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**Datasheet for the decision
of 10 December 2021**

Case Number: T 0790/18 - 3.2.08

Application Number: 10015329.5

Publication Number: 2460956

IPC: E05B19/04

Language of the proceedings: EN

Title of invention:

A flip key for an automotive vehicle with enhanced resistance to forces exerted onto an insert of such flip key

Patent Proprietor:

VALEO CLIMATIZACION S.A.

Opponent:

Huf Hülsbeck & Fürst GmbH & Co. KG

Headword:

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

Amendments - extension beyond the content of the application
as filed - main request, auxiliary request 1 (yes) - auxiliary
request 2 (no)

Decisions cited:

Catchword:



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Boards of Appeal
Chambres de recours

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Case Number: T 0790/18 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 10 December 2021

Appellant: VALEO CLIMATIZACION S.A.
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 February 2018 concerning maintenance of the
European Patent No. 2460956 in amended form.**

Composition of the Board:

Chairwoman P. Acton
Members: A. Björklund
Y. Podbielski

Summary of Facts and Submissions

I. The appeals were filed by the patent proprietor (appellant I) and opponent (appellant II) against the interlocutory decision of the opposition division finding that, on the basis of auxiliary request 1 (then on file), the patent in suit (hereinafter "the patent") met the requirements of the EPC.

II. Oral proceedings by videoconference were held before the Board on 10 December 2021.

III. At the end of the oral proceedings the parties' requests were as follows:

Appellant I (proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted, or, as an auxiliary measure, that the patent be maintained on the basis of one of auxiliary requests 1-4 filed with the grounds of appeal.

Appellant II (opponent) requested that the decision under appeal be set aside and the patent be revoked.

