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**Datasheet for the decision  
of 12 March 2014**

**Case Number:** T 0483/10 - 3.5.02

**Application Number:** 98109359.4

**Publication Number:** 881742

**IPC:** H02K1/16, H02K3/12, H02K3/44,  
H02K19/22, H02K3/487

**Language of the proceedings:** EN

**Title of invention:**  
AC generator for vehicles

**Patent Proprietor:**  
Denso Corporation

**Opponent:**  
Valeo Equipements Electriques Moteur

**Headword:**

**Relevant legal provisions:**  
EPC Art. 113(2)

**Keyword:**  
Grounds for opposition - fresh ground for opposition (yes)  
Priority - validity of priority date (no)  
Novelty - (no)  
Basis of decision - revocation of the patent at request of the  
patent proprietor

**Decisions cited:**

**Catchword:**



**Beschwerdekammern  
Boards of Appeal  
Chambres de recours**

European Patent Office  
D-80298 MUNICH  
GERMANY  
Tel. +49 (0) 89 2399-0  
Fax +49 (0) 89 2399-4465

Case Number: T 0483/10 - 3.5.02

**D E C I S I O N  
of Technical Board of Appeal 3.5.02  
of 12 March 2014**

**Appellant:**  
(Patent Proprietor)

Denso Corporation  
1-1, Showa-cho  
Kariya-city,  
Aichi-pref. 448-8661 (JP)

**Representative:**

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

**Appellant:**  
(Opponent)

Valeo Equipments Electriques Moteur  
2, rue André-Boulle,  
BP150  
94017 Créteil Cedex (FR)

**Representative:**

Gamonal, Didier  
Valeo Equipements Electriques Moteur  
Propriété Industrielle  
2 Rue André Boulle  
B.P. 150  
94017 Créteil Cedex (FR)

**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 December 2009 concerning maintenance of the  
European Patent No. 881742 in amended form.**

**Composition of the Board:**

**Chairman:** M. Ruggiu  
**Members:** M. Léouffre  
W. Ungler

## Summary of Facts and Submissions

- I. The opponent appealed on 26 February 2010 against the interlocutory decision of the Opposition Division, posted on 29 December 2009, on the amended form in which European patent no. 0 881 742 could be maintained. The statement setting out the grounds of appeal was received on 4 May 2010.
- II. On 5 March 2010, the proprietor of the patent also appealed. The statement setting out the grounds of appeal was received on 6 Mai 2010.
- III. Opposition had been filed against the patent as a whole and based on
  - Article 100(a) together with Articles 52(1), 54 and 56 EPC, and
  - Article 100(c) together with Article 123(2) EPC.

New documents E1/E2 (EP 0 881 750 A2 and B1), E3 (EP 0 881 749 A2) and E4 (EP 0 881 752 B1) had been cited by the opponent in a letter dated 14 October 2009 after the term for filing the opposition.

The division rejected the ground for opposition under Article 100(a) EPC concerning Article 54 EPC as inadmissible (see point 1) of the reasons for the decision under appeal). Nevertheless, the reasons for the decision under appeal indicated that claim 1 of the various requests was new pursuant to Article 54(3) EPC vis-à-vis documents E1 to E4 (see points 2.4), 3.3) and 4.3) of the decision under appeal).

Actually, the opposition division considered that the ground for opposition under Article 100(a) EPC together with Article 54 EPC had not been sufficiently

substantiated in the notice of opposition, that documents E1 to E3 did not disclose the feature of claim 1 that the slot, the electric conductors and the insulator define space gaps between them, the cross-sectional areas of the space gaps defining a ratio of the space gaps with respect to the cross sectional areas of the slot not more than 25%", and that document E4 did not disclose the feature of claim 1 that the electric conductors in each of the slots provide two or more pairs of an outer layer located on a deeper side of the slot and an inner layer located on a side closer to an inner opening of the slot".

- IV. In an annex to the summons to oral proceedings dated 8 August 2013, the board questioned whether the opposition division might have exercised its discretionary power under Article 114(2) EPC wrongly.
- V. A first part of the oral proceedings was held before the board on 5 December 2013.

The opponent requested that the decision under appeal be set aside and that the patent be revoked in its entirety, and that the appeal of the proprietor be dismissed.

The proprietor requested that the decision under appeal be set aside and the patent be maintained in amended form on the basis of claims 1 to 3 of the main request filed with letter of 14 November 2007, alternatively on the basis of claims 1 to 3 of the first and second auxiliary requests filed with letter dated 20 October 2009, or to confirm the decision of the opposition division, i.e. to dismiss the appeal of the opponent (third auxiliary request), or that the patent be maintained in amended form on the basis of a fourth

auxiliary request as indicated in a letter dated 3 December 2013.

Furthermore, the proprietor requested not to admit into the proceedings all those documents which had been submitted by the opponent after expiry of the time limit for filing the opposition. The proprietor also argued against the introduction of the ground of lack of novelty into the appeal proceedings.

The Board decided to overrule the way in which the opposition division had exercised its discretion by admitting the ground of lack of novelty into the proceedings due to the *prima facie* relevance of documents E1 to E4 and due to the fact that there were *prima facie* doubts about the validity of the priorities claimed in the patent in suit.

After discussion and deliberation about the ground of lack of novelty with respect to the main request, the board indicated that none of the priorities claimed in the patent in suit were valid with respect to the subject-matter of claim 1 of the main request, in particular because there was no clear and unambiguous disclosure in the priority applications of the feature that (in the slots) the electrical conductors are in contact with each other at the shorter sides.

The Board considered that the relevant date for E1 was the 24 April 1998, earlier than the date of filing of the patent in suit, since E1 was a translation of its priority application JP115418/98, and that document E1 was novelty destroying for the subject-matter of claim 1 of the main request.

The oral proceedings were then adjourned.

- VI. With letter dated 10 January 2014, the appellant proprietor stated that the proprietor no longer approved the text in which the patent was granted and the text in which the patent was maintained by the opposition division, withdrew all current and previous requests regarding maintenance of the patent in any restricted form, and, in addition, withdrew the proprietor's request for oral proceedings. Furthermore, the appellant proprietor stated in that letter that, therefore, the patent was to be revoked.
- VII. The second part of the oral proceedings before the board were held on 12 March 2014 in the absence of the appellant opponent.

The appellant proprietor confirmed the withdrawal of all their requests.

### **Reasons for the Decision**

1. The appeal is admissible.
2. With letter dated 10 January 2014, the appellant proprietor stated that the proprietor no longer approved the text in which the patent was granted and the text in which the patent was maintained by the opposition division, withdrew all current and previous requests regarding maintenance of the patent in any restricted form, and, in addition, withdrew the proprietor's request for oral proceedings. Furthermore, the appellant proprietor stated in that letter that, "therefore, the patent is to be revoked".
3. Consequently, both the proprietor and the opponent aim at obtaining the revocation of the patent and there

exists no longer any version of a text submitted and/or approved by the patent proprietor (Article 113(2) EPC) in which the patent can be maintained.

The patent can therefore only be revoked.

## 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:



U. Bultmann

M. Ruggiu

Decision electronically authenticated