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Registered Letter

Section 42

Your file Votre référence

Our file Notre référence

May 23, 1980

Marks & Clerk,
Box 957, Station B,
Ottawa, Ontario.
K1P 5S7

Dear Sirs:

Re: Application - 312,735, Class 359/38
Filed - October 5, 1978
Applicant - Combustion Engineering, Inc.
Title - MOLTEN CORE CATCHER AND CONTAINMENT HEAT REMOVAL SYSTEM

The examiner's rejection of claims C1 and C2 made under Section 45(4) of the Patent Act has been referred to me for consideration, there having been no request for an oral hearing.

From the record it is quite clear that claims C1 and C2 are anticipated by German Auslegeschrift 2,525,534, dated June 24, 1976, to Werner Katscher. This is the reference cited by the applicant himself in his letter of January 3, 1980, and which he contends render the claims invalid. Its date is more than two years before applicant's filing date of October 5, 1978, and is thus a statutory bar against this application under Section 28(1) (3) of the Patent Act.

In his reply to the examiner's rejection, applicant has not questioned the pertinency of the citation but insists on maintaining the rejected claims unless the conflicting applicants also cancel them. What the other party does, or whether the citation is relevant to his application, is immaterial. Under Section 45(4) of the Act, I am required to re-examine each of the applications in conflict to determine the pertinency of the art submitted by the present applicant. Upon doing so I find that this application should be rejected under Section 42 of the Act and the applicant is not by law entitled to be granted a patent containing claims C1 and C2.

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Commissioner of Patents
Ottawa — Hull
K1A 0E1

Commissaire des brevets
Ottawa — Hull
K1A 0E1

In my view the purpose of this re-examination provided for in Section 45(4) is to eliminate from conflict proceedings those applications which are unpatentable because of prior art. It provides that each application is to be given the examination provided for under Section 37 of the Patent Act. It also envisages instances when one party, unable to make claims owing to prior art, supplies such art in anticipation that it might prevent the issuance of a patent to the opposing applicant. The section thus recognizes that one party in a conflict proceedings may be unable to maintain claims in the conflict because of art.

The purpose of Section 45 is not to permit the use of unpatentable applications to prevent others obtaining patents, but to determine who is the first inventor when two otherwise allowable applications are copending. If the applicant has disclosed the invention to the public before the conflicting application was filed he could (and should) use Section 63 (1) (a) against any patent granted to that party. If on the contrary, being an early inventor, he has delayed in filing his application until statutory bars have arisen against him, he should not be able to prevent a patent issuing to others who have made a proper effort to disclose the invention to the public. An important objective of the Patent Act is to have application filed quickly so the public may have knowledge of new inventions quickly.

For the above cited reasons I now reject this application. Under Section 44 of the Act applicant has six months within which to delete claims C1 and C2, or to appeal to the Federal Court.

Yours respectfully,

Original Signed by
J. H. A. Gariépy
Original Signé par

J.H.A. Gariépy,
Commissioner of Patents.