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D E C I S I O N
of 21 August 2002

Case Number: T 0330/01 - 3.4.3

Application Number: 95106589.5

Publication Number: 0681338

IPC: H01L 43/10

Language of the proceedings: EN

Title of invention:

Magnetoresistance effect device and magnetoresistance effect type head, memory device, and amplifying device using the same

Applicant:

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.

Opponent:

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Headword:

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Relevant legal provisions:

EPC R. 51(4), 51(6), 86(3)

Keyword:

-

Decisions cited:

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Catchword:

-



Case Number: T 0330/01 - 3.4.3

D E C I S I O N
of the Technical Board of Appeal 3.4.3
of 21 August 2002

Appellant: MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.
1006, Ohaza Kadoma
Kadoma-shi
Osaka 571-8501 (JP)

Representative: Kügele, Bernhard
Novagraaf SA
25, Avenue du Pailly
CH-1220 Les Avanchets - Geneva

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 December 2000
refusing European patent application
No. 95 106 589.5 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. K. Shukla
Members: G. L. Eliasson
M. B. Günzel

Summary of Facts and Submission

I. In the examination of the European patent application No. 95 106 589.5 pursuant to Article 96 EPC, the examining division issued a communication dated 7 September 1999 under Rule 51(4) EPC along with the text of the application in which it intended to grant a European patent. In response, the applicant approved the text as attached to the above communication in due time, and in response to the communication under Rule 51(6) EPC, submitted the translations of the claims and paid the fees for printing and grant.

Subsequently, however, in a letter dated 26 April 2000, the applicant withdrew his approval of the text intended for grant, and submitted an amended set of claims 1 to 56.

The examining division informed the applicant that pursuant to Rule 86(3) EPC, the amended claims submitted by the applicant were not allowed. The applicant, in response, maintained the request for the grant of a patent on the basis of the amended claims submitted with the letter of 26 April 2000.

The examining division refused the application in a decision dated 14 December 2000 as there was no text of the application which had been agreed by the applicant and allowed by the examining division.

II. The appellant (applicant) lodged an appeal on 8 January 2001 paying the appeal fee the same day. A statement of the grounds of appeal was filed on 2 February 2001.

The appellant requested that the decision under appeal

be set aside and that a patent be granted on the basis of one of the following requests:

Main request:

Grant of a patent on the basis of the following documents **under the condition** that a divisional application filed with a letter dated 2 February 2001 (appellant's reference BB43095B) is accorded a filing date and accepted as a divisional application by the Receiving Section:

Claims 1 to 28 filed with the statement of the grounds of appeal;

Description and Drawings as specified in the communication under Rule 51(4) EPC dated 7 September 1999.

Auxiliary request:

Further examination of the application on the basis of claims 1 to 56 filed with the letter dated 26 April 2000.

Furthermore, oral proceedings was requested as a precautionary measure.

III. In a communication, the Board informed the appellant that the Board was unable to consider the allowability of the main request, which was conditional upon the allowance of the filing of a divisional application. As the subject of the present appeal was only the refusal of the application in suit by the examining division, the Board was not empowered to rule on the allowability of the filing of a divisional application.

The Board, however, pointed out that it appeared from the records of the EPO that the divisional application in question had been accepted as a divisional application by the receiving section, since it was published as EP-A-1 126 531.

- IV. With a letter dated 30 July 2002, the appellant filed new claims 1 to 28 and stated that the main request is to be understood to be the grant of a patent on the basis of the documents as specified, without any further conditions.

The **main request** thus reads as follows:

Grant of a patent on the basis of the following documents:

Claims 1 to 28 filed with the letter dated 30 July 2002;

Description and Drawings as specified in the communication under Rule 51(4) EPC dated 7 September 1999.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. Claims 1 to 28 according to the main request are retyped copies of claims 1 to 28 as annexed to the communication under Rule 51(4) EPC dated 7 September 1999. Thus, the claims according to the main request are the claims which were intended for grant of a patent by the examining division.

Therefore, the factual basis for the decision to refuse the application in suit has been removed. Consequently, the main request is allowed.

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 the first instance with the order to grant a patent on the basis of the documents according to the main request as specified under item IV above.

The Registrar:

The Chairman:

M. Beer

R. K. Shukla