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D E C I S I O N
of 28 October 2005

Case Number: T 1011/03 - 3.4.02

Application Number: 97302102.5

Publication Number: 0800099

IPC: G02B 6/28

Language of the proceedings: EN

Title of invention:
Reflective optical star coupler

Applicant:
Mitsubishi Gas Chemicals Company, Inc. et al

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 56

Keyword:

"Inventive step (no) "

Decisions cited:

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Catchword:

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Case Number: T 1011/03 - 3.4.02

D E C I S I O N
of the Technical Board of Appeal 3.4.02
of 28 October 2005

Appellant:

MITSUBISHI GAS CHEMICAL COMPANY, INC.
5-2, Marunouchi 2-chome
Chiyoda-Ku
Tokyo 100-0005 (JP)

Representative:

Jenkins, Peter David
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London WC1N 2LS (GB)

Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 7 May 2003
refusing European application No. 97302102.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: A. Klein
Members: A. Maaswinkel
B. Müller

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal, received on 17 July 2003, against the decision of the examining division, dispatched on 7 May 2003, refusing the European patent application No. 97302102.5. The fee for the appeal was paid on 17 July 2003. The statement setting out the grounds of appeal was received on 16 September 2003.

II. In its decision, the examining division held that the subject-matter of the independent claim 1 of the main request and of the first, second and third auxiliary requests then on file did not involve an inventive step (Article 52(1) and 56 EPC) starting from the apparatus disclosed in the closest prior art document D1 and having regard to the further disclosures of documents D3 and D4' and common knowledge in the technical field:

D1: US-A-4 262 995

D3: EP-A-0 598 622

D4': Physics World, September 1991, vol. 4, No. 9, pages 50 to 54; T. Ikegami et al.: "Passive paths for networks".

III. In the statement of grounds of appeal the appellant requested that the sets of claims on which the decision under appeal was based be considered as its main and first to third auxiliary requests, and it also filed two further sets of claims as its fourth and fifth auxiliary requests. Additionally the appellant filed an auxiliary request for oral proceedings.

- IV. In a communication pursuant to Article 11(1) RPBA, dated 13 July 2005 and accompanying the summons to oral proceedings scheduled on 28 October 2005, the board expressed its provisional opinion that the subject-matter of claim 1 according to the main and first, second, third and fifth auxiliary requests followed in an obvious way from the prior art, herein also making reference to document GB-A-2 143 650 (document D5). Furthermore that claim 1 according to the fourth auxiliary request would appear objectionable under Article 123(2) EPC.
- V. With a facsimile letter of 26 September 2005 the appellant informed the board that it would not be attending the oral proceedings, that the auxiliary request for oral proceedings was withdrawn and that it was requested that the proceedings be continued in writing. In this letter the appellant did not make any observations on the objections in the board's communication.
- VI. Oral proceedings took place on 28 October 2005 in the absence of the appellant. The board gave its decision at the end of the oral proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. In the communication of the board, the appellant was informed in detail of the reasons of the preliminary view of the board that the subject-matter of claim 1

according to the main request merely involved an obvious combination of the teachings of documents D1, D4' and D5 (Article 52(1) and 56 EPC). In particular, the features of the claim not being known from the closest prior art D1 were functionally independent and did not show a combinative effect beyond the sum of their individual effects. It would be an obvious measure for the skilled person to implement such features known from D4' and D5 in the known apparatus. The same objection arose against claims 1 of the first, second, third and fifth auxiliary request, wherein reference was made to document D3, from which document the further additional features were known, which features were again functionally independent.

The fourth auxiliary request was objectionable under Article 123(2) EPC because claim 1 according to this request included a limitation which had only been disclosed together with further limitations, which, however, were not defined in the claim.

3. The appellant made no substantive response to the board's communication. Having again considered its own reasoned objections as set out in that communication and making express reference thereto, the board sees no reason to deviate from its earlier assessment. Consequently, the claims according to the main and first to fifth auxiliary requests not being allowable for the reasons set out in the board's communication dated 13 July 2005, these requests must be refused.

In the absence of any substantive response to its provisional view, the board also sees no reason to

continue the procedure by writing as requested by the appellant.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

A. Klein