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**Datasheet for the decision  
of 21 November 2014**

**Case Number:** T 0065/11 - 3.5.03  
**Application Number:** 05022410.4  
**Publication Number:** 1648196  
**IPC:** H04R23/00  
**Language of the proceedings:** EN

**Title of invention:**

Devices and transducers with cavity resonator to control 3-D characteristics/harmonic frequencies for all sound/sonic waves

**Applicants:**

Ramenzoni, Daniele  
Chiesi, Andrea  
Bianchi, Gianandrea

**Headword:**

Devices and transducers with cavity resonator/RAMENZONI et al.

**Relevant legal provisions:**

EPC Art. 78(1)(c), 113(2)  
RPBA Art. 12(4)

**Keyword:**

New subject-matter which could have been presented  
in the first instance proceedings (yes) - admitted (no)

**Decisions cited:**

G 0010/93, T 1990/07, T 0980/08

**Catchword:**



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Case Number: T 0065/11 - 3.5.03

**D E C I S I O N  
of Technical Board of Appeal 3.5.03  
of 21 November 2014**

**Appellants:**  
(Applicants)

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**Representative:**

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**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 16 June 2010  
refusing European patent application No.  
05022410.4 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** F. van der Voort  
**Members:** A. Madenach  
O. Loizou

## Summary of Facts and Submissions

I. The present appeal is against the decision of the examining division refusing European patent application No. 05022410.4 on the grounds that claim 15 contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC), that claims 1 and 15 are not clear (Article 84 EPC and Rule 43 EPC), and that the subject-matter of claim 1 does not involve an inventive step (Articles 52(1) and 56 EPC) having regard to the disclosure of:

D1: US 4 379 951 A;  
D5: US 6 353 670 B1;  
D6: JP 58 106989 A; and  
D7: US 5 461 676 A.

II. The board understands the appellants to be requesting that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 15 of a request filed with the statement of grounds of appeal.

III. In a communication accompanying a summons to oral proceedings the board, without prejudice to its final decision, raised various objections. More specifically, the board gave its preliminary opinion on the question of the admissibility under Article 12(4) RPBA of the request filed with the statement of grounds of appeal, pointing out, with reference to the case law, that the subject-matter of this request constituted a "fresh case" as compared with previous requests and that the request could not be admitted into the procedure. Further, objections under Articles 84 and 123(2) EPC and Article 52(1) EPC in combination with Article 56 EPC in respect of the subject-matter of claim 1 were raised.

IV. No substantive response by the appellants was received. With the letter dated 10 November 2014, the appellants informed the board that they would not attend the oral proceedings.

V. Oral proceedings took place on 21 November 2014 in the absence of the appellants.

After deliberation, the chairman announced the board's decision.

VI. Claim 1 of the sole request reads:

"Acoustic device operates as an injector of acoustic/sonic energy, and as a generator of electromechanical resonance, suitable for use in cybernetics, therapeutic and laboratory uses; said acoustic device contains a modular unit for the transmission of energy comprising a hollow resonating body forming at least a cavity (301, 407, 413, 415) containing a fluid with stabilized temperature and pressure said hollow resonating body defining at least two openings at the entrance extremities and at the opposite exit extremities; at least a dynamic driver inserted in said openings characterized in that said dynamic driver [sic] at least one main solenoid (201) wound around a central opening (207) and at least four fixed coils (209, 217, 231, 239) distributed on a circumference centred on said central opening (207) and in that said dynamic driver comprises a moving coil (243) surrounded by said fixed coils (209, 217, 231, 239) and a central cap (271) fixed to said moving coil (243)."

## **Reasons for the Decision**

### *1. Procedural matters*

The present decision is based on the non-admittance under Article 12(4) RPBA of the sole request. The board raised in its communication an objection concerning the admissibility of this request. The appellants had the opportunity to present their comments on this objection. However, no substantive submissions in response to the objections raised were made. Further, in deciding not to attend the oral proceedings, the appellants chose not to make use of the opportunity to comment during the oral proceedings on any of the objections but, instead, to rely on arguments as set out in the statement of grounds of appeal, which the board duly considered. Under these circumstances, the board was in a position to give a decision in accordance with Article 113(1) EPC.

### *2. "Fresh case" - non-admittance of the request (Article 12(4) RPBA)*

2.1 The application as filed includes a set of claims 1 to 21, of which claim 1 is the sole independent claim. This claim is directed to an acoustic device. The main features of the device are a modular unit and a symmetric modular unit with inversion in the polarity of the power supply. Both modular units comprise at least one cavity formed by a hollow resonating mass or hollow resonating body having one or more openings at opposing extremities, and drivers with magnetic field generators. The latter, in the board's understanding, are also referred to as electro-acoustic transducers.

The claims as originally filed were replaced on 8 May 2009 by a set of claims 1 to 11, of which claim 1 is the sole independent claim and is directed to an acoustic energy generating and transmitting device. The main features of this device are a modular unit with at least one cavity having one or more openings at opposing extremities and a symmetrical modular unit, both units having an inversion in the polarity of the power supply. Fixed solenoids and two or more drivers (electric magnets and/or permanent magnets) are part of the device.

This set of claims was replaced on 20 January 2010 by a set of claims 1 to 15, which formed the basis of the impugned decision and which includes two independent claims, of which claim 1 is directed to an acoustic device and claim 15 to a method for designing an acoustic device. The main features of the acoustic device of claim 1 are a modular unit with a reversible power supply, a Helmholtz cavity resonator with a hollow resonating mass body with inlet and outlet openings and a temperature and pressure stabilized fluid, and a plurality of drivers with magnetic field generators.

2.2 Present claim 1 of the set of claims 1 to 15, as filed with the statement of grounds of appeal, has been considerably amended with respect to both claim 1 as originally filed and claim 1 on which the decision under appeal is based. In particular, the main features of present claim 1 are now a modular unit comprising a hollow resonating body with at least two openings and at least a dynamic driver inserted in the openings, the driver comprising at least one main solenoid, at least four fixed coils, a moving coil, and a central cap,

wherein specific positions of these driver components are defined in the claim. These specific positions appear for the first time in the claims and are described in the description only in connection with an electro-dynamic driver (paragraphs [0076] to [0082] of the application as published). The subject-matter of previous claim 1 as submitted on 20 January 2010 before the examining division comprised only a generic reference to a plurality of drivers with magnetic field generators without specifying their positions, and, moreover, included features relating to a reversible polarity power supply and a fluid stabilized in specific temperature and pressure ranges. These latter features have been omitted in present claim 1. Further, none of the dependent claims 2 to 15 of the claims set filed on 20 January 2010 comprises features relating to the specific positions of the main solenoid, the four fixed coils, the moving coil and the central cap.

2.3 The board therefore concludes that the present request constitutes a "fresh case" in that its main claim (claim 1) relates to features which have not been part of any of the previous claims and in that, by removing features which were present in previous versions of the claim, the claimed subject-matter does not converge to subject-matter which is more restricted as compared with the subject-matter of previous versions of the claim.

2.4 It is established case law that *ex parte* proceedings before the boards of appeal are primarily concerned with examining the contested decision (G 10/93, OJ EPO 1995, 172, points 3 and 4 of the reasons). Since the judicial examination in *ex parte* proceedings concerns the stage prior to grant and lacks a contentious nature, the boards are restricted, in their review of



the decision under appeal, neither to an examination of the grounds for the contested decision nor to the facts and evidence on which the decision is based. In T 980/08 (not published in OJ EPO) the board stated that this absence of restriction **does not amount to a positive obligation for the boards to consider any request filed in appeal especially when the requests bring about a new case.** The appeal proceedings are intended to review the correctness of the decision of the first instance rather than to continue examination by other means.

If it were the intention of the applicants to pursue matter which forms a new case, an appropriate request should and could have been filed before the first instance.

In accordance with Article 12(4) RPBA, the board has the power to hold inadmissible any such request filed with the appeal.

2.5 The appellants argued in the statement of grounds of appeal that the new amendments had been introduced in appeal because the applicants and their previous representative were not able to reach a shared opinion. However, a disagreement with a representative or a change of representative does not constitute unforeseeable developments lying outside the sphere of responsibility of the appellants (see T 1990/07, not published in the OJ, point 7 of the reasons). Hence, the board does not accept this argument.

2.6 In view of the above, the board decided not to admit the amended claims filed with the statement of grounds of appeal into these appeal proceedings, in accordance with Article 12(4) RPBA.

3. Under Article 113(2) EPC the European Patent Office shall consider and decide upon the European patent application only in the text submitted to it, or agreed, by the applicant. In the present case, since the board did not admit the amended claims filed with the statement of grounds of appeal into the proceedings, the patent application lacks claims either submitted or agreed to by the appellants, contrary to Article 78(1)(c) EPC. The decision under appeal can therefore not be set aside.

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



G. Rauh

F. van der Voort

Decision electronically authenticated