COMMISSIONER'S DECISION

OPERABILITY: Section 36 and 40; Perpetual Motion Device Refused.

An application for a machine for perpetual motion was refused under Section 36 as being inoperative and for failure to provide an adequate description of the invention. Failure to provide a working model called for under Section 40 was also cited. The decision reflects the fact that the applicant was a private individual not versed on patent law and practice.

FINAL ACTION: Affirmed.

****

On July 18, 1973, Mr. Elis A. Kutvonen filed in the Patent Office an application for patent for an invention which he calls "Perpetuum Mobile." It was given serial number 176,786, and classified in Class 60/30. The invention relates to a perpetual motion machine which operates pneumatically. The examiner refused the machine as being inoperable, and eventually rejected the application. The applicant then requested a review of the rejection, and a Hearing before the Patent Appeal Board. In order that it might better understand the invention, the Board asked Mr. Kutvonen to supply a working model of the invention. This requirement was made under Section 40 of the Patent Act.

The Hearing took place on May 21, 1975, at which time Mr. Kutvonen argued his case, though he declined to demonstrate a model of his invention. He obviously is a very sincere and religious person, with a manifest desire to serve humanity. If his machine did operate as claimed it would, of course, be of tremendous benefit to mankind in providing its energy needs, and solving the current fuel crisis. The inventor argued his case eloquently, and if he failed to convince the Board he at least gained its sympathy.

Before a patent may be granted for an invention, it is required by the Patent Act inter alia that the invention be operable, and that the invention be so described in the application that others may both understand and be able to practise the invention. When required, a working model of the invention must also be provided by the applicant. With reluctance the Board has come to the conclusion that the request for a patent fails on all three grounds.

It is a well recognized scientific principle that perpetual motion is unattainable. All machines require energy inputs both to overcome frictional losses during their operation, and to provide energy output. The examiner, who is a technical expert in this field, is satisfied that the applicant has not overcome that principle, and we have seen no evidence to disturb his findings.

The examiner has also concluded that the description of the invention is such that it cannot be understood by technical experts in this science. Of such an objection the President of the Exchequer Court of Canada has stated in Minerals Separation v. Noranda Mines (1947) Ex. C.R. 306 at 316:

> Two things must be described in the disclosures of a specification, one being the invention, and the other the operation or use of the invention as contemplated by the inventor, and with respect to each the description must be correct and full. The purpose underlying this requirement is that when the period of monopoly has expired the public will be able, having only the specification, to make the same successful use of the invention as the inventor could at the time of his application.

And at page 317:

> When it is said that a specification should be so written that after the period of monopoly has expired the public will be able, with only the specification, to put the invention to the same successful use as the inventor himself could do, it must be remembered that the public means persons skilled in the art to which the invention relates, for a patent specification is addressed to such persons.

We have not been able to understand how the invention works, neither from the written description nor from the oral submission. Mr. Kutvonen alluded at the Hearing to the hazards which exist when his invention is used by those who do not understand it. We find no adequate description or warning of such dangers in the disclosure, and from that must conclude that the application fails to meet the statutory requirements which must be met before it may be allowed. Consequently we feel further constrained from reversing the examiner's findings that the disclosure does not provide an adequate and clear description of the invention.

The Board must recommend that the rejection of the application be affirmed. We do this regretfully because Mr. Kutvonen holds such high hopes for the success of his machine, and came so far, doubtlessly at considerable expense, to argue his case. We have, however, given him a fair hearing, and considered his appeal most thoroughly. We hope that will be some consolation to him.

Mr. Kutvonen is entitled to appeal our findings and the decision of the Commissioner of Patents to the Federal Court of Canada if he so wishes. This, however, could be a costly process, and in this instance we fully believe it would be a frustrating exercise. Since Mr. Kutvonen asked for guidance from the Board, we would counsel him to utilize his undoubted talents in other endeavours.

Gordon A. Asher,
Chairman,
Patent Appeal Board.

I concur with the findings of the Patent Appeal Board, and refuse to grant a patent for this application. If the applicant wishes to appeal to the Federal Court of Canada, he has six months, as provided under Section 44 of the Patent Act, within which to launch such an appeal.

Decision accordingly,

A.M. Laidlaw,
Commissioner of Patents.

Dated at Hull, Quebec
this 26th. day of
May, 1975

Agent for Applicant