

COMMISSIONER'S DECISION

Patentability: The applicant has submitted evidence supporting the results of the apparatus. In view of the absence of evidence establishing that the apparatus functions in a manner contrary to the laws of magnetics or modern physics, there are insufficient grounds for rejecting the application. The rejection of the application is withdrawn.

This decision concerns the request for review by the Commissioner of Patents of the final action in the case of Application No 345,767 (Class 326-4). The application, filed on February 15, 1980, is entitled [translation] PROCEDURE AND APPARATUS FOR THE MAGNETIC TREATMENT OF LIVING CREATURES. The inventor is Dr Nogier. The examiner assigned to study the application rejected it on October 8, 1982.

Mr R Hicks, the patent agent, requested that the date of the hearing be advanced in order to permit Dr Nogier, of France, who was in Canada on business, to testify. We have also acceded to Mr Hicks' request that the hearing be in English. Mr Hicks was informed however, that the Commissioner's decision would be rendered in French, the language in which the patent application had been submitted. On June 27, 1983, Dr Nogier explained why he thought his patent application was acceptable. Moreover, Dr Proulx made an appearance to testify on behalf of Dr Nogier.

In his final action, the examiner rejected the application because, in his opinion, the invention was based on hypotheses contrary to the established laws of physics. In his final action he said, in part:

[TRANSLATION] . . . that it is not really necessary to understand the operation of a new apparatus to obtain a patent. The applicant must, however, convince the Patent Office that his invention (sic) can function as stated, that is, that his invention is based on sound laws of physics and engineering . . .

In this application, the inventor presumes that the flux leaving the left end of the apparatus (Figure 4) passes through the polaroid screen, (9), that it travels along . . . the armoured cable (C) to the patient. The applicant attributes this abnormal behaviour of the magnetic flux to a "modification" of the flux by the screen (9). However, such a modification is completely unbelievable and unacceptable to a modern scientist or expert . . .

In setting forth the grounds for believing his invention patentable, the applicant replied, in part, as follows:

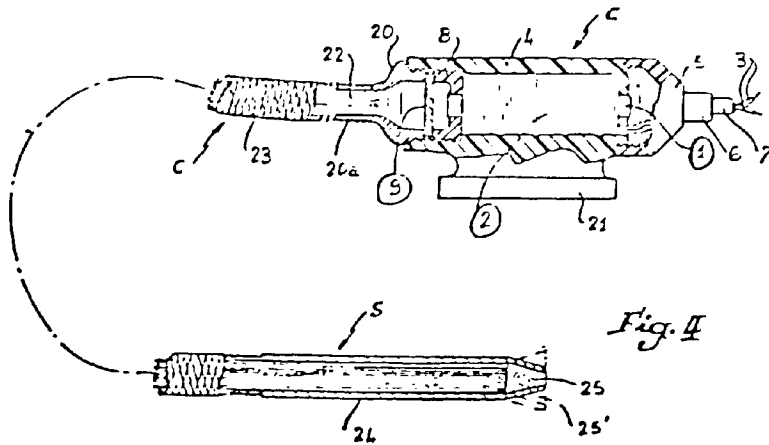
...While it is not possible to explain the effects achieved in terms of the laws of physics, it is quite indisputable that there is a difference between a magnetic flux which has passed through a screen such as a polaroid screen and an ordinary magnetic flux. This has been demonstrated in experiments effected on mice and on organic dyes. Appended hereto as exhibit A is a report by Dr Henry Guyot, subscribed to before the British Vice-Consul at Lyon which shows that if three samples of dye, in this case Hydranga Blue, are submitted to a light beam of given wavelength, the sample which has been submitted to the polarized or reticulated flux undoubtedly differs from the other two samples, one of which has not been treated by magnetic flux and the other of which has been submitted to a simple magnetic flux.

...

Applicant has claimed an apparatus for "polarizing" magnetic fluxes, which polarized flux has a therapeutic effect when used for the treatment of living creatures. The apparatus comprises a combination of readily available components and can hardly be described as contrary to the laws of physics. ...

...

The invention is an apparatus for emitting magnetic fluxes; it consists of a magnetic flux generator (G) and a nonmagnetic component of oriented crystalline structure (9), for example, a polaroid screen. The generator consists of a core of soft iron (1) on which a coil (2) is mounted to produce a magnetic flux. The flux leaves the left end of the generator and passes through the polaroid screen. According to the applicant, the flux that emerges from the polaroid screen is modified; this modified flux is used to reduce pain in living creatures. Figure 4 shows the arrangement of these components.



The Board must therefore decide whether the application represents patentable technical progress. Claim (1) reads as follows:

[TRANSLATION] Apparatus for obtaining a continuous pulsating or modified alternating magnetic flux, suitable for use in the treatment of living creatures or biological products derived from them, and characterized by a combination of:

- a source of magnetic flux;
- and at least one nonmagnetic component of oriented crystalline structure interposed between the source and the creature or product to be treated.

