

Internal distribution code:

- (A) [] Publication in OJ
(B) [] To Chairmen and Members
(C) [X] To Chairmen
(D) [] No distribution

D E C I S I O N
of 20 January 2003

Case Number: T 0816/02 - 3.4.2

Application Number: 98110678.4

Publication Number: 0886324

IPC: H01L 31/048

Language of the proceedings: EN

Title of invention:

Solar cell module, production method thereof, and installation method of solar cell modules

Applicant:

CANON KABUSHIKI KAISHA

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 122, 111(1)

Keyword:

"*Restitutio in integrum* (admitted)"
"Remittal to the first instance"

Decisions cited:

-

Catchword:

-



Europäisches
Patentamt

European
Patent Office

Office européen
des brevets

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: T 0816/02 - 3.4.2

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 20 January 2003

Appellant: CANON KABUSHIKI KAISHA
30-2, 3-chome, Shimomaruko,
Ohta-ku
Tokyo (JP)

Representative: Pellmann, Hans-Bernd, Dipl.-Ing.
Patentanwaltbüro
Tiedke-Bühling-Kinne & Partner
Bavariaring 4-6
D-80336 München (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 6 March 2002
refusing European patent application
No. 98 110 678.4 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: E. Turrini
Members: A. G. Klein
B. J. Schachenmann

Summary of Facts and Submissions

I. European patent No. 98 110 678.4 (publication No. 0 886 324) was refused by the Examining Division on the ground that the subject-matter of independent claims 1 and 10 as then on file, which were directed respectively to a method of producing a solar cell module and to a solar cell module, lacked an inventive step.

The decision refusing the application was dispatched on 6 March 2002.

II. By letter dated 6 May 2002 and received at the EPO on the same date the appellant (applicant) filed notice of appeal.

With the letter dated 12 July 2002 and received at the EPO on the same day, the appellant filed a written statement setting out the grounds of appeal, together with five sets of claims forming the basis of its main and first auxiliary to fourth auxiliary requests and amended pages of the description.

The claims of the main request, directed to an installation method of solar cell modules are numbered 12 to 18 and they are identical to claims 12 to 18 as originally filed. Original claims 1 to 11 and the claims on which the first instance decided are no longer part of the appellant's request.

Claim 12, the only independent claim in accordance with the appellant's main request reads as follows:

"12. An installation method of solar cell modules for forming a part or the whole of a solar cell array by mutually connecting a plurality of solar cell modules

in series, in parallel, or in series and parallel in every block, which comprises a step of installing the solar cell modules having adhesive films of respective colors different among the blocks which are stuck to a part or the whole of a light-receiving surface side of the solar cell module, and a step of removing the adhesive films."

The set of claims of the appellant's first to fourth auxiliary requests each also comprises one independent claim corresponding to the single independent claim of the main request, with further limitations.

In its statement of the grounds of appeal, the appellant submitted that none of the citations referred to in the decision under appeal disclosed an installation method of solar cell modules comprising the features of claim 12 of the main request. Such installation method was therefore new.

Concerning inventive step, a person skilled in the art striving at simplifying the installation of solar cell modules would provide the different modules with specific distinguishing marks, as is common practice in several application fields, to indicate how to install them. However, in this invention, it is a coloured film which exerts both the function of protection and the function of identification, which cannot be regarded as being suggested in an obvious way by the prior art.

III. In a communication of loss of rights pursuant to Rule 69(1) EPC, dated 22 August 2002, the Board informed the appellant that the appeal fee appeared not to have been paid and that, accordingly, the appeal was deemed not to have been filed.

IV. By letter dated 30 September 2002, received at the EPO on 4 October 2002, the appellant requested re-establishment of his rights under Article 122 EPC (*restitutio in integrum*) on the ground that the non-payment of the appeal fee had resulted from an isolated mistake made by an otherwise reliable assistant, who periodically received further professional training and whose work was subjected to random monitoring.

In support of its submissions, the appellant filed copies of the first page of the decision to refuse the European patent application of 6 March 2002 with an internal rubber stamp indicating the date of expiry of the delay for filing an appeal as 6.5.02, of the applicant's letter of instructions, of the minutes of the oral proceedings of 21 November 2002 and of the representative's register of outgoing mail for the 6 May 2002, together with the retrieved original form for the payment of fees and costs as signed by the representative and dated 6 May 2002 and a sworn declaration by the representative's assistant.

The payment of the appeal fee took effect on 4 October 2002.

Reasons for the Decision

1. *Restitutio in integrum*

The payment of the appeal fee did not meet the time limit for the payment of the appeal fee in accordance with Article 108 EPC, which is two months after the date of notification of the decision appealed from. The cause of non-compliance with this time limit, namely the erroneous belief that the corresponding payment instructions had been forwarded to the EPO with the

notice of appeal, was removed on receipt by the appellant of the communication of loss of rights pursuant to Rule 69(1) EPC dated 22 August 2002, which in accordance with the appellant's declaration confirmed by the acknowledgement of receipt returned to the EPO occurred on 23 August 2002.

Since the application for *restitutio in integrum* was filed and the omitted act was completed within two months from the removal of the cause of non-compliance and less than one year after expiry of the unobserved time limit, the application for *restitutio in integrum* meets the formal conditions of Article 122(2) EPC.

The Board is also satisfied that the substantial condition set out in Article 122(1) EPC that all due care required by the circumstances have been taken by the appellant is met in the present instance. As a matter of fact the representative's submissions and the consistent evidence provided with its letter of 30 September 2002 convincingly establish that non-payment of the appeal fee resulted from an isolated mistake of the representative's assistant who, against the representative's instructions and the current practice followed in his patent firm, omitted to join the correctly filled and signed form for the payment of fees and costs to the signed notice of appeal when he transmitted the latter to the patent firm's internal mailing department, but put it back into the file where it was eventually retrieved. The representative's submissions and the assistant's sworn declaration also convincingly establish that the assistant had worked for more than 7 years to the patent firm's full satisfaction, that he had received adequate initial and further training and that his work was subjected to regular control by the representative.

In these circumstances, non-compliance with the time limit for filing the appeal fee was due to an excusable isolated mistake of the assistant, which in accordance with established case law of the Boards of Appeal of the EPO justifies allowability of the appellant's application for *restitutio in integrum*.

2. *Admissibility of the appeal*

The appellant's rights being re-established, the appeal fee is deemed to have been paid in due time. The appeal is therefore admissible.

3. *Further prosecution*

The only independent claim of each of the appellant's main and first auxiliary to fourth auxiliary requests is directed to an installation method of solar cell modules. As disclosed in the passage from page 30, line 6 to the end of the description in conjunction with Figure 6, the claimed installation method comprises a step of installing solar cell modules having adhesive films of respective different colours among corresponding blocks.

The set of claims on which the decision was based did not comprise any similar subject-matter, the two independent claims then on file being respectively directed to a method of producing an individual solar cell module (claim 1) and to an individual solar cell module (claim 10). The reasons for which the subject-matter of these independent claims were considered not to involve an inventive step in the decision under appeal thus no longer apply to the present claims.

In addition, the Board notes that the independent claim of the appellant's present main request was referred to only cursorily in paragraph 3.1 of the first communication of the Examining Division, dated 20 December 1999, together with the other independent claims 1 and 19, which were directed to a method of producing an individual solar cell module and to such a solar cell module, respectively. The Examining Division - in the Board's view incorrectly - did not make any distinction in that communication between the subject-matters of the different independent claims.

Accordingly, since the grounds for the decision under appeal no longer apply to the claims in accordance with the appellant's present requests and in consideration of the fact that the merits of these claims have not yet been assessed in detail by the Examining Division and that the appeal procedure took less than nine months from the filing of the appeal, the Board deems it appropriate in the present circumstances to remit the case directly to the Examining Division for further prosecution as provided for in Article 111(1) EPC, so as to allow for the merits of the claimed subject-matter being assessed by two instances.

Order

For these reasons it is decided that:

1. The appellant's request for re-establishment of his rights is allowed.
2. The decision under appeal is set aside.
3. The case is remitted to the department of first instance for further prosecution on the basis of the appellant's main and first auxiliary to fourth auxiliary requests.

The Registrar:

The Chairman:

P. Martorana

E. Turrini