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Datasheet for the decision of 15 March 2018

Case Number: T 2340/12 - 3.4.01

Application Number: 07833098.2

Publication Number: 2086637

IPC: A61N5/06

Language of the proceedings: EN

Title of invention:
A SPACE ENERGY IMPLOSION UNIT AND AN ENERGY AMPLIFICATION GENERATOR USING THE SAME

Applicant:
Lee, Eun-Jae
Lee, Yong-Won

Headword:

Relevant legal provisions:
EPC 1973 Art. 83
EPC R. 137(3)
RPBA Art. 12(4)

Keyword:

Decisions cited:
G 0007/93, T 1842/06, T 0541/96

Catchword:
The filing of experimental results is not to be seen as an obligation resulting from the EPC imposed on the applicant but, in contrast, as a right, recognised by the practice and the case law of the boards of appeal, providing the applicant with the opportunity to convince the examining division or board of appeal that it erred in its initial findings (cf. point 4.1).

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Boards of Appeal

Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 2340/12 - 3.4.01

D E C I S I O N
of Technical Board of Appeal 3.4.01
of 15 March 2018

Appellant: (Applicant 1)	Lee, Eun-Jae 28-4 Burim-dong Gwacheon-si Gyeonggi-do (KR)
Appellant: (Applicant 2)	Lee, Yong-Won 111-904 Hangang-Hyundai Apt. 28 Heoukseok-Dong, Tongjak-Gu Seoul 156-070 (KR)
Representative:	Patentanwaltskanzlei WILHELM & BECK Prinzenstraße 13 80639 München (DE)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 18 June 2012 refusing European patent application No. 07833098.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	D. Rogers
Members:	P. Fontenay
	F. Neumann

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division to refuse European patent application No. 07 833 098.

II. The application was refused by the examining division because the applicant's main request did not meet the requirements of Article 83 EPC and Rule 42(1)(c) EPC.

Auxiliary requests 1 - 3, which were filed during the oral proceedings before the examining division, were not admitted into the procedure because they were considered to contravene Rule 137(3) EPC and Rule 116(1) EPC.

III. In the reasons for the decision, the examining division held that the notion of "space energy", underlying the claimed invention, was not clearly defined. In this respect, it was stressed that its existence was neither proven nor accepted by the scientific community. The same shortcomings applied to the notion of "torsion field" presented by the applicant as equivalent to the concept of space energy. The evidence provided by the applicant in order to prove the alleged effects produced by the invention with regard to the treatment of patients or the preservation of foodstuff did not convince the examining division.

IV. The appellant requested on appeal that the decision of the examining division be set aside and that a patent be granted "on the basis of the valid claims".

In support of his arguments, the appellant filed the following documents:

F1: US-A-6 548 752;
F2: Article of Wikipedia. "Torsion field pseudoscience)";
F3: Article entitled "Spin-field Generator", A. Shpilman;
F4: Article entitled, "Torsion Fields and their experimental Manifestations", A. E. Akimov, G. I. Shipov, 1996;
F5: Article entitled "Electromagnetic Waves in the Vacuum with Torsion and Spin", R. M. Kiehn, Physics Department, University of Houston, Houston, TX 77004, 3 July 1998;
F6: Certificate of the "Research Team of Rotating Electro-magnetic wave in School of Mechanical Engineering Ajou University", with protocol of measurements carried out;
F7: Protocol of measurements carried out by the "Research Team of Rotating Electro-magnetic wave in School of Mechanical Engineering Ajou University";
F8: Protocol of measurements carried out by the "Research Team of Rotating Electro-magnetic wave in School of Mechanical Engineering Ajou University";
F9: Protocol of measurements carried out by the "Research Team of Rotating Electro-magnetic wave in School of Mechanical Engineering Ajou University";
F10: Protocol of measurements carried out by the "Research Team of Rotating Electro-magnetic wave in School of Mechanical Engineering Ajou University";
F11: Protocol of measurements carried out by the "Research Team of Rotating Electro-magnetic wave in School of Mechanical Engineering Ajou University";
F12: Quality certificate issued by the "Research Team of Rotating Electro-magnetic wave in School of Mechanical Engineering Ajou University".

