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**Datasheet for the decision
of 22 April 2010**

Case Number: T 1291/07 - 3.3.05

Application Number: 99908045.0

Publication Number: 1076632

IPC: C01B 13/00

Language of the proceedings: EN

Title of invention:

Method and apparatus for preparation and use of ozone water

Applicant:

Segulah Sweden II AB

Headword:

Ozonising water/SEGULAH

Relevant legal provisions:

EPC Art. 123(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Allowability of amendments (no - al requests): removal of features from claim 1 as originally filed - subject-matter of amended claims 1 extending beyond the content of the application as filed"

Decisions cited:

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Catchword:

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Case Number: T 1291/07 - 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 22 April 2010

Appellant: Segulah Sweden II AB
P O Box 5483
S-114 84 Stockholm (SE)

Representative: Lindgren, Anders
BRANN AB
P.O. Box 1344
S-751 43 Uppsala (SE)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 29 March 2007
refusing European application No. 99908045.0
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: G. Raths
Members: B. Czech
H. Preglau

Summary of Facts and Submissions

- I. This appeal is from the decision of the examining division to refuse European patent application No. 99908045.0 on the ground that the amended claims then on file did not meet the requirements of Article 123(2) EPC.
- II. Claim 1 of the application as filed (on 2 March 1999 as PCT/SE99/00298) reads as follows:

"1. System for production of water having ozone dissolved therein, said system comprising water feeding means (11,V1,71,30,83), a container means (60), ozone feeding means (10,70,V2,F1,20) for feeding ozone to a mixing means (BK) for dissolving ozone in said water, said mixing means (BK) drawing water from the lower part of the container (60), ozone measuring means (51) for measuring the ozone concentration of said water in the container (60), water pumping means (P1,P2) for circulating said water from the lower part of the container (60) to the upper part of the container (60) in dependence of a measured ozone concentration in said water and said ozone feeding means feeding ozone to said mixing means (BK) in dependence of a predetermined ozone concentration value, said container (60) having an outlet (71,P2,71,V4,12) for water having the predetermined concentration of ozone, said system adapted to maintain a predetermined liquid level in said container, said system also comprising a control unit (50) for controlling the system in dependence of measured physical parameters in the system."

III. Under cover of its statement of grounds of appeal of 11 July 2007, the appellant filed three sets of amended claims respectively labelled "NEW CLAIMS (1° request)", "1st auxiliary request" and "2nd auxiliary request"

Claim 1 according to the "1° request" reads as follows:

*"1. Apparatus for producing a water-ozone solution, comprising:
a tank(60);
means (11, 71, 30, 83) for supplying water to the tank (60);
a mixing chamber (BK) for mixing ozone and water;
an ozone generator (20) and means (V3, BV4) for feeding ozone from the generator to the mixing chamber (BK);
means (P1) for feeding water from the lower part of the tank (60) via a conduit (77) to the mixing chamber (BK), for mixing it with ozone to provide a solution, and back to the tank;
characterized by
an ozone sensor (S1) for sensing the ozone concentration, arranged at the outlet from the tank (60), or in an outlet conduit (84) from the tank (60);
means (P2, 78, 84, V4) for recirculating solution from the bottom of the tank (60) back to the upper part of the tank (60); and
a control unit (50) coupled (109) to the ozone sensor (S1), wherein signals from the sensor (S1) are used for controlling the operation of the apparatus."*

Claim 1 according to the 1st auxiliary request differs therefrom in that several features are omitted, namely

- in the pre-characterising part, the features "for mixing it with ozone to provide a solution";

- in the characterising part, the features "from the bottom of the tank (60) back" and "coupled (109) to the ozone sensor"

Claim 1 according to the 2nd auxiliary request differs from claim 1 according to the 1st auxiliary request in that the features relating to the means for recirculating solution read as follows:

"means (P2, 78, 84, V4) comprising a conduit (84) near the bottom of the tank (60), and a pump (P2), for recirculating solution to the upper part of the tank (60), via a conduit (78)"

The appellant argued that the decision under appeal should be set aside since the newly filed claims met the requirements of the EPC. More particularly, the appellant submitted that as far as the amended wording of the claims did not find an exact literal support in the text of the application as filed, the features in question were derivable from the drawings.

