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**Datasheet for the decision  
of 25 January 2019**

**Case Number:** T 2457/13 - 3.5.01

**Application Number:** 09167747.6

**Publication Number:** 2284780

**IPC:** G06Q10/00

**Language of the proceedings:** EN

**Title of invention:**

Method for laying-out a business park and a business park

**Applicant:**

G.S. Hofman Holding B.V.

**Headword:**

Laying-out a business park/HOFMAN

**Relevant legal provisions:**

EPC Art. 52(2), 56, 111(1), 116(1)

**Keyword:**

Declaration of non-establishment of the Search Report  
Patentable invention - method of laying out business park (no  
- mental act)  
Inventive step - arranging valves in a ring main to enable  
exchange of wastewater for space heating between users (not  
notorious)  
Remittal to the department of first instance - (yes)

**Decisions cited:**

T 0019/87, T 0042/90, T 0641/00, T 0258/03, T 1434/06,  
T 1411/08, T 2299/10



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Case Number: T 2457/13 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 25 January 2019**

**Appellant:** G.S. Hofman Holding B.V.  
(Applicant) Blauwhek 27  
2676 NB Maasdijk (NL)

**Representative:** Land, Addick Adrianus Gosling  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 9 July 2013  
refusing European patent application No.  
09167747.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** W. Chandler  
**Members:** M. Höhn  
C. Schmidt

## **Summary of Facts and Submissions**

- I. This appeal is against the decision of the examining division refusing European patent application No. 09167747.6 pursuant to Article 97(2) EPC. The division found that the method for laying out a business park in claim 1 of the main request was a mental act and excluded from patentability under Article 52(2)(c) EPC. Claim 4 to the business park itself lacked inventive step (Article 56 EPC). The method and apparatus claims of the first to eighth auxiliary request were found to lack inventive step (Article 56 EPC).
- II. The division referred to the following prior art publications:
- D1: D. Herman: "Investigation of the Technical and Economic Feasibility of Micro-Grid-Based Power Systems", 1 January 2001, Palo Alto, CA  
Retrieved from the Internet:  
[URL:http://www.smartgridnews.com/artman/uploads/1/EPRI\\_Technical\\_Report\\_Micro-Grid.pdf](http://www.smartgridnews.com/artman/uploads/1/EPRI_Technical_Report_Micro-Grid.pdf) and
- D2: US 5605419.
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision be set aside and that a patent be granted on the basis of the main request or one of the first to ninth auxiliary requests, essentially corresponding to the subject-matter of the refused requests, all submitted with the statement setting out the grounds of appeal. Oral proceedings were requested as an auxiliary measure.
- IV. In the communication accompanying the summons to oral proceedings, the Board essentially agreed with the

examining division's findings on the main to third auxiliary request and added the following with respect to D1:

*"First auxiliary request*

4. *Article 56 EPC - Inventive step*

...

*D1 discloses a distribution infrastructure for electrical power, where units/users are interconnected by a distribution system (see e.g. page v, Background) from which the services are made available (see e.g. figures 2-4 to 2-6). D1 mentions the application for commercial/industrial office parks, i.e. business parks (see page 1-1, third para.). D1 explicitly mentions the potential for lower total cost, greater efficiency, increased reliability, and increased security as advantages.*

...

*Auxiliary request III*

7. *D1 discloses the additional feature of claim 4 according to this request of using warm wastewater for space heating (see heat recovery in figures 2-4 and 2-5; see also page 2-6, last para. "Waste heat of the fuel cell is employed for heating purposes" and page 2-7, first para. "efficient distribution of waste heat")."*

V. Concerning the fourth auxiliary request, the Board stated:

"8. *Claim 4 according to this request further specifies that the conduits form a ring main, and wherein valves are arranged in the ring main so that services, such as warm wastewater for space heating, can be exchanged via the ring main between users of the plots connected to the ring main.*

8.1 *D1 discloses an architecture of either a networked or a radial distribution system (see D1, figure 2-13). The networked alternative can additionally be implemented as a looped architecture (see page 2-2, second para. from the bottom) for the electrical conduits. While it might be speculated that "looped" is comparable to the form of a ring (i.e. without the interconnected networked structure as shown in figure 2-13), this is not disclosed for heat distribution, which is realised as a radial structure (see e.g. figure 2-5 of D1).*

*D1 therefore does not disclose that valves are arranged in the ring main so that services, such as warm waste water for space heating, can be exchanged via the ring main between users of the plots connected to the ring main. D2 does not disclose such a feature either.*

8.2 *In the Board's view there is a difference between electrical conduits and conduits transporting fluids from a technical point of view so that it cannot merely be assumed that the skilled person would have applied the same concept of looped architecture for heat distribution. In particular, D1 explicitly teaches away from the claimed solution, because it shows embodiments where even in a networked architecture for electrical power distribution, the distribution of fluids for waste heat is not in a ring main.*

8.3 *The contested decision considered the use of valves for*

*controlling the distribution of fluids in a ring structure to be well known and not involving an inventive activity (see point 3.4 of the decision under appeal). No written prior art was cited, in spite of the fact that the applicant had disputed such a feature to have been notoriously known.*

9. *Despite D1 and D2 having been introduced during substantive examination, there is no indication that a systematic search for pertinent prior art has been carried out.*

9.1 *However, according to the jurisprudence of the boards an additional search for pertinent prior art may be dispensed with only if the technical features of the claims are considered to be "notorious", i.e. generic and so well known that they cannot reasonably be refuted (see T 1411/08 of 6 June 2011, point 4; T 2299/10 of 31 March 2014, point 4.5).*

*In the Board's view, the afore-mentioned distinguishing features go beyond the mere common general knowledge (for example the commonly encountered use of a computer, a network, an electronic database) and cannot be considered "notorious". In particular, it is not considered to be notorious knowledge to arrange valves in a ring main so that services, such as warm wastewater for space heating, can be exchanged via the ring main between users of the plots connected to the ring main.*

9.2 *Thus, present claim 4 according to this request cannot be definitively assessed with respect to inventive step without knowledge of the relevant documented prior art. Thus, auxiliary request IV requires a search for*

*relevant prior art. Hence the matter must be remitted for an additional search and further examination.*

10. *According to Article 111(1) EPC the Board may exercise any power within the competence of the examining division (which was responsible for the decision under appeal) or remit the case to that department for further prosecution. It is thus at the Board's discretion whether it examines and decides the case or whether it remits the case to the department of first instance. For the afore-mentioned reasons, the Board therefore considers that in the present case remittal is the more appropriate course of action."*

VI. Accordingly, the Board invited the applicant to indicate whether the auxiliary request for oral proceedings was maintained and/or to file an amended main request considering the reasons given in the communication.

VII. In a reply, dated 4 January 2019, the appellant made auxiliary request IV its new main request and requested a written decision.

VIII. The oral proceedings appointed for 7 February 2019 were then canceled.

IX. Independent claim 4 of the new main request reads as follows:

"4. Business park which comprises a number of plots and which is also provided with one or more distribution stations for obtaining and further transport of mains services such as water, power, heat, cooling medium, telecommunication and the like, and a number of conduits preferably laid in a shared encasing duct for



the purpose of distributing the mains services from the distribution station to the users of the plots, wherein the conduits (and the encasing duct) form a ring main, and wherein valves are arranged in the ring main so that services, such as warm wastewater for space heating, can be exchanged via the ring main between users of the plots connected to the ring main."

### **Reasons for the Decision**

1. In view of the new main request, which corresponds to the former auxiliary request IV dealt with in the annex to the summons cited above and the reasons given therein (see points 8 and 9), the Board remits the case to the department of first instance for further prosecution.
  
2. Regarding the appellant's auxiliary request for oral proceedings submitted with the statement setting out the grounds of appeal, it is clear from the mandatory wording of Article 116(1) EPC that a party which requests oral proceedings is in principle entitled to such proceedings (see for example T 0019/87 of 16 April 1987, OJ EPO 1988, 268). However, in the present case the request for oral proceedings was made on an auxiliary basis and reads: "If the Board of Appeal, in view of the Examining Division's Decision and the refutation there against above is of the opinion that the application has been refused justly, then as a precaution there against Oral Proceedings are herewith formally requested". Since the Board does not confirm the contested decision and does not refuse the application, oral proceedings are not necessary. The

Board notes that remitting the case does not fall under the conditions set out in this request.

The appellant requested grant of a patent on the basis of the main request. However, as stated in decision T 42/90 of 25 February 1991, point 5, the decision to remit the case to the department of first instance is not to be considered as being adverse to that party, so that no oral proceedings before the Board need to be appointed (see also T 1434/06 of 12 April 2010, point 3 and "Case Law of the Boards of Appeal of the EPO", 8th edition, 2016, III. C.2.5).

For these reasons the decision can be taken in writing.

3. Since the decision can be taken on the basis of the main request, the Board does not have to deal with the auxiliary requests.

## **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 on the basis of the main request, originally submitted as auxiliary request IV with the statement setting out the grounds of appeal, which should include an additional search.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated