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D E C I S I O N
of 24 February 2005

Case Number: T 1034/02 - 3.5.2

Application Number: 95905229.1

Publication Number: 0739081

IPC: H02K 53/00

Language of the proceedings: EN

Title of invention:
Power generator

Applicant:
HYUN LABORATORY CO., LTD

Opponent:
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Headword:
-

Relevant legal provisions:
EPC Art. 83

Keyword:
"Sufficiency of disclosure (no)"

Decisions cited:
T 0010/86, T 0219/85, T 0260/85

Catchword:
-



Case Number: T 1034/02 - 3.5.2

D E C I S I O N
of the Technical Board of Appeal 3.5.2
of 24 February 2005

Appellant:

HYUN LABORATORY CO., LTD.
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Osaka (JP)

Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 3 June 2002
refusing European application No. 95905229.1
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: W. J. L. Wheeler
Members: J.-M. Cannard
C. Holtz

Summary of Facts and Submissions

- I. The appellant contests the decision of the examining division to refuse European patent application No. 95 905 229.1. The reasons given for the refusal were that the subject-matter of claim 1 according to the main request was not novel and the auxiliary request was not allowable, *inter alia*, because claim 1 was not clear and the application did not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.
- II. With a summons to oral proceedings, the Board issued a communication in which it was pointed out, *inter alia*, that the description did not appear to enable the invention to be carried out in such a manner as to achieve the objectives and effects of the invention, which would be contrary to well established natural laws.
- III. The appellant filed with a letter dated 21 January 2005 a translation into English of an Experimental Report issued by the Head of Tokushima Prefectural Industrial Technology Center on 14 October 2004 which contained an experimental evaluation of an apparatus according to the invention. In the course of the written proceedings the appellant filed six sets of claims in respect of first to six auxiliary requests. He did not file any amendments to the description.
- IV. Oral proceedings were held on 24 February 2005.
- V. The appellant demonstrated an example of the first embodiment of the invention during the oral proceedings.

The arguments of the appellant concerning the disclosure of the invention can be summarized as follows:

The generator of the invention comprised a magnetic structure having slots in which primary and secondary windings were fitted as shown in the drawings of the application. All these components could be made and assembled by the skilled person without any problem. The output electric power produced by the generator was larger than the input electric power supplied to it. This appeared clearly from the demonstration made by the appellant and from the filed Experimental Report. Since the generator hardware could be assembled and the objectives and effects specified in the application were achieved, the invention was sufficiently disclosed to comply with the requirement of Article 83 EPC.

- VI. The appellant withdrew the main request and requested that the decision under appeal be set aside and that a patent be granted on the basis of one of the first to sixth auxiliary requests filed in the written proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. The application does not comply with the requirement of Article 83 EPC because it does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

2.1 As consistently presented throughout the application as filed, the invention relates to "generators" for supplying electrical energy, and to "generators" used as induction motors. According to the general description of the invention (column 2, line 1 to line 22), the energizing current flowing in the primary windings of the "generators" sets up a travelling magnetic field in addition to an alternating (induction) magnetic field (see also original claim 1). For all the described embodiments, the electromotive forces in the secondary windings of the "generators" are said to be greater than the electric power supplied to the primary windings. Moreover, as recited in column 2, lines 23 to 30 and column 3, lines 29 to 34, if at least part of the electromotive forces induced in the secondary winding is provided to the primary winding, this enables self-excitation and the "generators" of the invention provide a constant supply of electric energy without any supply of electrical energy from the outside, except for during the primary stage of starting-up. No other source of outside energy is mentioned. The stated effects and objectives are contrary to well established natural laws, in particular the law of conservation of energy.

2.2 The appellant observed that there is no requirement in the EPC for the applicant to explain why his invention works. However, according the case law of the Board of appeal, it must be possible for the notional skilled person to reproduce a claimed invention from the disclosure in the original application documents without requiring any inventive effort (e.g. T 10/86, reason 4). In decision T 219/85 (OJ 1986, 376), where

the applicant did not furnish details of the production process in the description (...) and the missing information could not be supplied from the general knowledge of a person skilled in the art, the invention was held to be insufficiently disclosed. This means that, where the effects and objectives stated in the application appear to contradict established natural laws, as in the present case, the application must contain adequate information leading the skilled person necessarily and directly towards the intended effects and objectives because the skilled man reading the application cannot use the common general technical knowledge or practice to supplement the information given in the application to render its subject-matter implementable. However, the disclosure of the "generators" of the invention does not go beyond general considerations relating to the geometrical configuration of the magnetic core and standard knowledge of the skilled person in the field of electrical engineering having regard to the nature of the windings. Accordingly, the Board judges that the application does not describe these "generators" in such a manner as to achieve the intended effects and objectives and cannot enable the invention to be carried out.

3. According to the appellant, an apparatus whose hardware is sufficiently described to enable it to be assembled, is sufficiently disclosed if it has been convincingly shown that the objectives recited in the application were achieved.

3.1 However, according to the established case law of the Boards of appeal, the disclosure must be reproducible

without undue burden. In the present case, this means that the disclosed hardware, assembled by an average skilled person putting into practice the information contained in the application should constitute a "generator" capable of achieving the stated object of the invention. This could not be proved by demonstrating an example of the invention during the oral proceedings, because such a demonstration could at best prove that the hardware assembled by the applicant might achieve this object. Even if the Experimental Report filed by the appellant and the demonstration made during the oral proceedings (which both relate to a "power generator" similar to the generator described in the first embodiment of the invention) show that the sum of the apparent power (VA) values measured at the outputs of the generator in question is numerically larger than the power in Watts supplied to its input, these results do not demonstrate that the present invention is sufficiently disclosed in the application as filed.

- 3.2 Therefore, the Board concludes that the application does not meet the requirements of Article 83 EPC.

4. The appellant submitted that, if the Board could not recognize that the invention provides additional power, the invention was presented as relating to a very efficient transformer or motor. Such an alternative presentation implies that the effects and objectives of the invention stated in the application would have to be amended. These effects and objectives are consistently presented in the application as filed as essential features of the invention (see paragraph 2.1 above). Therefore, deleting them from the description

would extend the subject-matter beyond the content of the application as filed and thus contravene Article 123(2) EPC (see T 260/85, OJ 1989, 105). Such an amendment is not allowable.

5. In view of the foregoing, it is superfluous to consider the claims according the various requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

D. Sauter

W. J. L. Wheeler