

Internal distribution code:

- (A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

**Datasheet for the decision
of 3 March 2015**

Case Number: T 0809/14 - 3.2.08
Application Number: 10192242.5
Publication Number: 2325524
IPC: F16H37/02
Language of the proceedings: EN
Title of invention:
Stepless variable transmission device with parallel low gear
wheel group
Applicant:
Yang, Tai-Her
Headword:

Relevant legal provisions:
EPC Art. 84, 123(2), 111(1)
Keyword:
Claims - clarity - main request (no) -
clarity after amendment (yes)
Amendments - added subject-matter (no)
Appeal decision -
remittal to the department of first instance (yes)
Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 0809/14 - 3.2.08

**D E C I S I O N
of Technical Board of Appeal 3.2.08
of 3 March 2015**

Appellant: Yang, Tai-Her
(Applicant) No. 59 Chung Hsing 8 Street
Si-Hu Town
Dzan-Hwa (TW)

Representative: Chew, Kwan Chong Daniel
Withers & Rogers LLP
4 More London Riverside
London SE1 2AU (GB)

Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 20 November
2013 refusing European patent application No.
10192242.5 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman T. Kriner
Members: M. Foulger
C. Schmidt

Summary of Facts and Submissions

- I. The appellant (applicant) lodged an appeal against the decision of the Examining Division, dispatched on 20 November 2013, refusing the European patent application no. 10 192 242.5.

The notice of appeal and the statement setting out the grounds of appeal were filed within the given time limits.

- II. The Examining Division held that the main request and the first and second auxiliary requests then on file did not meet the requirements of Article 123(2) EPC. The third auxiliary request did not meet the requirements of Article 84 EPC.
- III. Oral proceedings took place before the Board of Appeal on 3 March 2015. The appellant was not represented at the oral proceedings which in accordance with Rule 115(2) EPC and Article 15(3) RPBA were held in his absence.
- IV. The appellant requested that the decision under appeal be set aside and a patent granted based on the main request filed with the grounds of appeal. Alternatively that a patent be granted on the basis of the first auxiliary request filed with the grounds of appeal or the second or third auxiliary requests filed on 3 February 2015.
- V. The sole claim of the main request reads as follows:

"A stepless variable transmission device including a parallel-connected low gear wheel group (102), wherein the low gear transmission wheel group (102), equipped

with a one-way transmission unit (111) which is arranged to transmit with fixed speed ratio in same rotary direction, is installed between the input shaft and output shaft of the stepless variable transmission device; and wherein the stepless variable transmission device further includes a clutch device (212) with angular displacement difference and/or a clutch device (222) installed at the output shaft between a hetero-shaft stepless variable transmission device (100) and the low gear transmission wheel group (102) for eliminating the vibration produced by the hetero-shaft stepless variable transmission device (100) and the low gear transmission wheel group (102), wherein they both do not operate with fully same speed ratio, for overloaded transmission."

The sole claim of the first auxiliary request differs from that of the main request in the deletion of "or" from the "and/or" conjunction.

The sole claim of the second auxiliary request differs from the main request in the deletion of the feature "wherein they both do not operate with fully same speed ratio, for overloaded transmission."

The sole claim of the third auxiliary request differs from that of the second auxiliary request in the deletion of "or" from the "and/or" conjunction.

VI. The following document plays a role in this decision:
D1: EP 2 085 650 A2

VII. The appellant argued essentially that:

Main and first auxiliary requests:

Article 123(2) EPC

The claim was based on claim 12 as originally filed. Other than minor amendments for clarity, the feature has been added whereby the clutch device (222) is "installed at the output shaft between a hetero-shaft stepless variable transmission device (100) and the low gear transmission wheel group (102)". This was disclosed on page 9, lines 29-30 of the originally filed description. Moreover this feature was shown in Figs. 1-3,8-10.

The claim of the first auxiliary request differed merely in the deletion of "or" in the "and/or" conjunction.

Clarity

The feature "wherein they both do not operate with fully same speed ratio, for overloaded transmission" was clear. The skilled person reading the claim as a whole would immediately understand that "overloaded transmission" referred to a condition between the transmission source and the load when both do not operate with fully same speed ratio.

Second auxiliary request:

Article 123(2) EPC

The deletion of the phrase "wherein they both do not operate with fully same speed ratio, for overloaded transmission" was admissible because these features were not described as being essential in the application as originally filed.

Clarity

As the phrase "wherein they both do not operate with fully same speed ratio, for overloaded transmission" had been deleted there was no cause for objection in the claim.

Novelty with respect to D1

A clutch device (222) provided between the hetero-shaft type stepless variable transmission device and the low gear transmission wheel group was not disclosed in D1.

Reasons for the Decision

1. The appeal is admissible.
2. Main and first auxiliary request
 - 2.1 Article 123(2) EPC

The claim of the main and first auxiliary requests is based on independent claim 12 as originally filed. The feature relating to the position of the clutch has been added. This was disclosed on page 9, lines 29-30 of the application as originally filed (column 10, lines 51-55 of the published application). Thus the claim does not contain subject-matter which extends beyond that of the application as originally filed.

The claim of the first auxiliary request differs from that of the main request in that in the term "and/or", the "or" alternative has been deleted. This is also not objectionable under Article 123(2) EPC.

Therefore the claim of both the main and first auxiliary requests meets the requirements of Article 123(2) EPC.

2.2 Clarity

The feature "for overloaded transmission" is not clear in the sense of Article 84 EPC. In particular due to its arrangement after the comma it is separated grammatically from the previous clause. Therefore the reader does not know to which element of the claim this term relates to. Moreover this term is ambiguous because it can either mean suitable for providing overloaded transmission or can refer to a case where overloaded transmission occurs.

As the claims of both the main and the first auxiliary requests contain this unclear term then neither request is allowable (Article 84 EPC).

3. Second auxiliary request.

3.1 Article 123(2) EPC

The claim of this request corresponds to that of the main request wherein the phrase "wherein they both do not operate with fully same speed ratio, for overloaded transmission" has been deleted.

The phrase "they both do not operate with fully same speed ratio" implies that there is a speed difference across the input and output side of the clutch. That this is a possibility is included in the term "clutch". This feature appears merely to indicate that the vibration reduction is achieved by slipping the clutch when there is a speed difference. This is explained in

the description in column 10, lines 42-47. The claim specifies that the clutch (222) is for eliminating the vibration produced by the hetero-shaft stepless variable transmission device (100) and the low gear transmission wheel group (102). For the clutch to achieve this there must be a speed difference. The deleted feature "wherein they both do not operate with fully same speed ratio" is thus implied by the remaining features of the claim. Its deletion does not therefore change the subject-matter of the claim and is consequently compliant with Article 123(2) EPC.

In the application as originally filed, the feature "for overloaded transmission" was not referred to as being essential for the invention. Moreover this feature, insofar as it can be understood, is not indispensable for the function of the invention because this feature merely further describes how the already defined device should operate and consequently no modification of other features is required. The deletion of this feature does not therefore go beyond the content of the application as originally filed. The requirements of Article 123(2) EPC are met.

3.2 Clarity

As the unclear feature of claim 1 objected to above has been deleted then the clarity objection is no longer relevant.

3.3 Novelty

The subject-matter of the claim is however prima facie not new (Article 54(1) and (2) EPC).

The wording of the claim is such that the clutch device

(212) and the clutch device (222) are linked with an "and/or" construction. This construction logically means that either both clutch devices listed are present or that only one of the two clutch devices is present. In the case where only the clutch device (212) is included in the scope of the claim, D1, Figure 4 discloses:

A stepless variable transmission device including a parallel-connected low gear wheel group (102), wherein the low gear transmission wheel group (102), equipped with a one-way transmission unit (111) which is arranged to transmit with fixed speed ratio in same rotary direction, is installed between the input shaft and output shaft of the stepless variable transmission device; and wherein the stepless variable transmission device further includes a clutch device (212) with angular displacement difference (the device 212 is consistently presented in the description, e.g. column 11, line 52, as being of a "sliding type", which indicates that there is an angular displacement difference between input and output).

Therefore, all features of claim 1 are known from D1. The appellant's argumentation is based on D1 not disclosing the feature "a clutch device (222) installed at the output shaft between a hetero-shaft stepless variable transmission device (100) and the low gear transmission wheel group (102)". However as discussed above this feature is to be regarded as optional and consequently the appellant's arguments are not convincing in this respect.

This request is therefore not allowable because the subject-matter of the claim is not new with regard to D1.

4. Third auxiliary request

The claim of this request differs from that of the second request in that in the term "and/or", the "or" alternative has been deleted. By simply deleting alternatives from the claim no subject-matter has been added.

The claim of this request therefore meets the requirements of Articles 84 and 123(2) EPC i.e. the grounds for refusal of the application. Moreover the claim is not clearly unallowable - it is for example further restricted over the subject-matter identified as being known from the prior art in the obiter dictum of the impugned decision.

In order to preserve the right to have the case examined in two instances, the Board considers it appropriate to remit the case to the Examining Division for further prosecution in accordance with its discretion under Article 111(1) EPC.

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 based on the claim of the third auxiliary request.

The Registrar:

The Chairman:



V. Commare

T. Kriner

Decision electronically authenticated