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**D E C I S I O N**  
**of 24 January 2001**

**Case Number:** T 0788/99 - 3.5.2

**Application Number:** 94108862.7

**Publication Number:** 0629033

**IPC:** H02J 7/35

**Language of the proceedings:** EN

**Title of invention:**  
Apparatus including a solar battery

**Applicant:**  
CANON KABUSHIKI KAISHA

**Opponent:**  
-

**Headword:**  
-

**Relevant legal provisions:**  
EPC Art. 84, 123(2)

**Keyword:**  
"Claims clear - yes (after amendment)"  
"Added subject-matter - no (after amendment)"

**Decisions cited:**  
-

**Catchword:**  
-



**Case Number:** T 0788/99 - 3.5.2

**D E C I S I O N**  
**of the Technical Board of Appeal 3.5.2**  
**of 24 January 2001**

**Appellant:** CANON KABUSHIKI KAISHA  
30-2, 3-chome, Shimomaruko  
Ohta-ku  
Tokyo (JP)

**Representative:** Tiedtke, Harro, Dipl.-Ing.  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 19 March 1999  
refusing European patent application  
No. 94 108 862.7 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** W. J. L. Wheeler  
**Members:** J.-M. Cannard  
P. Mühlens

## Summary of Facts and Submissions

I. The appellant contests the decision of the examining division to refuse European patent application No. 94 108 862.7. The reason given for the refusal was that claim 26 of the main request and three auxiliary requests filed in oral proceedings held after a communication under Rule 51(4) EPC had been issued did not meet the requirements of Article 84 EPC and that claim 26 of the main and first and third auxiliary requests contravened Article 123(2) EPC.

II. Oral proceedings were held on 24 January 2001, in the course of which the appellant filed a new Claim 26 worded as follows:

"A cover (2, 201, 211) which is adapted to a shape of a body of an apparatus (1, 202, 212) and which comprises a coupling portion (2a, 201a, 211a) for coupling it to said apparatus (1, 202, 212), a solar battery (3) mounted thereon and a space forming portion (6, 6', 202c, 212c, 213c) which forms, when said cover (2, 201, 211) is brought into point contact with said body of said apparatus, a space (7) for reducing heat influence between said solar battery (3) and at least one of an outside of said body of said apparatus (1, 202, 212) and an outside of a battery container (5) accommodating a secondary battery (4), characterized in that said cover (2, 201, 211) is shaped such that it has a side surface (2a', 201b, 211b) which extends to a side surface of said apparatus (1, 202, 212) so that, when said cover (2, 201, 211) is brought into point contact with said body of said apparatus, said space (7) also extends to the side surface portion of said cover (2,

201, 211)."

- III. The appellant argued that since solar batteries had a shorter life time than a camera, it was appropriate to have a claim for the cover which would be sold as a spare part.
- IV. The appellant requested that the decision under appeal be set aside and a patent granted on the basis of the application in its present form, namely:

**Claims:**

- No. 1 as filed on 3 April 1998  
No. 2 to 25 as proposed in the Rule 51(4) communication  
No. 26 as filed in the oral proceedings

**Description:**

- page 1 of the then "second auxiliary request" as filed with the grounds of appeal  
pages 2 and 3 to 18 as in the Rule 51(4) communication  
page 2a of the then "secondary auxiliary request" filed 22 December 1998

**Drawings:**

- sheets 1/5 to 5/5 as in the Rule 51(4) communication.

**Reasons for the Decision**

1. The appeal is admissible.
2. It is clear from the communication under Rule 51(4) EPC that the examining division considered claims 1 to 25 to be acceptable. The Board sees no reason to disagree with this.

3. *Clarity of claim 26*

3.1 Claim 26 filed in the oral proceedings specifies, *inter alia*, that the cover "is adapted to the shape of a body of an apparatus", that it "comprises a coupling portion for coupling it to said apparatus" and "a space forming portion which forms, when said cover is brought into point contact with said body of said apparatus, a space for reducing heat influence" and that it "is shaped such that it has a side surface which extends to a side surface of said apparatus so that, when said cover is brought into point contact with said body of said apparatus, said space also extends to the side surface portion of said cover."

3.2 Thus claim 26 specifies in functional terms the manner in which the cover is adapted to the shape of the body of an apparatus.

3.3 Such functional definitions are permissible when a more precise definition in terms of structural features is not possible without unduly restricting the scope of the invention. In the present case it is not possible to precisely specify the dimensions or the shape of the claimed cover, since such covers may be used with a variety of apparatus having different dimensions or shapes, as shown for example in the described embodiments.

3.4 A skilled person faced with the problem of manufacturing for any given apparatus a cover as defined in claim 26 will have no difficulty in understanding or designing the structural features implied by the terms of the claim. Similarly, there would be no difficulty in determining whether a cover

manufactured for any given apparatus fell within the terms of the claim. Accordingly, the claim is sufficiently clear to define the scope of protection, as required by Article 84 EPC.

4. *Support for claim 26 in the original disclosure*

4.1 In the second embodiment, described in the original application (see column 5, lines 4 to 29 of the published application, noting the reference to the first embodiment) a cover (2) which is adapted to a shape of a body of an apparatus (1) and which comprises a coupling portion (2a) for coupling it to said apparatus, a solar battery (3) mounted thereon and a space forming portion (6') which forms, when said cover is brought into point contact with said body of said apparatus, a space (7) for reducing heat influence between said solar battery and an outside of said body of said apparatus and an outside of a battery container (5) accommodating a secondary battery (4), is shaped such that it has a side surface (2a') which extends to a side surface of said apparatus so that, when said cover is brought into point contact with said body of said apparatus, said space (7) also extends to the side surface portion of said cover.

4.2 In this embodiment, as indeed in all the embodiments disclosed in the original application, the cover is attached to an electronic apparatus or a removable battery unit thereof by a coupling portion including a hinge shaft.

4.3 Thus, the cover is recognisable as a distinct part of the originally disclosed equipment which could be replaced by a corresponding spare part if it is broken

or becomes defective.

4.4 For the foregoing reasons, in the Board's judgement, the cover according to claim 26 is directly and unambiguously derivable from the originally disclosed application, and the claim does not contravene Article 123(2) EPC.

5. *Novelty and inventive step*

5.1 The subject-matter of claim 1 as filed on 3 April 1998, which is directed to "an apparatus including a cover" without specifying any details of the apparatus, was considered by the examining division to be novel and inventive over the prior art. The Board sees no reason to disagree with the opinion of the examining division. Since claim 26 includes all the features of the cover recited in claim 1 plus the coupling portion, it follows that the subject-matter of claim 26 may be considered to be new and involve an inventive step within the meaning of Articles 54 and 56 EPC.

6. In the Board's judgement, the application meets the requirements of the EPC.

## 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 with the order to grant a patent in the following version:

#### **Claims:**

No. 1 as filed on 3 April 1998

No. 2 to 25 as proposed in the Rule 51(4) communication

No. 26 as filed in the oral proceedings

#### **Description:**

page 1 of the then "second auxiliary request" as filed with the grounds of appeal

pages 2 and 3 to 18 as in the Rule 51(4) communication

page 2a of the then "secondary auxiliary request" filed 22 December 1998

#### **Drawings:**

sheets 1/5 to 5/5 as in the Rule 51(4) communication.

The Registrar:

The Chairman:

M. Hörnell

W. J. L. Wheeler