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**Datasheet for the decision
of 28 August 2006**

Case Number: T 1538/05 - 3.2.04

Application Number: 00938954.5

Publication Number: 1226358

IPC: F03G 7/00

Language of the proceedings: EN

Title of invention:

Einstein-Bohr end: new atomic scale physics, electric field:
neutrinos and electrons in conversions, perpetual motion.
Development: seisms, extinguished volcans, created islands,
big bang energy

Applicant:

Zagyansky, Yuly

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 57

Keyword:

"Discovery (yes) "
"Invention (no) "
"Industrial application (no) "

Decisions cited:

-

Catchword:

-



Case Number: T 1538/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 28 August 2006

Appellant: Yuly Zagysky,
Entraide, 22, rue Sainte Marthe,
F-75010 Paris (FR)

Representative: -

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 15 July 2005
refusing European application No. 00938954.5 to
Article 97(1) EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Heath
M. Poock

Summary of Facts and Submissions

- I. The applicant, Professor Yuly Zagyansky, filed a European patent application on 30 March 2001 based on a previous PCT filing of 22 June 2000 and a French priority filing of 3 November 1999. The title of his invention is "Einstein-Bohr end: new atomic scale physics, electric field: neutrinos and electrons in conversion, perpetuate motion. Development: seisms extinguished volcanos, created islands, big-bang energy". The patent at issue contains 12 claims. Claim 1 reads: "The "magnetic" "(magnetic) force characterised in that it is born as a result of the mutual deformations of the electric fields (of only existing electric charges) due to their relative movements". Claims 2 to 12 are dependent claims. For the complete wording of the claims, reference is made to pages 53-59 of the patent application. The application was refused by the examining division on 15 July 2005.
- II. In the examination phase, a number of errors were made by the Office. Certain fees were miscalculated, refunds were refused for mistaken reasons, refunds were offered for fees the applicant had not paid, mistaken request for a priority document was made. Under the entry of WO 0052989, the patent at issue, the publicly available online European patent register refers to another, yet unrelated patent application of the applicant. Finally, the decision to refuse the current application as of 15 July 2005 was made by the examining division in a correct composition (Gianni, Korb, Lang) and was duly signed by these three members, yet the pre-printed decision sheet gave the Chairman's name as "Centmayer". for some of these errors, the applicant received

apologies by letters sent by the office on 18 July 2002 and 5 November 2003.

III. The decision by the examination division of 15 July 2005 was essentially based on the following grounds:

"3. The claims according to the present application, while related in general to "The "magnetic" (magnetic) force ..." (claim 1), "New unknown force in the atom ." (claim 2), "The bases of the New Atomic Scale Physics ..." (claim 3) contain various statements about a new physics (i.e. "The Heizenberg Incertainty Principle is not correct ...", "The relativistic correction of Dirac to the principal Schrodinger equation of the Quantum Mechanics is not correct ..." and so on) or claim such statements like "The falsehood of the Theory of Relativity and its consequences ..." (claim 4). Furthermore claim 5 "The new process of the measurement ... with the New discovered Force according to claims 1,2,3(1) ..." explicitly refers to a discovery.

Therefore, together with the description which presents pages of calculations and applicant's remarks in his letters of reply (see e.g. the letter of 25 April 2001, item 2., "very NEW ingenious physical conception") the Examining Division is of the opinion, that the application presents subject-matter which is not of a technical character. However subject-matter within the meaning of Article 52(2) EPC is excluded from patentability.

4. In consequence the subject-matter claimed in claim 1 of the application lacks the basic requirement for patentability that there must be an "invention", contrary to the requirements of Article 52(1) EPC.

Therefore this claim is not allowable. The same objection applies to each of the further claims 2 to 12.

For the above reasons the application is refused.

5. In addition it should be noted that with regard to concrete and functioning devices the application as a whole is completely unclear (Article 84 EPC, Article 83 EPC). It is also not clear whether the corrections to the description received with letters of 25 April 2001 ("slips of the tongue") and 19 February 2002 meet the requirements of Article 123(2) EPC."

IV. On 16 August 2005, the appellant filed a notice of appeal and duly paid the appeal fee. The grounds of appeal were received on 11 November 2005 containing the request to grant a European patent based on the original application. In his statement of appeal, the appellant basically argues that since no prior art could be found in the search report, the invention should be patentable. The appellant also states that the *perpetuum mobile* set out in his claims were enough to overcome any objection under Article 84 EPC. A lot of the appellant's statement of grounds of appeal was further dedicated to proving the correctness of the physical theories set out in the patent, and in proving

that employees of the European Patent Office colluded against the appellant in order not to grant a patent of what the appellant calls a "new famous magnetic force" and a "revolutionary scientific theory of century". A number of further letters from the appellant were received on 18 November 2005, 4 January 2006 and 6 April 2006.

V. In a communication dated 9 May 2006, the appellant was informed that in the Board's preliminary view, the invention at issue was deemed unpatentable in view of the fact that it related to a discovery of a scientific theory and that it lacked industrial applicability. The Board drew attention to the fact that in the absence of a request for oral proceedings, the Board would be inclined to render a final decision taking into account the appellant's further submissions.

VI. The appellant replied by letter of 2 August 2006, basically alleging the following:

- (1) the preliminary search as carried out during the examination phase had revealed an absence of prior art;
- (2) the fact that a search had been carried out at all confirmed the industrial applicability of the invention;
- (3) that the irregularities during the examination phase showed criminal intent, censorship and "brigandage" by a united mafia;

(4) that the Board's appointed rapporteur was unable to understand the appellant's physical theories, as was the French physicist de Gennes, winner of a Nobel price. To quote a passage from page 7 of the appellant's response: "so without doubt, board of anecdotic only studying unskilled rapporteur (with superficial looking by others) cannot know more than specialised Nobel no. 1 and cannot surely answer for such my answer to EPO (that was already sufficient to deny Einstein/Bohr physics wherein even EPO surely falsifying special examiner was agreed). It clearly proves the intentional criminal character letter of EPO board judges."

Reasons for the Decision

1. The errors and inconsistencies that occurred during the examination phase do not lead to the first instance decision to be overturned on formal grounds. In particular, the fact that there was an inconsistency between the name of the examiners as printed on the decision and those that actually rendered it is not a ground that would make the decision void or open to appeal. Rather, it is important to note that the decision was actually made by the examining division in charge of the case, and that those persons in charge actually signed the decision. Both was the case. The fact that the name of the previous chairman of the examination division, Mr Centmayer, was still encoded in the file and given in the decision was a clerical error open to correction under Rule 89 EPC: "in decisions of the European Patent Office, only linguistic errors, errors of transcription and obvious

mistakes may be corrected." The board considers the error an obvious one in view of the fact that the chairman who was actually responsible for the case at this time of the decision, Mr. Gianni, actually did sign the decision as the chairman in charge. This is evidenced by form 2916 (on file) rejecting the above patent application. That form was signed on 7 July 2005 by all three members in charge of the case, and then the case of Mr Gianni only contains his signature without the pre-printed name of Mr Centmayer below Mr Gianni's signature.

2. The board could find no evidence of any undue influence or pressure put upon the examination division in making its decision. Neither is there evidence that information has been suppressed, or that the appellant was wilfully treated in a manner that would give rise to legitimate complaints.

3. The appellant has correctly and repeatedly pointed out that no prior art could be found for the application at issue. Based thereupon the applicant seems to take the view that, first, the fact that a search report was drawn up in the first place indicated that the invention was industrially applicable, and, second, that the absence of prior art would already make his invention patentable. Neither is the case. The objective of the search is to discover the state of the art which is relevant for the purpose of determining whether, and if so to what extent, the invention to which the application relates is new and involves an inventive step. Thus, contrary to the allegations by the appellant, the search as carried out by the EPO is not primarily concerned with industrial applicability,

but only with novelty and inventive step of otherwise patentable subject-matter. To regard this as an indication of patentability, as the appellant appears to do, would not be appropriate for the above mentioned reasons.

4. In most general terms, an invention must be of a technical character and must solve a technical problem with - at least partially - technical means. Claim 1 of the invention relates to "the "magnetic" (magnetic) force characterised in that it is borne as a result of a mutual deformation of the electric fields (of only existing electric charges) due to their relative movements." Claim 4 relates to "the falsehood of the theory of relativity and its consequences / mainly for atomic scale (microworld) physics / and new additional basic laws (additional basis) for the atomic scale (microworld) physics, cosmology (as natural nuclear super laboratory) and even for the nature (firstly serious) of the electric and gravitational fields (for microworld included) as a result of the basis of the atomic scale (microworld) physics and new force, according to claims 1-3 characterised by the following characteristics... ". Claims 2 to 12 are dependent upon claim 1, and claims 6 to 12 refer back to claim 4. These claims relate to the **discovery of a scientific theory** rather than a technical teaching. The appellant claims to have discovered a magnetic force that was hitherto unknown, and as a consequence thereof, established theories such as the Heisenberg uncertainty principle as well as Einstein's theory of relativity should be wrong. These are scientific theories or discoveries of the law of nature different from those currently established. Neither the claims, nor the

description, nor the numerous letters sent by the appellant give any indication about a clear technical teaching. It is insufficient in this respect that the patent description indicates to which patent classifications the invention may belong or for which the invention may serve. The above deficiencies thus make the invention unpatentable under Article 52 EPC that explicitly excludes discoveries, scientific theories and mathematical methods.

5. In determining whether an invention is industrially applicable according to Article 57 EPC, it is necessary that the teaching specified by the applicant can be carried out. This is expressly laid down in Article 83 EPC with respect to the disclosure of the invention. Where a method or a device is claimed that is to be operated in such a way as clearly in conflict with the established laws of physics, e.g. *perpetuum mobile*, such invention lacks industrial application unless the appellant can clearly and unambiguously demonstrate the contrary. Some of the appellant's claims rely on perpetual motion (claim 4-29 and claim 8), and thus contravene established laws of physics. The claims as presented by the appellant thus lack industrial application and are not patentable according to Article 57 EPC.

6. The appellant has repeatedly pointed out that his physical theories and discoveries have not been well understood by the EPO's examiners, by the Board of Appeal and also by established physicists. This may well be so. The board is in no position to determine whether these physical theories and discoveries are correct or not. Yet, an office for granting patents and

a Board of Appeal cannot be a discussion forum for new physical theories unless these are unambiguously proven, are of a technical nature and capable of industrial application. It is clear to the board that the subject-matter claimed by the appellant is not patentable, as the appellant has not demonstrated that they are of a technical nature and that the invention can be applied to processes or devices. To what extent the appellant's physical theories are correct would be a matter for academic debate, and the appropriate forum for the applicant's theories would be a physics journal. In this respect, the board finds it conspicuous that according to the appellant, neither has a leading French physicist understood the theories at issue, nor has the appellant succeeded in having his theories published by an established journal.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte