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Case Number: T 140 / 83

DECISION
of the Technical Board of Appeal 3.2.1
of 24 October 1983

Appellant: Schremp, Edward Jay
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USA

Representative: Iain C. Baillie
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Decision under appeal:	Decision of Examining Division 108 Office dated 5 April 1983 application No 79 900 056.7 EPC	of the European Patent refusing European patent pursuant to Article 97(1)
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Composition of the Board:
Chairman: G. Andersson
Member: M. Huttner
Member: P. Ford

SUMMARY OF FACTS AND SUBMISSIONS

- I. European patent application No. 79 900 056.7 filed on 6 December 1978 as international application PCT/US 78/00189 claiming priority from a national United States application of 6 December 1977, and published under International Publication No. WO 79/00 349 was refused by a decision of Examining Division 108 of the European Patent Office dated 5 April 1983. The Decision was based on Claims 1 to 39, 48, 50 to 53, 57, 73 and 74. The reason given for the refusal was that the subject matter defined by the independent Claims 1, 2, 6, 27, 73 and 74 did not clearly relate to a single general inventive concept and thus these claims do not meet the requirements of unity of invention (Article 82 EPC) while the remaining dependent claims were likewise inadmissible as they presuppose the admissibility of the independent claims.
- II. On 6 June 1983 the appellant lodged an appeal against the decision. The appeal fee was duly paid and the statement of grounds was received in due time together with new Claims 1 to 10 and a revised introductory portion of the description wherein the closest prior art of record has been acknowledged and brought into conformity with the revised claims. The appellant likewise requested an interlocutory revision on the grounds that the new claims submitted are now drawn to a single inventive concept as required by Article 82 EPC. In case the findings of the Examining Division as to patentability should be unfavourable to the appellant, the case should be sent to the Board of Appeal.

Subsequently, the appellant filed a new set of Claims 1-11 received on 5 October 1983 to substitute the previous claims on file.

III. The effective Claim 1 reads as follows:

1. Apparatus for providing, in practically any sea state, at a site located anywhere at sea, useful power from the open sea, as well as shelter from the open sea, in such a manner as to achieve high yields of converted wave energy with simultaneous maximal suppression of wave action everywhere within a predetermined, bounded central region at and below the surface of the water, comprising impellers responsive to ambient wave induced water movement and means coupled to said wave responsive impellers for converting to a usable form the wave energy extracted by the impellers, characterised by the fact that the impellers have respectively different ranges of movement, different depths of submergence below the surface of the water, and different horizontal locations with respect to said bounded central region, each of said impellers being supported for oscillatory movement about a preselected equilibrium position in resonant and multi-directional response to a corresponding preselected narrow band of wavelengths of said wave induced subsurface water movement, and the resonant frequencies of said wave responsive impellers being distributed in such a manner that they effectively span a preselected, substantially broad wave frequency band, means being coupled to said wave energy conversion means for transmitting the converted wave energy from the respective locations of said impellers to the interior of said bounded central region; and wave energy collection means being located within said bounded central region and coupled to said wave energy transission means.

IV. For the original claims, description and drawings, reference should be made to publication No. WO79/00 349.

REASONS FOR THE DECISION

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore, admissible.
2. Since the Board has no objection to the filing of the new claims, it is therefore merely necessary to examine whether or not the new claims are in compliance with the requirements of Article 82 EPC.
3. Claim 1 is now drawn in the two-part form as prescribed by Rule 29(1) EPC and in the pre-characterising clause those technical features which are necessary for the definition of the claimed subject matter are now stated. Further, in the characterising portion, those technical features are stated for which in combination with the features of the pre-characterising portion protection is sought and to which they are closely related. Since the application now contains only one single independent apparatus claim (Claim 1) which contains closely related features, there is no doubt that there is a single inventive concept in this claim. The objection of lack of unity thus no longer arises with respect to the independent claim 1.
 - 3.1 Claim 1 therefore meets the requirement of Article 82 EPC.
 - 3.2 Claims 2-11 are of the same category and dependent on the independent Claim 1. They are directed to subject

matter containing particular embodiments of the impellers mentioned in the characterising clause of Claim 1 (Rule 29(3) EPC). Therefore, they also meet the requirement of Article 82 EPC.

4. Since the appellant's new set of claims disposes of the objection of lack of unity of invention and the Examining Division has not yet finally examined whether or not an apparatus according to Claim 1 would be patentable under the remaining requirements of the Convention, therefore, the case must be remitted to the Examining Division for further prosecution.
5. Since the Board cannot find any substantial procedural violation by reason of which the reimbursement would be equitable, the Board does not see any cause to order the reimbursement of the appeal fee (Rule 67 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 the presently effective claims 1-11.

The Registrar:

J. K. K.

The Chairman

[Signature]