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**D E C I S I O N**  
**of 28 June 2002**

**Case Number:** T 0081/02 - 3.2.4

**Application Number:** 96100902.4

**Publication Number:** 0724073

**IPC:** F02D 41/26

**Language of the proceedings:** EN

**Title of invention:**  
Air-fuel ratio control system

**Applicant:**  
MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.

**Opponent:**

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**Headword:**

-

**Relevant legal provisions:**  
EPC Art. 84, 96(2), 109  
EPC R. 29(2)(c), 29(4), 51(2), 67

**Keyword:**  
"Conciseness and clarity - yes (after amendment)"

**Decisions cited:**

-

**Catchword:**

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Boards of Appeal

Chambres de recours

**Case Number:** T 0081/02 - 3.2.4

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.4**  
**of 28 June 2002**

**Appellant:** MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.  
1006, Oaza-Kadoma  
Kadoma-shi  
Osaka 571-8501 (JP)

**Representative:** Eisenführ, Speiser & Partner  
Martinistrasse 24  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 17 August 2001  
refusing European patent application  
No. 96 100 902.4 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** T. Kriner  
C. Holtz

## Summary of Facts and Submissions

- I. The Appellant (Applicant) lodged an appeal on 19 October 2001, against the decision of the Examining Division, dispatched on 17 August 2001, refusing the European patent application No. 96 100 902.4. The fee for the appeal was paid simultaneously and the statement setting out the grounds of appeal was also received on 19 October 2001.
- II. The Examining Division held that the application did not meet the requirements of Article 84 EPC, because the claims on file lacked conciseness and clarity.
- III. The Appellant requested that the decision be rectified and substantive examination of the present application be continued on the basis of the following documents:

Claims: No. 1 to 23 filed with letter of 18 October 2001 (comprising only two independent claims, i.e. claims 1 and 2);

Description: Pages 1 to 4, 7 to 87 as originally filed;  
Pages 5, 5a, 6 filed with letter of 18 October 2001;

Drawings: Figures 1 to 28 as originally filed.

Additionally the Appellant requested the reimbursement of the appeal fee, and as an auxiliary request the appointment of oral proceedings, if the Board did not intend to set aside the appealed decision.

IV. In support of its requests, the Appellant relied essentially on the following submissions:

The claims of the present application had been amended so as to overcome the objections of lack of conciseness and lack of clarity on which reasons the decision to refuse the application was based. Since previous claims 2, 12, 13, 16, 21, 22 had been transformed into new dependent claims 2, 13, 14, 17, 22 and 23, the deficiencies objected to had been overcome, and the request for rectification of the contested decision and for continuation of substantive examination by the Examining Division was justified.

The request for reimbursement of the appeal fee was equitable by reason of a substantial procedural violation. In response to the first official communication the Appellant had filed new claims which, in his opinion, had overcome the objections of the Examining Division. According to the fair rules for examination before the European Patent Office and according to the usual rules as they had been applied for many years, it could have been expected that a second official communication would be issued or, at least, a corresponding indication by the Examining Division that the new claims had not overcome the previous objections. However, the Examining Division refused the application without any further information, so that the Appellant had been surprised by the decision and had not had an opportunity to present his comments on the reasons on which the decision was based.

## Reasons for the decision

1. The appeal is admissible
2. *Conciseness and clarity*
  - 2.1 According to the decision of the Opposition Division, previous claims 1, 2, 12, 13, 16, 21 and 22 had been drafted as separate independent claims. Indeed, although claims 12, 13, 16, 21 and 22 formally referred to claim 2, they had to be regarded as independent claims, since on the one hand they all explicitly omitted (different) features defined in claim 2, whereas on the other hand other features were added. Anyway, these claims did not include all features of claim 2, so that they could not have been dependent on claim 2 (see Rule 29(4) EPC).

Since all independent claims appeared to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection was sought and/or in respect of the terminology used for the features of that subject-matter, these claims lacked conciseness. Additionally the aforementioned claims as a whole (i.e. the relation to each other) lacked clarity, since the plurality of independent claims made it difficult, if not impossible, to determine the matter for which protection was sought, and placed an undue burden on others seeking to establish the extent of the protection.

- 2.2 The present claims however comprise only two independent claims (claim 1 and claim 2). Claims 13,

14, 17, 22 and 23 which correspond to previous claims 12, 13, 16, 21 and 22 refer to claims 2 (claims 13, 22, 23) and 3 (claims 14, 17) and no longer omit any feature of any claim to which they refer. Consequently these claims have to be regarded as dependent claims (see Rule 29(4) EPC).

Claim 1 is directed to a first embodiment of the invention, namely to a vehicle control system, and claim 2 is directed to a second embodiment of the invention, namely to an air-fuel ratio control system. The more general control system of claim 1 and the specific control system of claim 2 are defined by different features.

Consequently the present independent claims neither relate effectively to the same subject-matter, nor do they differ from each other only with regard to the definition of the subject-matter for which protection is sought and/or in respect of the terminology used for the features of that subject-matter.

- 2.3 In accordance with Rule 29(2)(c) EPC, a European patent application may contain more than one independent claim in the same category, if the subject-matter of the application involves alternative solutions to a particular problem, where it is not appropriate to cover these alternatives by a single claim.

With respect to the different scope of claims 1 and 2, the Board does not see any reason why it should be appropriate to cover the subject-matter of the present application by a single independent claim. On the contrary, the Appellant's interest in covering a general embodiment of the invention (a vehicle control

system) and a specific embodiment (an air-fuel ratio control system) justifies in the present case the use of two different independent claims in the same category.

2.4 The Board is also convinced that the present two independent claims do not hinder the skilled person in any way in determining the matter for which protection is sought, and do not place an undue burden on others seeking to establish the extent of the protection.

2.5 With respect to the above findings, the present claims are concise, and the claims **as a whole** (i.e. the relation to each other, not the clarity of the wording itself) are clear.

### 3. *Reimbursement of the appeal fee*

3.1 According to Rule 67 EPC, the reimbursement of appeal fees shall be ordered in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation.

3.2 It is questionable whether the condition that the appeal is deemed allowable is met, when the facts on appeal are not the same as before the first instance. In the present case the appeal was allowed only with regard to the amended claims filed with the appeal.

The Board is of the opinion that a reimbursement is not justified when only on appeal the applicant amends his claims as clearly suggested by the first instance.

3.3 In order to establish whether or not a substantial

procedural violation occurred in the present case, the question has to be answered whether or not the decision of the Examining Division was only based on grounds or evidence on which the Appellant had had an opportunity to present his comments as required by Article 113(1) EPC.

In the sole communication, i.e. that of 23 February 2001, the Examining Division informed the Appellant among other things that, as a result of the plurality of independent claims which appeared to relate effectively to the same subject-matter, the claims on file lacked conciseness. Additionally, the Examining Division pointed out that the claims lacked clarity, since the plurality of independent claims made it difficult, if not impossible, to determine the matter for which protection was sought. With the decision of 17 August 2001 the Examining Division refused the application solely on the basis of these reasons (lack of conciseness and lack of clarity). Hence, the decision was only based on grounds on which the Appellant had had an opportunity to present his comments.

- 3.4 The Appellant's argumentation according to which he had been surprised by the decision and had not had an opportunity to present his comments on the reasons on which the decision was based, is not convincing. The Appellant was informed by the communication of the Examining Division that, as a result of too many independent claims, the originally filed claims lacked conciseness and clarity. Nevertheless he responded by filing a set of amended claims which again comprised a plurality of independent claims (1, 2, 12, 13, 16, 21, 22). Although five of these claims (12, 13, 16, 21, 22)

formally referred to claim 2, they were in fact independent claims, since each of these claims explicitly omitted a feature defined in claim 2. Since the subject-matter of these claims (12, 13, 16, 21, 22) did not include the subject-matter of claim 2, the Appellant should have been aware that claims 12, 13, 16, 21, 22 actually were independent claims (see also section 2.1). Furthermore, he should have known that the amended claims were not suitable for overcoming the conciseness and clarity objections of the Examining Division.

With respect to the situation described above, although it might have been appropriate to inform the Appellant that the amended claims still lacked conciseness and clarity, the Examining Division was not legally obliged to issue a second communication or to indicate that the new claims had not overcome the previous objections (see in that respect Article 96(2) and Rule 51(2), and the corresponding case law as referred to in "Case Law of the Boards of Appeal of the EPO", 4th edition 2001, VII.B.3.1 - pages 420 and 421).

In order to avoid the present kind of refusal of the application, the Appellant could have filed an auxiliary request (such as the present request which overcomes the previous objections) or he could have requested oral proceedings.

- 3.5 Since the decision of the Examining Division was only based on grounds on which the Appellant had had an opportunity to present his comments, the requirements of Article 113(1) EPC have been met in the present case. Therefore, no substantial procedural violation (which is a requirement for reimbursement of the appeal

fees) occurred during the examination proceedings.

4. *Procedural matter*

The Examining Division rejected the present application exclusively on the grounds of lack of conciseness and lack of clarity as a result of too many independent claims.

Since these objections have been overcome by the amended claims, the Examining Division should have rectified its decision according to Article 109 EPC.

During the examination proceedings only unity, conciseness and **clarity of the claims as a whole** (clarity of the wording of the claims being not involved) have been examined so far. Therefore, the case is remitted to the first instance for the examination of the further requirements of the EPC, as requested by the appellant in his letter of 18 October 2001.

5. Since the Board sets aside the decision under appeal, no oral proceedings are required.

