

Internal distribution code:

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

**Datasheet for the decision
of 28 November 2018**

Case Number: T 1385/16 - 3.2.03

Application Number: 07810724.0

Publication Number: 2174082

IPC: F25D17/06, B60H1/00, F25D19/00,
B60H1/32, F25D17/04

Language of the proceedings: EN

Title of invention:
EVAPORATOR AIR MANAGEMENT SYSTEM FOR TRAILER REFRIGERATION

Applicant:
Carrier Corporation

Headword:

Relevant legal provisions:
EPC Art. 113(1), 123(2), 111(1)

Keyword:
Right to be heard - substantial procedural violation (yes)
Amendments - allowable (yes)
Appeal decision - remittal to the department of first instance
(yes)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 1385/16 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 28 November 2018

Appellant: Carrier Corporation
(Applicant) One Carrier Place
Farmington, CT 06034 (US)

Representative: Dehns
St. Brides House
10 Salisbury Square
London EC4Y 8JD (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 7 March 2016
refusing European patent application No.
07810724.0 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman G. Ashley
Members: C. Donnelly
E. Kossonakou

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division refusing European application no. 07810724.0. In its decision the examining division held that the subject-matter of claim 1 according to the main and first auxiliary requests submitted with letter of 4 September 2015 did not meet the requirements of Article 123(2) EPC.

II. Requests

The applicant (hereinafter: the "appellant") requests that the decision under appeal be set aside and that a patent be granted on the basis of the main request, alternatively on the basis of the first auxiliary request both filed with written submissions of 4 September 2015 and refused in the decision under appeal, alternatively on the basis of the second auxiliary request filed with the grounds of appeal.

The appellant also requests a refund of the appeal fee for the reason of substantial procedural violation (see *infra*, point IV. a)).

III. Claim 1 according to the main request reads:

"A trailer refrigeration system, comprising:
an evaporator coil (32) and fan (37);
a condenser coil and fan disposed adjacent thereto; and
an engine driven generator for providing electrical power to said evaporator fan and condenser fan,
wherein said evaporator fan (37) comprises:
at least one axial fan having a vertically oriented axis for drawing air through said evaporator coil (32) and discharging it vertically upward; and

a nozzle (39) disposed downstream of said axial fan (37) for turning the airflow substantially 90° from its upward flow path, said nozzle transitioning while turning 90° from a circular cross-section to a wide-aspect ratio rectangular outlet cross-section."

IV. *Appellant's submissions*

(a) Substantial procedural violation, Article 113 EPC

The appellant alleges that its right to be heard according to Article 113 EPC was violated since the examining division failed to acknowledge or respond to its arguments made in the letter of 4 September 2015 that the objected amendment was in fact based on paragraphs [0004] and [0007] of the application as filed rather than on paragraph [0025].

(b) Extended subject-matter, Article 123(2) EPC

Original paragraph [0004] generally discloses that electrical fans may have a vertical shaft orientation, and this disclosure is independent of the orientation and location of the motor driving the fan. Original paragraph [0007] states that:

"an electrically powered, vertical axis, axial flow fan is arranged so as to draw air through a horizontally mounted evaporator coil and drive it upward through a nozzle which turns the flow 90° and discharges into the trailer".

These passages disclose unambiguously and directly that the axis of the axial fan may be oriented vertically, independently of the position and orientation of its motor.

Reasons for the Decision

1. *Substantial procedural violation, Article 113 EPC*

1.1 The feature in claim 1 as filed reading:

"at least one axial fan for drawing air through said evaporator coil and discharging it vertically upward"

was amended in claim 1 of the main request before the examining division to read:

"at least one axial fan **having a vertically oriented axis** for drawing air through said evaporator coil"

1.2 The examining division considered this feature was only disclosed in paragraph [0025] of application as filed in combination with the features of an electric drive motor (38) with their axis being vertically oriented, and with the drive motor (38) disposed above the axial fan (37).

1.3 In view of this, it concluded that the amendment was an unallowable generalisation of the disclosure of original paragraph [0025] in violation of Article 123(2) EPC and refused the main request for this reason alone. The first auxiliary request was also refused for similar reasons.

1.4 In the decision under appeal, the examining division acknowledges receipt of the appellant's letter of 4 September 2015 (see "Summary of Facts and Submission" point 2.7) and indicates that the requests under

consideration are indeed those filed with this letter. However, there is no discussion of the appellant's submission, made in the same letter, that the disputed amendment finds a basis in paragraphs [0004] and [0007] of the application as filed.

1.5 There is also no discussion in the decision under appeal of the appellant's submissions made in letters of 12 December 2012 and 17 August 2012 regarding application of the Guidelines H-V, 3.2.1 and H-V, 3-1 at that time, which it regarded as being relevant to the question of assessing whether the amendment constituted an unallowable intermediate generalisation. Indeed there does not appear to have been any adequate discussion of these submissions at any point during the examination procedure.

1.6 Although the appellant withdrew its request for oral proceedings (see letter of 19 October 2015) at which the examining division may have been intending to go over these points, this does not excuse their omission from the reasoning of the final decision.

1.7 In conclusion, since the examining division has failed to address fundamental submissions made by the appellant in the decision under appeal, the Board finds that a substantial procedural violation has occurred, which justifies the reimbursement of the appeal fee in full pursuant to Rule 100(1)(a) EPC.

2. *Extended subject-matter, Article 123(2) EPC*

2.1 The appellant argues in the grounds of appeal that the basis for the disputed amendment is to be found in paragraphs [0004] and [0007] of the application as filed.

2.2 Paragraph [0004] relates to a discussion of the relative merits of centrifugal fan systems. The opening sentence of the following paragraph [0005] emphasises this fact since it states "The aforementioned centrifugal fan systems". Therefore, the Board does not accept that a basis for specifying a vertically oriented axis of an axial fan is given here.

2.3 Original paragraph [0007] reads:

"Briefly, in accordance with one aspect of the invention, an electrically powered, vertical axis, axial flow fan is arranged so as to draw air through a horizontally mounted evaporator coil and drive it upward through a nozzle which turns the flow 90° and discharges into the trailer".

2.4 This is an explicit, unambiguous and direct disclosure that the axis of the axial flow fan according to the invention is oriented vertically without any particular specification of the motor orientation or position. As the appellant has admitted, this disclosure is nevertheless made in combination with the specification that the evaporator is mounted horizontally. However, the Board also agrees with the appellant that the application as filed explicitly discloses alternative configurations in which the evaporator is not horizontal, together with the reasons why such positions are preferable. In particular, paragraph [0024] states:

"The evaporator coil 32 is disposed in a lower portion of the evaporator section and preferably placed at an angle as shown to increase the effective surface area and assist in condensate drainage."

2.5 The position and orientation of the fan motor are not specified in any of the claims as filed nor are they accorded any particular importance in the original specification in general. Thus, there is not an inextricable link between the orientation of the axial fan and the arrangement of its motor.

2.6 In conclusion, claim 1 of the main request meets the requirements of Article 123(2) EPC.

3. *Remittal to the first instance*

Since the examining division has not taken position in its decision on novelty and inventive step (Articles 54 and 56 EPC) of the subject-matter of the main request, the Board considers it appropriate to remit the case to the first instance for further prosecution (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.
3. The appeal fee is refunded.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated