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D E C I S I O N
of 15 December 2005

Case Number: T 0437/05 - 3.3.05

Application Number: 00959112.4

Publication Number: 1230171

IPC: C02F 1/461

Language of the proceedings: EN

Title of invention:

Electrolytic water treatment with rotating radial electrodes

Applicants:

Sebo, Dusan, et al

Opponent:

-

Headword:

Water treatment/SEBO

Relevant legal provisions:

EPC Art. 123(2)

Keyword:

"Amendment not admissible: generalisation of feature shown only in a Figure"

Decisions cited:

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Catchword:

-



Case Number: T 0437/05 - 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 15 December 2005

Appellants: Sebo, Dusan, et al
Letna 14
04001 Kosice (SK)

Representative: -

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 19 November 2004
refusing European application No. 00959112.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: M. Eberhard
Members: B. Czech
J. Willems

Summary of Facts and Submissions

- I. The appeal is from the decision of the examining division refusing European patent application No. 00 959 112.4.
- II. Independent claim 1 of the application as filed reads as follows:
- "Item 1 - The Electrolytic water treatment with rotating radial electrodes is characterized by an electrolytic vessel (1) with an inlet of waste water (2), and outlet of clean water (3), froth collector (4) located above the water level; waste or sludge drain (5) located on the bottom of the vessel. There are at least six electrodes (12) from the eighth group of elements from the Periodic Table of Elements, and at least twelve electrodes (13) from the third group of elements from the Periodic Table of Elements located in a radial direction to the center of rotation (7), and connected to dc power supply (8) and control system (9)."*
- III. In the course of the examination proceedings, the applicants amended the claims, inter alia by additionally specifying in claim 1 that the radial electrodes (12) and (13) were *shovellike*.
- IV. The application was refused on the ground that several of the amendments carried out in the claims did not comply with the requirements of Article 123(2) EPC, since they introduced subject-matter which extended beyond the content of the application as filed. One of the amendments objected to was the introduction of the

feature *shovellike*, for the reason that such electrodes were not described in the original application.

- V. In the statement of grounds of appeal, the appellants requested that the appeal be set aside and a patent be granted on the basis of new claims 1 to 7 as main request. These claims were submitted with a letter dated 5 April 2005. Independent claim 1 of this set reads as follows:

"1. *Electrolytic water treatment device comprising an electrolytic vessel (1) with an inlet (2) of waste water, an outlet (3) of clear water and a sludge drain (5) located at the bottom of the vessel, and comprising further rotating **shovellike** [emphasis added by the board] electrodes arranged in a radial direction towards the center of rotation, characterized in that adjacent electrodes are connected to different poles of a DC power supply (Z. 83 i.V.m. Fig.2) connected to a control system (9), wherein the electrodes are made of elements the eight and third group of the Periodic Table, wherein between two electrodes made of elements of the eight group two electrodes made of the elements of the third group are arranged, so that the number of electrodes of the third group is always twice the number of electrodes from the eight group. (Fig.2 i.V.m. Z.84-91)."*

As auxiliary request 1, they requested the grant of a patent on the basis of claims 1 to 6, wherein claim 1 represents a combination of claims 1 and 2 of the main request, and wherein claims 2 to 6 correspond to

claims 3 to 7 of the main request with adapted back-referencing.

As auxiliary request 2, they requested the grant of a patent on the basis of claims 1 to 5, wherein claim 1 represents a combination of claims 1, 2 and 3 of the main request, and wherein claims 2 to 5 correspond to claims 4 to 7 of the main request with adapted back-referencing.

VI. In the statement of grounds of appeal, the appellants essentially argued as follows concerning the admissibility of the incorporation, into claim 1, of the feature *shovellike*, (see point I.II):

It could unambiguously be gathered from Figure 2 of the application in suit that the electrodes consisted of plates extending in the direction of a common axis of rotation. From Figures 1 and 2 and the description it could also be gathered that the electrode plates were rotatable around this common axis of rotation. The term *shovellike* was used to clarify this arrangement, and a clarifying amendment did not necessarily represent an extension. In this connexion, reference was made to decision T 0037/82. A skilled person would unambiguously understand that in the context of the application, the term shovel ("Schaufel") would designate essentially two-dimensional ("flächige") plates interacting with the surrounding medium, which plates may be curved ("Wölbung").

VII. In the annex to the summons to oral proceedings dated 16 September 2005, the board questioned whether several of the amendments carried out in claim 1 were

sufficiently based on the application as filed. More particularly, the board expressly objected to the introduction of the feature *shovellike*, which also covered curved electrode plates. Since such electrode shapes were not disclosed in the application as filed, said amendment did not meet the requirements of Article 123(2) EPC (see point 4. of the said annex).

VIII. With letter dated 11 November 2005, the appellants' representative indicated that he had ceased to act as such.

IX. No other written submission reached the board before the oral proceedings, which took place on 15 December 2005 in the absence of the appellants.

Reasons for the Decision

Right to be heard

1. As the representative only notified the board by a letter of 11 November 2005 that he no longer acted for the appellant, the summons to oral proceedings was rightly sent to the representative (Rule 81(1) EPC). Therefore, the appellants were duly summoned to the oral proceedings and their non-appearance at these proceedings formed no obstacle for the board to continue the proceedings (Rule 71(2) EPC and Article 11(3) Rules of Procedure of the Boards of Appeal) and such continuation does not infringe the appellants' right to be heard.

Main request

2. The term *shovellike* contained in amended claim 1 finds no literal basis in the application as filed. Actually, the entire text of the application including the claims contains no information whatsoever concerning possible shapes of the electrodes.
3. Information concerning the shape of the electrodes can be gathered from Figure 2 of the application, which shows a **specific** embodiment of an electrolytic device having electrodes which appear to be flat and rectangular, or, in the words of the examining division, "plate-like".
4. In accordance with the appellants' own submission, the board is of the opinion that the skilled person would understand the term *shovellike* to also cover shapes which are curved to some extent, in contrast to the flat rectangular plates shown in Figure 2.
5. Hence, the question to be answered in the present case when examining the proposed amendment for its compliance with the requirements of Article 123(2) EPC is whether or not the application as filed somehow discloses the plurality of shapes that can be subsumed under the generic term *shovellike*.
6. The application does not, however, contain parts disclosing electrode shapes other than the one shown in Figure 2. Under certain circumstances, it is possible to introduce a feature taken from a drawing into a claim without contravening Article 123(2) EPC. However, in the present case, there is no element in the entire

application suggesting that the shape-related details of Figure 2 could be considered to represent other, e.g. curved shapes, as well. Hence Figure 2 cannot represent a valid basis for using the more general term *shovellike*.

7. Therefore, although the additional term *shovellike* limits the multitude of possible electrodes shapes, it adds subject-matter which was not disclosed in the application as filed to the extent that the term *shovellike* covers shapes differing from the one shown in Figure 2, such as curved plates.
8. Decision T 0037/82 invoked by the appellants relates to a subsequent clarification, in the description, of an effect achieved by technical features that were disclosed in the original application. This effect could be deduced without difficulties from the original application by the skilled person (see Headnote I and Reasons, point 2.). Since the term *shovellike* relates to the shape and not to an effect of the electrodes and cannot directly and unambiguously be derived from the original application by the skilled person, this decision cannot affect the position of the board concerning the admissibility of the amendment.
9. Hence, the amendment consisting in the introduction of the feature "*shovellike*" into claim 1 does not meet the requirement of Article 123(2) EPC. Consequently, the appellants' main request cannot be granted.

Auxiliary requests

10. Although the amended claims 1 of the first and second auxiliary requests announced in the grounds of appeal dated 18 March 2005 were neither formulated nor submitted, they are based on a combination of claim 1 of the main request with dependent claims of the said request (see point V above). Every claim formed by a combination of claim 1 according to the main request with one or more of the dependent claims according to the main request would, irrespective of its exact wording, necessarily also contain the feature *shovellike* contained in said claim 1. The respective independent claims 1 according to the first and second auxiliary requests being formed in such a manner, the objection raised against claim 1 according to the main request applies mutatis mutandis to the respective independent claims 1 according to the first and second auxiliary requests.

11. Hence, due to the presence of the feature *shovellike*, these claims also do not meet the requirements of Article 123(2) EPC. Consequently, neither of the two auxiliary requests can be granted.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

A. Wallrodt

M. Eberhard