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**Datasheet for the decision
of 24 July 2019**

Case Number: T 0699/16 - 3.2.04

Application Number: 08788433.4

Publication Number: 2191142

IPC: F04D25/08, F04D33/00

Language of the proceedings: EN

Title of invention:

A FAN

Patent Proprietor:

Dyson Technology Limited

Opponents:

German Pool (Deutschland) GmbH
Fresnomaq Industria de Maquinas S.A.

Headword:

Relevant legal provisions:

EPC Art. 54(2), 123(2)
EPC R. 103(1)(a), 111(2)

Keyword:

Appealed decision - reasoned (yes)

Reimbursement of appeal fee - (no)

Novelty - (no)

Amendments - allowable (no) - intermediate generalisation

Decisions cited:

Catchword:



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Case Number: T 0699/16 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 24 July 2019

Appellant: Dyson Technology Limited
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 16 March 2016
revoking European patent No. 2191142 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chairman A. de Vries
Members: S. Oechsner de Coninck
 T. Bokor

Summary of Facts and Submissions

I. The appellant (proprietor) lodged an appeal received on 21 March 2016 against the decision of the Opposition Division dispatched on 16 March 2016 on the revocation of the patent EP 2 191 142, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 26 July 2016.

II. The opposition was filed against the patent as a whole and based on Article 100(b) together with 83 EPC, and (a) together with 52(1), 54(1) and 56 EPC. The Opposition Division held that the subject-matter of claim 1 according to the main request lacked novelty having regard to the following documents in particular:
E1: JP 64-021300 U
E1': English translation of E1

and that claim 1 according to auxiliary requests 1 to 4 contained subject-matter which extended beyond the content of the application as filed.

III. With letter of 6 December 2018 the Board summoned the parties to oral proceedings. In a communication from the Board of 13 May 2019, in preparation for oral proceedings, the Board expressed its provisional opinion regarding novelty vis-à-vis E1 for claim as granted and according to the auxiliary request 1 as well as regarding added subject-matter for the auxiliary requests 1 to 3.

IV. Oral proceedings were held on 24 July 2019 in the absence of the appellant, who had declared with letter of 25 March 2019 that they would not attend.

V. The appellant/proprietor requests that the decision be set aside and that the patent be maintained as granted (main request) or in an amended form on the basis of any of the auxiliary requests 1 to 3, all filed with the statement of the grounds on 26 July 2016. They further request reimbursement of the appeal fee and remittal to the Opposition Division for further examination.

VI. The respondent/opponent 1 requests that the appeal be dismissed. They further request the non-admission of the auxiliary requests.

- The respondent/opponent 2 did not make substantive submissions nor file requests in the present appeal proceedings.

VII. The wording of the independent claim 1 of the relevant requests reads as follows:

Main request

"A bladeless fan assembly for creating an air current, the fan assembly comprising a nozzle (1) and means (22, 30) for creating an air flow through the nozzle, the nozzle (1) comprising an interior passage (10), and a mouth (12) for receiving the air flow from the interior passage, characterised in that the nozzle comprises a Coanda surface (14) located adjacent the mouth (12) and over which the mouth (12) is arranged to direct the air flow."

Auxiliary request 1 (amendments underlined)

1. A bladeless fan assembly for creating an air current, the fan assembly comprising a nozzle (1) and means (22, 30) for creating an air flow through the nozzle (1), the nozzle (1) comprising an interior passage (10), and a mouth (12) for receiving the air flow from the interior passage (10),

characterised in that

the nozzle (1) comprises a Coanda surface (14), located adjacent the mouth (12) and over which the mouth (12) is arranged to direct the air flow, such that the air flow exits the nozzle (1) via the mouth (12) and passes over the Coanda surface (14).

Auxiliary request 2 (amendments with respect to granted claim 1 underlined)

1. A bladeless fan assembly for creating an air current, the fan assembly comprising an annular nozzle (1) and means (22, 30) for creating an air flow through the nozzle (1), the nozzle (1) comprising an annular interior passage (10), which is formed as a continuous loop or continuous duct within the nozzle (1), and a mouth (12) for receiving the air flow from the interior passage (10),

characterised in that

the nozzle (1) comprises an inner wall (38) and an outer wall (40) defining the interior passage (10) and the mouth (12), and the inner wall (38) and the outer wall (40) are arranged in a looped or folded shape such that the inner wall (38) and the outer wall (40) approach one another to define the mouth (12), the mouth (12) comprising a tapered region (42) narrowing to an outlet (44); the nozzle (1) comprises a Coanda surface (14) located adjacent the mouth (12) and over which the mouth (12) is arranged to direct the air flow.

Auxiliary request 3 (amendments with respect to granted claim 1 underlined)

1. A bladeless fan assembly for creating an air current, the fan assembly comprising a nozzle (1) and means (22, 30) for creating an air flow through the nozzle (1), the nozzle (1) comprising an interior passage (10), and a mouth (12) for receiving the air flow from the interior passage (10), the nozzle (1) extending about an axis (X) to define a central opening (2) through which air from outside the fan assembly is drawn by the air flow emitted from the mouth (12), wherein the nozzle (1) has a depth in the direction of said axis, starting with the central opening (2) being formed by the interior passage (10) formed by a portion of the inner wall (38) in a tapered region (42) of the mouth (12), characterised in that the nozzle (1) comprises a Coanda surface (14), located adjacent the mouth (12) and over which the mouth (12) is arranged to direct the air flow, the shape of the nozzle (1) is annular, the interior passage (10) is annular and is formed as a continuous loop or continuous duct within the nozzle (1), the nozzle (1) is formed from at least one wall defining the interior passage (10) and the mouth (12), the nozzle (1) comprises an inner wall (38) and an outer wall (40), the walls (38, 40) being arranged in a looped or folded shape such that the inner wall (38) and outer wall (40) approach one another, the inner wall (38) and the outer wall (40) together define the mouth (12) and the mouth (12) extends about the axis (X), the mouth (12) comprises the tapered region (42) narrowing to an outlet (44), the outlet (44) comprises a gap or spacing formed between the inner wall (38) of the nozzle (1) and the outer wall (40) of the nozzle (1), the spacing between the opposing surfaces of the walls (38, 40) at the outlet (44) of the mouth (12) being in the range from 1 mm to 5 mm.

- VIII. The appellant argues as follows:
- the impugned decision fails to meet the requirements of Rule 111(2) EPC because it merely quotes the appellant's arguments without addressing them, and therefore is not reasoned.
 - E1 does not disclose a mouth arranged over the Coanda surface to direct the air flow according to the characterising feature, and is not novelty destroying.
 - Each of the expressions added in claim 1 according to the auxiliary requests 1 to 3 is directly and unambiguously supported by the original description as filed.

- IX. The respondent argues as follows:
- Auxiliary requests 1 to 3 are late filed and should not be admitted.
 - The wording of claim 1 should be interpreted broadly because it allows for the mouth to direct air independently of the Coanda surface. This is also the case in E1, which therefore is novelty destroying.
 - Auxiliary requests 1 to 3 are late filed and should not be admitted. Furthermore, the features added to claim 1 of auxiliary request 1 is also known from E1. Claim 1 of auxiliary requests 2 and 3 contains an unallowable intermediate generalisation.

Reasons for the Decision

1. The appeal is admissible.
2. Procedural issues
 - 2.1 In its communication in preparation to the oral proceedings, see section 5, the Board gave the following provisional opinion:

"5. Reimbursement of the appeal fee
According to Rule 103(1)(a) EPC reimbursement is conditional on the appeal being held allowable. The appellant requests reimbursement of the appeal fee by virtue of a substantial procedural violation, in that the decision of the Opposition Division fails to address essential arguments of the appellant, so that it is not reasoned (Rule 111(2) EPC) and violates the appellant's right to be heard (Article 113 EPC)."

"It is true that the decision, see e.g. reasons 16.1, in that it first summarizes the opponent's arguments,

then the proprietor's to conclude with a brief paragraph that it does not follow the proprietor's view, is not a glowing example of discursive reasoning. However, the concluding paragraph does add the information on how the division reads the claim, "namely in that the mouth directs the air flow independently of the Coanda surface". Even if rather succinct (and regardless of its merit), this statement does provide some insight into the division's motivation for not accepting the proprietor's viewpoint, but rather implicitly following the opponent's position. Thus, though the decision is far from perfect in logical structure and clarity of reasoning, it nevertheless does appear to address the proprietor's argument. For that reason the Board at present is unable to see a substantial procedural violation that might justify reimbursement of the appeal fee."

"The Board is also not able to see a violation of the right to be heard (page 23 of the grounds) in the division's announcement concerning auxiliary requests 2 and 3 (points 8,9 of the minutes)."

2.2 Absent any further argument or reply from the appellant on the issue the Board sees no reason why it should depart from its preliminary view. It concludes that no substantial procedural violation occurred that would justify a reimbursement of the appeal fee according to Rule 103(1)(a) EPC.

3. Main request - Novelty

3.1 In the communication in preparation for the oral proceedings, see section 3, the Board gave its provisional opinion that

"3.1 The impugned decision found the subject-matter of claim 1 as granted to lack novelty with respect to E1. It is common ground that E1 discloses a bladeless fan 1 assembly according to the preamble of claim 1 also comprising: a nozzle with Coanda surface 37, adjacent a mouth 35 for receiving the air flow from the interior passage 31 (see figure 1)."

"3.2 The appellant however disputes the decision's finding that the characterizing feature of claim 1 is also disclosed in E1. In particular they argue that this feature is to be read as meaning that the mouth is arranged to direct the air flow over the Coanda surface, rather than (in the division's understanding) that the mouth is arranged over the Coanda surface for directing airflow (in some non-specified direction).

In the Board's provisional view the wording of the final feature is ambiguous and indeed allows of either reading. However, both readings are seen to be disclosed in E1. Thus, because the mouth (port) 35 is located adjacent the Coanda surface 37 and by virtue of the Coanda effect, it is arranged to direct the air flow over the Coanda surface. Thus even if the air flow from the mouth is directed initially radially inward, as one of the lateral walls of the mouth or discharging port 35 merges seamlessly into the wall of the Coanda surface 37, due to the well known Coanda effect, expressly described in E1 (E1' : page 4, 1st complete paragraph; page 6, first complete paragraph and final paragraph continued onto page 7), air flow from mouth 35 is guided along Coanda surface 37. It appears thus unambiguously clear to the skilled person that the mouth 35 that is located adjacent a Coanda surface 37 according to a first feature of the characterising

portion of claim 1, is also configured to exhaust the air in a direction tangential to the convex Coanda surface 37 and that consequently the mouth is arranged to direct air "over" the Coanda surface."

"3.3 In this regard the report submitted in first instance and meant to prove that the fan described in E1 does not actually exhibit the Coanda effect, is not considered convincing. The Board shares the view of the Opposition Division that simulations that are based on dimensions measured on a schematic drawing such as figure 1 of E1 can have but very limited probative value. Figure 1 of E1 is clearly of schematic nature, meant only to illustrate the general construction of the fan and the spatial and functional relationships of its component parts as well as its operation. Such schematic drawings are not blueprints meant to provide precise dimensions and geometry, cf. CLBA, I.C.4.6, 8th edition, 2016. Thus, any calculations based on dimensions and exact geometric relationships derived from figure 1 cannot convincingly prove that the operation of E1 is not based on the Coanda effect. Thus even if the division had admitted this evidence it would seem unable to prove convincingly the point made."

3.2 As the appellant did not respond to the communication, absent any further argument, the Board confirms the finding of the impugned decision, that the subject-matter of claim 1 lacks novelty with respect to E1. The main request must fail for that reason.

4. Auxiliary requests 1-3

4.1 Auxiliary request 1 - Novelty

In the communication in preparation to the oral proceedings, section 3.3 final paragraph, the Board was of the provisional opinion that:

" This conclusion [lack of novelty] also appears to hold for claim 1 of auxiliary request 1 which is now clarified to state that the arrangement is such that air flow exits the nozzle via the mouth and passes over the Coanda surface."

The Board adds that this added feature merely describes air flow that results as a direct consequence of the Coanda effect, cf. specification paragraph [0014] or E1', page 4, 2nd paragraph. As such it is inherent in any arrangement of a Coanda surface located adjacent the mouth that exhibits the Coanda effect.

Absent any reply or argument from the appellant, the Board confirms its finding that claim 1 of the auxiliary request 1 lacks novelty, Articles 52(1) and 54 EPC.

4.2 Auxiliary requests 2 and 3 - Added subject-matter

4.2.1 In its communication in preparation for the oral proceedings, section 4.2, the Board gave its provisional opinion that

"4.2 ... Claim 1 of the auxiliary requests 2 and 3 adds several structural limitations of the nozzle said to be taken from specification paragraph 33 (paragraph bridging pages 8 and 9 in the application as filed).

That paragraph is one of a number of paragraphs describing in detail the particular embodiment shown in figures 3 and 4. Selected but not all features have been added. However it would appear to the Board that there is a close structural or function relationship linking many of the features not included with those incorporated into claim 1. These appear to include the specific shape and dimensions of the nozzle and mouth, the presence of a diffuser, the angle subtended between the Coanda surface and the X-axis, the airfoil shape of nozzle profile.

Without argument as to the absence of any relationship between these features it would appear that these amendments add subject-matter extending beyond the original disclosure, Article 123(2) EPC."

- 4.2.2 Absent any reply from the appellant, the Board sees no reason to depart from this provisional view. It therefore concludes that the amendments to claim 1 of the auxiliary requests 2 and 3 adds subject-matter extending beyond the application as filed, contrary to Article 123(2) EPC.

5. As no allowable requests remains, the Board can but confirm the impugned decision to revoke the patent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated