

COMMISSIONER'S DECISION

Sections: 2, 28, 36 and 40 - Perpetual Motion

Applicant's three applications describe **devices** operable without a source of external power. This theoretical description is not supported by any documentation and the model requested during the prosecution of applications 277,822 (C.D. 583) and 309,708 (C.D. 581) was not supplied.

Final Action: Affirmed

Patent application 267,896 (Cl. 322-35), was filed on December 14, 1976 for an invention entitled "Self Energizing Power Amplifier." The inventor is Konrad A. Otta. The Examiner in charge of the application took a Final Action on November 9, 1978 refusing to allow it to proceed to patent.

There are three applications filed by this Applicant which have been rejected under Section 46 of the Patent Act. While there is a common relationship among them, each has been reviewed separately.

The subject matter of this application is a source of steam generated power in which steam produced in a boiler is used to drive a turbine. A series of four stages are indicated in the disclosure which is referred to as a Self Energizing Power Amplifier. Claim 1 is illustrative.

Using steam generated in a boiler to drive a turbine, using about 5% of the turbine's torque to operate an alternator whose output perpetuates the boiler's steam generation; alternatively: using steam generated in a boiler to drive a turbine which in turn drives a generator whose some 5% of output is applied to the boiler's electric heating element thereby perpetuating the boiler's steam generation.

It is thus evident that what is claimed is a form of perpetual motion device in which part of the energy produced by the generator is the sole energy source to run the generator.

In the Final Action the Examiner refused the application because it is inoperable in a patent sense, lacks utility, and is not "directed to patentable subject matter in view of the definition of invention in Section 2 of the Patent Act." He states his reasons (in part) as follows:

Applicant discloses two embodiments. In the first embodiment batteries provide 3-4kW to the heater of a boiler. The steam pressure drives a turbine of 500HP (373KW). Part of the torque

of the turbine is used to drive an alternator to provide 3-4 KW which is applied to the heater of the boiler while the batteries are switched off. The remaining output of the turbine (369-370 KW) is applied to a generator.

In the second embodiment an external power source drives a first generator. The output of the generator is applied to the heater which operates a second generator larger than the first. Part of the output of the second generator is applied to the heater of the first boiler while the external power source is shut off thereby establishing self energization.

Both of these embodiments are perpetual motion devices which violate the laws of physics, namely the Law of Conservation of Energy. In the first embodiment, for example, the boiler provides 3-4KW to the turbine while the turbine produces an output of 373KW. Thus 370KW is created ex nihilo contrary to the Law of Conservation of Energy. With respect to perpetual motion the McGraw-Hill Encyclopedia of Science and Technology states that perpetual motion "refers to a mechanism whose efficiency exceeds 100%. Clearly such a mechanism violates the now firmly established principle of conservation of energy."

Thus the apparatus claimed by the applicant is inoperable and thus lacks utility. The application is therefore rejected as not being directed to patentable subject matter in view of the definition of invention in Section 2 of the Patent Act.

The applicant has submitted six letters in response to the Final Action. While these letters discuss various facets of steam propelled vehicles they do not contain any documented evidence to support the Applicant's power amplifying theory.

After reviewing the disclosure we find that it does not correctly and fully describe an invention and its operation, nor set forth clearly the various steps in a process, or a method of constructing, making, compounding or using a machine. In that respect it fails to comply with Section 36 of the Patent Act. We concur with the Examiner's view that the Applicant is claiming a perpetual motion device which runs counter to the natural laws of conservation of energy. Obviously a mechanical device cannot continue to operate without a source of external power even if there were no withdrawal of energy for other uses. We think it would be useful to quote here an article on perpetual motion by A. Leokum which appeared in the Ottawa Journal on July 19, 1977.

The words perpetual motion by themselves just mean motion that goes on forever. But usually when we say perpetual motion we are referring to a very special thing.

For hundreds of years, men have had the dream of creating a machine that, once it is set in motion, would go on doing useful work without drawing on any external source of energy. Every machine now known has to have a source of energy.

A perpetual motion machine, however, would create its own energy in the form of motion. Every time a complete cycle of its operation was finished, it would give forth more energy than it had absorbed.

Is it possible to create a perpetual motion machine? Any scientist will tell you that the answer is no. The reason is based on what is one of the most important laws of science, the principle of conservation of energy.

According to this principle, energy cannot be created and cannot be destroyed in nature. Energy can be transferred from one place to another, energy can be freed or unlocked, but energy cannot be created. This means that any machine that does work must have a source of energy.

In the course of history, thousands of attempts have been made to create perpetual motion machines. The first attempts were made at a time when the law of the conservation of energy was still unknown. A great many others were simply fakes that were later exposed.

The question of operability of an invention has been the subject of review in the Courts. The Exchequer Court in Minerals Separation v. Noranda Mines Ltd., (1947) Ex. C.R. 306, stated at page 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 it was stated:

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. (Emphasis added).

A person skilled in the art would not be able to make, construct, compound or use the alleged invention from the description found in the applicant's specification.

What we are concerned with in this application is the amplification of energy wherein the output exceeds the input. The test for utility of an alleged invention depends on whether, by following the directions in the specification,

the effects which the Applicant professes to produce can be in fact reproduced. If this is not the case, then the device lacks utility in the patent sense because it is inoperable. See, for example, Northon Electric v. Browns Theatre (1940) Ex. C.R. 36 at 56, wherein it is stated:

An invention to be patentable must confer on the public a benefit. Utility as predicated of inventions means industrial value. No patent can be granted for a worthless art or arrangement. Here there is described and claimed something that lacks utility because it is inoperable for the purpose for which it was designed.

Also of interest is Raleigh Cycle v. Miller, (1946) 63 R.P.C. 113 at 140 which reads:

In other words, protection is purchased by the promise of results. It does not, and ought not to survive the proved failure of the promise to produce the results.

In Union Carbide v. Trans-Canadian Feeds (1967) 49 CPR 27 the Court held:

I conclude that the patent is bad because the specification claims what is not useful in a patentable sense.

In Re Le Rosair Appollo (1932) 49 RPC, the court concluded that when the theory upon which a patent was founded was erroneous, there was no subject matter of utility in the invention. (Emphasis added).

And lastly, as succinctly put in Wandscheer v. Sicard (1946) Ex. C.R. at p. 112, and (1948) S.C.R. 1:

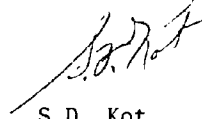
The test of utility of an invention is that it should do what it is intended to do and that it be practically useful at the time when the patent is issued for the purpose indicated by the patentee.

We note that in the Applicant's response dated November 14, 1978 it is stated that the Final Action is the first action received by the applicant. We find however that on October 5, 1978 the applicant wrote to the Commissioner requesting that he review this application with his two other rejected applications. In a letter dated October 12, 1978 the Commissioner indicated that the applicant could expect action on this application shortly. Therefore in order to expedite proceedings to allow review by the Commissioner the rejection under Section 46 of the Patent Act was made in the initial action.

We are satisfied that the Applicant has not given the promised result of amplifying energy as described in this application. We therefore recommend that the decision in the Final Action to refuse the application be affirmed.



G.A. Asher
Chairman
Patent Appeal Board, Canada



S.D. Kot
Member

I have reviewed the prosecution of this application and I agree with the recommendations of the Patent Appeal Board. Accordingly, I refuse to grant a patent on this application.



J.H.A. Gariépy
Commissioner of Patents

Dated at Hull, Quebec

this 16th. day of May, 1979