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**Datasheet for the decision  
of 29 November 2016**

**Case Number:** T 0469/12 - 3.5.02

**Application Number:** 07819745.6

**Publication Number:** 2097968

**IPC:** H02K41/03

**Language of the proceedings:** EN

**Title of invention:**

Switched reluctance linear motor/generator

**Applicant:**

Wedge Global, S.L.

**Relevant legal provisions:**

EPC Art. 84, 123(2)

**Keyword:**

Claims - clarity after amendment (yes)

Amendments - added subject-matter (no)

Remittal to the department of first instance



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Case Number: T 0469/12 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 29 November 2016**

**Appellant:** Wedge Global, S.L.  
(Applicant) C/Hernán Cortés, 39  
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**Representative:** Temiño Ceniceros, Ignacio  
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**Decision under appeal:** **Decision of the Examining Division of the European Patent Office posted on 12 October 2011 refusing European patent application No. 07819745.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** R. Lord  
**Members:** M. Léouffre  
W. Ungler

## **Summary of Facts and Submissions**

- I. The applicant appealed against the decision of the examining division, posted on 12 October 2011, to refuse the application No. 07 819 745.6. The statement of grounds of appeal was received on 10 February 2012.
- II. The examining division held that the claims then on file were not clear in the sense of Article 84 EPC and that their subject-matter extended beyond the content of the application as originally filed, contrary to Article 123(2) EPC.
- The examining division also objected that the subject-matter of claim 1 lacked an inventive step (Article 56 EPC) having regard to the machine disclosed in EP 0 527 593 A2 (D1), from which it differed only in that:
- the machine was a linear reluctance motor/generator;
  - and "concentrated coils" were attached to the poles of the intermediate stators.
- III. In the communication annexed to the summons to oral proceedings dated 24 August 2016, the board referred to a new document WO 95/12914 A1 (D3), which disclosed a machine comprising the two features mentioned above and represented therefore closer prior art than D1. A copy of document D3 was annexed to a separate communication also dated 24 August 2016.

With a letter dated 27 October 2016, and in view of the new evidence cited by the Board, the appellant requested that the case be remitted to the department of first instance and that the oral proceedings be cancelled.

With a communication dated 28 October 2016 the appellant was informed that a remittal to the first instance for further prosecution would be considered by the board solely for a request complying with the requirements following from Articles 83, 84 and 123(2) EPC.

- IV. At the oral proceedings, which took place before the board as scheduled on 29 November 2016, the appellant filed claims 1 and 2 according to a new request as their sole request.

The appellant requested that the decision under appeal be set aside and that the case be remitted to the department of first instance for further prosecution on the basis of that new request.

- V. Claim 1 of the sole request reads as follows:

"Linear switched reluctance motor/generator, comprising, at least, two translators (1,2) and a stator (3) wherein the stator (3) is placed between the two translators (1,2); and also comprising two outermost stators, each having an outer yoke (4,5) wherein the poles of said yokes (4,5) extend perpendicularly to the moving direction inside the machine; and wherein the intermediate stator (3) is placed within said outermost stators (4,5); said yokes (4,5) and intermediate stator (3) comprising a plurality of poles arranged in the moving direction of the translator (1,2) to each of which a concentrated coil (6) is attached; and wherein between each pair of stators, a translator (1,2) is located; and wherein the poles of the yokes (4,5) and the intermediate stator (3) are aligned in a direction

perpendicular to the moving direction of the translator; wherein said poles of the intermediate stator (3) being equally spaced each other in the moving direction;  
and wherein each translator and each stator is separated by an air gap; and wherein a magnetic flux is fed by a magneto-motive force of the coils (6) attached to the yokes (4,5) and the intermediate stator (3); and wherein the magnetic flux forms a closed loop through both yokes (4,5);  
said magnetic flux being perpendicular to the air gap."

Claim 2 is dependent on claim 1.

