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**Datasheet for the decision
of 26 February 2019**

Case Number: T 0691/18 - 3.5.02

Application Number: 06705638.2

Publication Number: 1988631

IPC: H03J3/20, G10K9/12, B60Q5/00,
G10K9/18

Language of the proceedings: EN

Title of invention:

Method and circuit of the electronic horn driving signal
frequency adjusted by capacitance

Applicant:

Wan, Yu

Relevant legal provisions:

EPC Art. 84, 109(1)

Keyword:

Claims - clarity (yes)
Interlocutory revision - department of first instance should
have rectified decision (yes)



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Case Number: T 0691/18 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 26 February 2019

Appellant: Wan, Yu
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Representative: Schmidt, Steffen
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 12 October 2017
refusing European patent application No.
06705638.2 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman R. Lord
Members: H. Bronold
J. Hoppe

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division to refuse European patent application No. 06 705 638.2 for lack of clarity.
- II. The appellant (patent applicant) requested in the grounds of appeal that the decision under appeal be set aside and that a patent be granted on the basis of the claims of their main request, or if that was not possible, on the basis of the claims of one of their first and second auxiliary requests, all filed together with the statement setting out the grounds of appeal.
- III. In a communication under Rule 100(2) EPC the board had informed the appellant that it held the appeal allowable regarding the reasons on which the decision under appeal was based and that it intended to set the contested decision aside. The board also informed the appellant that it was not in a position to order the grant of the patent due to deficiencies under Article 123(2) EPC in all pending requests.
- IV. With letter dated 26 September 2018, the appellant requested that "the Board of Appeal decides that the claims of the main request and the auxiliary requests of February 22, 2018, fulfill the requirements of Article 84 EPC and that the application is remitted to the Examining Division".
- V. Independent claim 1 according to the main request reads as follows:

"A driving circuit connectable to an electronic horn having a resonant frequency, comprising:
an oscillating circuit (12) and a frequency division circuit (14),
wherein said oscillating circuit (12) is adapted to generate a signal having an oscillating frequency,
wherein said oscillating circuit (12) includes a variable capacitor (13),
wherein said frequency division circuit (14) is adapted to conduct frequency division with respect to the signal having the oscillating frequency to generate a frequency-divided signal having a divided frequency,
said driving circuit is adapted to generate a driving signal having the divided frequency from the frequency-divided signal to drive the electronic horn to produce sound, and
said oscillating circuit (12) is adapted to change the oscillating frequency by adjusting the capacitance of the variable capacitor (13) so that the divided frequency of the driving signal is adjustable within $\pm 5\%$ of the resonant frequency of the electronic horn."

Independent method claim 17 relates to a corresponding method of driving an electronic horn.

- VI. The independent claims 1 and 17 according to the first auxiliary request differ from those according to the main request in that "resonant frequency of the electronic horn" is replaced by "a prescribed fundamental frequency".
- VII. The independent apparatus claim 1 according to the second auxiliary request differs from claim 1 according to the main request in that it is directed to "A system comprising a driving circuit and an electronic horn" instead of "A driving system for an electronic horn".

The independent method claim 17 is identical to claim 17 according to the main request.

VIII. The arguments of the appellant, as far as they are relevant for this decision, can be summarised as follows:

The added feature "adjustable within $\pm 5\%$ of" was originally disclosed on page 1, lines 14 to 22 and page 4, lines 27 and 28 of the original description.

The independent claims were further amended such that the two terms "consistent" and "resonant frequency of the electronic horn" objected to in the contested decision no longer formed part of the claimed subject-matter. Thus, the corresponding objections were overcome.

Reasons for the Decision

1. Admissibility

The appeal was filed in due time and form and is therefore admissible.

2. Clarity (Article 84 EPC)

The examining division based their decision on objections under Article 84 EPC regarding two features of the former independent claims.

On the one hand, it was argued that the resonant frequency of the electronic horn was not characteristic for the claimed driving circuit. This objection is overcome by the amendment to "connectable to" in the main request and in the first auxiliary request, and by the inclusion of the electronic horn into the subject-matter of the second auxiliary request in accordance with the Guidelines for Examination in the European Patent Office F-IV-4.14.

On the other hand, the examining division held the expression "consistent with" unclear in the sense of Article 84 EPC. The examining division had assumed that "consistent" meant "compatible" and found that there was a contradiction with the description which allegedly meant something more specific. However, the expression "consistent with" no longer forms part of any of the requests of the appellant. Consequently, neither of the two features on which the reasoning in the decision under appeal is based forms part of the current requests of the appellant as filed together with the statement of grounds of appeal.

Under Article 109(1) EPC, if the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision.

In the context of Article 109(1) EPC, an appeal is to be considered "well founded" if the main request submitted with the appeal includes amendments which clearly overcome the objections on which the decision relies, such that the examining division could reasonably be expected to recognise this and thus rectify its decision. It is established case law of the Boards of Appeal that other objections which arise in

the current request but which were not the subject of the contested decision cannot preclude the application of Article 109(1) EPC (T 139/87, point 4; T 1060/13, point 4.1). Thus, even if the amendments raise new objections not previously discussed, interlocutory revision must be allowed since an applicant should in such circumstances have the right to examination at two instances. In particular this would enable the applicant to address the objection under Article 123(2) EPC, by argument and/or amendment, as well as, if appropriate, giving the examining division the opportunity to address the issues of novelty and inventive step.

3. Conclusion

In the present case no other conclusion is possible than that the appeal is admissible and well founded, since the features leading to the objections under Article 84 EPC are no longer claimed.

The examining division should therefore have rectified its decision and continued with the examination of other requirements of the EPC.

Consequently, the board decides to remit the case.

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:



C. Rodríguez Rodríguez

R. Lord

Decision electronically authenticated