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File Number: W 30/91 - 3.4.2

Application No.: PCT/CA 91/00035

Publication No.:

Title of invention: Electro-optical Apparatus

Classification: G01C 3/08

D E C I S I O N
of 27 January 1992

Applicant: VX Optronics Corp.

Headword:

PCT Article 17(3)(a), Rules 13.1 and 40

Keyword: "Refuse of refunding the additional fee"

Headnote

Case Number : W 30/91 - 3.4.2
International Application No. PCT/CA 91/00035

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 27 January 1992

Applicant : VX Optronics Corp.
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Subject of the Decision : Protest according to Rule 40.2(c) of the Patent
Cooperation Treaty made by the applicants against
the invitation (payment of additional fee) of the
European Patent Office (branch at The Hague)
dated 16 May 1991.

Composition of the Board :

Chairman : E. Turrini
Members : R. Zottmann
C. Payraudeau

Summary of Facts and Submissions

- I. International patent application PCT/CA 91/00035 was filed at the Canadian Patent Office.
- II. The European Patent Office (EPO), as competent International Search Authority (ISA), issued an invitation pursuant to Article 17(3)(a) and Rule 40.1 PCT to pay three additional fees. The ISA considered that the application did not comply with the requirement of unity of invention as set out in Rule 13.1 of the PCT.
- III. The further information accompanying said invitation summarized the inventions as being that claimed in
1. Claims 1-23, 26, 35-39: electro-optical range finder; in
 2. Claim 24: optical system comprising a combination of prisms; in
 3. Claim 25: sensor comprising a refracting element; and in
 4. Claim 27: optical switchable beamsplitter.

These were considered by the ISA to be four subjects, defined by the problems and their means of solution, which are so different from each other that no technical relationship or interaction can be appreciated to be present so as to form a single general inventive concept.

- IV. Within the prescribed time limit the Applicant paid one additional fee, requested that a search be carried out with respect to the aspect of the invention defined by Claim 27 and the claims depending therefrom and submitted

a response to said invitation, the tenor of which was that the additional fee was being paid under protest as it was unwarranted. In support of the protest, he submitted that the optical beamsplitter of Claim 27 may be used as a component of an electro-optical apparatus of inter alia Claim 35 whose portion (c) describes said beamsplitter and which had already been searched.

Reasons for the Decision

1. Pursuant to Rule 40.2(c) of the PCT and Article 154(3) of the European Patent Convention (EPC) the Boards of Appeal of the EPO are responsible for deciding on protests made by an applicant against additional fees charged by the EPO acting as ISA under the provisions of Article 17(3)(a) of the PCT.
2. The Applicant having only paid one supplemental fee in respect to the fourth mentioned invention, the Board of Appeal has only to decide whether there is a common inventive concept between the "optical switchable beamsplitter" which is the subject-matter of the corresponding Claim 27 and the "electro-optical range finder" which is the subject-matter of Claims 1-23, 26 and 35-39 according to the invitation of the ISA to pay additional fees.
3. Although the invitation is very succinct and only comprises a standard statement and a list of assumed separate inventive concepts, the Board considers that it results clearly from this simple enumeration and from an examination of the claims of the international application that the reasons of the objection of lack of unity "a priori" between the two inventive concepts resides in that the beamsplitter of Claim 27 is an apparatus which,

although it can be used in the electro-optical apparatus which is the subject-matter of the first invention, must not be used in said apparatus, i. e. it does not contribute to the inventive concept of the first invention.

4. It also results clearly from the grounds given in the protest that the Applicant has rightly understood this reasoning and therefore the Board of Appeal considers that the invitation to pay was sufficiently reasoned.
5. The common concept linking Claims 1-23, 26 and 35-39 is that they all concern an

electro-optical apparatus comprising:

- a housing having at least one eyepiece;
- two entrance windows within said housing to receive light beams radiated from an objective;
- reflecting means for directing said light beams to form images of said objective with said eyepiece;
- sensor means to provide data from which at least the range of said objective can be determined; and
- a microprocessor which receives data from said sensor means to calculate at least the range of said objective;

where the beamsplitter is not even mentioned.

Thus, the use of a beamsplitter in such an apparatus is a totally optional feature which is in fact only mentioned in independent Claim 35 in combination with other features of said electro-optical apparatus.

6. Since, on the other hand, the beamsplitter is claimed independently in Claim 27 as an apparatus totally distinct from the electro-optical apparatus, there is no link between the two inventions claimed because both of them can be performed independently of the other even if their combination is possible or even advantageous.

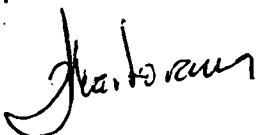
7. In these circumstances, the present international application does not comply, at least as far as Claims 1-23, 26 and 35-39, on the one hand, and Claim 27, on the other hand, are concerned, with the requirements of unity of invention set out in Rule 13.1 of the PCT and the additional fee paid by the Applicant in respect to the invention which is the subject-matter of Claim 27 cannot be refunded.

Order

For these reasons, it is decided that:

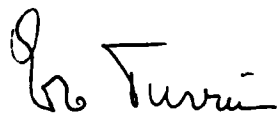
Refund of the additional fee is refused.

The Registrar:



P. Martorana

The Chairman:



E. Turrini