During the hearing, Mr Hicks emphasized that the effectiveness of the invention was attributable to the polarization or modification of the strength of a magnet by means of a polarizing screen placed between the source of the magnetic flux and the organism to be treated. He maintained that it was the polarized, reticulated or modified magnetic force that produced the new results.

Mr Hicks also submitted exhibits A to E, saying they described experiments conducted with the applicant's apparatus and established its usefulness. He said that exhibits A, B and C were statements by well known physicians, setting forth in general terms the satisfactory results they had obtained using Dr Nogier's apparatus. Exhibits D and E were two letters addressed to Dr Nogier.

First, let us examine Exhibits A, B and C, which bear the names and addresses of the physicians, Dr Degraix, Dr Haubursin and Dr Dahour, respectively. There is nothing on the exhibits identifying them as statements. However, they do provide brief case profiles of particular patients and describe the location and type of apparatus used in treating them. The profiles indicate that the treatments eased the patient's pain. Exhibit A also includes an introductory page entitled [translation] **OBSERVATIONS ON THE POLARTRON**. It explains that the therapeutic application of polarized magnetic energy by means of a Polartron has always had a satisfactory effect on all kinds of pain. In Exhibit C there is a brief profile in which the physician says that there was no appreciable effect on the pain of some patients he treated.

We will next examine Exhibits D and C. Exhibit D is a letter from Mr Borscheix, Research Director of SIR Internationale. He states that three rabbits were treated, first using a magnetic field alone and then using the same field with the addition of polaroids. He reports that the variations his department recorded in the cortical evoked responses of somesthetic origin in the awake rabbit were achieved using a system called Polartron. In summary, he says that variations tend to increase in the presence of a magnetic field combined with polaroids and decrease in the presence of a magnetic field alone.

Dr Navach, an orthopedic surgeon from California, alludes to Dr Nogier's patent application in his letter (Exhibit E). He says that it uses the reticular energy system for treatment. He also says that he studied the therapeutic effects of an electromagnetic device on rabid coyotes. The apparatus is equipped with electromagnetic coils, in front of which are placed sheets of polaroid film. In his opinion, the apparatus had a sedative effect on the animals lasting a few hours. He adds however that, being afflicted with rabies, they lived only a few days. He continued his experiments after the animals' deaths by placing a radio receiver inside their skulls and an electromagnetic device with a reticular field outside their skulls, in proximity to the radio receiver. He reports that the receiver picked up a signal. He also reports that a test using a device with electromagnetic coils but with no polaroid filter did not pick up any signals.

Dr Nogier said at the hearing that tests done on rabbits indicated that the use of polarized energy yielded positive results. He added that the research institute at Lyon had made recordings which had been studied by experts. He also said that it was possible to prove statistically that there was a modified flux, even though complete results were not always available. In summary, he stated that the tests and observations demonstrated that his apparatus had certain advantages.

Dr Proulx explained that he had observed that, when a polarizing component was placed in front of a magnetic field, the field emerging from the component was modified to produce what was, in his opinion, a rather concentrated linear polarization. He added that one of the problems in explaining clearly the form of energy produced by the applicant's apparatus was the fact that modern physics did not yet have any means of measuring this force.

In his action, the examiner said that such a modified flux could not really exist. However, he did not submit any documentary reference or precedent with which he could support his allegations or establish that the applicant's description of the apparatus and its performance was contrary to the established laws of magnetics and physics. The inventor, on the other hand, submitted documents showing that other people, notably Dr Navach and Mr Borgeix, had used his apparatus and its polarized or modified field and observed good results. In addition, Dr Proulx testified that he had obtained good results in his experiments with Dr Nogier's apparatus. In the statement of biologist Henri Guyot, submitted in response to the final action, Mr Guyot said that he had received three samples to use in the study of the application of chromatographic methods, and that Dr Nogier had prepared the samples. The first sample was treated using Dr Nogier's apparatus, the second was treated using a magnetic field alone, and the third was not treated at all. Mr Guyot said that he had determined the optical densities of the three samples on the same spectrophotometer, at wavelengths of 610 and 615 nanometres. He had observed that the sample treated using Dr Nogier's apparatus had an optical density different from the others.

Taking into account the evidence supporting the results of Dr Nogier's apparatus and in view of the absence of precedents or evidence establishing that the operation of the apparatus is contrary to the laws of magnetics or modern physics, we do not think there are grounds for rejecting the application. Therefore, we cannot uphold the rejection by the examiner.

During the hearing, the claims were discussed briefly and their flaws were noted by the Board and the agent. Although the application cannot be rejected on the grounds set forth in the final action, the claims are unacceptable in their present form.

We recommend that the rejection of the application be withdrawn and that the application be sent back to the examiner so that he can request acceptable claims.

(signed)	(signed)	(signed)
A McDonough	M G Brown	S D Kot
Chairman Patent Appeal Board	Assistant Chairman	Member

I accept the conclusions and the recommendation of the Patent Appeal Board and, consequently, I withdraw the final action and send the application back to the examiner for re-examination.

(signed)

J H A Gariépy
Commissioner of Patents

Done at Hull, Quebec

April 30, 1984

Agent for the Applicant

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