IV. The requests differ only in the drawings. The figures of the main request are the following:

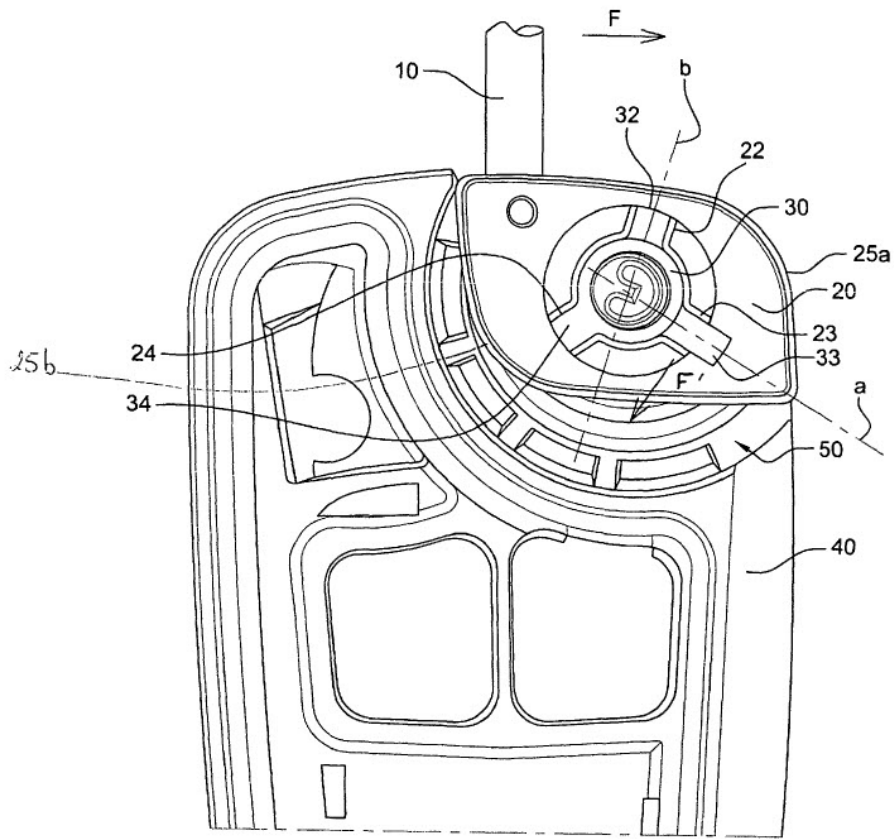


Fig. 1

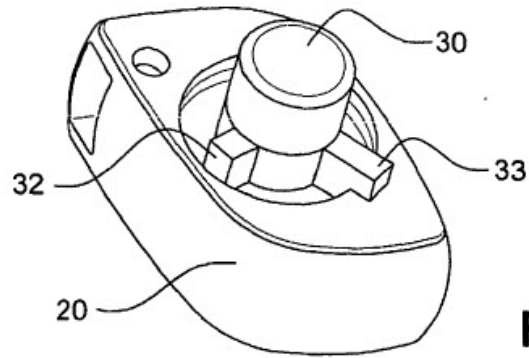


Fig. 2

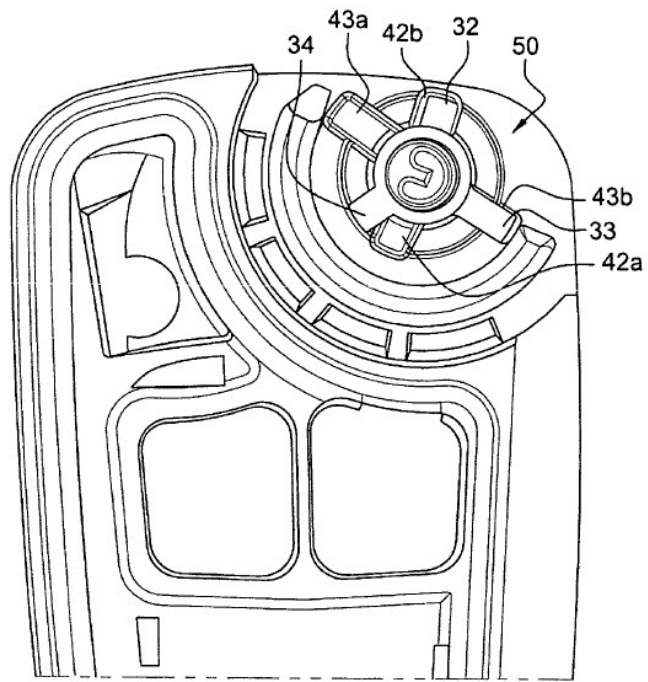


Fig. 3

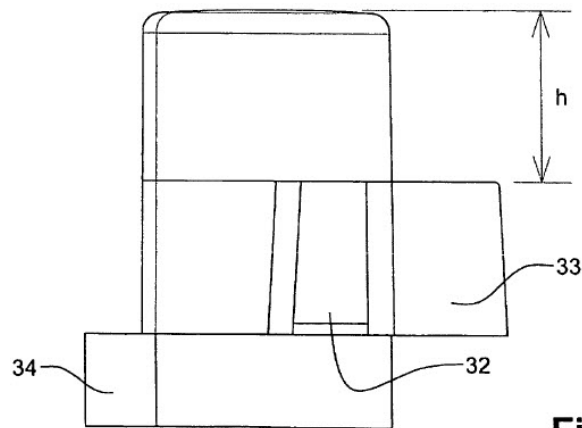


Fig. 4

Auxiliary request 1 differs from the main request only in the deletion of figure 4.

The figures of auxiliary request 2 are the following.

Fig. 1

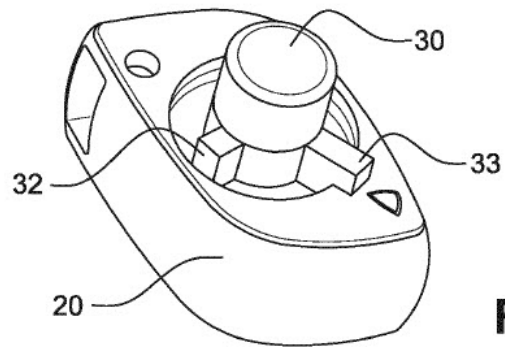
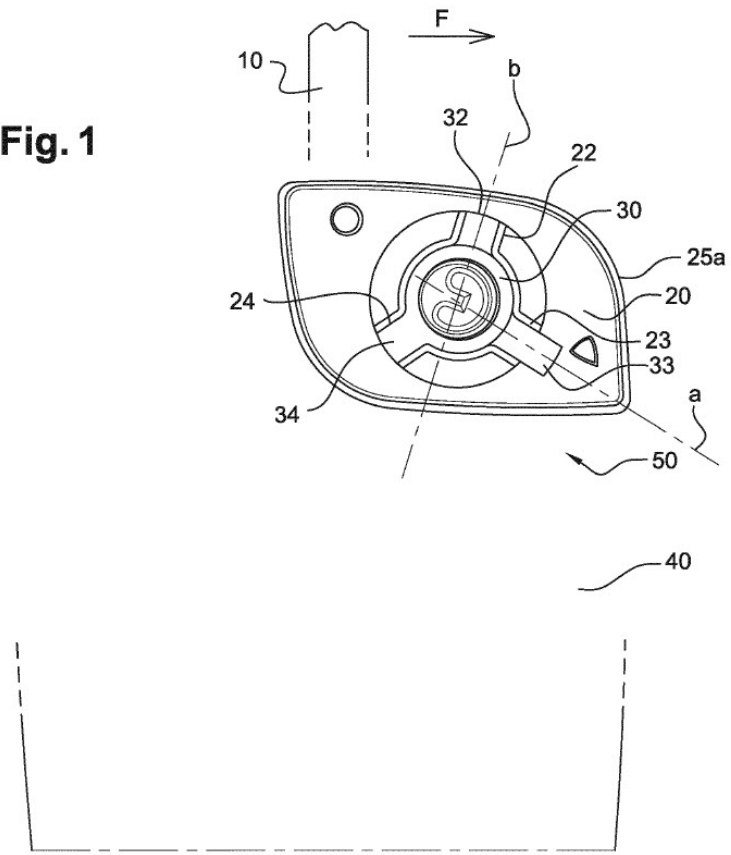


Fig. 2

Fig. 3

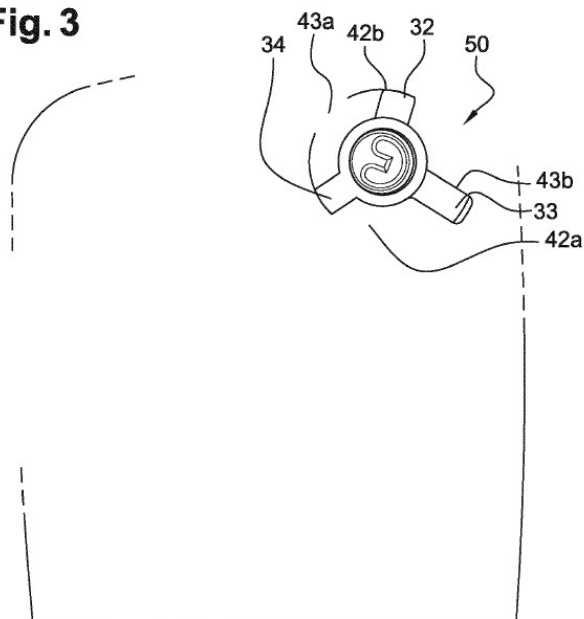
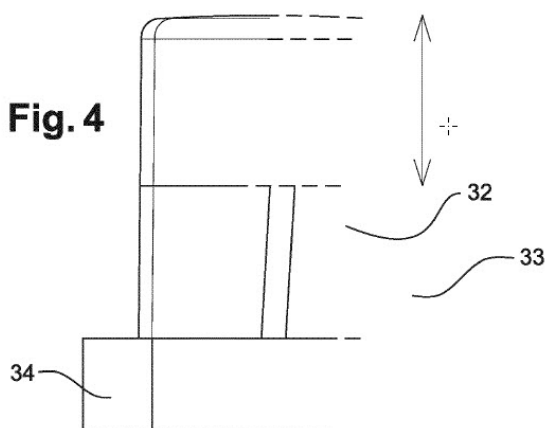


Fig. 4



V. The arguments of appellant I (patent proprietor) can be summarised as follows:

Main request and auxiliary request 1

During the assessment of added subject-matter, the content of the entire application as filed, including the description, and the skilled person's knowledge should be considered.

Paragraphs [0022], [0024] and [0033] of the patent as granted clearly indicated that the figures were only to be considered as examples. Furthermore, the non-referenced details of the cavity of Figure 3 were without relevance to the invention and did not provide the skilled person with any additional technical information beyond that already available in the application as filed.

Auxiliary request 2

In auxiliary request 2, the figures had been redrawn as close as possible to the figures as filed. Should there be a difference, it did not provide any new technical teaching and did thus not improve the patent proprietor's position compared to that when the application was filed.

The shape and position of the rotatable bearing as shown in Figure 1 of auxiliary request 2 was perfectly visible in Figure 1 as filed and also described in paragraphs [0017] to [0019] of the published application. There was no difference in the technical information concerning the insert 10 between the different versions of the figures.

The various grooves of the bearing and housing which were drawn in the figures of auxiliary request 2 were also visible on the figures as filed.

The faint details visible in the figures as filed which had been omitted in the figures of auxiliary request 2 were not described in the application as filed and were of no relevance to the invention. They were thus not essential and their omission did not require any modifications of the rest of the key.

Auxiliary request 2 thus fulfilled the requirements of Article 123(2) EPC.

VI. The arguments of appellant II (opponent) can be summarised as follows:

Main request and auxiliary request 1

Figure 3 of the patent as granted showed the geometry of the bottom wall of the cavity 50 in which the bearing rotated together with the shape of the anchoring grooves 42a, 42b, 43a and shapes of various internal parts surrounding the cavity. It thus contained new technical information which was not disclosed in the application as filed, in particular not in the originally filed figures.

This applied also to the first auxiliary request which contained the same figure.

Auxiliary request 2

For evaluating whether the figures complied with Article 123(2) EPC, it had to be assessed whether the skilled person would arrive at the figures of auxiliary request 2 from the figures as originally filed, without hindsight. With this in mind, the figures of auxiliary request 2 extended beyond the content of the application as filed in several aspects.

The position of the bearing in the upper right corner of the housing was not disclosed in the figures as filed, nor was the connection of the insert 10 to the bearing 20 through the pin hole.

The shape of the anchoring groove 23 or the air gap between the button and the bearing in Figure 1 and the shape of anchoring groove 43b in Figure 3 of auxiliary request 2 could not be seen in the corresponding figures as filed. The same applied to the shape of the housing, including the upper left corner and its lower limit.

Furthermore, there were many details in Figures 1 and 3 as filed which were missing in the figures of auxiliary request 2. By keeping only some but not all of the details shown in the figures as filed, structures which had no particular meaning had been given a specific meaning. For example the shaded white areas and thin white lines in Figures 1 and 3 as filed were missing .

Reasons for the Decision

1. Appellant II is correct in that an extension of subject-matter beyond the content of the application as filed is prohibited under Article 123(2) EPC irrespective of whether the amendments have been made in the claims, the description or the drawings.

What is relevant in examining whether the amendments made in the drawings of the main request, auxiliary request 1 and auxiliary request 2 comply with the requirements of Article 123(2) EPC is whether the figures of the respective requests convey a technical teaching to the skilled person which extends beyond the content of the application as filed.

2. Main request and auxiliary request 1

It was not disputed between the parties that Figure 3 of the main request (patent as granted) shows various geometrical shapes of the interior of the cavity 50 which are not visible in figure 3 as filed.

For example, the shape of the cavities 42a, 42b and 43a shown in figure 3 of the main request cannot be seen at all in figure 3 as filed. The same applies to the arc shaped element and the circle segment shaped elements inside the cavity. These geometries are also not described in detail in the claims or description as filed.

Appellant I is correct in that paragraphs [0022], [0024] and [0033] of the patent as granted indicate that the drawings show an example. However, even if the drawings of the patent as granted just show an example of the claimed key, they add additional technical information regarding this specific example which was not disclosed in the application as filed.

Furthermore, the geometries in the cavity, in particular that of the anchoring grooves 42a, 42b and 43a are not information which the skilled person could derive from their common general knowledge.

Figure 3 of the main request (patent as granted) thus extends beyond the content of the application as filed contrary to Article 123(2) EPC.

Since Figure 3 is present also in auxiliary request 1, this request extends beyond the content of the application as filed as well.

3. Auxiliary request 2

- 3.1 Appellant II submits that Figure 1 of auxiliary request 2 shows that the insert 10 may be directly or indirectly connected to the rotatable bearing 20, by means of a pin hole in the bearing, which was not disclosed in Figure 1 as filed.

However, neither version of Figure 1 discloses precisely how the insert 10 is connected to the bearing or whether a pin is inserted into the hole to fixate the insert to the bearing. Furthermore, page 1, lines 1 to 5 and claim 1 of the application as filed disclose that the bearing supports the insert, which requires a direct or indirect connection of the insert to the bearing.

Figure 1 of auxiliary request 2 does therefore not present any technical information regarding the connection of the insert to the bearing which extends beyond the content of the application as filed.

- 3.2 Appellant II further submits that the position of the rotatable bearing in the housing was not disclosed in the figures as filed. The skilled person would understand the term "edge" used on page 3, line 29 to page 4, line 5 of the application as filed to describe the sharp corners and not the longer rounded sides of the rotatable bearing. It was thus not disclosed that the rotatable bearing was positioned in the upper right corner of the housing as shown in Figures 1 and 3 of auxiliary request 2.

