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**Datasheet for the decision
of 14 March 2017**

Case Number: T 2193/14 - 3.2.01

Application Number: 05017761.7

Publication Number: 1627787

IPC: B60S1/38, B60S1/40

Language of the proceedings: EN

Title of invention:

Arrangement introduced in wiper blade

Patent Proprietor:

Eletromecanica Dyna S/A

Opponent:

VALEO SYSTEMES D'ESSUYAGE

Headword:

Relevant legal provisions:

EPC Art. 56, 83

RPBA Art. 12(4)

Keyword:

Sufficiency of disclosure (yes)

Inventive step (yes)

Admissibility of late filed documents (no)

Decisions cited:

G 0009/91, G 0003/14

Catchword:

Admissibility of documents filed with the statement of grounds of appeal for questioning the validity of the subject-matter of granted dependent claims against which no substantiated attack was made in the notice of opposition.



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 2193/14 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 14 March 2017

Appellant: VALEO SYSTEMES D'ESSUYAGE
(Opponent) 8 Rue Louis Lormand
La Verrière
B.P. 581
78321 Le Mesnil Saint Denis (FR)

Respondent: Eletromecanica Dyna S/A
(Patent Proprietor) Rua Barão de Rio Branco, 46
Itapegica - Guarulhos
07042-010 São Paulo (BR)

Representative: Patentanwälte Dr. Keller, Schwertfeger
Westring 17
76829 Landau (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
25 September 2014 concerning maintenance of the
European Patent No. 1627787 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. 1 627 787 was maintained in amended form by the decision of the Opposition Division posted on 25 September 2014. Against this decision an appeal was lodged by the Opponent on 25 November 2014 and the appeal fee was paid at the same time. The statement of grounds of appeal was filed on 5 February 2015.

II. Oral proceedings took place on 14 March 2017. The Appellant (Opponent) requested that the impugned decision be set aside and that the patent be revoked. The Respondent (Patentee) requested that the appeal be dismissed.

III. Claim 1 of the main request reads as follows:

"Arrangement introduced in wiper blade (1), secured to an arm (2) of a wiper, wherein said blade (1) acts on the surface of a windshield (3); said blade (1) has a blade body (6) formed as a single piece by welding, bonding, fitting or co extrusion of two different profiled materials, resulting in a single body, where a profile of said blade body (6) consists in an upper support (4), made of flexible material, and a lower support (5), made of semi rigid material; the upper support (4) of the blade body (6) has, in its upper portion a symmetric spoiler (16), made of concave curved elements (17, 18), joint together by an upper vertex (19) having a rounded profile, the interior of said symmetric spoiler (16) configuring a chamber (20) or a no-spoiler profile, consisting in only one convex bulging (26), the interior of said bulging (26) configuring a chamber (27);

the blade body (6) has a mounting channel (8),
passing lengthwise throughout the length of the blade
body (6),
being preferably rectangular in shape
and further provided with a longitudinal rectangular
opening (13), extended throughout the blade body (6),
in which a rubber element (9) is inserted lengthwise
through the rectangular section (14),
so that the rectangular upper section (15) of said
rubber element (9) is inserted in the lower mounting
channel (12),
supporting said rubber element (9) together with the
blade body (6);
the lower support (5)
supports the complete length of the rubber element (9)
and also follows the curvature of the metal vertebra
(7) under any loading condition on the blade (1);
the blade (1) and the arm (2) are joined together
through a sequential central support (10), made of
metallic or plastic material,
the blade body (6) and the rubber element (9) are
secured by means of tips (35) that further encase
possible cutting edges of the metal vertebra (7),
characterized in that
the upper support (4) has a mounting channel (8)
and said upper support (4) supporting and accommodating
the vertebra (7)
in its mounting channel (8),
throughout the length,
also following its curvature under any loading
condition on the blade (1) throughout the length,
wherein the sequential central support (10) has a
mounting channel (28),
passing lengthwise throughout the length of the central
support (10),
being preferably rectangular in shape,

inside of which a metal vertebra (7) is inserted and also locked in its central region by means of a plastic pin or riveting;

the region of a lower base of the support (10) has a passage channel (29) for the rubber element (9), passing lengthwise throughout the length of the central support (10), being preferably rectangular in shape and further provided with a longitudinal rectangular opening (30), extending throughout the central support (10), in which the rubber element (9) is inserted through the rectangular section (14), so that the upper section (15) of said element (9) is inserted into the passage channel (29), so as to support the profile of the rubber element (9);

by using said sequential central support (10), the profiles of the blade body (6) are mounted by means of the two ends of the metal vertebra (7), after inserting and positioning said vertebra (7) in the mounting channel (28), the blade body (6) being split;

alternatively, an enclosing central support (11) may be used as an alternative to the sequential central support (10), being provided with preferably rectangular positioning guides (31), positioned perpendicularly to the plane of the metal vertebra (7) and engaging into rectangular openings (32) equally positioned in the central region of the metal vertebra (7);

said enclosing central support (11) is mounted on the metal vertebra (7) over the blade body profile (6), having a longitudinal cut-out (33)

and allowing communication between the central support (11) and the vertebra (7), that are locked by the abovementioned processes."

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

The subject-matter of claim 1 does not meet the requirements of Article 83 EPC since it is not disclosed in a manner sufficiently clear and complete for it to be carried out by the skilled person. To begin with, the wording "arrangement introduced in wiper blade" does not render clear for which technical object protection is actually sought, particularly whether this object includes the wiper blade as a whole or whether it includes only a specific combination of constructional parts. Further, reference is made to the features reading "said blade (1) has a blade body (6) formed as a single piece", "the blade body (6) being split", "support (5) supports the complete length of the rubber element (9)" and to the embodiment illustrated in figures 9, 10 (where the sequential central support 10 instead of the blade body (6) is shown to support the rubber element (9)), these features evidently implying incongruences which affect all alternative embodiments covered by claim 1. Finally, the terms "flexible material" and "semi-rigid material" do not have a well-defined meaning in the art, thus the skilled person would not know how to produce a "semi-rigid" lower support (5) capable of maintaining a uniform and optimized load distribution on the wiper blade (see patent specification, hereinafter designated as EP-B, paragraph [0010]) "under any loading condition on the blade" (see claim 1).

The subject-matter of claim 1 lacks an inventive step in view of documents A2 (DE-A1-100 36 115), A3 (WO-A-00/34090) and the skilled person's common general knowledge. Indeed, the Appellant considers that according to one alternative included in the claim, the only difference to A2 resides in that the symmetric spoiler has "an upper vertex having a rounded profile" (hereinafter designated as feature (a)) and in that "the blade body and the rubber element are secured by means of tips that further encase possible cutting edges of the metal vertebra" (hereinafter designated as feature (b)). Specifically, a "symmetric spoiler, made of concave curved elements, joined together by an upper vertex" is already known from A2, as is derivable from figure 4c (showing "concave curved elements") and from figures 1a,1b (showing a "symmetric spoiler" with respect to an axis transverse to a longitudinal axis). However, the aforesaid differences cannot imply an inventive step over A2, for feature (a) belongs to the skilled person's common general knowledge and feature (b) would be obtained through the obvious combination with A3.

Documents A6 (US-A1-2002/0053112), A7 (FR-A-1 410 083), A8 (FR-A-2 679 186), A9 (US-A1-2003/0014828) and A10 (US-A-3 088 155) should be admitted to the appeal proceedings since they were submitted with the statement of grounds of appeal and form an integral part of the Appellant's case pursuant to Article 12(1), (2) RPBA (Rules of Procedure of the Boards of Appeal). Moreover, these documents are prima facie relevant to the assessment of inventive step, for the subject-matter of claim 1 of the main request clearly lacks an inventive step in view of documents A2, A3 and of further documents A6, A7, A8, A9 or A10. Documents A6 to A8 disclose the feature reading "a symmetric spoiler

(16), made of concave curved elements (17, 18), joint together by an upper vertex (19) having a rounded profile" (hereinafter designated as feature (c)), according to one alternative of claim 1, and documents A9, A10 disclose the feature reading "a no-spoiler profile, consisting in only one convex bulging" (hereinafter designated as feature (d)), according to a second alternative of claim 1. Further, these documents were submitted merely to buttress and reinforce the previous line of argument presented during oral proceedings before the Opposition Division and in response to the Patentee's auxiliary request III filed only during these proceedings. Moreover, there was no necessity to submit at an earlier stage of the proceedings arguments on inventive step relating to granted claims 2 to 4 since the Opponent considered that the patent should anyway be revoked on the grounds of the objections based on Article 123(2) EPC. For all these reasons these documents should be admitted to the appeal proceedings.

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

The Appellant's objections related to insufficiency of disclosure (Article 83 EPC) are unfounded since they actually merely involve unclear features, if at all, which are no ground for opposition. These objections also relate to features which were already part of the granted claim and therefore are not open to clarity objections as opposed to amended features. This was definitely stated in the decision G 3/14 of the Enlarged Board.

