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**Datasheet for the decision
of 18 October 2022**

Case Number: T 0822/19 - 3.5.02

Application Number: 11871783.4

Publication Number: 2752828

IPC: G08B17/107

Language of the proceedings: EN

Title of invention:

Photoelectric Smoke Detector

Applicant:

Fenwal Controls of Japan, Ltd.

Relevant legal provisions:

RPBA Art. 12(4)

Keyword:

Late-filed request - admitted (no) - request could have been
filed in first instance proceedings (yes)



Beschwerdekammern

Boards of Appeal

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Case Number: T 0822/19 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 18 October 2022

Appellant: Fenwal Controls of Japan, Ltd.
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Tokyo 102-0072 (JP)

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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 11 October 2018
refusing European patent application No.
11871783.4 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: F. Giesen
J. Hoppe

Summary of Facts and Submissions

- I. The present appeal by the applicant (appellant) lies from the decision of the examining division refusing European patent application No. 11871783.4 pursuant to Article 97(2) EPC.

The decision under appeal is based on a main request and first to third auxiliary requests filed during the oral proceedings before the examining division on 7 September 2018.

- II. In the appeal proceedings the appellant requested in writing that

the decision under appeal be set aside and that a patent be granted based on the sole request, filed with the statement of grounds of appeal on 21 February 2019.

- III. The board informed the appellant in a notification pursuant to Article 15(1) RPBA 2020 dated 22 November 2021 of their preliminary opinion according to which *inter alia* the sole request filed with the statement of grounds of appeal might be held inadmissible. The appellant was summoned to attend oral proceedings scheduled to take place on 18 October 2022.

- IV. The appellant informed the board by letter dated 4 October 2022 that they would not be represented at the oral proceedings.

V. Oral proceedings took place in the form of a videoconference on 18 October 2022. As announced the appellant was neither present nor represented.

VI. Claim 1 of the **sole request** reads as follows:

"A photoelectric smoke sensor (31) having a cylinder portion (2) and a substantially rectangular shaped flat box portion (3) extending upward from the cylinder portion (2), configured to detect smoke flowing into a housing (3a) of a flat box portion (3) by light, comprising:

a light emitting element (8, 41) provided at a position in an upper part of an internal space of the flat box portion (3), and also provided by being faced with a detection region (AR) in the housing (3a) and emitting inspection light to the detection region (AR);

a light receiving element (9, 42) provided below the light emitting element (8, 41) inside of the housing (3a) in the flat box portion (3), and also provided at a position shifted from an optical path of the inspection light of the light emitting element (8, 41) by being faced with the detection region (AR) and configured to receive diffused light which is the inspection light having hit the smoke and diffused, so as to detect the smoke; and

two light reflecting members (32, 33) provided in the housing (3a) of the flat box portion (3), provided over the whole area in the vertical direction of a detection-region side inner wall (3b) of the housing (3a) of the flat box portion (3), said inner wall (3b)

provided at a position opposite to both the light emitting element (8, 41) and the light receiving element (9, 42), with the detection region (AR) between them,

the two light reflecting members (32, 33) are provided with reflecting surfaces (32a, 33a) inclined to a V-shaped planar shape, characterized in that

of the two reflecting members (32,33), a reflecting surface (32a) of one of the two reflecting members (32) is configured to reflect inspection light emitted from the light emitting element (8, 41) in the direction not directed to the light receiving element (9, 42) but to the other reflecting member (33) or the housing inner wall (3b),

and of the two reflecting members (32, 33), a reflecting surface (33a) of the other reflecting member (33) reflects light from the above-mentioned reflecting member (32) and direct the reflecting light to the detection region (AR) again,

a labyrinth (17, 18) is provided in the housing (3a), said labyrinth being configured to avoid intrusion of ambient light into the housing and to allow intrusion of smoke into the housing."

- VII. The statement of grounds of appeal did not contain any argument explaining why the sole request could (and should) not have been filed in the first instance proceedings or why the board should nevertheless take it into consideration. The appellant also did not present any arguments in reply to the board's notification pursuant to Article 15(1) RPBA 2020, in

which the board raised the issue of admissibility of the sole request.

Reasons for the Decision

1. Admissibility of the Appeal

The appeal meets the requirements of Articles 106 and 108 EPC as well as of Rule 99 EPC. It is therefore admissible.

2. Sole Request - Admittance

2.1 Pursuant to Article 12(4) RPBA 2007, applicable by virtue of Article 25(2) RPBA 2020, the board has the discretionary power to hold inadmissible facts, evidence and requests which could have been presented or were not admitted in the first instance proceedings.

2.2 The sole request was not presented in the first instance proceedings, but has been presented for the first time with the statement of the grounds of appeal.

2.3 Concerning the question as to whether this request could (and should) have been presented, the minutes of the oral proceedings indicate that a main request was filed at the oral proceedings. The examining division informed the appellant of their preliminary opinion that the subject-matter of claim 1 was not new in view of document D1 (JP 2008 287452 A), specifically also because the relative positions of light emitting and light receiving elements as well as the reflecting

members as claimed were not new in view of D1, see minutes, item 2, and the decision under appeal, reasons 2.1.

The appellant reacted to this specific novelty objection by filing a first auxiliary request during the oral proceedings before the examining division, which specified details of the light receiving element, in particular a lens and an inclination member. The appellant received further occasions to file second and third auxiliary requests during these oral proceedings. None of these requests contains a definition of "a substantially rectangular flat box shaped housing portion" and none of them contains the modified feature of the present sole request specifying that the wall on which the reflecting members are provided is opposite the light receiving and emitting elements. Rather, these requests contained the feature that the reflecting elements themselves, rather than the wall on which they were mounted, were opposite to both the light emitting and the light receiving elements.

The board additionally notes that the objection of lack of novelty in view of D1 had been raised by the examining division as early as in the preliminary search opinion and also in the official communication dated 5 October 2016.

The statement of grounds of appeal does not contain any argument explaining why the present sole request was presented only in the appeal proceedings. Moreover, the appellant also did not present any arguments in this respect in response to the preliminary opinion of the board, which specifically raised this issue.

- 2.4 It follows from the above, that there have been several occasions for the appellant during the first instance proceedings to overcome the examining division's novelty objection.

The fact that the appellant's attempts have not convinced the examining division is not a sufficient reason for further attempts to overcome the objection to be admitted in the appeal proceedings, since the primary objective of the appeal proceedings is the review, rather than the continuation, of the examination proceedings.

The board therefore exercised their discretion under Article 12(4) RPBA 2007 so as to hold inadmissible the appellant's sole request into the proceedings.

3. *Conclusions*

Since there is no admissible request on which the board could base the decision, the board cannot accede to the appellant's sole request.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated