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**Datasheet for the decision
of 23 April 2008**

Case Number: T 0567/04 - 3.3.05

Application Number: 99944183.5

Publication Number: 1123156

IPC: B01J 8/38

Language of the proceedings: EN

Title of invention:

Particle treatment in a toroidal bed reactor

Applicant:

MORTIMER TECHNOLOGY HOLDINGS LIMITED

Headword:

Toroidal bed/MORTIMER

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Amendments containing subject-matter extending beyond the content of the application as filed (yes)"

Decisions cited:

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Catchword:

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Case Number: T 0567/04 - 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 23 April 2008

Appellant: MORTIMER TECHNOLOGY HOLDINGS LIMITED
Ferndale Court,
West End Road,
Mortimer
Reading RG7 3S7 (GB)

Representative: Van Malderen, Joëlle
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 01 December 2003
refusing European application No. 99944183.5
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: G. Raths
Members: J.-M. Schwaller
H. Preglau

Summary of Facts and Submissions

- I. This appeal lies from the decision of the examining division refusing European patent application No. 99944183.5.
- II. In the contested decision, the examining division held that independent claim 7 as filed with letter of 15 October 2000 did neither meet the requirements of Articles 56 and 84 EPC, nor those of Rule 29(7) EPC [EPC 1973].

Said claim 7 read as follows:

*"7. Apparatus of the type used to process particulate material in a stream of fluid and having:
an annular processing zone including a base;
fluid inlets at the base of the zone arranged to direct fluid into the annular treatment zone to meet particulate material in the zone;
the processing zone being shaped to maintain a circumferentially circulating turbulent band within the processing zone in response to the flow of fluid;
characterised in that the processing zone is proportioned to provide a predictable particle flow path both circumferentially of the processing zone and helically of the zone with the following characteristics:
(i) the fluid flow creates a circulating bed of particulate material which has a width between about 2% to 20% of the bed outer extremity diameter, an inner bed depth of less than 1% of the bed diameter, and an outer bed depth between about 2% to 5% of the bed diameter; and*

(ii) the flow of fluid is directed at an angle relative to the base of the processing zone in the range of about 10° to 45°."

In the contested decision, the examining division further held that the set of claims then on file did not comply with the requirements of Rule 86(4) [EPC 1973] and Article 82 EPC.

III. In the grounds of appeal dated 10 February 2004, the appellant contested the above decision and believed that the set of claims enclosed with its response dated 6 June 2003 satisfied the requirements of the EPC. It also filed a subsidiary set of claims which it described as "corresponding to the previous set of claims, but wherein the apparatus claims 7 to 9 were cancelled", and requested a favourable opinion regarding the patentability of this set of claims.

Claim 3 of said subsidiary set of claims read:

"3. A process as claimed in claim 1 in which said radial width of the bed is about 5% to 15% of said outer diameter of the bed."

IV. In the annex to the summons to oral proceedings dated 5 December 2007, the board held that the subject-matter of *inter alia* claim 3 above did not appear to fulfil the requirements of Article 123(2) EPC.

In addition to this issue, the board further raised objections under Articles 84, 54 and 56 EPC against the claims on file.

- V. The sole response to the summons to oral proceedings was a fax dated 11 April 2008, in which the appellant indicated that it did not wish to attend the oral proceedings, but that it would like to obtain a decision from the board.
- VI. Oral proceedings took place on 23 April 2008 in the absence of the appellant.
- VII. The board understands from the grounds of appeal that the appellant requests as a main request the grant of a patent on the basis of a set of claims enclosed with its letter dated 06 June 2003, or alternatively, as an auxiliary request on the basis of the subsidiary set of claims 1 to 6 enclosed with the grounds of appeal.

Reasons for the Decision

1. The board observes that the letter dated 06 June 2003 referred to in the grounds of appeal as enclosing the set of claims according to the main request in fact contained the translations in French and German of a set of claims 1 to 9 that the applicant (now appellant) described as having been brought on file with a letter dated 15 October 2000.

It is therefore understood that the set of claims according to the present main request corresponds to the one filed with the said letter dated 15 October 2000.

Independent claim 1 and dependent claim 3 thus have the same wording in both requests on file and read as follows:

"1. A process of the type used to bring particulate material into contact with a moving fluid in an annular processing zone having a base, the process including the steps:

supplying the particulate material to the processing zone;

generating a circumferentially directed flow of gas in the zone to develop a circumferentially circulating turbulent bed of particulate material moving within the processing zone about a vertical axis, and

discharging processed particulate material from the processing zone;

characterised in that the particulate material is circulated in the processing zone in a predictable particle flow path both circumferentially of the processing zone and helically of the zone to define a circulating bed with the following characteristics:

(i) the flow of fluid is controlled to develop the circulating bed with radial width between about 2% to 20% of the outer diameter of the bed, an inner bed depth of less than 1% of the bed diameter, and an outer axial height between about 2% to 5% of the outer bed diameter; and

(ii) the flow of fluid is directed at an angle relative to the base of the processing zone in the range of about 10° to 45° to the horizontal.

3. A process as claimed in claim 1 in which said radial width of the bed is about 5% to 15% of said outer diameter of the bed."

2. Allowability under Article 123(2) EPC of claim 3
 - 2.1 The wording of dependent claim 3 being the same in present main and auxiliary request, the reasons hereinafter apply to both requests.
 - 2.2 In the annex to the summons to oral proceedings, the appellant was informed that the subject-matter of dependent claim 3 did not appear to have a basis in the application as filed - i.e. in the PCT application published as WO 00/16891.

The appellant was furthermore invited to indicate the passages in the published PCT application forming a basis for the subject-matter of this claim, and a time limit of two weeks before the scheduled date for oral proceedings was set for the filing of observations and/or amendments.

- 2.3 The appellant neither indicated the passages in the application as filed forming a basis for the subject-matter of dependent claim 3, nor contested the objection raised by the board, nor filed amendments to the claims on file.
- 2.4 In this context, as the board does not find any basis in the application as filed for the feature "*radial width of the bed is about 5% to 15% of said outer diameter of the bed*" recited in dependent claim 3, it must be concluded that the latter contains subject-matter extending beyond the content of the application as filed, which is contrary to the requirements of Article 123(2) EPC.

3. Since the dependent claim 3 of both requests are identical, none of the sets of claims on file meets the requirements of the EPC and therefore none of the requests can be allowed.

In view of the above findings, the further objections raised by the board in the summons to the oral proceedings need not to be dealt with in this decision.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:

S. Fabiani

G. Rath