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**Datasheet for the decision
of 12 May 2011**

Case Number: T 1578/10 - 3.2.04

Application Number: 06425753.8

Publication Number: 1836908

IPC: A23N 12/06

Language of the proceedings: EN

Title of invention:

Process for washing and sterilising food products,
particularly vegetables, and relevant apparatus

Applicant:

Turatti S.r.l.

Opponent:

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Headword:

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Relevant legal provisions:

EPC Art. 83, 84

Relevant legal provisions (EPC 1973):

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Keyword:

"Clarity (yes)"

"Disclosure - sufficiency (yes)"

Decisions cited:

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Catchword:

-



Case Number: T 1578/10 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 12 May 2011

Appellant: Turatti S.r.l.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 December 2009
refusing European patent application
No. 06425753.8 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. de Vries
Members: C. Scheibling
T. Bokor

Summary of Facts and Submissions

I. The Appellant lodged an appeal, received 17 February 2010, against the decision of the Examining Division posted 14 December 2009, refusing the European patent application No. 06 425 753.8 and simultaneously paid the required fee. The grounds of appeal were received 26 April 2010.

In its decision the Examining Division held that the application did not meet the requirements of Articles 83 and 84 EPC.

II. With letter of 13 April 2011 the Appellant filed a new main request in reply to comments made by the Rapporteur on behalf of the Board in a telephone conversation held on that same date.

III. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of claims according to the new main request submitted with letter of 13 April 2011, or, in the alternative, based on description and claims of further requests submitted with the grounds of appeal. Oral proceedings are also requested.

IV. The independent claims of the main request read as follows :

1. "Process for washing and sterilising food products, particularly vegetables, characterised in that it comprises the following steps:

- (a) treatment of said food products in water by ultrasounds and ultraviolet rays and micro filtering said water;
- (b) treatment of said food products in water under ozone atmosphere and ultraviolet rays and micro filtering said water;
- (c) treatment of said food products by ultraviolet rays;
- (d) dewatering and drying said food products under controlled atmosphere."

12. "Apparatus (1) for washing and sterilising food products, particularly vegetables, for carrying out the process according to claims 1 - 11, comprising loading means (2) and means (10, 11) for discharging said food products, characterised in that it comprises:

- a first section (4), including dragging means (6), a cavity within which said products are submerged in water, means for generation of ultrasounds, ultraviolet light emission means, water micro filtering means (42) and means (45) for generation of ozone, said water contained within said cavity being saturated with ozone produced by said means for generation of ozone (45);

and

- a second section (5) comprising further dragging means (7), means (9) for drying said food products and cooling means (10)."

Reasons for the Decision

1. The appeal is admissible.

2. *Background*

The application relates to a process and an apparatus for washing and sterilising food products which involves the use of ultraviolet light and ultrasound among others. Its main concern is to limit the further use of additional toxic chemicals, without increasing water or energy consumption, and while ensuring a prolonged preservation of the product under sterile conditions, see page 2, lines 18 to 36 of the description as filed. To this end the application suggests among others including *micro filtering* in the treatment of the food products, see page 3, lines 5 to 14 of the description as filed.

3. *Sufficiency of Disclosure*

3.1 In claim 1 *as filed* micro filtering appears in steps (a) and (b) in the following terms : "treatment of said food products by ultrasounds, ultraviolet rays and micro filtering" and "treatment of said food products under ozone atmosphere, ultraviolet rays and micro filtering". Page 3 of the as filed description repeats this formulation. A literal reading might suggest that micro filtering acts directly on the food products. This, however, would be at odds with what is normally understood as micro filtering, namely the filtering out of very small particles (on the scale of microns) from a fluid passed through a filter, such as for example commonly practised in water purification. The above

formulation may well be unclear and not immediately intelligible to the skilled person. The skilled person, however, has a mind willing to understand and wants to make technical sense of the various terms in the disclosure (claims and description). He will therefore try to resolve any lack of clarity by reading the terms in the context of the entire disclosure, description, drawings and claims, and using his common general knowledge to figure out their true, proper meaning, in particular where the text might seem unusual or flawed.

- 3.2 It is certainly true that in the present case the text - a translation into English from the authentic Italian text in which the application was filed - is full of further flaws and inconsistencies. Nevertheless, a clear picture does emerge from a contextual reading of the text in particular when considered together with the figures. The description as filed, on page 5, line 26, for example, states that the "micro filtration step is placed along the washing water circuit". According to the paragraph bridging pages 6 and 7 "[a] micro filtration process treats washing water by said micro filtering unit 42 ... [said] treatment permits elimination of still present bacteria and virus from water". In both figures the microfiltration unit 42 is indeed shown located in a separate line or circuit, next to what is readily identifiable as the main processing line, where the main cleaning treatment of the vegetables takes place. The unit 42 is shown between a *decanter* 44 (a decanter commonly denotes a device for removing sediments from liquid) and a dirty water container 43 (description page 6, lines 1 and 2) on one side, and a water container 41 (page 5, lines 34 to 35) on the other. Lines run from the main processing

line to decanter 44, then to container 43, then to the micro filtration unit 42, from there to the container 41 and then back to the main processing line. Arrows indicate what must be flow direction, from right to left, into the decanter 44 and out of container 41 into the main processing line via container 43 and the micro filtering unit 42. This is further confirmed by the authentic text captions retained in the translated figures: "stock" at container 43 to the right of the micro filtering unit 42 and "stock filtrata" meaning "filtered stock" at container 44 to its left, implying the unit 42 filters the contents of container 43 and supplies them to container 44.

3.3 From these various passages and the figures the skilled person readily and without any doubt understands that where the application refers to micro-filtration it means that the water used in the main processing line to wash and sterilize the products is micro filtered. More particularly, he understands that water from the main treatment line is first decanted at 44, stored intermediately at 43, then micro-filtered at 42 and fed to container 41 before being returned to the main treatment line. In the context of the stated problem - reducing water and energy consumption - this understanding fits perfectly and makes complete technical sense. The micro filtering of the water used to treat the food products is in fact the main distinctive feature over the self-cited prior art.

3.4 Not only is the skilled person therefore able to figure out what the claims meant by micro-filtering, he is also able to derive from description and figures clear and complete instructions as to how to carry out the

micro-filtration. The Board is in no doubt that the application discloses the invention in a manner sufficiently clear and complete for it to be carried out by the skilled person as required by Article 83 EPC.

4. *Allowability of Amendments, Article 123(2) EPC*

4.1 Independent claims 1 and 12 of the main request are amended to clarify that the micro filtering is of the water used in the main food product treatment steps. These amendments are based on the skilled person's clear and unambiguous understanding of the micro filtering as outlined above.

Claim 1 now also clarifies that the treatments of steps (a) and (b) take place in water. This can be inferred already from claims 5 (ozone saturated water with ultraviolet rays) and 12 (products are submerged in water, with various generation means) as originally filed. It also follows from the description, e.g. page 6, lines 3 to 12, referring to "ultrasound bath" and "ozone ultrasonic bath", and "rays within the ultrasonic bath" followed by "again subjected to ultraviolet rays". This amendment also has a clear basis in the original application.

4.2 In claim 5 the chemical formulae which were held to be unclear in the decision under appeal have been deleted. The original chemical reaction formulae were manifestly incorrect as the sums of hydrogen or oxygen atoms did not add up. However it is not immediately evident to the Board what the correct versions should have been so that a correction under Rule 139 EPC is not possible. Nevertheless, the Board considers that the particular

reactions, whatever these may be, will be dictated by the interaction of ultraviolet light and ozone saturated water. They can therefore be regarded as the inevitable result or consequence of these conditions and are therefore inherent therein. For this reason, deletion of the incorrect versions does not result in any broadening.

4.3 The Board is satisfied that the amendments to the claims of the main request do not add subject-matter, Article 123(2) EPC.

5. *Clarity, Article 84 EPC*

In that the claim 1 now state that water used in the treatment of the vegetables is micro filtered, while claim 12 identifies the corresponding means as water micro filtering means, these claims are now clear. Likewise, the removal of the objectionable formulae from claim 5 renders that claim clear. The requirements of Article 84 EPC are thus met.

6. *Remittal*

The decision under appeal concerned only the issues of Articles 83 and 84 EPC, and did not consider any of the further requirements of the EPC, in particular those of novelty and inventive step. So as not to deprive the Appellant of a first instance consideration of these remaining, substantive requirements, the Board considers it appropriate to exercise its discretion under Article 111(1) EPC to remit the case for further prosecution on the basis of the set of claims of the main request.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance for further prosecution.

The Registrar

The Chairman

G. Magouliotis

A. de Vries