essentially argued as follows:

Considering the priority of D1, only the priority document JP 35564/86, with a filing date of 20 February 1986, has an earlier filing date than the present application. This priority document does not describe the feature mentioned

in the last four lines of Claim 1 of the present application nor can this feature be derived from Figures 1 to 3 thereof.

The fact that Claim 5 of D1 recites the feature in question does not necessarily mean that this feature is shown in the drawings.

The Examining Division could not positively establish that Figures 1 and 3 of the Japanese priority document in fact show the feature in question, the argument was only that the Figures 1 and 3 of the present application and of the priority document of D1 were essentially identical. But identical figures, which do not show the feature in question, are no proof for the fact that a feature which is disclosed in the present application would also be disclosed in figures of the priority document of the older application. This would be an ex post facto interpretation of Figures 1 and 3 of the priority document not justifying an objection of lack of novelty according to Article 54(3).

- V. In a communication in accordance with Article 110(2) EPC the Board gave the provisional opinion that in view of established jurisprudence of the Boards of Appeal with regard to features taken solely from schematic drawings there appeared to be no sufficient disclosure of the features of Claim 1 in JP 35564/86 and consequently D1 does not destroy novelty of the subject-matter of present Claim 1 under Article 54(3)(4) EPC.

Since the application was rejected for lack of novelty only and the Examining Division apparently did not carry out an examination for inventive step of the subject-matter of Claim 1 the Board informed the Appellant of its intention to remit the case to the Examining Division for further prosecution.

In view of the intended remittal to the Examining Division the Appellant was asked whether he maintained his auxiliary request for oral proceedings.

- VI. With letter of 7 January 1993 the Appellant withdrew his request for oral proceedings and requested that the case be remitted to the Examining Division for further prosecution.

Reasons for the Decision

1. The appeal is admissible.
2. Amendments
 - 2.1 The current Claims 1 to 8 are, as regards their subject-matter, essentially identical with the originally filed claims.

Merely, Claims 1, 2, 4 and 5 contain some clarifications whilst further the respective reference numerals were inserted into the claims.

In view of these amendments no objections arise under Article 123(2) EPC.

- 2.2 As regards the new description and drawings the Board observes that the original Figures 5 and 6 showing the torque caused in a conventional type of radiator cap (Figure 5) when compared to the radiator cap of the present application (Figure 6) were deleted. However, Figure 6 is the only figure which sufficiently clearly shows the feature defined in the last four lines in Claim 1 so that at least this figure and its corresponding

description on page 5, line 28 to page 6, line 14 should be reintroduced into the current description in order to comply with the requirements of Rule 27 EPC.

3. Novelty

3.1 Novelty of the subject-matter when compared to the prior art cited in the European search report was not contested by the Examining Division and in this respect also the Board is satisfied that none of these cited documents discloses the last features of Claim 1 according to which the point of abutment between the coil spring and the pressure valve is located lower than the connecting point between the sealing portion of the pressure valve and the filler neck of the radiator.

3.2 Considering the disclosure of EP-A-0 233 654 (D1) cited under Article 54(3) EPC by the Examining Division the Board established that the combination of features of Claim 1 and in particular the above-mentioned feature are comprised in the priority document JP 90994/86 with filing date of 18 April 1986, which is therefore the effective filing date of the subject-matter of Claim 1 of the present application (Art. 89 EPC). This date is earlier than the European filing date of D1 and also earlier than the filing date of the second priority document of D1. Therefore only the subject-matter of D1 that is disclosed in its first priority document JP 35564/86, having an effective filing date of 20 February 1986, may put into question the novelty of the subject-matter of Claim 1 under consideration.

It appears indeed that Figures 1 and 3 of the priority document JP 35564/86, in addition to the features of the first part of the claim (up to "wherein"), also show that the plane on which the coil spring contacts the pressure

valve could possibly lie a fraction lower than the plane of the upper side of the filler neck, which is in fact the feature defined in the last part of Claim 1.

- 3.4 However, in accordance with established jurisprudence of the Boards of Appeal, when a feature is shown solely in a drawing without any mention or support in the description a careful check should be made to establish whether the mere diagrammatic representation enables a person skilled in the art to derive a practical technical teaching therefrom (see point 4 of the reasons in T 204/83, OJ EPO 1985, 310).

Clearly the Figures 1 and 3 in JP 35564/86 are schematic drawings and in view of the fact that the level of the planes to be compared is almost the same there is, in the Board's opinion, in the absence of any explanation or an immediately apparent reason for a lower location of the contact area of the spring, no clear teaching derivable from these drawings in the priority document under discussion that "the point of abutment between the coil spring and the pressure valve is located lower than the connecting point between the sealing portion of the pressure valve and the filler neck".

In this respect Claim 5 of D1 also relied upon by the Examining Division and which explicitly mentions this feature, cannot be used to interpret the Figures 1 and 3 in the above sense because this claim is clearly based on the second priority document JP 288355/86 having a filing date of 3 December 1986 which is later than all the priorities upon which the present application relies.

- 3.5 Summarising, the Board comes to the conclusion that neither the cited documents in the European search report nor the document D1 cited by the Examining Division can destroy novelty of the subject-matter of Claim 1 of the present application within the meaning of Article 54(1) EPC.
4. In the present case the application was rejected for lack of novelty only and it appears from the file that the subject-matter of the application has not yet been examined in respect of inventive step.

Under these circumstances the Board considers it to be appropriate to make use of its power under Article 111(1) EPC to remit the case to the Examining Division for further prosecution.

Order

For these reasons, it is decided that:

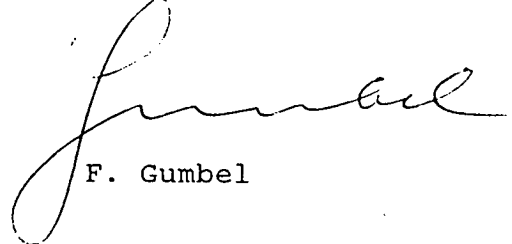
1. The contested decision is set aside.
2. The case is remitted to the first instance for further prosecution of the examination on the basis of Claims 1 to 8 and the description (see in this respect point 2.2 of this decision) filed on 2 January 1991.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel

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