Alternatively, the appellant requested "oral proceedings, or at least an opportunity to amend claims".

IV. The appellant was summoned to oral proceedings. In its communication dated 17 February 2010, the board raised objections concerning all the requests (see point 4.2), inter alia in regard to the allowability of the

amendments under Article 123(2) EPC. In particular, the board noted the following:

"Several features of claim 1 of the application as filed have been omitted and/or generalised such that they are no longer comprised in the amended independent claims 1 of all the requests. The resulting subject-matter of the independent claims 1 would thus appear to comprise more generic subject-matter not disclosed in the application as filed. For instance,

i) the present claims 1 no longer require means feeding the ozone to the mixing means (BK) "*in dependence of a predetermined ozone concentration*";

ii) the present claims 1 no longer require means circulating water from the lower part of the container (60) to its upper part "*in dependence of a measured ozone concentration in said water*";

...

iv) the presently claimed apparatuses no longer need to be "*adapted to maintain a predetermined liquid level*" in the container means (60);

...

vi) an outlet "*for water having the predetermined concentration of ozone*" is no longer referred to; and

vii) present claims 1 no longer refer to a plurality of measured physical parameters s to be used in controlling the system."

The board also set a time limit for filing amended application documents.

V. In its reply dated 31 March 2010, the appellant merely indicated the following: "... the applicants cannot

attend the Oral Proceedings on April 22 because of financial reasons. Thus, a decision must be taken on the file."

- VI. No other written submission reached the board up to the day of the oral proceedings, which were held on 22 April 2010 in the absence of the appellant.

- VII. The appellant requested in writing that the contested decision be set aside and that a patent be granted on the basis of the claims according to the set labelled "NEW CLAIMS (1° request)" or, alternatively, on the basis of one of the sets of claims labelled "1st auxiliary request" and "2nd auxiliary request", all the requests filed on 11 July 2007 under cover of the statement of grounds of appeal.

Reasons for the Decision

Allowability of the amendments (Article 123(2) EPC) - All requests

- 1. In its reply to the board's communication, the appellant neither refuted the board's objections under Article 123(2) EPC nor pointed out any specific parts of the application as filed which in its view constituted a basis for the amendments in question. Up to the date of the oral proceedings, the appellant did also not take the opportunity offered by the board to file further amended claims.

- 2. The board has no reason to deviate from its negative preliminary opinion as expressed in its communication

of 17 February 2010 (see point IV above) having regard to the allowability of the amendments to claim 1.

2.1 The respective amended independent claims 1 according to the three requests on file are all directed to an apparatus comprising a combination of several features that were already present (although differently worded) in claim 1 of the application as originally filed.

However, claim 1 as originally filed additionally comprises several essentially functional limiting features which were removed and are thus no longer present in the amended claims 1. The features concerned (see point IV above) include the ones recited under point 4.2, subsections i), ii), iv), vi) and vii) of the board's communication.

2.2 For the board, the amendments consisting in the omission of the said limiting functional features are not supported by the contents of the application as filed, since apparatuses as now claimed, i.e. without these limitations, are not directly and unambiguously disclosed in the description, the claims and/or the drawings as filed, neither expressly nor implicitly. In particular, the board considers that nothing in the application as filed suggests the option of foreseeing, as an apparatus according to the invention, an apparatus wherein all the said functional limiting features are omitted. The three respective claims 1 are thus directed to subject-matter extending beyond the content of the application as originally filed.

2.3 Hence, the amendments in question do not meet the requirements of Article 123(2) EPC.

3. Consequently, none of the appellant's requests is allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

C. Vodz

G. Rath