VI. The appellant essentially argued as follows:

New claim 1 was based on claim 1 of the main request as filed with the grounds of appeal and had been amended to take into account the objections of lack of clarity and added subject-matter raised by the board in their communication accompanying the summons to oral proceedings. In particular the unclear features

- "power scalable by enlargement of any of its three dimensions, the number of poles in active part, the width of the machine and the number of intermediate translators and stators; the power that may generate is proportional to the volume of its active part which may be performed only by the increase in the number of identical parts"
  - "and wherein the coils (6) being put in series"
- had been deleted.

The effect of the arrangement of the coils was specified by the introduction of the following feature: "wherein the magnetic flux forms a closed loop through both yokes (4,5)", which was based on the corresponding

feature of original claim 1 (line 8) read in the light of the arrangement shown in figure 1.

Finally, claim 2 had a literal basis on page 5, lines 22 to 24 of the description. The request was therefore clear and had a basis in the original application, as required by Articles 84 and 123(2) EPC.

Since the request was filed as a reaction to the objections raised by the board, the request should be admitted into the proceedings.

In the summons to oral proceedings, the board cited and referred to a new document D3. In order to give the applicant the opportunity of discussing the merit of the request with two instances, the case should be remitted to the department of first instance for the assessment of novelty and inventive step.

### **Reasons for the Decision**

1. The appeal is admissible.
  
2. *Admissibility of the request*

The request was filed during the oral proceedings before the board, i.e. after the date for filing of further submissions mentioned in the communication accompanying the summons to oral proceedings. With the filing of that request, the subject-matter for which protection is sought has not been changed, but has rather been clarified and more precisely defined, so that, taking due account of Article 13(3) RPBA, the board exercised its discretionary power to admit the request into the proceedings.

3. *Clarity (Article 84 EPC) and admissibility of amendments (Article 123(2) EPC)*

The board agrees with the appellant that the unclear features which were objected to in the communication accompanying the summons to oral proceedings have been removed and the linguistic errors corrected, so that claims 1 and 2 of the now sole request are clear and comply with the requirements following from Article 84 EPC.

The board also agrees with the appellant that claim 1 of the new request has a basis in the parts of the original application mentioned by the appellant. The board is therefore satisfied that claims 1 and 2 of the now sole request do not infringe Article 123(2) EPC.

4. *Remittal to the department of first instance*

4.1 The examining division considered that claim 1 of the request then on file differed from the prior art disclosed in D1 in that:

- the machine is a linear reluctance motor/generator;
- and "concentrated coils" are attached to the poles of the intermediate stators.

4.2 Subsequently, in its communication accompanying the summons to oral proceedings, the board referred to document D3, which discloses a machine comprising also the two features mentioned above, and expressed strong doubts about the novelty of claim 1 then on file, having regard to this new evidence.

4.3 Claim 1 of the request filed during the oral proceedings before the board has been amended and comprises further, inter alia, the feature that "the magnetic flux forms a closed loop through both yokes

(4,5)". This feature is understood by the board as implicitly defining a particular arrangement of the coils positioned on the intermediate stator, namely an arrangement which allows the flux to form a loop through both yokes. This feature does not appear, *prima facie*, to be disclosed in either of documents D1 and D3. This feature has also not been examined. Claim 1 of the request discussed in the first instance examination comprised in this respect only the feature "around each pole of the intermediate stators a concentrated winding is placed", and the objection held against this feature and raised in item 5.3 of the decision under appeal did not take account of any possible effect on the flux due to the arrangement of the coils of the intermediate stator.

- 4.4 The appellant in their letter dated 27 October 2016, requested the possibility to discuss the matter at two different instances, because the new document would "affect seriously to the inventiveness of the invention". The appellant reiterated this request during the oral proceedings.
- 4.5 Since the assessment of novelty and inventive step underlying the claimed invention might depend on the newly cited document D3, and maybe other documents to be revealed, the board, exercising its discretion under Article 111(1) EPC, decided to grant the request of the appellant for remittal to the department of first instance.



**Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated