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**Datasheet for the decision  
of 16 March 2016**

**Case Number:** T 0778/13 - 3.2.01

**Application Number:** 08159123.2

**Publication Number:** 2008841

**IPC:** B60H1/00

**Language of the proceedings:** EN

**Title of invention:**  
Automotive air conditioner

**Patent Proprietor:**  
Calsonic Kansei Corporation

**Opponent:**  
VALEO SYSTEMES THERMIQUES

**Headword:**

**Relevant legal provisions:**  
EPC Art. 83  
RPBA Art. 13(1)

**Keyword:**  
Sufficiency of disclosure (no)  
Admission of late filed requests (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
**Chambres de recours**

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Case Number: T 0778/13 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 16 March 2016**

**Appellant:** VALEO SYSTEMES THERMIQUES  
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**Respondent:** Calsonic Kansei Corporation  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
21 January 2013 concerning maintenance of the  
European Patent No. 2008841 in amended form.

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** C. Narcisi  
S. Fernández de Córdoba

## **Summary of Facts and Submissions**

- I. European patent No. 2 008 841 was maintained in amended form by the decision of the Opposition Division posted on 21 January 2013. Against this decision an appeal was filed by the Opponent on 21 March 2013 and at the same time the appeal fee was paid. The statement of grounds of appeal was filed on 31 May 2013.
- II. Oral proceedings were held 16 March 2016. The Appellant (Opponent) requested that the appealed decision be set aside and that the patent be revoked. The Respondent (Patentee) requested that the appeal be dismissed (main request) or, in the alternative, that the patent be maintained in amended form on the basis of the claims according to the auxiliary requests I, II or III, as filed during the oral proceedings.
- III. Claim 1 of the main request reads as follows:
- "An automotive air conditioner, comprising:  
an air-conditioning case (22) in which air passages including a cold air path (28) via an evaporator (26), a warm air path (29) via a heater core (30), and a plurality of discharge path systems (32, 33) communicating with outlets, respectively, are formed:  
an air mix door (71, 72) which distributes cold air and warm air by an opening degree to each of the discharge path systems (32, 33) via a junction region (J) of the cold air and the warm air;  
wherein said automotive air-conditioner comprises a rotary door (31) having a cross-wall (31b), which is rotatably disposed in the junction region (J) of the cold air and the warm air and guides cold air flow to the junction region (J) by the cross wall (31b) in an advanced position,

the rotary door (31) and the air mix door (71, 72) including an overlap layout which uses a door space surrounded by the cross wall (31b) of the rotary door (31) in the advanced position as an opening and closing operation space of the air mix door (71, 72), characterized in that the downstream position of the heater core (30) is provided with a warm air path blocking plate (41, 42) which blocks a part of the warm path in a state in which at least the rotary door (31) is located in a withdrawal position."

Claim 1 of auxiliary request I reads as follows:

"An automotive air conditioner, comprising:  
an air-conditioning case (22) in which air passages including a cold air path (28) via an evaporator (26), a warm air path (29) via a heater core (30), and a plurality of discharge path systems (32, 33) communicating with outlets, respectively, are formed: a cold air side air mix door (71) which distributes cold air and a warm air side air mix door (72) which distributes cold air by an opening degree to each of the discharge path systems (32, 33) via a junction region (J) of the cold air and the warm air;  
wherein said automotive air-conditioner comprises a rotary door (31) having a cross-wall (31b), which is rotatably disposed in the junction region (J) of the cold air and the warm air and guides cold air flow to the junction region (J) by the cross wall (31b) in an advanced position,  
the rotary door (31) and the cold air side air mix door (71) including an overlap layout which uses a door space surrounded by the cross wall (31b) of the rotary door (31) in the advanced position as an opening and closing operation space of the cold air side air mix door (71),

characterized in that the downstream position of the heater core (30) is provided with a warm air path blocking plate (41, 42) which blocks a part of the warm path in a state in which at least the rotary door (31) is located in a withdrawal position."

Claim 1 of auxiliary request II differs from claim 1 of auxiliary request I in that the wording "the rotary door (31) is located in a withdrawal position" is replaced by the wording "the rotary door (31) is located in a withdrawal position, and in that the warm air path blocking plate (41) is integrally formed with the rotary door (31)".

Claim 1 of auxiliary request III differs from claim 1 of auxiliary request II in that the wording "the warm air path blocking plate (41) is integrally formed with the rotary door (31)" is replaced by the wording "the warm air path blocking plate (41) is integrally formed with the rotary door (31), and in that the rotary door (31) includes a pair of side walls (31c, 31c) parallel to each other each having an approximately fan shape, the cross wall (31b) which connects outer circumference edges of the side walls, and a door shaft (31a) which is located in a position which is a base of the fan shape of the side wall, and the rotary door (31) rotates centering on the door shaft (31a) rotatably supported to the air-conditioning case (22), and the warm air path blocking plate (41) is set in a position for covering a part of a region of the warm air path in which three directions are surrounded by the side walls (31c, 31c) and the cross wall (31b) of the front side of the advanced direction of the rotary door (31)".

IV. The Appellant's submissions may be summarized as follows:

The invention has not been disclosed in a manner sufficiently clear and complete for the skilled person to put it into effect. In particular, the skilled person would not be able to perform the invention over the full scope of claim 1. The automotive air conditioner of claim 1 includes "an air mix door (71, 72) which distributes cold air and warm air". This technical feature implies that distribution of warm air and cold air is achieved by means of a single air mix door which controls both warm and cold air flow at the same time. However, the disclosure of the invention in the description of the patent specification (hereinafter designated as EP-B) comprises merely and exclusively embodiments wherein cold and warm air distribution is obtained by operation of a "cold air side air mix door" and a separate and distinct "warm air side air mix door". This represents a manifest and serious insufficiency in the disclosure of the invention, for it is the very object of the invention to downsize the air conditioner in order to reduce or minimize the space required for installation in the vehicle (EP-B, paragraph [0009]), and the skilled person would expect to find in EP-B at least one embodiment including a single air mix door as claimed. Moreover, the skilled person would not be able to devise an air conditioner according to claim 1 and having a single air mix door being able to perform satisfactorily the intended necessary mixing functions, since this could not be obtained through obvious modifications of the embodiments disclosed in EP-B. In particular, given the specific configuration of the air conditioner in the disclosed embodiments (i.e. relative positions of the junction region (air mixing chamber) and of the rotary door; nearly perpendicular orientation of evaporator and heater core), this would require an air mix door with considerably complex

design. Hence, if at all possible, this would anyway lie well beyond the skilled person's usual capabilities and would involve an inventive step. Consequently, the invention is not disclosed in a sufficiently clear and complete manner.

Auxiliary requests I to III have been filed late, for the aforesaid objections were put forward by the Appellant already during the opposition proceedings, no valid justification being adduced for the late filing. In addition, amended claim 1 of these requests seemingly does not overcome the outstanding objections relating to the inclusion in granted claim 1 of subject-matter extending beyond the content of the application as filed (objections based on Article 100(c) EPC), these amendments also raising new issues for discussion relating to introducing further features possibly not disclosed in the application as filed (Article 123(2) EPC). Therefore these requests should not be admitted to the appeal proceedings.

V. The Respondent's submissions may be summarized as follows:

The patent specification (EP-B) discloses the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person. Admittedly, the concept of an "air mix door" as implied by claim 1 of the main request (see also paragraph [0062] in the published patent application (hereinafter designated as EP-A)) is quite broad and encompasses the general concept of an air mix door comprising one or more different sub-units (or sub-doors). Nevertheless, throughout the description and the figures of EP-B it appears without doubt that the subject-matter of claim 1 was solely and exclusively intended to cover



embodiments including an "air mix door" consisting of an "cold air side air mix door" and a distinct and separate "warm air side air mix door" (see EP-A, paragraph [0017]). Possible different embodiments, such as for instance comprising a single air mix door, were never intended to be covered by the claimed subject-matter. This is not only confirmed by the entire description of EP-A (or EP-B) but is further also exemplified by the features of dependent claim 2, explicitly including a separate and distinct "cold air side air mix door (71)". Therefore the skilled person would construe claim 1 as being necessarily and obviously limited, and implying a "cold air side air mix door" and a "warm air side air mix door" constituting said "air mix door". Obviously, such an embodiment is undoubtedly disclosed in the description of EP-B in its entirety, in a manner sufficiently clear and complete for the skilled person to put into effect.

Auxiliary requests I to III should be admitted to the appeal proceedings since they were submitted in response to the view of the Board expressed during oral proceedings. These requests likewise overcome the mentioned objections raised in relation to sufficiency of disclosure, for amended claim 1 clearly specifies that a "cold air side air mix valve" and a "warm air side air mix valve" are provided. Moreover, the amendments are evidently supported by the description of EP-A, such as for instance in paragraphs [0014], [0016], [0034] (disclosing a "cold air side air mix door" and a "warm air side air mix door"; see also claim 2) and [0026], [0050], [0063] (disclosing an overlap of the "cold air side air mix door" with the "rotary door"). Hence the amendments do not introduce any subject-matter possibly extending beyond the content of EP-A.

## **Reasons for the Decision**

1. The appeal is admissible.
  
2. The patent specification (EP-B) does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person. The subject-matter of claim 1 comprises "an air mix door (71, 72) which distributes cold air and warm air", and by this wording the skilled person would evidently understand, that one and the same air mix door (as a constructional unit) performs the mentioned functions. According to the Respondent, the concept of an "air mix door" has instead to be construed as a constructional unit, such as possibly comprising more generally not only one mix door, but necessarily also a plurality of one or more mix doors. In particular the Respondent considers that the aforesaid concept should be interpreted as specifically consisting of two sub-dors, i.e. a "cold air side air mix door" and a "warm air side air mix door".

In the Board's view, even assuming that said concept of an "air mix door" has to be interpreted broadly as a unit (as stated) comprising several sub-units (or sub-doors), then there is no reason why the number of sub-doors should be limited to just two. In effect, if (as in the present case) a concept is meant to imply a plurality of one or more constructional sub-units but only one embodiment including only two such sub-units is disclosed in EP-B, then it should be clear and obvious how to the extend the given technical teaching to other embodiments with a different number of such sub-units, particularly only one sub-unit.

Indeed, as is clearly indicated by the concept of "an air mix door", at least the most obvious and natural case of an embodiment including only one such sub-unit should be disclosed in or be derivable from the application (EP-A). This not being the case, the Board shares the view of the Appellant, that it would not be possible for the skilled person to derive from the disclosure of EP-B (or EP-A) how an embodiment including only one single air mix door should be put into effect, such an embodiment being required to perform functions (and operating modes) substantially equivalent to the disclosed embodiment including a "cold air side air mix door" and a "warm air side air mix door". The Respondent did not submit any arguments disputing this point.

Finally, the Board does not share the Respondent's view that adopting the term "air mix door" was merely due to unskilful or inappropriate choice. In effect, it ensues from claim 1 as filed (or as granted) (and for instance cited paragraph [0062] in EP-A) on one hand, and from claim 2 as filed (and for instance paragraph [0017] in EP-A) on the other hand, that in EP-A clearly a distinction was made between the broader concept of an "air mix door" and the specific concepts of a "cold air side air mix door" and a "warm air side air mix door". Hence, there is no valid reason to interpret claim 1 in a limited sense with "air mix door" implying two air mix doors only.

For the mentioned reasons the main request does not meet the requirements of Article 83 EPC.

3. The Auxiliary requests I to III, which were filed late, were not admitted to the appeal proceedings, account being taken of the complexity of the new subject-matter submitted, the current state of the proceedings and the

need for procedural economy (Article 13(1) RPBA (Rules of Procedure of the Boards of Appeal)). These requests were filed only during oral proceedings without valid reasons since the objections concerned, based on Article 100(b) EPC, were already put forward during opposition proceedings and were also discussed in the appealed decision. The late filed requests were not admitted to the appeal proceedings, for after a prima facie examination it appeared that the outstanding objections (as observed by the Appellant) based on Article 100(c) EPC were not overcome by the amendments made to claim 1. In addition, as pointed out by the Appellant, the amendments taken from the description appeared to pose new questions about features possibly extending beyond the content of the application as filed (Article 123 (2) EPC). Thus the Board decided to exercise its discretionary power not to admit the late filed requests.

## **Order**

### **For these reasons it is decided that:**

1. The appealed decision is set aside.
2. The European patent is revoked.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated