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**Datasheet for the decision
of 21 March 2012**

Case Number: T 1196/11 - 3.2.01

Application Number: 09165707.2

Publication Number: 2113458

IPC: B64D 23/00, A63G 31/00,
A01K 73/02

Language of the proceedings: EN

Title of invention:
Wind tunnel skydiving simulator

Applicant:
SKYVENTURE, LLC

Headword:
-

Relevant legal provisions:
EPC Art. 76(1), 111(1)

Keyword:
"Extension of subject-matter beyond content of parent
application (no - after amendments)"
"Remittal - yes"

Decisions cited:
-

Catchword:
-



Case Number: T 1196/11 - 3.2.01

D E C I S I O N
of the Technical Board of Appeal 3.2.01
of 21 March 2012

Appellant: SKYVENTURE, LLC
(Applicant) 7751 Kingspointe Parkway, Suite 126
Orlando, FL 32819 (US)

Representative: Haverkamp, Jens
Patentanwalt
Stefanstraße 2
Kirchhoffgebäude
D-58638 Iserlohn (DE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 30 March 2011
refusing European patent application
No. 09165707.2 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: G. Pricolo
Members: Y. Lemblé
T. Karamanli

Summary of Facts and Submissions

- I. The present appeal is directed against the decision of the Examining Division posted 30 March 2011 to refuse the European patent application No. 09165707.2 which has been filed as a divisional application of the earlier European patent application No. 05803928.0 on 16 July 2009.
- II. The application has been refused under the terms of Article 76(1) EPC. The Examining Division held that the claims of the application as originally filed, published as EP-A-2 113 458, (which is hereinafter referred to as document D0) contained subject-matter which extends beyond the content of the earlier parent application as originally filed, which was published under the number WO-A-2006/012647 and will be referred to hereinafter as document D00.
- III. Oral proceedings were held before the Board on 21 March 2012. The Appellant (Applicant) requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims according to the sole request, filed during the oral proceedings of 21 March 2012.
- IV. Claim 1 according to the sole request reads as follows:
- "A vertical wind tunnel skydiving simulator comprising:
a recirculating airflow plenum having a generally rectangular configuration;
a vertical flight chamber (10, 1503, 1701, 2202)
capable of floating at least one human housed within a

first vertical side member of the generally rectangular configuration of the airflow plenum;
a fan assembly (3);
characterized in
that the fan assembly (3) comprises a plurality of fans (40, 41) in a side-by-side arrangement mounted horizontally in a top member of the airflow plenum;
that the flight chamber (10, 1503, 1701, 2202) is located on the inlet side of the fan assembly (3);
wherein a top member return duct (30), the first vertical side member, and a second vertical side member return duct (5) of the airflow plenum each have a divergent wall segment to expand a flow of recirculating air while maintaining a generally laminar airflow."

Reasons for the Decision

1. The appeal is admissible.
2. As compared to claim 1 as originally filed, claim 1 has been amended to include the feature of claim 1 of D00 that the plurality of fans in a side-by-side arrangement is "mounted horizontally in a top member of the airflow plenum" (feature A). The absence of this feature in claim 1 as originally filed was the sole reason given by the Examining Division for justifying the lack of compliance with Article 76(1) EPC. Thus, claim 1 overcomes the reason on which the decision under appeal is based.
3. Additionally, claim 1 contains the feature of claim 1 of D00, according to which "a top member return duct,

the first vertical side member, and a second vertical side member return duct of the airflow plenum each have a divergent wall segment to expand a flow of recirculating air while maintaining a generally laminar airflow" (feature B).

- 3.1 The addition of this feature addressed the objection raised by the Board during the oral proceedings, that not only the absence of feature A but also the absence of feature B in claim 1 according to all the requests then on file (the main request, based on the claims as originally filed, and the first to fourth auxiliary requests filed with letter dated 5 March 2012) constitutes an infringement of Article 76(1) EPC. Indeed, in the earlier application, features A and B are exclusively disclosed in combination, and there is a clearly recognisable functional and structural relationship between them. In fact, both features are to be regarded as essential for solving the problem underlying the claimed invention, namely to minimise the height of the vertical skydiving simulator while maximising efficiency (see D00: page 4, lines 9-11 and page 4, lines 24-25).

- 3.2 The original wording of feature B of claim 1 of the earlier application D00, which mentions a "duct of the rectangular configuration", has been modified into a "duct (5) of the airflow plenum". This slight amendment does not change in any way the meaning of that feature, since the airflow plenum has been defined in the preamble of the claim as "a plenum having a generally rectangular configuration". It simply makes more sense to speak about the "duct of an airflow plenum" than the

"duct of the rectangular configuration" [of the airflow plenum].

3.3 Finally, as regards the last feature of claim 1 of D00 "wherein an uppermost part of the top member is no more about 50-120 feet above a lowest part of a bottom member of the generally rectangular configuration" (feature C), the Board considers that the skilled person would clearly recognise that this last feature C does not make part of the technical teaching in accordance with the disclosure of the earlier application, because it is only a result which can be achieved by the structural design of the vertical wind tunnel skydiving simulator, which design is defined by the preceding features of claim 1 of D00. Thus it is apparent on a reading of the earlier application D00 that feature C is superfluous and that it can be dispensed with in claim 1.

3.4 Consequently, the Board comes to the conclusion that there is a direct and unambiguous basis in the earlier application D00 for the specific combination of the features of claim 1 according to the present request. Thus, claim 1 meets the requirements of Article 76(1) EPC.

4. The Board is aware that the Examining Division already expressed its intention to grant a European patent on the basis of an amended set of claims by way of a communication under Rule 71(3) dated 1 December 2010, which was set aside with a brief communication dated 15 February 2011. However, since the decision under appeal is exclusively concerned with the issue of Article 76(1) EPC and the wording of claim 1 differs

from that of the claim forming the basis for the communication under Rule 71(3) EPC, the Board considers it appropriate to exercise its discretion to remit the case to the Examining Division pursuant to Article 111(1) EPC for further prosecution.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.

The Registrar

The Chairman

A. Vottner

G. Pricolo