

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 24 April 2015**

Case Number: T 0526/10 - 3.4.01

Application Number: 03450225.2

Publication Number: 1522865

IPC: G01R31/36

Language of the proceedings: EN

Title of invention:
Battery powered device

Applicant:
AKG Acoustics GmbH

Headword:

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
Amendments - added subject-matter (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0526/10 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 24 April 2015

Appellant: AKG Acoustics GmbH
(Applicant) Lemböckgasse 21 - 25
1230 Wien (AT)

Representative: Patentanwälte
Barger, Piso & Partner
Mahlerstrasse 9
Postfach 96
1015 Wien (AT)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted on 22 October 2009 refusing European patent application No. 03450225.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman G. Assi
Members: P. Fontenay
J. Geschwind

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse European patent application No. 03 450 225.2. The decision was dispatched on 22 October 2009.
- II. In the "Reasons" for the decision, the examining division held that the subject-matter of independent claims 1 and 5 then on file did not involve an inventive step in the sense of Article 56 EPC 1973.
- III. The original version of the description filed on 7 October 2003 consisted of pages 1 and 3 to 9. Missing page 2 was filed on 19 January 2004 following a communication of the receiving section dated 13 January 2014 informing the applicant of the result of the formal examination which had been carried out and of its finding concerning the absence of page 2.

On 28 August 2009, in the course of the examination procedure, a modified version of the description including new pages 1 to 3 and 3a was filed. This section of the modified description incorporates the content of page 2 as filed on 19 January 2004.

During the oral proceedings before the examining division the applicant indicated its readiness to excise the unallowable information from the description if the description then on file would be regarded as infringing Article 123(2) EPC (cf. Minutes of the oral proceedings before the examining division, point 5). In the decision to refuse the application (cf. Reasons, point 3), however, the examining division noted that *"it was agreed with the applicant's representative to delete said content from the present version of the*

description". The examining division then based its refusal on Article 52(1) EPC 1973 in combination with Article 56 EPC 1973.

- IV. The appeal against the decision to refuse the application was filed on 21 December 2009. The appeal fee was paid on the same day. The statement setting out the grounds for the appeal was filed on 22 February 2010.

The appellant requested in the notice of appeal that the decision under appeal be set aside and a patent be granted on "*the base of the papers which formed the base of the appealed decision*".

The appellant's request thus relied on the following documents (cf. Decision of the examining division; point VII):

Description pages:

1-3, 3a as filed on 28 August 2009;

4-9 as originally filed;

Claims:

1-5 as filed on 28 August 2009;

Drawing sheets:

1/4-4/4 as originally filed.

- V. In accordance with the appellant's request, summons to attend oral proceedings were issued on 8 December 2014.
- VI. In a communication dated 14 January 2015 pursuant to Article 15(1) RPBA, the Board expressed its provisional opinion with regard to the appellant's request.

In particular, the Board drew the attention of the appellant to the fact that pages 2 and 3 according to

the present request include features deemed to be disclosed in missing page 2 of the application as originally filed.

While acknowledging that a definition of a technical problem could be introduced in the description after the filing of the original application, the Board stressed that this appeared to be only possible insofar as the information resulting from the proposed definition derived from the original application documents read in the light of the relevant prior art.

In this respect, the Board stressed that some information present in the amended version of current pages 2 and 3 of the description did not derive directly and unambiguously from the (incomplete) version of the application documents as originally filed (Article 123(2) EPC).

VII. In a letter dated 18 March 2015, the appellant informed the Board that neither an employee nor a legal representative of the appellant would attend the oral proceedings. Moreover, the appellant requested to decide on the record.

VIII. The oral proceedings took place before the Board on 24 April 2015 in the absence of the appellant.

Reasons for the Decision

1. *Applicable law*

This decision is issued after the entry into force of the EPC 2000 on 13 December 2007, whereas the application was filed before this date. Reference is

thus made to the relevant transitional provisions for the amended and new provisions of the EPC, from which it may be derived which Articles and Rules of the EPC 1973 are still applicable to the present application and which Articles and Rules of the EPC 2000 are to apply. When Articles or Rules of the former version of the EPC are cited, their citations are followed by the indication "1973" (cf. EPC, Citation practice).

2. *Admissibility of the appeal*

The appeal complies with the requirements of Articles 106 to 108 EPC and Rule 99 EPC. The appeal is, thus, admissible.

3. *Article 123(2) EPC*

3.1 The passage of the current description corresponding to page 2, line 15 to page 3, line 18, reproduces in essence the content of page 2 as filed on 19 January 2004.

The reference on page 2, lines 24-26, to problems in many applications due to the "*relatively high interference radiation*" emanating from known bus systems is not corroborated by any section of the original application documents. Neither is the problem associated to the "*need for additional contacts between the battery pack and the device*" addressed on current page 2, line 26 to page 3, line 2, directly and unambiguously derivable from the original application documents.

The paragraph on page 3, lines 3 to 6, explicitly specifies that the invention is supposed to be applicable for arrangements with two or more batteries

or storage batteries. The original application documents are, however, devoid of indications concerning this aspect of the invention.

In addition, the paragraph on page 3, lines 21-24, according to which it is also possible according to a special embodiment of the invention that "*the battery pack extends from the slot in order to give it a bigger volume and storage capacity*" refers to new subject-matter that was not present in the original application documents (and also not in page 2 filed on 19 January 2004).

3.2 In the communication of the Board pursuant to Article 15(1) RPBA dated 14 January 2015, the applicant was informed that pages 2 and 3 of the description contained information that did not derive directly and unambiguously from the application documents as originally filed (cf. point 1.1).

3.3 In a letter dated 18 March 2015, however, the appellant's representative informed the Board that neither an employee nor a legal representative of the appellant would attend the oral proceedings.

The appellant requested that a decision be taken on the record and neither amended its request as filed on 21 December 2009 nor commented on the objection raised by the Board under article 123(2) EPC.

3.4 In conclusion, as the present application contains subject-matter that does not derive directly and unambiguously from the original application documents, it contravenes to the requirements of Article 123(2) EPC.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



R. Schumacher

G. Assi

Decision electronically authenticated