The subject-matter of claim 1 involves an inventive step over documents A2 and A3. First, in addition to

the above mentioned features (b), (c) and (d) (as identified in the impugned decision), likewise not disclosed in A2 are particularly the features of claim 1 relating to the upper support having a mounting channel, the lower support having a lower mounting channel, the upper support's interior configuring a chamber and the features relating to the enclosing central support (see Respondent's letter dated 12 August 2015). Specifically in relation to feature (c), the "symmetric spoiler" (according to one alternative of the claim) as claimed is symmetric with respect to a longitudinal axis of the wiper blade, i.e. its cross section taken along a direction transverse to its longitudinal axis is symmetric, in marked contrast to the spoiler depicted in A2 (see figure 4c). On account of these various differing features the combination of A2 and A3 and the skilled person's common general knowledge would not lead in an obvious manner to the subject-matter of claim 1, as stated in the impugned decision.

Documents A6 to A10 should not be admitted to the appeal proceedings for they were filed late without any valid reason being given for this late submission. In addition they are prima facie no more relevant than the previously cited prior art.

Reasons for the Decision

1. The appeal is admissible.
2. In the Board's view the invention is disclosed in the patent specification in a manner sufficiently clear and complete for it to be carried out by the skilled person (Article 83 EPC). In effect, the Appellant's objections are based on ambiguities and lack of clarity affecting

some of the features in the subject-matter of claim 1. Such ambiguities and lack of clarity, if present at all, are not open to an objection under Article 84 EPC, since they are not caused by the amendments made but relate to features already present in the granted claim (see G 3/14). However, these ambiguities are mainly a consequence of the various different alternatives implied by the claim and of the difficulty in formulating a claim intended to include a number of different embodiments.

Nonetheless, these ambiguities disappear when the claim is considered in conjunction with the description, as required by Article 83 EPC. Thus, for instance, the features reading "said blade (1) has a blade body (6) formed as a single piece", "the blade body (6) being split" and "support (5) supports the complete length of the rubber element" do not entail any ambiguities if considered in conjunction with the description, which discloses two different alternate embodiments including either a sequential central support (10) (see figures 9, 10) centrally located between two separate identically formed blade bodies, or an enclosing central support (11) enclosing the central portion of a single blade body. In each case said single blade body and said two separate identical blade bodies are "formed as a single piece by welding, bonding, fitting or co-extrusion of two different profiled materials, resulting in a single body" (see claim 1), said contested features thus being entirely clear and unambiguous. Similarly, it is evident that depending on which of the above two alternative embodiments is considered, said rubber element (9) is supported by the lower mounting channel (in the lower support (5)) either along its entire length or only partly (due to the presence of the central sequential support).

As to the objection relating to the wording "arrangement introduced in wiper blade, secured to an arm of the wiper, wherein ...", in the Board's judgement it is sufficiently clear and obvious that the entirety of the technical features defining the wiper blade, except for the arm (2), as defined by the combination of features following the above term "wherein", are comprised in the claimed subject-matter. Indeed, the Appellant did not express any serious doubt in respect of any specific feature mentioned in claim 1.

Finally, the use of the terms "semi-rigid material" and "flexible material" has likewise to be considered in the context of the further claimed features and of the description. Hence, as may be inferred for example from paragraph [0010] of EP-B, the constructional arrangement in its entirety (as claimed) is designed to lead to uniform and optimized load distribution by the wiper arm, in particular the constructional features of the spoiler which additionally affect load distribution through aerodynamic action. Thus, contrary to the Appellant' view, the choice of materials (according to the above terms or definitions) is only one aspect among several other aspects of the invention as resulting from the combination of the entirety of the claimed features. Moreover, this choice is performed by the skilled person conforming to known requirements, similar to those applied e.g. in relation with document A2, where likewise a wiper blade body essentially consisting of an upper flexible and a lower semi-rigid material is disclosed.

3. The subject-matter of claim 1 involves an inventive step in view of A2 in conjunction with A3 and the skilled person's common general knowledge.

The Board concurs with the view taken in the impugned decision (in contrast to the view expressed by the parties) in that the sole differences between the subject-matter of claim 1 and the disclosure of A2 resides in said features (b), (c) and (d) (see point IV).

In this respect it is noted that the Appellant's view (in relation to feature (c)) is not correct, for in claim 1 said "symmetric spoiler" is implicitly considered in relation to a longitudinal axis of symmetry, as derivable from the context of claim 1 and particularly from the wording "where a profile (emphasis added) of said blade body consists in an upper support the upper support has, in its upper portion a symmetric spoiler" (as well as from the overall specification in EP-B; see e.g. figures 3 to 5). The "profile" of the blade body (or wiper blade) is typically and ordinarily considered in a direction transverse to the longitudinal direction of the blade and the symmetry of a profile is therefore typically construed as being with respect to an axis of the blade.

The Respondent's view is likewise not shared by the Board since the features it invoked (see point V) are known from A2, as detailed in the impugned decision of the Opposition Division. In particular A2 discloses (see figure 4c) a blade body having an upper portion 8 (formed of flexible material S.a) and a lower portion 1 (made of semi-rigid material S.i and enclosed by the upper portion), the upper portion including a chamber (accommodating the lower portion) and including a channel (as a part of said chamber) receiving and supporting the vertebra 2, the lower portion including a lower channel receiving an upper rectangular section of the rubber element 3,4,5. Finally, the enclosing central support 6 (see figures 4a, 4b, 5, 6a, 6b)

comprises clearly an enclosing central support 6 including rectangular positioning guides 10 engaging into rectangular openings 11, the blade body profile 1,8 having a longitudinal cutout 9 according to claim 1.

Said features (b), (c) and (d) marking a difference to prior art A2 likewise contribute to inventive step, in view of A3 and the skilled person's common general knowledge. Indeed, as derivable from the impugned decision, at least it would not be obvious for the skilled person to achieve the object of providing an alternative profile which guarantees a uniform and optimized load distribution by the wiper arm through either feature (c) or alternatively feature (d) (not known from A3). In fact, neither of these features was proven to be part of common general knowledge or to lie within the customary practice of the skilled person (Article 56 EPC).

4. The Board decided to exercise its discretion pursuant to Article 12(4) RPBA (Rules of Procedure of the Boards of Appeal) not to admit to the appeal proceedings documents A6 to A10, submitted with the statement of grounds of appeal. As discussed at the oral proceedings, the Board considered that these documents should and could have been submitted already before the Opposition Division. The Appellant argued that these documents were filed in response to the findings of the Opposition Division that an inventive step was to be acknowledged in view of features of the dependent claims that were added to claim 1 as granted. However, the Appellant-Opponent did not provide in its notice of opposition any line of argument on inventive step against the features in granted dependent claims 2 to 4, on which the present main request of the Patentee is

based. Nor was another line of argument based on different legal grounds provided against these dependent claims in the notice of opposition. Again, in its response (dated 20 February 2014) to the preliminary opinion of the Opposition division (annexed to the summons to the oral proceedings), the Opponent failed to provide any arguments against said dependent claims, let alone on inventive step based on the skilled person's common general knowledge. Only during oral proceedings before the Opposition Division did the Opponent submit arguments against inventive step of claim 1 of auxiliary request III (identical to present main request), which was based on granted dependent claims 2 and 4. However, again no prior art documents proving its allegations concerning the skilled person's common general knowledge were submitted. Failure to provide earlier any arguments (and evidence) on inventive step against granted dependent claims 2 to 4 is particularly significant in the present case, given that there were only three granted dependent claims in EP-B, each claim corresponding to a different major embodiment of the invention. Consequently, it was to be expected that any amendment by the Patentee to granted claim 1 would be based on these claims, as actually confirmed by the Patentee's auxiliary requests II and III filed one month before the date set for the oral proceedings before the Opposition Division (i.e. filed on 20 February 2014). Therefore, the Opponent could not be surprised by the Patentee's filing of a new auxiliary request III (wherein one alternative included in previous auxiliary request III was deleted) during oral proceedings before the Opposition Division, no new subject-matter having been added as compared to previous auxiliary request III.

Under these circumstances, considering that it is already questionable whether admitting A6 to A10 during opposition proceedings would be compatible with the legal and factual framework within which the substantive examination of the opposition in principle should be conducted (see G 9/91), as in the absence of any arguments in the notice of opposition it is doubtful whether the validity of the dependent claims was indeed questioned simply by ticking the box in EPO form 2300 that the patent was opposed as a whole, further considering that the Appellant's conduct amounts to substantiating in appeal proceedings an attack on inventive step in respect of the dependent claims which could have already been substantiated with the notice of opposition, and further considering that the appeal proceedings is by its very nature less investigative than the opposition procedure (see G 9/91, point 18 of the reasons), the Board takes the view that it is justified in holding inadmissible documents A6 to A10.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



A. Vottner

G. Pricolo

Decision electronically authenticated