

**Internal distribution code:**

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

**Datasheet for the decision  
of 20 January 2009**

**Case Number:** T 0697/06 - 3.4.01

**Application Number:** 00961465.2

**Publication Number:** 1210145

**IPC:** A61N 2/00

**Language of the proceedings:** EN

**Title of invention:**

Method for electromagnetically restructuring water for consumption

**Applicant:**

Jacobson, Jerry

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 84  
EPC R. 43(3)

**Relevant legal provisions (EPC 1973):**

-

**Keyword:**

-

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0697/06 - 3.4.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.4.01  
of 20 January 2009

**Appellant:** Jacobson, Jerry  
2006 Mainsail Circle  
Jupiter, FL 33477-1418 (US)

**Representative:** Johansson, Lars-Erik  
Hynell Patenttjänst AB  
Patron Carls väg 2  
S-683 40 Uddeholm (SE)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 27 December 2005  
refusing European application No. 00961465.2  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** B. Schachenmann  
**Members:** G. Assi  
H. Wolfrum

## Summary of Facts and Submissions

- I. The European patent application No. 00961465.2 (publication number 1 210 145) was refused by the examining division which, in its decision, inter alia held that the application did not meet the requirements of Article 84 EPC 1973.
- II. The applicant (appellant) lodged an appeal against the decision of the examining division.
- III. With the grounds of appeal dated 24 April 2006 the appellant requested that the decision under appeal be set aside and a patent be granted on the basis of the following sets of claims:
- Claims 1-18 according to a main request submitted with the grounds of appeal,
- Claims 1-11 according to a first auxiliary request submitted with the grounds of appeal,
- Claims 1-11 according to a second auxiliary request submitted with the grounds of appeal.
- IV. With a communication dated 30 October 2008 the appellant was summoned to oral proceedings (Rule 115(1) EPC) scheduled to take place on 20 January 2009.
- V. On 14 November 2008 the Board sent a communication pursuant to Article 15(1) RPBA, in which objections under Articles 53(c) and 83 EPC as well as Articles 84, 56 and Rule 29 EPC 1973 were raised. The Board drew the appellant's attention to the fact that "*Due to the*

*number and the nature of the objections, the grant of a patent may not be envisaged at least at present"*  
(point 4.1).

- VI. With a letter of 19 December 2008 the appellant informed the Board that it would not attend the oral proceedings.

The appellant maintained the previously filed requests and further requested that the application be decided according to the state of the file but that an adaptation of the description to claims accepted by the EPO be dealt with in connection with a communication according to Rule 71(3) EPC. The appellant also requested that the Board reconsider the case.

Moreover, the appellant did not submit any arguments on the objections raised by the Board.

- VII. Oral proceedings took place on 20 January 2009 in the absence of the appellant and its representatives.

- VIII. The wording of claim 1 of the main request reads as follows:

*"Use of an electromagnetic field of a specific flux density varying from  $10^{-5}$  to  $10^{-21}$  gauss and a specific frequency varying from 0 hertz to 300 hertz for treatment of water and the contents thereof, which water will subsequently be applied to or ingested by an organism, wherein a sample of water outside the organism is subjected for a period of time to an electromagnetic field with a specific flux density and*

*a specific frequency depending on the intended subsequent use of said water."*

Claims 2-17 of the main request are dependent claims.

The wording of claim 18 of the main request reads as follows:

*"A method of treating a plant or seed, the method comprising subjecting water for a period of time to an electromagnetic field of a specific flux density varying from  $10^{-5}$  to  $10^{-21}$  gauss and a specific frequency varying from 0 hertz to 300 hertz, characterised in that the method comprises the steps of subjecting a sample of water outside the plant or seed to a specific flux density and a specific frequency depending on the intended subsequent use of said water and subsequently applying the water so treated to the plant or seed depending on the intended subsequent use of said water."*

IX. The wording of claim 1 of the first auxiliary request reads as follows:

*"A method of treating a plant or seed, the method comprising subjecting water for a period of time to an electromagnetic field of a specific flux density varying from  $10^{-5}$  to  $10^{-21}$  gauss and a specific frequency varying from 0 hertz to 300 hertz, characterised in that the method comprises the steps of subjecting a sample of water outside the plant or seed to a specific flux density and a specific frequency depending on the intended subsequent use of said water and subsequently applying the water so treated to the plant or seed."*

Claims 2-11 of the first auxiliary request are dependent claims.

- X. The wording of claim 1 of the second auxiliary request reads as follows:

*"A method of treating a plant or seed, the method comprising subjecting water for a period of time to an electromagnetic field of a specific flux density varying from  $10^{-5}$  to  $10^{-21}$  gauss and a specific frequency varying from 0 hertz to 300 hertz, characterised in that the method comprises the steps of subjecting a sample of water outside the plant or seed to a specific flux density and a specific frequency and subsequently applying the water so treated to the plant or seed."*

Claims 2-11 of the second auxiliary request are dependent claims.

- XI. The revised version of the European Patent Convention or EPC 2000 entered into force on 13 December 2007. In the present decision, reference is made to "EPC 1973" or "EPC" for EPC 2000 (EPC, Citation practice, pages 4-6) depending on the version to be applied according to Article 7(1) of the Revision Act dated 29 November 2000 (Special Edition No. 1 OJ EPO, 196) and the decisions of the Administrative Council dated 28 June 2001 (Special Edition No. 1 OJ EPO 2007, 197) and 7 December 2006 (Special Edition No. 1 OJ EPO 2007, 89).

