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**Datasheet for the decision
of 16 May 2008**

Case Number: T 1106/07 - 3.2.01

Application Number: 03777888.3

Publication Number: 1682384

IPC: B60R 13/02

Language of the proceedings: EN

Title of invention:

Method for making a vehicle panel and vehicle panel

Applicant:

Johnson Controls Technology Company

Opponent:

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Headword:

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Relevant legal provisions:

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Relevant legal provisions (EPC 1973):

EPC Art. 96(2), 113(1)

EPC R. 67

Keyword:

"Reimbursement of appeal fee (no)"

Decisions cited:

T 0201/98

Catchword:

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Case Number: T 1106/07 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 16 May 2008

Appellant: Johnson Controls Technology Company
650 Waverly
Holland
MI 49423 (US)

Representative: Wolff, Felix
Kutzenberger & Wolff
Theodor-Heuss-Ring 23
D-50668 Köln (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 23 February 2007
refusing European application No. 03777888.3
pursuant to Article 97(1) EPC 1973.

Composition of the Board:

Chairman: S. Crane
Members: C. Narcisi
G. Weiss

Summary of Facts and Submissions

- I. The European patent application No. 03 777 888.3 was refused by the Examining Division with the decision posted on 23 February 2007. The Examining Division decided that the application did not meet the requirements of Article 84 and Rule 27(1)(c) EPC 1973. An appeal against this decision was filed on 20 April 2007 and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 25 June 2007. The Appellant requested that the decision be set aside and a patent be granted on the basis of the new set of claims submitted with the statement of grounds of appeal. The Appellant further requested reimbursement of the appeal fee.
- II. The Examining Division informed the Appellant with a communication dated 16 July 2007 that the contested decision was rectified under Article 109(1) EPC 1973, whereas the request for reimbursement of the appeal fee could not be allowed and would be forwarded to the Board of Appeal for a decision.
- III. The Appellant's arguments may be summarized as follows:
- The refusal of the application was only the second official action in the present case. Previously, it had never been EPO practice to refuse applications after the second official action, especially when the Applicant had indicated its willingness to comply with the objections of the Examining Division which dealt only with formal matters.

Reasons for the Decision

1. The appeal is admissible.

2. The Board, considering the facts and the Appellant's submissions, does not see that any substantial procedural violation has occurred. The application was refused on the grounds that it did not comply with Article 84 and Rule 27(1)(c) EPC 1973, the reasons being a lack of clarity in the features of some of the dependent claims as well as inconsistencies between the description and the claims. These deficiencies had already been notified to the Applicant in the communication dated 21 July 2006, and this is not disputed by the Appellant. Thus the requirements of Article 113(1) EPC 1973 have been met.

The point specifically addressed by the Appellant, i.e. that the refusal was only the second official action, does not by itself imply a procedural violation, as has been ruled for instance in the decision T 201/98 of the Boards of Appeal. According to Article 96(2) EPC 1973 the Examining Division shall invite the Applicant "as often as necessary" to amend the application.

Therefore, it lies within the discretionary power of the Examining Division to decide whether to issue a further communication. It is established case law of the Boards of Appeal to leave this decision to the discretion of the Examining Division, unless the Board comes to the conclusion that the exercise of discretion in the decision is evidently unreasonable or is based on the wrong principles. This does not appear to be the case here, since in the present case the Examining Division obviously estimated that there was not

sufficient prospect of progress being made by inviting the Applicant to further amend the application, given that the objections raised in the first communication had not been appropriately dealt with and moreover still further deficiencies were present in the application or had even resulted by way of amendment of the application after the first communication (see the contested decision, "Further issues", points 1 to 4).

In view of the above reasons the request for reimbursement of the appeal fee according to Rule 67 EPC 1973 is unfounded.

Order

For these reasons it is decided that:

The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

A. Vottner

S. Crane