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Veröffentlichung im Amtsblatt	Ja/Nein
Publication in the Official Journal	Yes/No
Publication au Journal Officiel	Oui/Non

Aktenzeichen / Case Number / N° du recours : T 303/89 - 3.4.1

Anmeldenummer / Filing No / N° de la demande : 84 303 013.1

Veröffentlichungs-Nr. / Publication No / N° de la publication : 125 845

Bezeichnung der Erfindung:
Title of invention: Ultrasonic flowmeter
Titre de l'invention :

Klassifikation / Classification / Classement : G01F 1/66

ENTSCHEIDUNG / DECISION

vom / of / du 21 December 1989

Anmelder / Applicant / Demandeur : British Gas Corporation

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 123(2) EPC

Schlagwort / Keyword / Mot clé : "(Subject-matter of Claim 1 not extending beyond the content of the application as originally filed)"

Leitsatz / Headnote / Sommaire

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Case Number : T 303/89

D E C I S I O N
of the Technical Board of Appeal 3.4.1
of 21 December 1989

Appellant : British Gas Corporation
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London SW1V 3JL (GB)

Representative : David J. Morgan
British Gas Corporation - Patents Department
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Decision under appeal : Decision of Examining Division 036 of the European Patent Office dated 22 February 1989 refusing European patent application No. 84 303 013.1 pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : K. Lederer
Members : E. Turrini
L. Mancini

Summary of Facts and Submissions

I. European patent application No. 84 303 013.1 (publication No. 125 845) was refused by decision of the Examining Division.

II. The reason given for the refusal was that Claim 1 infringes Article 123(2) EPC due to the fact that the feature of the preamble that each pathway in one half of the pipeline bore have in the other half of the pipeline bore a corresponding pathway of substantially equal length (feature A), is not described in the originally filed application nor can it be directly deduced from it.

III. The Appellant lodged an appeal against the decision.

IV. Current Claim 1 filed on 1 August 1988, which corresponds to the claim on which the decision of the Examining Division is based, reads as follows:

"Apparatus for the measurement of the rate of flow of fluid through a pipeline, the apparatus being of the type comprising matched pairs of transducers (3) mounted in the wall (1) of the pipeline, each transducer (3) of the pair co-operating with the other transducer (3) of the pair to transmit and receive therebetween pulses of ultrasonic energy which pulses form a pathway (a, b, c, d) through the bore of the pipeline (1), the transducer pairs (3) being arranged so that at least two pathways (a, b) are located in one half of the pipeline bore and an equal number of pathways (c, d) are located in the other half of the pipeline bore, the pathways (a, b, c, d) being disposed at an angle to the projection of the longitudinal axis of the pipeline (12) with each pathway (a, b, c, d) lying in its own separate plane which is substantially parallel to the

said axis and to any adjacent said plane, each pathway (a, b) in one half of the pipeline bore having in the other half of the pipeline bore a corresponding pathway (c, d) of substantially equal length, characterised in that said angle made by each pathway (a, b) is of opposite sign to the angle made by its corresponding pathway (c, d)."

Claims 2 to 4 are dependent on Claim 1.

V. In the statement of grounds filed in support of the appeal, the Appellant argued in substance that the lower of the two original drawings in each Figure 7b and 7c respectively, which relate to a section of the pipeline, show clearly that each pathway in one half of the pipeline bore (the upper side half in relation to Figure 7b and the left-hand side half in relation to Figure 7c) has in the other half of the pipeline bore (the lower side half in relation to Figure 7b and the right-hand side half in relation to Figure 7c) a corresponding path of substantially equal length, i.e. in Figure 7b the uppermost and lowermost paths are of equal length as are the two middle paths, and in Figure 7c the two most external paths are of equal length as are the two innermost paths.

He additionally underlined that, as indicated on page 6 of the patent application as originally filed, the claimed invention utilises the symmetrical path arrangement described in document GB-A-1 503 852 (A). In case of a circular pipe this configuration leads necessarily to equal length as claimed in the application in suit.

Thus, feature A of Claim 1 is disclosed by the original application and the rejection of Claim 1 as infringing Article 123(2) EPC should fail.

Reasons for the Decision

1. The appeal is admissible.

2. Extension of the subject-matter of the patent application.

2.1 The Board is of the opinion that feature A of Claim 1 can be directly deduced from the originally filed drawings.

Indeed, e.g. from the lower drawing of Figure 7b, which clearly represents a cross-section of the pipeline, it appears that the uppermost and lowermost paths or the two middle paths are of equal length, under the condition that the projections of two corresponding paths over two straight lines each of them intersecting one of the two corresponding paths and parallel to the axis of the pipeline are of equal length. If the four transducers (transmitting and receiving units) of two corresponding paths are positioned two by two substantially in two planes perpendicular to the axis of the pipeline, then the before-mentioned condition is satisfied. Figure 7a, which is a top view of the pipeline ("all bends are in the horizontal plane"), shows that four transducers are positioned in the two above-mentioned planes. The other four transducers are necessarily on the same planes because they are covered from the others and thus not visible in the top view. That both transmitting and receiving transducers project outside the outer surface of the pipeline, can be seen from Figures 1, 2, 2a and 3a.

It is true, as argued by the Examining Division, that Figures 7b and 7c do not disclose alone feature A of Claim 1.

Furthermore, the Board of Appeal shares the opinion of the

Examining Division that the passage on page 6, paragraph 2 of the originally filed description referring to document A does not support the original disclosure of feature A of actual Claim 1, because nowhere in the original application is it stated that the symmetrical path arrangement of document A has to be applied to the subject-matter of the present application.

Feature A, in the Board's view, is, however, directly deducible from the teaching of, e.g. Figure 7b (lower drawing) in combination with Figure 7a, as before explained.

2.2 The other features of actual Claim 1 were not contested in the decision of the Examining Division as infringing Article 123(2) EPC. In particular, the Board agrees with the Appellant that the characterising feature of actual Claim 1, namely that the angle made by each pathway is of opposite sign to the angle made by its corresponding pathway, is unambiguously derivable from the drawing of Figure 3, where corresponding paths (a and d or b and c) are drawn with opposite orientation (for path a the bigger hole is on the left side and for the corresponding path d is on the right side; for path b the bigger hole is on the right side and for the corresponding path c on the left side). The same can be deduced from the corresponding back and front views of the transducers 3 in Fig. 2a.

2.3 While it is admitted that some of the features of actual Claim 1 are deduced from the original drawings which are in diagrammatic form and not to scale, this fact does not hinder the skilled man to unambiguously derive from the drawings general features such as, e.g. different components being positioned on the same plane or pathway angles being of opposite signs. Thus, said features should be considered as disclosed in the original application. Reference is made in this respect to T 169/83, OJ EPO 1985, 193.

2.4 The Board is therefore satisfied that the present application documents do not contain subject-matter extending beyond the content of the application documents as originally filed (Article 123(2) EPC).

3. The Examining Division in its decision has merely considered the question whether the subject-matter of Claim 1 extends beyond the content of the original application documents. This is the reason why the Board is of the opinion not to examine further the application, in order to give the Appellant the possibility to take advantage of the two instances, as far as the conformity of Claim 1 to the other requirements of the EPC is concerned, and to remit the case for further prosecution to the Examining Division, in accordance with Article 111 EPC.

Order

For these reasons, it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Examining Division for further prosecution on the basis of Claims 1 to 4 as filed on 1 August 1988.

The Registrar: The Chairman:

S. Fabiani K. Lederer

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