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**D E C I S I O N**  
of 17 February 1999

**Case Number:** T 0414/97 - 3.2.1

**Application Number:** 87308999.9

**Publication Number:** 0285724

**IPC:** B60R 1/08, G02F 1/17, G02F 1/19

**Language of the proceedings:** EN

**Title of invention:**  
Improved automatic rearview mirror system for automotive vehicles

**Patentee:**  
Gentex Corporation

**Opponent:**  
Murakami Kaimedo Co., Ltd.

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 56, 123(2)

**Keyword:**  
"Inventive step (main request, no; seventh auxiliary request, yes)"  
"Reformatio in peius - first to fifth auxiliary requests inadmissible"  
"Unallowable intermediate generalisation (sixth auxiliary request)"

**Decisions cited:**  
G 0009/92, T 0830/90, T 0782/92, T 1055/92

**Catchword:**  
-



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Boards of Appeal

Chambres de recours

Case Number: T 0414/97 - 3.2.1

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.1  
of 17 February 1999

**Appellant:**  
(Opponent)

Murakami Kaimeido Co., Ltd.  
12-25, Miyamoto-cho Shizuoka-shi  
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**Representative:**

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**Respondent:**  
(Proprietor of the patent)

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**Representative:**

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**Decision under appeal:**

Interlocutory decision of the Opposition Division  
of the European Patent Office posted 12 February  
1997 concerning maintenance of European patent  
No. 0 285 724 in amended form.

**Composition of the Board:**

**Chairman:** F. Gumbel  
**Members:** S. Crane  
J. Willems

## Summary of Facts and Submissions

- I. European patent No. 0 285 724 was granted on 30 December 1992 on the basis of European patent application No. 87 308 999.9.
- II. The granted patent was opposed by the present appellants (opponents 01) and further opponents (opponents 02) under each of the available grounds of opposition, namely lack of novelty and/or inventive step (Article 100(a) EPC), insufficiency of disclosure (Article 100(b) EPC) and addition of subject-matter (Article 100(c) EPC).

Opponents 02 subsequently withdrew their opposition with their letter dated 13 January 1997.

Of the state of the art documents relied upon in the opposition proceedings only the following have played any significant role on appeal:

(D3) DE-A-3 615 379

(D4) US-A-4 603 946

(D6a) F. G. K. Baucke "Beat the Dazzlers", published 1983 in "Schottinformation", Schott Glaswerke, Mainz (DE);

(D11) JP-A-57-208 531

(D19) Wesley R. Iversen "Electrochromics are set to do it with mirrors", published on 5 February 1987 in Electronics, pages 36 and 38;

(NRL6) Joseph M. Callahan "Electrochromic Mirrors: Donnelly's (Non)Glaring Innovation", published on 17 February 1987 in Chilton's Automotive Industries;

(NRL8) The brochure "GENTEX introduces new electronics technology", published by GENTEX VISIONS in "Winter 1987".

Opponents 02 had also filed a substantial body of evidence relating to the alleged prior use of the claimed invention by the present respondents (proprietors of the patent).

III. With its decision posted on 12 February 1997 the Opposition Division held that the subject-matter of the then main request of the respondents lacked inventive step having regard in particular to the documents D3 and D19 but that the patent could be maintained in amended form on the basis of the claims and revised description according to a first auxiliary request.

In coming to this decision the Opposition Division held that the alleged prior use by the respondents had not made the relevant mirror systems available to the public in the sense of Article 54(2) EPC.