## Reasons for the Decision

1. As requested by the appellant, the Board reconsidered the case. However, the Board has no reason for withdrawing the objections raised in the communication of 14 November 2008, inter alia those concerning the requirement of clarity.

2. Main request

2.1 Article 84 EPC and Rule 43(3) EPC (identical to Article 84 EPC 1973 and Rule 29(3) EPC 1973)

The wording of claims 1 and 18 does not comply with the requirement of clarity (Article 84 EPC) in the following respects.

2.1.1 Claim 1 does not recite features essential for the invention (Rule 43(3) EPC).

A first point concerns the electromagnetic field. In particular, claim 1 refers to the use of an electromagnetic field of a specific magnetic flux density varying from  $10^{-5}$  to  $10^{-21}$  G and a specific frequency ranging from 0 to 300 Hz. Thus, according to the claim, the magnetic field may be steady or alternating. Claim 1 does not mention any further characteristic of the electromagnetic field. However, the description consistently teaches to apply a homogeneous electromagnetic field (published application, page 3, lines 4-7 and page 15, lines 4-16). Since this feature is considered to be essential for the invention, claim 1 lacks clarity as failing to recite it.

Another point concerns the relationship between the electromagnetic field and the intended use of the treated water. According to claim 1, a sample of water outside the organism is subjected "*for a period of time to an electromagnetic field with a specific flux density and a specific frequency depending on the intended subsequent use of said water*". The expression "*depending on the intended subsequent use of said water*" is void of any meaning, unless a causal relationship is established between the choice of a specific field and the intended use of the treated water. Since this relationship is considered to be essential for the invention, claim 1 lacks clarity as failing to recite it.

2.1.2 According to the description (published application, page 3, lines 22-26; page 5, lines 2-6), water is subjected to "*alternating and steady magnetic fields*" having given flux densities and frequencies. "*These magnetic fields recrystallize water molecules*".

It is known that, in the liquid phase, polar water molecules arrange themselves into a semi-ordered molecular structure. However, there is no scientifically accepted proof that a steady magnetic field of the claimed strength would significantly alter that structure. An alternating magnetic field, on the other hand, would at best repeatedly change the molecular structure so that it is inconceivable how the water molecules could indeed be "*recrystallized*" in the usual technical meaning of this term. Now, if such a "*recrystallization*" is assumed to provide for the alleged beneficial effects of the treated water



- (published application, page 3, lines 8-17), it is not clear how these effects could be achieved by an alternating magnetic field, as recited by claim 1.
- 2.1.3 Another issue consists in that any alteration in the water would reasonably take place only as long as the field is applied. It is not clear how the treated water could maintain its alleged properties after the application of the field is stopped and until the water is ingested by the organism, as implied by claim 1.
- 2.1.4 The values of the flux density according to claim 1 are extremely low in comparison to the earth's magnetic field, the strength of which at the earth's surface varies in the range from 0.3 to 0.6 G depending on the position. It is not clear how the claimed field could produce any effect distinguishable from that deriving from the earth's magnetic field.
- 2.1.5 Claim 1 is unduly broad. First, the term "*organism*" covers humans, animals, fruits, vegetables and plants in general (published application, page 3, lines 11-17). Second, the claimed ranges, in particular that for the flux density ( $10^{-5}$  to  $10^{-21}$  G) covers sixteen orders of magnitude. Moreover, the period of time during which the sample of water is subjected to the field is not defined at all, so that any interval is possible. Third, the term "*contents*" is undefined. Thus, many kinds of water, for example spring water, sea water, water with various ions, additives or other elements, fall within the scope of the claim, whereby it is reasonable to assume that the water has an influence on the electromagnetic field to be applied in view of the intended use.

The appellant submitted in the grounds of appeal (page 4) that "*the mere fact that a claim is wide does not in itself result in a lack of clarity*". This may be correct in certain cases. However, claim 1 covers innumerable combinations due to the broad and/or undefined features regarding the "*organism*", the "*contents*" of water, the flux density range and the field application time. This renders the subject-matter of claim 1 speculative.

2.1.6 The above considerations are also valid for claim 18 with the exception of those concerning the term "*contents*" which is not mentioned in claim 18. Moreover, although claim 18 only refers to "*a plant or seed*", it remains unduly broad owing to the large number of varieties thereof.

2.2 For these reasons, the subject-matter of claims 1 and 18 of the main request lacks clarity.

2.3 Therefore, the main request is not allowable.

3. First and second auxiliary requests

3.1 The considerations concerning claim 18 of the main request also apply with equal force to claim 1 of the first auxiliary request.

3.2 They also apply *mutatis mutandis* to claim 1 of the second auxiliary request.

3.3 For these reasons, the subject-matter of claim 1 of the first auxiliary request lacks clarity. The same applies to claim 1 of the second auxiliary request.

3.4 Therefore, the first and second auxiliary requests are not allowable.

4. Right to be heard

The Board's communication of 14 November 2008 drew the appellant's attention to the clarity issues addressed above. With the reply of 19 December 2008 the appellant did not submit any comment on these issues.

## **Order**

**For these reasons, it is decided that:**

The appeal is dismissed.

The Registrar

The Chairman:

R. Schumacher

B. Schachenmann