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**Datasheet for the decision
of 9 August 2012**

Case Number: T 1656/09 - 3.3.05

Application Number: 06023725.2

Publication Number: 1787704

IPC: B01D 46/24, F01N 3/021,
F01N 3/031, B01D 47/06,
B04C 5/23

Language of the proceedings: EN

Title of invention:
Apparatus for filtering micro particles

Applicant:
Polaris AGM

Headword:
Microparticle filter/POLARIS

Relevant legal provisions:
EPC Art. 84

Keyword:
"Clarity: no"

Decisions cited:
-

Catchword:
-



Case Number: T 1656/09 - 3.3.05

D E C I S I O N
of the Technical Board of Appeal 3.3.05
of 9 August 2012

Appellant:
(Applicant)

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Representative:

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Decision under appeal:

Decision of the Examining Division of the
European Patent Office posted 6 March 2009
refusing European patent application
No. 06023725.2 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: G. Raths
Members: B. Czech
C. Vallet

Summary of Facts and Submissions

- I. The appeal is from of the decision of the examining division refusing European patent application No. 06023725.2.
- II. The examining division found that independent claim 1 and several of the dependent claims according to the sole request then on file lacked clarity (Article 84 EPC).
- III. Under cover of its statement of grounds of appeal dated 16 July 2009, the appellant filed an amended set of claims. It did not challenge the conclusion reached by the examining division, but submitted *inter alia* that the newly filed claims overcame the clarity objections that had led to the refusal of the application.

Amended claims 1, 10 and 11 according to said request read as follows:

"1. *An apparatus for filtering micro particles, comprising tubular cells, wherein a first end of each cell is open to let a fluid enter from a distribution area into the cell and a second end of each cell is closed, the fluid being forced to change direction of flow from axial to radial for vacating the cell through a cell mantle into an escape area, and wherein the tubular cells form a package supported by a flange, the flange enveloping the package and separating the distribution area from the escape area, characterized in that the cell is designed in such a manner, that the speed of the fluid is reduced down to such a level that micro*

particles can settle over a retaining cloth and gradually fill up interstices of the retaining cloth and spaces between layers of the retaining cloth, wherein a thermal fabric layer made of mineral wool covers the inside of the second end of the cells in such a way that the thermal fabric layer penetrates the inside space of the cells in a distance of about 0,01 m or more, one thermal fabric layer covering the inside of second ends of a multitude of cells, the second ends being closed by a steel plate, which is pressed against the thermal fabric layer and in that position is welded to the second ends of the cells."

"10. Apparatus according to one of the preceding claims, characterized in that the cells are designed to produce gradually an interlayer filling formed by the particulate material, being able to trap particles sized 500 Å and smaller, preferably smaller than the particles that form the reticule."

"11. Apparatus according to one of the preceding claims, characterized in that the cell is designed in such a manner that the speed of the fluid is reduced down to such a level that the low kinetic energy of the retained particles prevents them from getting packed and/or forming hardened layers."

IV. The board considered said amended claims to be objectionable on various grounds, and therefore summoned the appellant to oral proceedings in accordance with the latter's auxiliary request. In the annex to the summons to oral proceedings, the board, taking into account the arguments of the appellant,

inter alia questioned the clarity of the claims at issue.

In said annex to the summons to oral proceedings, the board also set a time limit for filing amended application documents (up to one month before the oral proceedings) but expressed serious doubts whether it would be possible to draft claims which would reflect what was explained in the appellant's last submission and which were duly restricted, clear and supported by the description, and also met the requirements of Article 123(2) EPC.

- V. By a telefax received on 6 August 2012, the representative of the appellant informed the board in writing that he would not attend the oral proceedings.
- VI. Oral proceedings were held on 9 August 2012 in the absence of the appellant.
- VII. As indicated in the summons to oral proceedings, the board understands from the content of the file that the appellant requests that the contested decision be set aside and a patent be granted on the basis of the set of claims filed under cover of its statement of grounds of appeal dated 16 July 2009.

Reasons for the Decision

Clarity of the claims at issue - Article 84 EPC

- 1. Up to the date of the oral proceedings, the appellant neither responded in substance to the objections raised

by the board in the annex to the summons to oral proceedings, nor did it take the opportunity offered by the board to file further amended claims.

2. In the annex to the summons to oral proceedings, the board had expressed the following provisional opinion:

" ... The clarity objections raised by the examining division do not appear to be overcome by the amended claims filed by the appellant."

"In the case of claim 1, the reasoning of the examining division (points 2.1 and 2.2 of the decision under appeal) still applies, despite the amendment to the functional definition of apparatus features now reading *"the cell is designed in such a manner ... between layers of the retaining cloth"*.

"Said wording does still not permit a clear distinction of the claimed apparatus from similar apparatuses in terms of constructional apparatus features (such as the relative dimensioning of the cells, e.g. number, diameter, length, and the inlet/outlet areas of the apparatus, and/or in terms of the relevant properties of the filter material to be used, such as pore size/permeability)."

"Whether or not an apparatus with the express constructional features recited in present claim 1 can be considered to comply with said functional feature will depend on the flow of fluid to be filtered, on the dimensioning of the inlet and outlet areas of the apparatus, on the number and dimensioning of the cells,

on the properties of the filter medium used and on the properties of the particles to be retained (chemical nature, particle size)."

"Present claims 10 and 11 are objectionable for similar reasons."

"More particularly, the ambit of present claims 10 and 11 is indefinite and hence not clearly defined in terms of apparatus features, since a given filter apparatus may or may not meet the criteria recited, depending on the flow of fluid and the dimensioning of the cells and the inlet/outlet areas, on the properties of the filter medium and on the properties of the particles to be collected."

3. In essence, the lack of clarity stems from the attempts to define essential features of the claimed apparatus for filtering micro particles in terms of its intended use, by virtue of features depending on the properties of the particles and the flow of the fluid of to be filtered:

3.1 More particularly, according to claim 1, the filter apparatus is characterised *inter alia* in that "*the cell is designed in such a manner, that the speed of the fluid is reduced down to such a level that micro particles can settle over a retaining cloth and gradually fill up interstices of the retaining cloth and spaces between layers of the retaining cloth*".

3.2 According to claim 10 at issue, the filter apparatus is further characterised *inter alia* in that "*the cells are designed to produce gradually an interlayer filling*

formed by the particulate material, being able to trap particles sized 500 Å and smaller, preferably smaller than the particles that form the reticule".

- 3.3 According to claim 11 at issue, the filter apparatus is further characterised in that "*the cell is designed in such a manner that the speed of the fluid is reduced down to such a level that the low kinetic energy of the retained particles prevents them from getting packed and/or forming hardened layers*".
4. In the absence of any counter-arguments from the appellant, the board has no reason to deviate from its negative preliminary opinion as expressed in said annex to the summons to oral proceedings, in particular having regard to the clarity of claims 1, 10 and 11 at issue.
5. Hence, in the board's judgement, claims 1, 10 and 11 do not meet the clarity requirement of Article 84 EPC.
6. Consequently, the appellant's request is not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

K. Götz

G. Raths