V. In accordance with the appellant's request, a summons to attend oral proceedings was issued.

VI. A communication informed the appellant of the provisional opinion of the board with regard to the merits of the main and auxiliary requests underlying the impugned decision.

VII. In a letter dated 20 February 2018, the appellant informed the board that he would not attend the oral proceedings.

The appellant did not comment on the provisional opinion of the board.

VIII. Independent claim 1 of the main request underlying the decision in suit filed under cover of a letter dated 18 August 2010 reads:

"1. A torsion field implosion unit comprising:
a planar structure (1) having a regular pentagonal shape;
a cubic structure (2) which is installed to be separated from an upper portion of the planar structure (1) and has a regular pentagonal pyramid shape; and
a separation structure (3) which separates the planar structure (1) and the cubic structure (2) from each other and has a smaller area than areas of the planar structure (1) and the cubic structure (2)."

Independent claim 3 of the main request underlying the decision in suit reads:

"3. A torsion field implosion unit comprising:
a planar structure (6) having a regular heptangular shape;

a cubic structure (7) which is installed to be separated from an upper portion of the planar structure (6) and has a regular heptangular pyramid shape; and
a separation structure (8) which separates the planar structure (6) and the cubic structure (7) from each other and has a smaller area than areas of the planar structure (6) and the cubic structure (7)."

Independent claim 6 of the main request underlying the impugned decision reads:

"6. An energy amplification generator comprising:
a first geometrical structure in which vertices of each of five or seven pieces of planar structures (1) having a regular pentagonal shape contact one another;
a second geometrical structure which is separated from an upper portion of the first geometrical structure and in which vertices of each of five or seven cubic structures (2) having a regular pentagonal pyramid shape contact one another; and
a plurality of separation structures (3) which separate the first geometrical structure and the second geometrical structure from each other, are installed between the planar structure (1) and the cubic structure (2) and have a smaller area than areas of the planar structure (1) and the cubic structure (2)."

Independent claim 11 of the main request underlying the decision in suit reads:

"11. An energy amplification generator comprising:
first geometrical structure in which both-end vertices at two continuous sides of each of five or seven pieces of planar structures (6) having a regular heptangular shape contact one another;

second geometrical structure which is separated from an upper portion of the first geometrical structure and in which both-end vertices at two continuous sides of each of five or seven cubic structures (7) having a regular heptangular pyramid shape contact one another; and plurality of separation structures (8) which separate the first geometrical structure and the second geometrical structure from each other, are installed between the planar structure 6 and the cubic structure (7) and have a smaller area than areas of the planar structure 6 and the cubic structure (7)."

Claims 2, 4, 5, 7 to 10 and 12 to 15 are dependent claims.

As regards auxiliary requests 1 - 3 submitted, but not admitted, during the oral proceedings before the examining division:

Auxiliary request 1 differs from the main request in that the notion of "A torsion field implosion unit" in claims 1 and 3 has been replaced by "A unit for radiating a torsion field" and in that the term "An energy amplification generator" in claims 6 and 11 has been replaced by "A generator for radiating energy".

In auxiliary request 2, the term "A torsion field implosion unit comprising..." in claims 1 and 3 has been replaced by the term "A unit for radiating a torsion field, the torsion field being a force that is not gravity or electromagnetic force, the unit comprising...". Similarly, the notion of "An energy amplification generator comprising" has been replaced by the notion of "A generator for radiating a torsion field, the torsion field being a force that is not

gravity or electromagnetic force, the generator comprising...".

Auxiliary request 3 differs from the main request in that the term "torsion field implosion unit" has been replaced by "unit" and in that the concept of "energy amplification generator" has been replaced by the term "generator".

IX. The arguments of the appellant, insofar as they are pertinent to the present decision, are set out below in the reasons for the decision.

Reasons for the Decision

1. The appeal is admissible.

2. Interpretation of requests

The Board interprets the appellant's request that the patent be granted "on the basis of the valid claims" as referring to the claims of the main request filed under cover of a letter dated 18 August 2010 and to the claims of auxiliary requests 1 to 3 that were filed at the oral proceedings before the examining division on 26 April 2012.

