

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

D E C I S I O N
of 22 January 2002

Case Number: T 0170/01 - 3.2.4

Application Number: 97924382.1

Publication Number: 0903976

IPC: A01G 17/08

Language of the proceedings: EN

Title of invention:
Device for producing a ring

Applicant:
Van Schie, Sebastianus Theodorus Cornelis

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Extension of subject-matter - no"

Decisions cited:
-

Catchword:
-



**Europäisches
Patentamt**

**European
Patent Office**

**Office européen
des brevets**

Beschwerdekammern

Boards of Appeal

Chambres de recours

Case Number: T 0170/01 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 22 January 2002

Appellant: Van Schie, Sebastianus Theodorus Cornelis
Monnikenweg 39a
NL-2641 PX Pijnacker (NL)

Representative: de Bruijn, Leendert C.
Nederlandsch Octrooibureau
P.O. Box 29720
NL-2502 LS Den Haag (NL)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 1 September 2000
refusing European patent application
No. 97 924 382.1 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: M. G. Hatherly
H. Preglau

Summary of Facts and Submissions

- I. On 1 November 2000 the appellant (applicant) filed a notice of appeal against the examining division's decision of 1 September 2000 refusing the European patent application No. 97 924 382.1 (publication No. WO-A-97/44999) for contravention of Article 123(2) EPC. The appeal fee was paid simultaneously and the statement of grounds of appeal was received on 28 December 2000.
- II. After a communication from the board, the appellant filed amended pages of the application.

The independent claim 1 now reads:

"Device (1) for producing a ring (30), for example for fastening a plant stem (22) to a support (23), comprising a transport mechanism for a wire (12), means for turning said wire comprising a curved path for said wire in order to obtain a ring and cutting means (25) for said wire, which cutting means are arranged on a handle part (14), characterised in that said handle part comprises a support plate (17) on which the means for turning said wire and the cutting means are arranged, wherein said means for turning said wire comprises a protuberance (27) arranged in said support plate (17) provided on one side of the curved path and a bearing means (21) provided on the other side of the path to effect turning of the wire, and wherein the transport mechanism comprises a rotating motor which via rollers (8, 9) drives the wire."

- III. The appellant requests that the decision under appeal be set aside and that the case be remitted to the first

instance for further prosecution, on the basis of the following version of the application:

Claims: 1 to 8 filed with the letter of 25 October 2001;

Description: page 1 filed with the letter of 14 February 2000; pages 2, 4 and 5 filed with the letter of 27 November 1998; and page 3 filed with the letter of 25 October 2001; and

Drawings: sheets 1/2 and 2/2 of WO-A-97/44999.

Reasons for the Decision

1. The appeal is admissible.
2. *Amendments - claim 1*

The board will use the line numbering on the left hand side of the respective claims pages.

The present claim 1 differs from that originally filed as follows:

- 2.1 Line 6 of the present claim 1 adds to the originally filed claim 1 that the means for turning said wire comprise "a curved path for said wire".

There is a basis for this in WO-A-97/44999 because Figure 2 shows a curved path.

- 2.2 Line 8 of the present claim 1 adds to the originally filed claim 1 that said handle part "comprises a support plate (17)". This is clear from Figure 2 and page 3, lines 33 and 34 of WO-A-97/44999.
- 2.3 Lines 8 and 9 of the present claim 1 state that the means for turning the wire and the cutting means are arranged on the support plate 17. The originally filed claim 1 stated that the means for turning the wire and the cutting means were arranged on the handle part but this was less specific than the present formulation which is what is shown by Figure 2 of WO-A-97/44999.
- 2.4 Line 8 of the originally filed claim 1 referred to the "fixed handle part". The word "fixed" is rightly omitted from the present claim 1 because the handle part cannot be fixed - it must move from plant to plant.
- 2.5 Lines 9 to 12 of the present claim 1 adds to the originally filed claim 1 that "said means for turning said wire comprises a protuberance (27) arranged in said support plate (17) provided on one side of the curved path and a bearing means (21) provided on the other side of the path to effect turning of the wire".

The feature of "means for turning said wire comprising a curved path for said wire" has already been specified in lines 5 and 6 of the present claim 1 (in the pre-characterising portion since this feature is known from WO-A-84/03248). The board concludes from Figures 2 and 3 of WO-A-97/44999 that the wire 12 runs along a curved channel in the support plate 17, this curved channel being the curved path.

According to page 2, lines 32 to 34 of WO-A-97/44999, the ball-bearings 19 to 21 are present to reduce the friction during the wire's movement. However it is also true that the protuberance 27 is on one side of this curved path and the ball bearing 21 is on the other side and that, according to page 4, lines 2 and 3 of WO-A-97/44999, "this protuberance interacts with ball-bearing 21 to effect turning of the wire." Moreover claim 8 of WO-A-97/44999 refers in general terms to "at least one bearing means (19-21)".

Thus the information in the present claim that the means for turning the wire comprises the curved path, the protuberance and the bearing means is derivable from WO-A-97/44999.

2.6 Thus the board has no objection under Article 123(2) EPC to the present claim 1.

3. *Amendments - the dependent claims*

3.1 The present claims 2 to 7 are the same as claims 2 to 7 of WO-A-97/44999.

3.2 The unclear statement in claim 9 of WO-A-97/44999 that bearings "are arranged at an angle with respect to the feed direction of the wire" is clarified in the present claim 8 to read that the bearings "are arranged in the path of the wire (12)" which is what Figure 2 of WO-A-97/44999 shows and what line 38 of page 3 of WO-A-97/44999 states.

3.3 Thus the board has no objection under Article 123(2) EPC to the present dependent claims.

3.4 However the board does point out that the appendancies of claims 6 and 7 are wrong (the holder referred to in claim 6 is not mentioned until claim 2 and the actuating means referred to in claim 7 is not mentioned until claim 6). These errors can be corrected during the proceedings before the first instance.

4. *Amendments - the description*

4.1 The description of WO-A-97/44999 has been amended as follows to arrive at the current description.

4.2 The current pages 1 and 2 simply refer to claim 1 instead of repeating it word-for-word. Page 1 now more accurately discusses the prior art. Line 37 of page 3 contains a corrected reference numeral.

There are no objections to these amendments under Article 123(2) EPC.

4.3 However the board does point out that it would be helpful in line 24 of page 1 to refer to "this prior art application" rather than to "this patent specification" and that the first line of page 3 should be deleted as it merely repeats the end of page 2. These points can be dealt with during the proceedings before the first instance.

5. Since the sole objection relied upon by the examining division, namely contravention of Article 123(2) EPC, has now been overcome, it is appropriate to remit the case to the examining division for further prosecution (Article 111(1) EPC) so that the present version of the application can be examined for the other requirements of the EPC, in particular novelty and inventive step.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of the following version of the application:

Claims: 1 to 8 filed with the letter of
25 October 2001;

Description: page 1 filed with the letter of 14
February 2000;
pages 2, 4 and 5 filed with the letter
of 27 November 1998; and
page 3 filed with the letter of
25 October 2001; and

Drawings: sheets 1/2 and 2/2 of WO-A-97/44999.

The Registrar:

The Chairman:

G. Magouliotis

C. Andries