Claim 1 as accepted by the Opposition Division reads as follows:

"An automatic rearview mirror system for automotive vehicles, comprising a variable reflectance member (308), ambient light sensing means (301) effective to sense ambient light and to generate a corresponding electrical signal indicative of the ambient light level, glare sensing means (302) effective to sense glare-causing light and to generate a corresponding electrical signal indicative of the glare-causing light

level, and an electronic circuit (306, 307) operable to apply an electrical control signal to said variable reflectance member to vary the reflectivity of said member as a function of the sensed ambient light level signal and the sensed glare-causing light level signal, wherein the variable reflectance member is an electrochromic variable reflectance member (308) the reflectivity of which varies continuously over a range as a function of at least two electrical signal levels applied thereto, the response of the electrochromic member is slower than the response of the electronic circuit to the electrical signal indicative of the glare-causing light; and wherein the electronic circuit is adapted to drive the reflectance member to high, intermediate or low reflectance states when the electrical signal indicative of glare-causing light is low, exceeds an intermediate threshold or exceeds a high threshold, respectively."

- IV. An appeal against that decision was filed on 10 April 1997 and the fee for appeal paid at the same time.

The statement of grounds of appeal was filed on 30 April 1997.

The appellants requested that the decision under appeal be set aside and the patent revoked in its entirety.

- V. In a communication pursuant to Article 11(2) RPBA dated 5 May 1998 the Board, *inter alia*, expressed its provisional view that the finding of the Opposition Division with respect to the alleged prior use was consistent with the case law of the Boards of Appeal in relation to similar circumstances, see T 830/90 (OJ EPO

1994, 713) and T 782/92 (not published in OJ EPO), so that it would not be fruitful to investigate further the nature of the prototypes delivered by the respondents to General Motors shortly before the priority date of the patent.

VI. Oral proceedings before the Board were held on 17 February 1999.

At the oral proceedings the respondents requested that the appeal be dismissed and the patent maintained in the form agreed by the Opposition Division (main request) or in the alternative that the patent be maintained in further amended form on the basis of documents according to first to eighth auxiliary requests submitted at the oral proceedings.

The respective claims 1 of the auxiliary requests comprised all of the features of the claim 1 accepted by the Opposition Division, as set out in Section III above, together with the respective following passages added at the end of the claim:

First auxiliary request:

"and wherein in the intermediate state the reflectance of the reflectance member (308) is controlled in response to the sensed glare-causing light level signal."

Second auxiliary request:

"wherein in the intermediate state the reflectance of the reflectance member (308) is controlled in response to the sensed glare-causing light level signal, and wherein the reflectance is kept constant in the low and the high reflectance states."

Third auxiliary request:

"and wherein the reflectance of the reflectance member (308) is kept constant in the low and the high reflectance states and the reflectance decreases with increasing glare-causing light level in the intermediate reflectance state."

Fourth auxiliary request:

"and wherein the reflectance of the reflectance member (308) is kept constant in the low and the high reflectance states and the reflectance gradually decreases with increasing glare-causing light level in the intermediate reflectance state."

Fifth auxiliary request:

"and wherein the reflectance of the reflectance member (308) is kept constant in the low and high reflectance states and the reflectance decreases with increasing glare-causing light level in the intermediate reflectance state, so that the reflected light is kept at an almost constant level or increases moderately with increasing glare-causing light level."

Sixth auxiliary request:

"with sloped gradual transitions in the reflectance of the mirror element between the high and intermediate reflectance states and the intermediate and low reflectance states."

Seventh auxiliary request:

"with sloped gradual transitions in the reflectance of the mirror element between the high and intermediate reflectance states and the intermediate and low reflectance states, due to the glare-sensing means (302) sensing the glare-causing light after attenuation by the reflectance member (308)."

Eight auxiliary request:

"wherein the glare-sensing means does not detect the light reflected by the variable reflectance member (308) and the output signal of the glare-sensing means is compensated for the attenuation of the reflectance member."

To complete the documents of the seventh auxiliary request the respondents also submitted a set of dependent claims 2 to 21 relating to preferred embodiments of the mirror system according to claim 1 and amended pages 18 and 20 of the description.

VII. The arguments put forward by the appellants in support of their request for revocation of the patent were essentially as follows:

Each of the claims 1 of the various requests required that the response of the electrochromic member was slower than the response of the electronic circuit to the electrical signal indicative of the glare-causing light. In the first place there was no clear disclosure of this feature in relation to the embodiment of mirror system with "three state" control of the variable reflectance member specified in the claims so that this constituted an objectionable addition of subject-matter contrary to Article 123(2) EPC. In the second place the



feature as defined covered a broad range of response times for the electrochromic member, from fast to slow, with the only requirement being that the relevant circuit response time was comparatively faster. It was however clear from the patent specification that the stated object of avoiding abrupt and erratic changes in reflectance level could only be achieved if the response time of the reflectance member was slow in absolute terms and not merely comparatively. Since the patent specification did not teach how the problem could be solved over the whole broad range claimed there was insufficiency of disclosure contrary to Article 100(b) EPC.

With reference to the totality of the disclosure of document D3 it was at least implicit that the response of the electrochromic member of the automobile mirror system of Figures 15 to 17 was slower than that of the electronic circuit to the electrical signal indicative of the glare-causing light. Even if that could not be accepted, then it was abundantly clear from document D19, as had been correctly decided by the Opposition Division, that the slow response time of the electrochromic member was sufficient to eliminate erratic behaviour of the mirror, so that no special measures to increase the response time of the electronic control circuit would be necessary to this end. The remaining feature of claim 1 of the main request, that of "three state" control of the reflectivity had been proposed in a number of prior art documents of which document NRL8, a publication emanating from the respondents, was the most conclusive, the values of the reflectivity in the three states given there corresponding closely to those stated in the present patent specification. The subject-matter of the claim therefore lacked inventive step.

Since the apparent intention of the amendments made to the claims of the first to fifth auxiliary requests was to shift the subject-matter of the claims away from "three state" control towards a mirror system with continuously variable reflectivity between upper and lower limits, these requests were inadmissible having regard to the decision G 9/92 of the Enlarged Board of Appeal (OJ EPO 1994, 875).

In any mirror system using an electrochromic member with a slow response time there will always be gradual transitions in the reflectance as the control circuit drives the electrochromic member between different states. Thus the corresponding feature added to the claims of the sixth and seventh auxiliary requests contributed nothing of substance. The further feature added to claim 1 of the seventh auxiliary request whereby the glare-causing light is sensed after attenuation by the reflectance member was known to be advantageous from document D4 and was not therefore of inventive significance.

In view of the comments of the Board in its communication of 5 May 1998, the alleged public prior use was no longer relied upon.

VIII. The counterarguments of the respondents can be summarised substantially as follows:

Both the original application and the granted patent specification contained an extensive and complete disclosure as to how the mirror system according to claim 1 of the main request was to be constructed and of its advantageous characteristics. The objections of the appellants under addition of subject-matter and insufficiency of disclosure were therefore ill-founded.

There was nothing in the copious state of the art relied upon by the appellants which taught the person skilled in the art to use an electronic control circuit for an electrochromic member of an automobile mirror system having a response to the electrical signal indicative of the glare-causing light which was faster than the response of the electrochromic member. As for the "three state" control of the reflectivity of the electrochromic member specified in claim 1 of the main request this had to be distinguished from the three step control mentioned in document NRL8 since in the system claimed the reflectivity in the intermediate state was variable rather than being fixed as taught by this prior art. In order to make this distinction clear corresponding features, with progressively increasing detail, had been added to the respective claims 1 of the first to fifth auxiliary requests.

According to the sixth and seventh auxiliary requests reference had been in claim 1 to the particularly advantageous relationship between reflectivity and glare-causing light discussed in detail with respect to Figure 13 of the patent specification. There was nothing comparable to this in the state of the art. In claim 1 of the seventh auxiliary request it was additionally stated how the claimed relationship was achieved in practice. Since, however, it was clear from the original application that other possibilities existed a restriction in this sense was not necessary from the point of view of Article 123(2) EPC, so that claim 1 of the sixth auxiliary request was not objectionable in this respect.

## Reasons for the Decision

1. The appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.
2. *Considerations applicable to all requests*

In claim 1 of the main and each of the auxiliary requests it is a requirement that the response of the electrochromic member is slower than the response of the electronic circuit to the electrical signal indicative of the glare-causing light. An equivalent feature stated in the reverse, i.e. that the response of the electronic circuit was faster than that of the electrochromic member, is to be found in granted claim 1. The original application contains several statements e.g. at column 14, lines 35 to 39 and 44 to 59; and column 49, lines 4 to 9 - references are to the published A-document - of the general idea behind this feature, which is that the relatively slow response of the electrochromic member avoids abrupt and erratic change in the reflectance level without there being any need to incorporate a delay circuit with respect to the electrical signal indicative of the glare-causing light.

What the appellants now point out is that the relevant wording of the claims is very broad in its literal ambit, relying as it does merely upon the comparison between two responses, and extends to cover a system in which the response time of the electrochromic member is in fact so short that it is not possible by means of the inertia of that member to avoid abrupt and erratic changes in the reflectance level. Thus they argue that the claimed subject-matter is not capable of solving the underlying technical problem over the whole broad

range claimed and that since the description of the patent specification did not teach the person skilled in the art how to achieve this it was insufficient. In the particular circumstances of the present case the Board cannot accept the proposition of the appellants as being correct. It is not in fact in dispute that the patent specification comprises a comprehensive disclosure which would enable the person skilled in the art to realise a mirror system as claimed and that this would function as indicated. Nor is it in dispute that the person skilled in the art would have considerable latitude in choosing the response time of the electrochromic member while still being capable of achieving satisfactory results. The proposition of the appellants therefore amounts to a demand that a claim should be drafted in such detailed and specific terms that it would be impossible to construct something falling within its literal ambit that would not solve the technical problem addressed. However, in the vast majority of situations that demand cannot be sensibly fulfilled and in any case it is the primary purpose of a claim to set out the scope of protection sought for the invention and not to provide a complete set of instructions as to how the invention is to be performed, see for example T 1055/92 (OJ EPO 1995, 214). It is the purpose of the description to provide those instructions, insofar as they are not in any case within the domain of the common general knowledge of the person skilled in the art. As already indicated above the present description is wholly adequate in this respect. The objection of the appellants under Article 100(b) EPC is therefore not well founded.

Another objection of the appellants associated with the requirement of the claims concerning the relative response speeds of the electrochromic member and the electronic circuit is that this feature is not clearly disclosed in the original application in connection

with that embodiment of Figure 10 having "three state" control to which the claims are directed. For the reasons already expressed in its communication of 5 May 1998 the Board cannot accept that view. In its opinion there are clear indications in the original application, see the passages referred to above, that the advantage of the relatively slow response of the electrochromic member was inherent to all of the embodiments described. This objection under Article 123(2) EPC is also therefore not well founded.

3. *Main request*

The state of the art which has come to be considered as disclosing the most appropriate starting point for the evaluation of inventive step is represented by document D3. This document comprises, with reference to Figures 1 to 14, a detailed discussion of the properties of a variable reflectivity mirror comprising an electrochromic member, and with reference to Figures 15 to 17, the disclosure of an automatic dimming rearview mirror for automobiles. The mirror comprises ambient light sensing means, glare-causing light sensing means and an electronic control circuit which receives signals from these sensing means, determines an appropriate level of reflectivity of the mirror, ranging from about 50% to about 8%, and applies a corresponding drive voltage to the electrochromic member. There is no explicit disclosure in relation to the embodiment of Figures 15 to 17 of the relative response speeds of the electrochromic member and the electronic control circuit. Nevertheless the appellants argue, with reference to the foregoing general discussion in document D3 of the behaviour of electrochromic members, that it is at least implicit that the response of the electrochromic member will be slower than that of the electronic control circuit, so

that this first feature seen by the respondents as distinguishing over the closest prior art was in fact also disclosed there. In particular, the appellants rely on Figure 4 of document D3, which is a graph showing how the reflectivity of the electrochromic member varies over time as the applied voltage is switched between upper and lower values. There can be no doubt that within the context of the experimental results to which the graph relates the response of the electrochromic member is much slower than the change in applied voltage, which appears to be substantially instantaneous. But that is all that can be derived in this sense from the graph. It says nothing about how in the practical embodiment of Figures 15 to 17 the drive voltage will actually be varied by the electronic control circuit. All that can really be inferred from the foregoing general discussion of the behaviour of electrochromic members is that the response time of the electrochromic member of the mirror of Figures 15 to 17 will be of the order of a few seconds. The question therefore needs to be addressed whether it was obvious for the person skilled in the art to provide an electronic control circuit for the electrochromic member with a faster response to the signal indicative of the glare-causing light. In this respect document D19 is of particular significance. It is stated there that "an additional electrochromic advantage...is slow transition time. With rear-view mirrors an abrupt transition could be disconcerting to a driver...". Now, the clear import of that statement is that the slow transition time (i.e. "response") of the electrochromic member of the rearview mirror is sufficient in itself to overcome difficulties with too abrupt transitions so that the person skilled in the art would have no difficulty in appreciating that it would not be necessary to adopt any special measures to

introduce a delay into the electronic control circuit to deal with this problem, as had previously been done with electromechanically operated self-dimming mirrors. As a consequence no inventive significance can be seen in this feature of claim 1.

The second distinguishing feature of claim 1 is the requirement that the electronic circuit is adapted to drive the reflectance member to high, intermediate or low reflectance states when the electrical signal indicative of glare-causing light is low, exceeds an intermediate threshold or exceeds a high threshold, respectively.

All of the documents D6A, D11, NRL6 and NRL8 disclose an automobile rearview mirror comprising an electrochromic member which exhibits at least one intermediate reflectance state between a high and a low reflectance state. Of these documents document NRL8 is the most relevant. This document, which stems from the respondents, carries a printed date indication of "Winter 1987" and an added date stamp "JAN 27 1987". The document was filed as an exhibit to the second affidavit of Niall Richard Lynam in which he states that the document was circulated publicly by the respondents in January 1987. It has not been in dispute that this document belongs to the state of the art. It is stated there with respect to an electrochromic rearview mirror that was about to be introduced commercially that

"Another advantage is that the new mirror gradually darkens in three steps as opposed to the current 2-step process. Reflectance ranges from 85% reflectivity down to 6% reflectivity. The amount of dimming depends on how much glare the driver experiences, with only a



little glare the mirror dims part way, with bright blinding glare the mirror goes fully dark. The middle range, or Comfort Zone, is a 20% to 30% reflectivity level that eliminates the most common glare while still providing maximum rear vision."

Initially the respondents relied with respect to this document on the fact that it does not say there that the three reflectance states are established by the electronic control circuit. This is indeed true but is at best purely a formal distinction. It is plainly evident to the person skilled in the art that the electronic control circuit for the electrochromic member will have to be adapted to drive the member to the required intermediate reflectance state, there being in practice no other feasible way of doing this. At the oral proceedings the respondents then sought to argue a different line of defence, which was that the "steps" referred to in document NRL8, in particular the intermediate step, were in some way different to the "reflectance states", in particular the intermediate reflectance state, referred to in the claim. The respondents contend that the intermediate step referred to in document NRL8 is a single fixed value whereas in their intermediate "state" the reflectance level is variable under the control of the electronic circuit.

The Board can see no basis for interpreting claim 1 of the main request in the manner encouraged by the respondents. The purpose and effect of the amendments made to the granted patent specification within the framework of this request, which was the first auxiliary request considered by the Opposition Division, was unambiguously to direct the amended patent to the embodiment disclosed with reference to Figure 10. To quote page 17, lines 19 to 23, of the patent specification,

"Figure 10 is the circuit diagram of a mirror control which drives the electrochromic mirror(s) with one of three output levels. These three output levels drive the mirror(s) to a high reflectivity when glare is low, to an intermediate reflectivity when the glare exceeds an intermediate threshold, and to a low reflectance state when the glare exceeds a high threshold. Reflectance in the three states are nominally 7 percent, 23 percent, and 80 percent"

From the subsequent detailed description of the functioning of this embodiment there can be no question that the reflectance in the intermediate state is not variable but is held at one fixed value.

According to point 9a of the minutes of the oral proceedings before the Opposition Division it was the very passage quoted above which the respondents relied upon as providing the basis for their then first auxiliary request. It is not in dispute that the granted patent specification did indeed disclose an embodiment, in particular with reference to Figures 11, 12 and 14 to 16, where there is continuous control of the reflectance level between high and low reflectance states, but it was made clear by amendment of the description accepted by Opposition Division that this arrangement was no longer considered as an embodiment of the invention being claimed.

For these reasons the Board is convinced that document NRL8 directly teaches the person skilled in the art the advantageous nature of controlling the electrochromic member such that it adopts high, intermediate or low reflectance states when the electrical signal indicative of the glare-causing light is low, exceeds an intermediate threshold or exceeds a high threshold, in the manner defined in claim 1 of the main request. Furthermore, the Board can see no technical difficulty

and nor has any been argued, in adapting the schematically shown control circuit of document D3 to provide such "three state" control of the reflectivity of the electrochromic member of the mirror.

The Board therefore comes to the conclusion that the subject-matter of claim 1 of the main request does not involve an inventive step (Article 56 EPC).

4. *First to fifth auxiliary requests*

The respective amendments of claim 1 proposed in each of the first to fifth auxiliary requests have to be seen against the background of the interpretation the respondents sought to impose on the wording of claim 1 of the main request, see above. It was the evident and expressed intention of these amendments to direct the claims, with a progressive degree of precision, to the embodiment of a mirror disclosed in the granted patent specification with reference to Figures 11, 12 and 14 to 16.

The question of the extent to which a non-appealing patent proprietor is free further to amend his patent in a case where the opponent is the sole appellant against an interlocutory decision to maintain the patent in amended form has been considered by the Enlarged Board of Appeal in its decision G 9/92 (supra). It was laid down there that the patent proprietor is primarily restricted during appeal proceedings to defending the patent in the form in which it was maintained by the Opposition Division in its interlocutory decision. Amendments proposed by the patent proprietor as a party to the proceedings as of right under Article 107, second sentence, EPC, may be rejected as inadmissible by the Board of Appeal if they are neither appropriate nor necessary. Applying these

principles to the present case it can be seen that the respondents are not seeking with the proposed amendments to defend the patent on the basis of the "three state" control of the electrochromic member underlying the contested decision but instead to shift the subject-matter of the claim towards an arrangement deliberately excluded from the ambit of that decision. The proposed amendments are therefore neither "appropriate" nor "necessary" within the terms of decision G 9/92 and the Board therefore rejects the respective requests as inadmissible.

5. *Sixth and seventh auxiliary requests*

In contrast to the first to fifth auxiliary requests discussed above the sixth and seventh auxiliary requests are concerned with further limitations on the nature of the "three state" control claimed in claim 1 of the main request and thus do not fall foul of any objection arising from the considerations of the decision G 9/92.

Claim 1 of both the sixth and the seventh auxiliary request contains the added feature that there are "sloped gradual transitions in the reflectance of the mirror element between the high and intermediate reflectance states and the intermediate and low reflectance states." The basis for this added feature is to be found in Figure 13 and the accompanying description in column 38, line 51 to column 39, line 52 of the original description. Figure 13 is a graph plotting the mirror reflectance level against glare-causing light level for a series of different ambient light levels. As the glare-causing light level increases the mirror reflectance moves from a high reflectance state via a first transition zone to an intermediate reflectance state and from here via a

second transition zone to a low reflectance state. It is indicated that the gradual transitions in the reflectance level arise from the fact that the glare-causing light is sensed after attenuation by the electrochromic member. A further more detailed explanation of this is to be found with reference to Figure 10 in column 36, lines 19 to 33, where it is stated that sensing of the glare-causing light after attenuation leads to cycling of the electronic control circuit which is averaged by the relatively slow response of the mirror.

Having regard to the above the Board is of the opinion that the only disclosure in the original application of a mirror system having the characteristics required by claim 1 of the sixth and seventh auxiliary requests, i.e. high, intermediate and low reflectance states with gradual transitions between them, is in the context of a mirror system where the glare-causing light is sensed after attenuation. The respondents have pointed to the passage at column 36, lines 38 to 41, as being the disclosure of an alternative arrangement for obtaining the same effect but the Board cannot agree. All that that passage is concerned with is the possibility in principle of having more than one intermediate reflectance state. As a consequence the Board takes the view that claim 1 according to the sixth auxiliary request constitutes an inadmissible intermediate generalisation of what was originally disclosed so that this request must be rejected pursuant to Article 123(2) EPC.

Claim 1 of the seventh auxiliary request is not open to this, or for that matter any other, objection under Article 123(2) EPC, the relationship between the transitional reflectance levels and the sensing of the glare-causing light after attenuation having been adequately specified. There is also no objection to the

claim under Article 123(3) EPC. However, the appellants argue that the claim is not clear in that it does not exclude the transitional reflectance levels merely being the result of what will inevitably occur for a short period of time as a consequence of the slow response of the electrochromic member when this is driven from one state to another. The Board is of the opinion that as a general principle a correct approach to the interpretation of a claim is not one which sets out to rob its features of any genuine technical meaning. In the present case the Board is satisfied that the claim in question, when read as a whole with reference, if necessary, to the relevant parts of the description, can only be properly understood as meaning that the gradual transitions in the reflectance levels are under the direct control of the electronic circuit in dependence on specific corresponding levels of glare-causing light. The arguments of the appellants in this respect are therefore not persuasive.

Turning to the substantive merits of the subject-matter of claim 1 of the seventh auxiliary request it is to be noted in the first place that there is no suggestion in any of the cited prior art documents of controlling the reflectance of a self-dimming automobile rearview mirror in the general manner required by the claim. The respondents argue that this manner of control provides in a relatively simple way particularly good results in adapting the light level reflected to the driver's eyes over a wide range of glare-causing light levels. The appellants have pointed to the fact that document D4 discloses the principle of sensing the glare-causing light after it has been attenuated by a self-dimming rearview. According to this document, which is specifically concerned with the use of liquid crystal panels in such mirrors, sensing after attenuation is useful in enabling the control circuit to compensate for dimensional deviations, the influence of

temperature and deterioration from ageing. At the end of the description, at column 11, lines 20 and 21, there is a single sentence which states that an electrochromic device may be employed instead of the liquid crystal panel. There is nothing in document D4 which could in any way encourage the person skilled in the art to sense the glare-causing light after attenuation by a relatively slowly responding electrochromic member of a self-dimming mirror as a means of obtaining a gradual transition of reflectance level in the manner envisaged by the claimed invention.

The Board has therefore reached the conclusion that the subject-matter of claim 1 of the seventh auxiliary request cannot be derived in an obvious manner from the state of the art and accordingly involves an inventive step (Article 56 EPC).

**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to maintain the patent on the basis of the following documents:

**Claims:** 1 to 21 according to the seventh auxiliary request,

**Description:** pages 2 to 17, 19, 21 to 32 according to the appealed decision with pages 18 and 20 as filed at the oral proceedings,

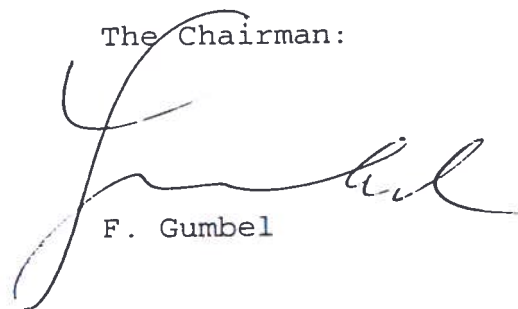
**Drawings:** as granted.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel