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Aktenzeichen / Case Number / N^o du recours : T 591/88 - 3.5.1
Anmeldenummer / Filing No / N^o de la demande : 81 110 611.1
Veröffentlichungs-Nr. / Publication No / N^o de la publication : 54 945
Bezeichnung der Erfindung: Speaker for automotive vehicle audio system
Title of invention:
Titre de l'invention :
Klassifikation / Classification / Classement : H04R 9/06

ENTSCHEIDUNG / DECISION
vom / of / du 12 December 1989

Anmelder / Applicant / Demandeur :
Patentinhaber / Proprietor of the patent /
Titulaire du brevet : Nissan Motor Co., Ltd.
Einsprechender / Opponent / Opposant : N.V. Philips Gloeilampenfabrieken

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Articles 56, 104(1) EPC

Schlagwort / Keyword / Mot clé : "Inventive step - no"
"Respondent did not appear at oral proceedings,
apportionment of costs - no"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

European Patent
Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number : T 591 /88 - 3.5.1



D E C I S I O N
of the Technical Board of Appeal 3.5.1
of 12 December 1989

Appellant : N.V. Philips Gloeilampenfabrieken
(Opponent) Groenewoudsweg 1
NL-5656 AA Eindhoven (NL)

Representative : van der Kruk, Willem Leonardus
INTERNATIONAAL OCTROOIBUREAU B.V.
Prof. Holstlaan 6
NL-5656 AA Eindhoven (NL)

Respondent : Nissan Motor Co. Ltd.
(Proprietor of the patent) No. 2, Takara-cho
Kanagawa-ku
Yokohama-shi
Kanagawa-ken 221 (JP)

Representative : TER MEER - MÜLLER - STEINMEISTER
Mauerkircherstrasse 45
D-8000 München 80 (DE)

Decision under appeal : Decision of Opposition Division of the European
Patent Office dated 17 November 1988 rejecting
the opposition filed against European patent
No. 54 945 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : E. Persson
Members : W.J.L. Wheeler
W.B. Oettinger

Summary of Facts and Submissions

- I. The grant of European patent No. 54 945 on the Respondent's European patent application No. 81 110 611.1, which was filed on 18 December 1981 claiming priority from seven previous applications in Japan (of which the earliest is JP-180203/80, dated 19 December 1980), was published on 30 October 1985.
- II. The only claim of the granted patent relevant to the present decision is Claim 1, which is worded as follows:
- "1. A speaker for an automotive vehicle comprising a driver unit and a membrane, for producing audio sound,
- said driver unit comprising a driver housing fixed to said membrane (507, 532, 552, 574, 612, 641), a driver assembly (506, 523, 549, 572, 593, 662), and a magnetic coil (510, 530, 556, 579, 603, 642) supplied with an audio signal and fixed to a tubular extension (502, 528, 548, 578, 609, 637) as support element which is connected to said membrane, and
 - said membrane being a member (52, 520, 540, 610, 643, 100, 201, 219, 301, 225), per se forming part of the vehicle body and being adapted to oscillate for producing an audio sound, characterized in that
 - said driver assembly is resiliently suspended within said housing."
- III. On 15 January 1986 the Appellant filed an admissible opposition, requesting revocation of the patent on the ground that its subject-matter was not patentable within the terms of Articles 52 to 57 EPC. Of the prior art documents cited in the notice of opposition only the following are relevant to the present decision:

- (b) FR-A-1 480 768
- (c) US-A-3 728 497.

IV. Oral proceedings were held before the Opposition Division, at which the Appellant filed additional prior art documents, the following being relevant to the present decision:

- (e) GB-A-2 020 509.

V. The Respondent, who had not filed any written reply to the notice of opposition, did not attend the oral proceedings, although duly summoned.

VI. By a decision announced at the oral proceedings and dispatched on 17 November 1988, the Opposition Division rejected the opposition.

VII. On 1 December 1988 the Appellant filed a notice of appeal against that decision, together with a written statement setting out the grounds of appeal and an unconditional request for oral proceedings, and paid the appeal fee.

VIII. In a letter dated 5 May 1989, which contained no substantive arguments, the Respondent requested that the appeal be dismissed and that the patent be maintained as granted. The letter contained an auxiliary request for oral proceedings.

IX. In a communication pursuant to Article 11(2) of the Rules of Procedure of the Boards of Appeal, agreement was expressed with the Appellant that document (c) disclosed a transducer having all the features specified in Claim 1 of the patent in suit except for the membrane being a member per se forming part of the body of an automotive vehicle, and it seemed that a skilled person wishing to carry out

the idea disclosed in documents (b) and (e) of using a lining panel in a vehicle as the diaphragm of a loud-speaker would consider the transducers known from document (c) to be suitable. It was therefore probable that the Board would decide that the subject-matter of Claim 1 of the patent in suit did not involve an inventive step, with the consequence that the ground (a) in Article 100 EPC would prejudice maintenance of the patent in suit in the form in which it was granted.

