

Internal distribution code:

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

**Datasheet for the decision
of 19 September 2007**

Case Number: T 0589/06 - 3.2.01

Application Number: 99956341.4

Publication Number: 1128985

IPC: B60R 1/06

Language of the proceedings: EN

Title of invention:

Vehicle provided with a rear-view mirror

Patentee:

Marketing & Adviesbureau Remy B.V.

Opponent:

MEKRA LANG GmbH & Co. KG

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

"Inventive step (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0589/06 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 19 September 2007

Appellant:
(Opponent)

MEKRA LANG GmbH & Co. KG
Schuckerstrasse 8-20
D-90765 Fürth (DE)

Representative:

Winter, Brandl, Fürniss, Hübner, Röss, Kaiser,
Polte Partnerschaft
Patent- und Rechtsanwaltskanzlei
Alois-Steinecker-Strasse 22
D-85354 Freising (DE)

Respondent:
(Patent Proprietor)

Marketing & Adviesbureau Remy B.V.
Statenlaan 21
NL-1405 EV Bussum (NL)

Representative:

van Westenbrugge, Andries
Nederlandsch Octrooibureau
P.O. Box 29720
NL-2502 LS Den Haag (NL)

Decision under appeal:

Decision of the Opposition Division of the
European Patent Office posted 10 February 2006
rejecting the opposition filed against European
patent No. 1128985 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: S. Crane
Members: P. L. P. Weber
T. Karamanli

Summary of Facts and Submissions

- I. The appeal is against the decision of the opposition division posted on 10 February 2006 to reject the opposition against European patent No. 1 128 985.

The notice of appeal was filed on 19 April 2006 and the appeal fee paid on the same day. The statement of the grounds of appeal was filed on 20 June 2006.

- II. Oral proceedings took place on the 19 September 2007.

- III. The appellant requests the setting aside of the impugned decision and the revocation of the patent.

The respondent requests that the appeal be dismissed or, in the alternative, that the patent be maintained in amended form on the basis of the auxiliary request filed with the letter of 17 August 2007.

- IV. The following documents played a role for the present decision.

D1: EP-A-0 666 196

D2: DE-U-90 05 537

- V. Claim 1 according to the main request reads as follows:

Vehicle(1), the front side of which comprises the windscreen (15) of the driver's cab, which vehicle is provided with an externally fitted rear-view mirror (14), more particularly a blind-spot mirror, which mirror is fitted in such a way that the driver of the vehicle can look in said mirror through the windscreen

of the vehicle, and the mirror surface extending in front view beyond the body of the vehicle, characterized
in that the bottom edge of the mirror surface is situated on or below the lower boundary between windscreen and body, seen in front view and
in that part of the mirror surface of the mirror (14) is situated within the boundary of the vehicle seen in front view.

Claim 1 according to the auxiliary request reads as follows:

Vehicle (1), the front side of which comprises the windscreen (15) of the driver's cab, which vehicle is provided with an externally fitted rear-view mirror (14), more particularly a blind-spot mirror for reducing the blind spot in lateral direction of the vehicle, which mirror is fitted in such a way that the driver of the vehicle can look in said mirror through the windscreen of the vehicle, and the mirror surface extending in front view beyond the body of the vehicle, characterized
in that the bottom edge of the mirror surface is situated on or below the lower boundary between windscreen and body, seen in front view and
in that part of the mirror surface of the mirror (14) is situated within the boundary of the vehicle seen in front view.

VI. The arguments of the appellant can be summarized as follows:

The content of D1, in particular the embodiment shown in figure 5, fully anticipates the subject-matter of claim 1. The mirror 30 shown in that figure is positioned exactly at the same place on the vehicle as required by claim 1. Since a technical element cannot be made different just by changing its name, the "front-view mirror" 30 shown in figure 5 of D1 has to be considered to fall under the wording "rear-view mirror" used in claim 1. Additionally claim 1 does not require that the blind spot to be seen with the mirror is lateral so that a mirror for seeing a front blind spot is also covered by claim 1. It is further self-evident that the mirror shown in figure 5 of D1 will allow the driver to see partly rearwards since it projects beyond the boundary of the body of the cab when seen in front view, so that also for this reason it has to be considered to be a "rear-view mirror".

