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DES BREVETS

A		B		C	X
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File No.: T 1004/92 - 3.5.2  
Application No.: 87 900 885.2  
Publication No.: 0 256 132  
Classification: H02N 11/00  
Title of invention: Magnetic Rotary Device

**D E C I S I O N**  
of 23 September 1993

Applicant: Minato, Kohei

Proprietor of the patent:

Opponent:

Headword:

**EPC:** Art. 57,83

**Keyword:** "Sufficient disclosure (yes)" - "industrial application (yes)" -

**Headnote**  
**Catchwords**



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Boards of Appeal

Chambres de recours

Case Number: T 1004/92 - 3.5.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.5.2**  
**of 23 September 1993**

**Appellant:**

Minato, Kohei  
Dear City Akasaka Hitotsugikan No. 303  
2-3, Akasaka 4-chome  
Minaot-ku  
Tokyo 105 (JP)

**Representative:**

Dipl.-Ing. Hans E. Ruschke  
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**Decision under appeal:**

Decision of the Examining Division of the European Patent Office dated 2 June 1992 refusing European patent application No. 87 900 885.2 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** E. Persson  
**Members:** A.G. Hagenbucher  
W.J.L. Wheeler

**Summary of Facts and Submissions**

- I. The decision under appeal was based on description pages 1 to 11 and drawing sheets 1 to 3 as originally filed and on Claims 1 to 4 as filed on 19 March 1991.
  
- II. The only reason given in the decision for the refusal of the application was that it did not meet the requirements of Article 57 in combination with Article 83 EPC because it was alleged in the description of the application that, contrary to well-established physical laws, the magnetic rotation apparatus according to Claim 1 would be able to produce continuous long term rotation without any supply of external energy.
  
- III. At Oral Proceedings before the Board 23 September 1993, the Appellant amended the description of the application by filing new pages 1,2,4,5 and 10, thereby deleting all statements indicating that the claimed apparatus could operate without the supply of external energy. Furthermore, the principle of the invention was demonstrated on the basis of two working models, which did not, however, exactly correspond to the claims on file.
  
- IV. The Appellant requested, that the decision under appeal be set aside and a patent be granted on the basis of the application as amended at the oral proceedings; as an auxiliary petition, he requested that the case be remitted to the first instance for further prosecution.

**Reasons for the decision**

1. The appeal is admissible.
  
2. By the amendment of the description referred to above, which obviously does not add any subject-matter extending beyond the content of the application as filed and therefore is not contravening Article 123(2) EPC, the only ground relied upon by the Examining Division for refusing the application has now been removed. However, grant of a patent cannot be ordered without further consideration of novelty and inventive step in view of the application as now amended. In particular, these matters have to be considered in the light of the disclosure in US-A-4 517 477 (see column 1, line 62 to column 2, line 43) referred to in the supplementary search report and in a communication of the Examining Division of 20 September 1990. In order not to deprive the Appellant of the possibility of such consideration by two instances, the Board deems it appropriate to make use of the possibility of remitting the case to the first instance for further prosecution in accordance with Article 111(1) EPC.

**Order**

**For these reasons, it is decided that:**

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution of the application as amended during the appeal procedure, having regard to what has been stated in paragraph 2 above.

The Registrar:

M. Kiehl

The Chairman:

E. Persson