3. *Main Request - Sufficiency of disclosure*

3.1 It is, firstly, observed that the board does not understand how the torsion field or space energy are to be measured. In particular, it is not straightforward for the skilled person to identify which devices or systems could possibly be used for such measurements. Similarly, in the description (cf. paragraph [97]) reference is made to the frequency of the radiated

space energy. In the absence of direct measurements of the torsion field or space energy, the board does not understand how the frequency of the radiated space energy could actually be measured.

With the statement of grounds of appeal, the appellant cited documents F1 to F5, suggesting that the terms used in the claims were well known in the art and that the term "torsion field" should be given the meaning recognised in these references. Moreover, the appellant claimed that over 40 000 Internet citations could be found concerning "Space Energy" in the sense of the present application and suggested that the skilled person would be able to understand the invention on the basis of these citations.

That these terms are well known in the art appears, however, questionable. Documents F1 to F5 suggest that the notion of "torsion field", also called "spin field", may be related to the spin of particles, a concept from quantum physics. Document F3 appears, in this respect, more concrete in that it associates the spin-field to the presence of spin polarisation.

It is, however, unclear from the present application what relationship exists between the claimed structure, the torsion field to whose generation it contributes, and the spin polarisation of substances. No specific Internet citation was cited which could serve to explain the concepts of torsion field or space energy. In this respect, the appellant's submissions are of no assistance in identifying how the torsion field or space energy could be somehow measured.

The applicant only refers to "indirect" measurements carried out on white rats or patients or on

observations carried out on substances like milk or fruits. The Board however fails to understand how such measurements would lead to any conclusions as to the frequency of the radiated space energy. The appellant did not elaborate on the nature of these experiments or on their relevance for the claimed invention despite having been invited to do so in the provisional opinion issued by the Board. The criticisms raised by the examining division regarding the absence of a control group for the patients treated, the doubts regarding the statistical relevance of the experiments carried out, the absence of details as to the circumstances and the way the experiments were controlled, are thus justified (cf. minutes of the oral proceedings before the examining division, point 3.2.1).

3.2 The inventions also concern an "energy amplification generator". It is however unclear what relationship exists between said generator and the notion of "torsion-field" or "spin-field". The generators appear to be elaborated on the basis of the implosion units. This, however, appears to contradict the statement in F2 that the spin-spin interaction, underlying the torsion field does not carry mass or energy. This contradiction is an indication that the concepts used throughout the application are not used in accordance with their generally accepted usage and meaning.

3.3 Secondly, the appellant also did not elaborate on the relevance of documents F6 to F12 enclosed with the statement of grounds of appeal.

The board concludes that these documents neither assist the skilled person in carrying out the invention, nor make plausible the effects described in the patent application.

Most importantly, it is not established that the documents F6 to F12 relate to the claimed subject-matter.

Furthermore, the content and purpose of the experiments carried out is not straightforward. The same appears to apply to the results obtained. In particular, statements such as the following from document F7, cover page:
"Result:
(1) left turn positive
left turn positive + right turn positive
(2) minus - (5) ~ plus+ (9)
{(-5) ~ (+9)}"; or, from document F11, cover page:
"Result: the sample is verifies [sic] to be very active for removing the harmful water vein left turn energy" appear to the Board not to follow the rules of English syntax and to be largely meaningless.

3.4 The appellant contested the findings of the examining division regarding the absence of proof of the effects achieved by the claimed devices. It was emphasised, in this respect, that the EPC does not contain any requirements for such experimental evidence to be provided. The appellant further questioned the competence of the examining division to require such evidence.

3.5 Article 83 EPC 1973 requires that the invention be disclosed in a manner sufficiently clear and complete for it to be carried out by the skilled person. In the case of inventions in fields of technology without any accepted theoretical or practical basis, the case law of the boards of appeal has established that the application should contain all the details of the

invention required for the effect to be achieved (cf. T 541/96, point 6.2). This is the direct consequence of the fact that the skilled person will be unable to rely on common and accepted general knowledge when dealing with inventions in such fields.

Concerning the burden of the proof, the following should be noted. It is not contested that it is for the organ raising the objection of lack of sufficiency to justify its view. It is, therefore, in ex-parte proceedings, up to the examining division or the board of appeal to substantiate the objection raised. A different approach would be tantamount to incorporate further conditions for the grant of a patent for which no legal support can be found in the EPC. Such objection should rely on concrete and verifiable knowledge or facts that question the reality of the effects provided for by the claimed invention. The lack of credibility may result, for example, from a conflict with established laws of physics or merely because the nature or intensity of the effects relied upon may appear rather "surprising" in view of what is generally achieved by the prior art.

It is then for the applicant/appellant to provide the arguments or evidence that convince the examining division or board to change its position. This may be achieved, for example, by way of a plausible theoretical explanation of the phenomena involved, or by providing results from experimentation or simulation. Reference is made, in this respect, to decision T 1842/06 (cf. point 3) of the present Board (in a different composition) where similar issues were discussed.

There is no provision in the EPC according to which the grant of a patent depends on the filing by the applicant of evidence that the claimed invention performs satisfactorily in the form of results of experimentation. It follows that the filing of such results is not to be seen as an obligation imposed on the applicant but, in contrast, as a right, recognised by the practice and the case law of the boards of appeal, providing the applicant with the opportunity to convince the examining division or board of appeal that it erred in its initial findings.

3.6 In conclusion, in the absence of any recognised meaning for the concepts of "torsion field implosion unit" (claims 1 and 3) or of "energy amplification generator" (claims 6 and 11), and being unable to verify by way of measurements any effect to be generated by the claimed entities, the skilled person would not be in a position to carry out the inventions, contrary to Article 83 EPC 1973.

4. Auxiliary requests 1 to 3

4.1 The examining division did not admit said three auxiliary requests into the proceedings in view of Rule 137(3) EPC and Rule 116(1) EPC.

Rule 137(3) EPC stipulates that, once the application has been amended a first time, no further amendment may be made to the description, claims and drawings without the consent of the examining division. This makes the admission of further amendments a matter of discretion for the examining division.

4.2 In accordance with the decision of the Enlarged Board of Appeal G 7/93 (point 2.6), a board of appeal should

only overrule the way in which a department of first instance has exercised its discretion under the EPC if it comes to the conclusion either that the first instance department, in its decision, has not exercised its discretion in accordance with the right principles, or that it has exercised its discretion in an unreasonable way, and thus exceeded the proper limits of its discretion.

In refusing to consent to the filing of the three auxiliary requests, the examining division held that the amendments introduced in the claims of the auxiliary requests did not *prima facie* overcome the objections regarding the insufficiency of disclosure (Art. 83 EPC) and the failure to comply with R. 42(1)(c) EPC which had been developed with regard to the main request.

4.3 The examining division thus based its decision on the question of whether the amendments were suitable to overcome the deficiencies of the main request. The examining division hence applied the right principle when deciding on the admissibility of requests which had been filed at a particularly late stage of the examination proceedings.

The examining division also made a reasonable application of this principle, since the objections regarding the reference to a "torsion field" in the main request applied also to auxiliary requests 1 and 2. This also appears to be true insofar as auxiliary request 3 is concerned. In this respect, it is noted that the generalisation resulting from the replacement of the term "energy amplification generator" by the term "generator" in independent claims 6 and 11 of said auxiliary request 3 without specifying the nature of

the generator, *de facto* renders the claimed subject-matter even more ambiguous and certainly does not contribute to solving the problem of sufficiency of disclosure raised previously.

In the statement setting out the grounds of appeal, the appellant did not comment on the decision not to admit auxiliary request 1 to 3 into the proceedings.

4.4 As a result, the board has no reason to overrule the way in which the examining division exercised its discretion in not consenting to the amendments under Rule 137(3) EPC.

4.5 Article 12(4) RPBA empowers the boards to refuse to admit requests which were not admitted in the first instance proceedings.

In the present case, admitting the auxiliary requests 1 to 3 upon appeal would mean that the examining division's discretion would be overruled.

As shown above, the board has no reason to overrule the way the examining division's exercised its discretion with respect to said requests.

Consequently the auxiliary requests 1 to 3 are not admitted into the appeal proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

R. Schumacher D. Rogers

Decision electronically authenticated