Concerning inventive step the only feature which is not disclosed by document D2 is the last feature of claim 1 namely that part of the mirror surface of the mirror is situated within the boundary of the vehicle seen in the front view.

This difference does however not change the functionality of the mirror which is as for the mirror of the alleged invention to see the side of the driver's cab opposite the steering wheel side. The skilled man would forgo cutting away the inboard edge of the mirror, as proposed in D2, in order to allow the driver to see part of the cab in the mirror and thus to have a reference for assessing the relative

position between his vehicle and the object seen in the mirror or in order simply to save production costs.

VII. The arguments of the respondent can be summarised as follows:

The mirror shown in figure 5 of D1 is not positioned outside the boundary of the body of the cab, so that it cannot allow the driver to see rearwards. This mirror can thus not be a rear-view mirror.

The positioning of the mirror according to the characterising features of claim 1 allows the driver to see the A-post of the driver's cab while at the same time increasing the field of view towards the right side of the vehicle. This allows the driver to see e.g. a cyclist even when he is further away on the right side of the vehicle while at the same time being able to assess his position in respect of the lorry.

The fact that the mirror should be positioned below the lower boundary between the windscreen and the body allows the driver to have a better view of the bottom part of the blind spot so that pedestrians can be more easily seen.

These features are not suggested by the prior art.

The position and the shape of the mirror according to D2 does not allow the driver to assess the position of the object, e.g. a cyclist, relative to the vehicle since no part of the cab is seen. The mirror is also not positioned below the lower boundary between the windscreen and the body.

Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 and Rule 64 EPC. It is therefore admissible.
2. *Novelty (Article 54 EPC)*
 - 2.1 The attacked claim requires a vehicle provided with an externally fitted rear-view mirror. In the board's opinion the normal understanding of this term is that the vehicle is fitted with a mirror allowing the driver to look behind him, i.e. in the rearward direction. No different meaning is apparent from the description of the patent in suit. On the contrary each time the term "rear-view mirror" is used it is to designate a mirror allowing the driver to see in the backwards direction.
 - 2.2 In D1 a vehicle 10 is described having rear view mirrors and additionally being provided with a front view mirror 2 allowing the driver to see the front of the driver's cab, more particularly the front zone going from the bottom of the windscreen to the ground.

Under these conditions this front-view mirror cannot be considered to be a rear-view mirror in the sense of claim 1.
 - 2.3 The argument of the appellant according to which given the position of the mirror 30 shown in figure 5 the driver will necessarily also see partly rearwards is

not supported by any information in D1. Since figure 5 is of a schematic nature (see column 3, lines 23, 24) and the exact angular position of the mirror not being visible, there is no unambiguous disclosure of the above mentioned alleged effect. In the absence of any such indication the reader of D1 can only consider that the mirror is positioned so as to fulfil the function it is expected to fulfil according to the description of D1, namely to show the driver the front of the vehicle.

2.4 Thus the subject-matter of claim 1 is novel over D1.

2.5 Other novelty objections were not raised or maintained by the appellant and the board is satisfied that the novelty of the subject-matter of claim 1 is given.

3. *Inventive step (Article 56 EPC)*

3.1 The parties agree that the closest prior art is disclosed in D2.

D2 discloses a rear-view mirror for a lorry allowing the driver to see pedestrians, cyclists and the like on the right side of the driver's cab. Although not explicitly mentioned in the document it is self-evident that the cab has a windscreen. On the right-hand side of the cab a rear-view mirror 6 is mounted which extends in front view beyond the body of the vehicle, see for instance page 3, lines 20 to 22 or figure 2.

3.2 The position of the windscreen and thus of the lower boundary between the windscreen and the body of the cab is not apparent from the figures nor described in the description, so that it cannot unambiguously be said

that the bottom edge of the mirror is situated on or below such boundary.