However, the passages cited by appellant II explicitly disclose that the rotatable bearing comprises a restricted edge 25a conformed to the corner of the

housing and that the rotatable bearing presents two opposite and centrally symmetrical edges which both have the same shape as the corner of the housing, these two opposite edges rejoining each other at their extremities so as to form angular extremity corners. The only corners on the bearing are those where the rounded sides meet. The rounded sides are thus the "restricted edges" referred to in these passages. Since Figure 1 shows the key in the open position as described on page 3, line 23 of the application as filed and the restricted edges conform to the corner of the housing, the bearing must be positioned in the upper right corner of the housing, as disclosed in Figures 1 and 3 of auxiliary request 2.

- 3.3 Appellant II submits that Figure 1 as filed does not disclose that the portion of the anchoring groove 23 located inside the circle (closer to the button) is wider than the portion located outside of the circle (further away from the button) which was shown in Figure 1 of auxiliary request 2. Furthermore, Figure 1 of auxiliary request 2, showed an air gap between the button and the bearing which was not disclosed in Figure 1 as filed.

However, even if the quality of Figure 1 as filed is low, it shows thin grey lines which follow along and slightly outside of the contour of the button 30 inside the circle in the center of the rotatable bearing. Outside of this circle, the line follows close to the leg 33. Figure 1 of auxiliary request 2 essentially shows the same geometries of the anchoring groove 23 and the hole receiving button 30. The slight differences between Figure 1 as originally filed and auxiliary request 2 do not result in any new technical teaching regarding the exact shape of anchoring groove

23 or the hole receiving button 30 since both sets of figures are schematic.

Figure 1 of auxiliary request 2 does therefore not contain any new technical teaching concerning the shape of the anchoring groove 23 or the hole receiving button 30.

- 3.4 Appellant II also submits that Figure 3 of auxiliary request 2 shows that the anchoring cavity 43b extends beyond the leg 33 and additionally that the anchoring cavities 42a and 43a were at 180° from the the anchoring cavities 42b respectively 43b, which was not disclosed in Figure 3 as filed.

However, the Figure 3 as filed shows a darker portion separated by a lighter line from the rest of the leg, right at the end of the leg 33. The figures of auxiliary request 2 show the positive representation of the objects shown in negative in the application as filed. Therefore, the lighter line is shown as a black line in figure 3 of auxiliary request 3 and the dark portion is shown in white.

Neither Figure 3 as filed, nor Figure 3 of auxiliary request 2 show the precise location of the anchoring cavities 42a, 43a in which the legs 32 and 33 are received when the key is in the closed position. Both versions of these schematic figures show that the anchoring cavities in which the legs are received in the closed position are approximately opposite to the anchoring cavities in which the legs are received when the key is in the open position. Figure 3 of auxiliary request 2 does therefore not contain any new technical teaching regarding the position of the anchoring cavities for the closed position of the key.

3.5 Appellant II finally submits that the shape of the housing of the key, including its lower end, shown in Figures 1 and 3 of auxiliary request 2 was also not disclosed in the figures as filed. Furthermore, the figures as filed showed several lines of which some had been selected and given a meaning, like the contour of the housing, while other details, such as the small areas shown in a lighter shade at the bottom of figures 1 and 3 as filed had been left out. The selection of some structures which had no meaning in the original figures, and including them in the figures of auxiliary request 2 gave these structures a meaning which they did not have in the application as filed.

However, the lower parts of Figures 1 and 3 clearly show the sides of the housing and there is an arc of dots in Figure 3 which is tangent to the other contours of the housing showing the upper left corner of the housing. While the contour shown in figures 1 and 3 of auxiliary request may not have precisely the same contour as that in the drawings as filed, the slight differences do not confer any new technical teaching regarding the housing of the key to the skilled person. The lower limit of the housing is not shown in the figures as filed, but Figures 1 or 3 of auxiliary request 2 do not show the lower limit of the housing either. The lowest portion of these figures is a dot-hashed line indicating that not the entire housing is shown.

Appellant II is correct in that the small rectangular areas at the bottom of Figures 1 and 3 as filed and the other thin non-descript lines inside the housing did not have any particular meaning. From the figures as filed it is not possible to see what the rectangles and internal thin lines inside the housing are, and since

they are also not described in the application as filed, they do not provide any technical teaching concerning the housing of the key to the skilled person. Thus, leaving them out from the figures of auxiliary request 2 cannot provide any new technical teaching regarding the housing of the key either.

3.6 The figures of auxiliary request 2 do therefore not confer any technical information which extends beyond the content of the application as filed and therefore fulfill the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeals are dismissed

The Registrar:

The Chairwoman:



C. Moser

P. Acton

Decision electronically authenticated