X. Oral proceedings were held before the Board on 12 December 1989. Although duly summoned, the Respondent did not attend. No request to amend the patent has been received from the Respondent.

XI. The Appellant requested that the decision of the Opposition Division be set aside and that the patent be revoked. He also requested an award of costs under Article 104 EPC, arguing that the expense of the oral proceedings could have been avoided if the Respondent had informed the Appellant that he would not attend.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is, therefore, admissible.
2. The general idea of using a lining panel in a vehicle as the diaphragm of a loudspeaker is disclosed in documents (b) and (e). It appears that the panel 2 in document (b) and the panels 12, 13 in document (e) can be regarded as "members, per se forming part of the vehicle body," just as much as the panels 100, 106 and 214 in Figs. 20, 32, 33, 35 and 36 of the patent in suit. In document (b) the vehicle is a car. Document (e) shows an aircraft as the

vehicle, but mentions automobiles on page 2. Apart from a reference to excitation coils, document (b) does not disclose any details of the electro-acoustic mechanism. Document (e) discloses that the electro-acoustic mechanism comprises a magnet and a voice coil (page 1, lines 84 and 85) and that a moving coil system 27 is operatively secured to the panel at 28 (page 1, lines 101 and 102), although it appears from Fig. 2 that the moving coil system may in fact be secured to the frame 21 rather than to the panel 20.

3. In view of the rather sparse information concerning the details of the electro-acoustic mechanisms in documents (b) and (e) it seems reasonable to assume that a person wishing to apply the teaching of one of those documents would search the literature for suitable electro-acoustic mechanisms.
4. Document (c) offers itself for consideration. Its title is "Dynamic loudspeaker using wall as diaphragm". Document (c) discloses with reference to its Figs. 1 and 3 transducers comprising a driver unit and a membrane (board 1) for producing audio sound, in which the driver unit comprises a driver housing (7) fixed to said membrane (by a screw 6), a driver assembly (3, 3a, 3b, 4) and a magnetic coil (5) supplied with an audio signal and fixed to a tubular extension (the sleeve mentioned in Claim 1 of document (c)) as support element which is connected to said membrane (via parts 2b and 2a of the damper 2); said membrane being a member (board 1) adapted to oscillate for producing an audio sound; said driver assembly being resiliently suspended (by spring portion 2c, see column 2, line 10) within said housing (7). Thus, even though the means by which the housing is fixed to the membrane and the arrangement for resiliently suspending the driver assembly differ from those in the particular embodiments

shown in the patent in suit, the prior art transducers shown in Fig. 1 and 3 of document (c) have all the features specified in Claim 1 of the patent in suit except for the membrane being a member per se forming part of the body of an automotive vehicle.

5. It appears to the Board that a person skilled in the art who was looking for an electro-acoustic mechanism for oscillating the vehicle lining panels shown in document (b) or document (e) to produce audio sound would immediately consider the transducers shown in Figs. 1 and 3 of document (c) to be suitable for that purpose.
6. Thus, in the opinion of the Board, it would be obvious to a person skilled in the art to make a speaker falling within the terms of Claim 1 of the patent in suit, so that the subject-matter of that claim cannot be considered as involving an inventive step within the meaning of Article 56 EPC. Ground (a) in Article 100 EPC therefore prejudices maintenance of the patent in suit in the form in which it was granted.
7. Since according to Article 113(2) EPC, the Board shall decide upon the opposed patent only in the text submitted to it, or agreed, by the proprietor of the patent and since no request to amend Claim 1 of the patent in suit has been received from the Respondent, the Board must revoke the patent in accordance with Article 102(1) EPC.
8. In the circumstances there is no need to consider the other cited documents by the Appellant or the arguments based on them.
9. Regarding the request for an award of costs, the Board notes that according to Article 104(1) EPC each party shall normally meet his own costs. In view of the fact

that the Appellant himself has filed an unconditional request for oral proceedings, the Board sees no reasons of equity for ordering a different apportionment of costs.

Order

For these reasons, it is decided that:

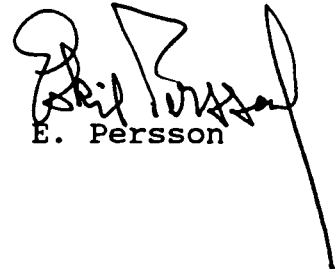
1. The decision under appeal is set aside.
2. European patent No. 54 945 is revoked.
3. The request for an award of costs is rejected.

The Registrar:



S. Fabiani

The Chairman:



E. Persson