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**D E C I S I O N**  
of 12 August 1996

**Case Number:** T 0776/94 - 3.5.2

**Application Number:** 89401345.7

**Publication Number:** 0342130

**IPC:** G11B 5/55

**Language of the proceedings:** EN

**Title of invention:**  
Servo amplifier circuit

**Patentee:**  
FUJITSU LIMITED

**Opponent:**  
-

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 84, 111(1)

**Keyword:**  
"Clarity and support (yes, after amendment)"  
"Remittal to Examining Division for further prosecution"

**Decisions cited:**  
-

**Catchword:**  
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Case Number: T 0776/94 - 3.5.2

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.2  
of 12 August 1996

**Appellant:**

FUJITSU LIMITED  
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Kanagawa 211 (JP)

**Representative:**

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**Decision under appeal:**

Decision of the Examining Division of the European  
Patent Office dated 30 March 1994 refusing  
European patent application No. 89 401 345.7  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** W. J. L. Wheeler  
**Members:** M. R. J. Villemin  
C. Holtz

## Summary of Facts and Submissions

- I. The appeal contests the decision of the Examining Division to refuse European patent application No. 89 401 345.7. The reason given for the refusal was that Claim 1 then on file was not clear within the meaning of Article 84 EPC.
- II. In response to a communication from the Board, the Appellant filed with the letter dated 9 May 1996 a new Claim 1 to replace Claim 1 refused by the Examining Division.
- III. The new Claim 1 is worded as follows:
- "1. A servo amplifier circuit, comprising:  
an output voltage detecting means (7) for detecting an output voltage of said servo amplifier circuit;  
a target value obtaining means (3) for obtaining a target value of said servo amplifier circuit;  
an absolute value outputting means (5) for outputting an absolute value of said target value;  
a control direction outputting means (6) for outputting a sign of said target value;  
an amplifier means (9) for amplifying an output of said absolute value outputting means;  
a forward/reverse conversion means (10) for passing said output of said amplifier means with or without inverting said output in accordance with said sign of said target value;  
characterized in that it further comprises:  
means (109-114) for determining the offset adjusting value that is necessary in forward seek mode for raising the output of the servo amplifier circuit above the larger one of the forward offset value and the reverse offset value;

means (115-119) for determining the offset adjusting value that is necessary in forward seek mode for lowering the output of the servo amplifier circuit below the smaller one of the forward offset value and the reverse offset value;

means (120-125) for determining the offset adjusting value that is necessary in reverse seek mode for raising the output of the servo amplifier circuit above the larger one of the forward offset value and the reverse offset value;

means (126-130) for determining the offset adjusting value that is necessary in reverse seek mode for lowering the output of the servo amplifier circuit below the smaller one of the forward offset value and the reverse offset value; and

means (130) for setting the adjusting value to the mean value of the adjusting values determined by said offset adjusting value determining means (109-130)."

IV. The Appellant explained that the characterizing portion of the submitted new Claim 1 recited the means for performing the adjustment steps (a) to (e) identified by the Examining Division in the decision under appeal as being necessary for a clear definition of the invention, and that this new Claim 1 substantially corresponded to the form referred to in the communication of the Board.

V. The Appellant requested that the decision under Appeal be set aside and the application be remitted to the Examining Division for the continuation of the examination and grant procedure.

## Reasons for the Decision

1. The Appeal is admissible.
2. New Claim 1 now recites **all the means** (109 to 130) for determining the four offset adjusting values and for setting the final adjusting value. Figures 13A to 13D, 14 and 15 and the corresponding text of the application as originally filed (page 14, line 24 to page 21, line 4) show and describe the series of steps 101 to 130 for obtaining the final offset adjusting value  $\Delta H$  on the basis of the four offset adjusting values  $\Delta H_1$ ,  $\Delta H_2$ ,  $\Delta H_3$  and  $\Delta H_4$  memorized in steps 114, 119, 125 and 130, respectively. In the opinion of the Board, present Claim 1 does not contain any subject-matter extending beyond the content of the application as filed, and therefore does not contravene Article 123(2) EPC.
3. *Article 84 EPC*
  - 3.1 The Board observed in the communication dated 19 January 1996 that the present application only disclosed one embodiment of a servo amplifier circuit. According to the disclosure, the determination of all four offset adjusting values  $\Delta H_1$ ,  $\Delta H_2$ ,  $\Delta H_3$  and  $\Delta H_4$  was necessary for obtaining the final adjusting value  $\Delta H$ . The Board therefore objected that claim 1 then on file merely recited the comparisons of the "second forward offset and the second reverse offset with the first forward offset and the first reverse offset, respectively", which resulted in the determination of only two offset adjusting values  $\Delta H_1$  and  $\Delta H_4$ . More precisely, Claim 1 then on file was silent as to any comparison between a second forward offset and the first reverse offset (step 117 when VAL1=FWD) and between a second reverse offset and the first forward offset (step 123 when VAL1=FWD).

The Board noted that there was no suggestion in the description that two offset adjusting values among  $\Delta H_1$ ,  $\Delta H_2$ ,  $\Delta H_3$  and  $\Delta H_4$  could be dispensed with for determining  $\Delta H$ , and that it was not apparent how the skilled person could calculate  $\Delta H$  on the basis of only two of the offset adjusting values.

3.2 The Examining Division refused the application on the basis of substantially the same objections as those raised by the Board in its communication, namely that Claim 1 did not comply with Article 84 EPC, even though paragraph 6 of the decision under appeal refers (incorrectly) to a lack of clarity of Claim 1 rather than to a lack of support for its full scope.

3.3 The Examining Division had informed the Applicant (now Appellant) in the communication dated 11 November 1992 that the application contained patentable subject-matter and had suggested the text of a new Claim 1 which would have provided, in the Examining Division's opinion, a basis for the grant of a patent. The characterizing portion of the new Claim 1 filed by the Appellant closely follows the suggestion made by the Examining Division, and, in the Board's opinion, the objection on which the refusal of the application was based has been overcome.

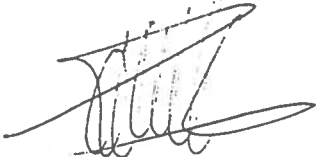
4 It remains, however, to be considered whether the application meets the other conditions required by the EPC for the grant of a patent. In order to preserve the possibility of having any matters which remain outstanding considered by two instances, the Board finds it appropriate to make use of its power under Article 111(1) EPC to remit the case to the first instance for further prosecution.

Order

For these reasons it is decided that:

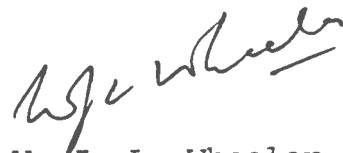
1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution on the basis of Claim 1 submitted with the letter dated 9 May 1996.

The Registrar:



M. Kiehl

The Chairman:



W. J. L. Wheeler