On the side of the body of the cab a part of the mirror 6 shown in D2 is cut away and the thus obtained edge is positioned outside the boundary of the body of the cab. By doing so the image seen by the driver should not be disturbed by parts of the cab (see figure 2 and description page 3, lines 26 to 36). The mirror 6 is thus not positioned as required by the last feature of claim 1 namely within the boundary of the vehicle seen in the front view.

The differences between the vehicle according to D2 and the one claimed in claim 1 are thus the characterising features of claim 1 namely:

- (i) that the bottom edge of the mirror surface is situated on or below the lower boundary between windscreen and body, seen in front view and
- (ii) that part of the mirror surface of the mirror is situated within the boundary of the vehicle seen in front view.

- 3.3 Feature (i) represents an optimisation of the position of the mirror so as to allow the driver to see the desired field, it helps in particular to optimise the lower or front boundary of the field of view. Feature (ii) can allow the driver to see part of the cab in order to be able to assess the relative position of the object seen and the lorry while at the same time reducing the manufacturing costs of the mirror if the part of the mirror on the side of the cab is not cut away.

In this context it has to be noted that in the absence of any dimensional indications in the claim as to the size of the mirror and its exact (also angular) position relative to the cab, the board cannot accept the argument of the respondent that the field of view will be enlarged towards the right side of the vehicle by positioning the rear-view mirror as defined in feature (ii) of claim 1.

For the same reasons the board can see no justification for the contention of the respondent that the position of the mirror as claimed makes it less susceptible to damage in comparison with what is disclosed in D2. In particular, there is no basis for concluding that in the arrangement claimed the mirror is positioned at a smaller distance in front of the cab and that its outboard edge extends less outside the boundary of the cab when seen in front view.

3.4 The objective problem can thus be seen as an optimisation of the position of the mirror to give the best possible image to the driver while at the same time reducing the manufacturing costs.

3.5 In the opinion of the board the claimed way of positioning the mirror does not involve an inventive step.

3.5.1 The aim of the invention disclosed in D2 is exactly the same as in the patent in suit namely to give the driver the possibility to see an object on the right side of the cab below the side window. In D2 it is indicated that the additional mirror should be positioned below the normal rear-view mirror and in front of it, see page 4, lines 3 to 5 and also figure 1.

A simple implementation of the teaching of D2 will bring the man skilled in the art to the subject-matter of claim 1 of the patent in suit.

From an optical point of view, the front boundary of the field of view will be given by the bottom edge of the mirror surface. This is what is indicated by line 16 in figure 1 of D2. It is also self-evident that the lower this bottom edge of the mirror surface is positioned, the more line 16 will be displaced towards the front of the cab giving a better view of the side of the cab. There is however a limit to this positioning which is when the driver is no more able to see the bottom edge of the mirror surface from his position in the driver seat. Feature (i) is nothing else than expressing the above and is clearly suggested by figure 1 of D2 which shows the bottom most line of vision 16 going from the driver's eyes to the bottom part of the mirror surface and to the ground.

In the opinion of the board feature (i) thus expresses a straight forward way of positioning the mirror in the vertical direction once it has been decided to give the driver the best possible image of the field alongside the right side of the cab.

3.5.2 The same is true for the lateral positioning expressed with feature (ii). While in D2 seeing part of the cab in the image of the mirror is considered disturbing for the driver (see page 3, line 36) it is obvious that by not seeing any part of the cab the driver will miss a reference in the image allowing him to assess the position of the object seen respective to the cab. In addition it is obviously less expensive to produce the mirror without the cut off part.

For these reasons the board considers it obvious that the skilled man will dispense with this cut-off part since it has more drawbacks than advantages.

The board thus cannot see any inventive step in the provision of feature (ii) either.

4. As accepted by the respondent the inventive step reasoning is not any different for the subject-matter of claim 1 according to the auxiliary request since the added feature in the first part of the claim that the rear-view mirror is for reducing the blind spot in lateral direction of the vehicle is already present in D2.

5. Since the ground for opposition under Article 100(a) EPC prejudices the maintenance of the patent as granted and, taking into consideration the amendments made by the respondent, the patent and the invention to which it relates do not meet the requirements of the EPC, the patent must be revoked (Article 102(1) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

A. Vottner

S. Crane