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**Datasheet for the decision
of 22 April 2024**

Case Number: T 0153/22 - 3.5.02

Application Number: 17785910.5

Publication Number: 3444924

IPC: H02J50/12, H02J7/00, B60M7/00,
H02J50/90

Language of the proceedings: EN

Title of invention:
Wireless power supply device

Applicant:
Yamaha Hatsudoki Kabushiki Kaisha

Relevant legal provisions:
RPBA 2020 Art. 12(4), 12(6)

Keyword:
Amendment to case - amendment within meaning of Art. 12(4) RPBA
Late-filed request - should have been submitted in first-
instance proceedings (yes)



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Case Number: T 0153/22 - 3.5.02

D E C I S I O N
of Technical Board of Appeal 3.5.02
of 22 April 2024

Appellant: Yamaha Hatsudoki Kabushiki Kaisha
(Applicant) 2500 Shingai
Iwata-shi, Shizuoka 438-8501 (JP)

Representative: Zimmermann, Tankred Klaus
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 14 September
2021 refusing European patent application No.
17785910.5 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 of the patent applicant (appellant) is against the decision of the examining division refusing European patent application No. 17 785 910.5.

The examining division reached the conclusion that the subject-matter of claims 1 and 9 according to the sole request pending before it lacked novelty.

II. The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the claims of the sole request filed with the statement of grounds of appeal on 13 January 2022, which is not identical to the request the impugned decision is based upon.

III. In a communication under Rule 100(2) EPC dated 20 November 2023 the board informed the appellant of its preliminary opinion on the case, in the light of which it intended to exercise its discretion under Article 12(6) RPBA not to admit the appellant's sole request.

IV. In a reply to this communication dated 15 January 2024 the appellant filed for the first time reasons regarding the amendment of its case.

V. In a communication under Article 15(1) RPBA sent together with summons to oral proceedings the board informed the appellant that it was preliminarily not inclined to admit the appellant's sole request.

VI. Oral proceedings before the board were held on 22 April 2024.

- VII. The wording of the claims of the appellant's sole request is not represented here because the board exercised its discretion not to admit this request.
- VIII. The appellant's arguments relevant for the decision can be summarised as follows:

The circumstances of the present case justified the admittance of the appellant's sole request filed together with the statement setting out the grounds of appeal.

Hypothetical subject-matter involving the primary side of the wireless transmission only was discussed during the oral proceedings before the examining division after it had been found that the subject-matter of the sole request pending before the examining division lacked novelty over the disclosure of document D8 or D9. In the situation of oral proceedings the appellant's representative was not sure how a request overcoming the examining division's objection under Article 123(2) EPC could be formulated. Only later during a discussion with the applicant did a solution become clear and the corresponding request was filed as sole request with the statement of grounds of appeal. The appellant believed that the board would directly understand that this request considered the hint under point 8 of the minutes of the oral proceedings before the examining division and was filed in order to conduct an efficient procedure.

Reasons for the Decision

1. Admissibility of the appeal - Article 108 EPC and Rule 99 EPC

The appeal was filed and reasoned in due time and form and it was sufficiently substantiated. Therefore, the appeal is admissible.

2. Admittance of the sole request - Article 12(4), (6) RPBA

- 2.1 In the present case the appellant's sole request was filed for the first time with the statement setting out the grounds of appeal. Compared to the request the impugned decision is based upon, the new request includes new features in claims 1 and 9 and thus constitutes an amendment according to Article 12(4) RPBA.

According to Article 12(6) RPBA, the board shall not admit requests, facts, objections or evidence which should have been submitted in the proceedings leading to the decision under appeal, unless the circumstances of the appeal case justify their admittance.

- 2.2 Contrary to the appellant's arguments the board is not convinced that the circumstances presented by the appellant can justify the admittance of the sole request. Rather, the lack of novelty in the light of document D8 or D9 was already set out in the preliminary opinion of the examining division dated 4 December 2020.

The board is thus not aware of any obstacle that could have hindered the appellant from filing the present request already during the proceedings before the examining division. Indeed it is apparent from the minutes of the first-instance oral proceedings that, following an in-depth discussion of the objections of lack of novelty based on D8 and D9, the applicant was given the opportunity to file further requests, but chose not to do so.

In the reasons for the contested decision, the examining division did not deviate from its preliminary opinion that the subject-matter of claims 1 and 9 according to the sole request pending before it lacked novelty over the disclosure of document D8 or over the disclosure of document D9.

- 2.3 The fact that the examining division had discussed hypothetical subject-matter with the appellant after it had concluded that the appellant's sole request pending before it was not allowable cannot be interpreted as circumstances which would allow the appellant to file an amended request only in appeal proceedings, instead of during the oral proceedings before the examining division. Further, nothing seems to have hindered the appellant from requesting more time for the preparation of an additional request before the examining division, or from asking the examining division for further explanation of their opinion.

The board thus considers the discussion of such hypothetical subject-matter during the oral proceedings before the examining division to be irrelevant for the admittance of the appellant's sole request. It relates to subject-matter which had never been formulated as a

request by the appellant in the first-instance proceedings.

2.4 The appellant's statement in their letter of 15 January 2024 that there was no time for this is further not justified, given that the oral proceedings before the examining division finished before 11:00 a.m. This is even more so since the appellant had replied to the examining division's preliminary opinion only after 7 months, thereby excluding the possibility for receiving a further written communication from the examining division instead of a telephone call four weeks before the oral proceedings.

2.5 Moreover, what was discussed with the examining division concerning the hypothetical subject-matter is not even reflected in the appellant's sole request filed with the statement setting out the grounds of appeal. It is not apparent to the board how the discussion according to point 8 of the minutes of whether a claim directed to the primary side only would involve an inventive step, but constitute a violation of Article 123(2) EPC, could be reflected in the amendment introduced in the appellant's sole request in the appeal proceedings, which defines that

"the first PWM signal and the second PWM signal are signals of two systems having ON-pulses at different times."

As is immediately apparent from its wording the amendment introduced in the appellant's sole request does not define a limitation to the primary side only.

The board therefore concludes that nothing was said during the first-instance oral proceedings which would

have prevented the applicant from filing such a request during those oral proceedings.

2.6 The aspects that the appellant's representative was not sure about how to formulate a new request during the oral proceedings before the examining division and that the appellant became aware of a possible wording for a request overcoming the amendment objections discussed with respect to the hypothetical subject-matter only after the oral proceedings do not constitute circumstances which could justify the admittance of such a request only in the appeal proceedings either.

2.7 Contrary to the appellant's assertions, the filing of their sole request in the appeal proceedings also does not support procedural efficiency, because the primary aim of the appeal procedure is the judicial review of first-instance decisions. In the present case this would not be possible because the appellant's sole request was never filed before the department of first instance, such that the board could not be in a position to review the decision of the examining division relating to this request.

2.8 Consequently, the board exercised its discretion under Article 12(6) RPBA not to admit the appellant's sole request.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

R. Lord

Decision electronically authenticated