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Datasheet for the decision of 23 February 2017

Case Number: T 0559/13 - 3.2.03

Application Number: 03720409.6

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IPC: F24C15/20, B01D53/14

Language of the proceedings: EN

Title of invention:
APPARATUS AND PLANT FOR TREATING CULINARY GASEOUS EFFLUENTS

Applicants:
Abehssera, Henry
DSO 2002

Headword:

Relevant legal provisions:
EPC Art. 123(2)
EPC R. 139

Keyword:
Amendments - correction of errors (no) - extension beyond the content of the application as filed (yes)
Late-filed request - request clearly allowable (no)

Decisions cited:

Catchword:

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Case Number: T 0559/13 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 23 February 2017

Appellant: (Applicant 1)	Abehssera, Henry 250 chemin Jean Léonardi 06480 La Colle sur Loup (FR)
Appellant: (Applicant 2)	DSO 2002 1001 avenue de la Batterie L'Amiral B 06270 Villeneuve Loubet (FR)
Representative:	Icosa 83 avenue Denfert-Rochereau 75014 Paris (FR)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 9 November 2012 refusing European patent application No. 03720409.6 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman	G. Ashley
Members:	B. Miller
	M.-B. Tardo-Dino

Summary of Facts and Submissions

I. The appeal lies from the decision of the examining division to refuse European patent application No. 03720409.6. The impugned decision is based on the finding of the examining division that claim 1 of the sole request filed with the letter dated 21 December 2009 did not meet the requirements of Article 123(2) EPC, Article 83 EPC and Article 56 EPC.

II. In a communication annexed to the summons for oral proceedings pursuant to Article 15(1) Rules of procedure of the Boards of Appeal (RPBA), the board informed the appellants (applicants) of its opinion of the issues to be discussed.

III. With a letter dated 30 January 2017 the appellants submitted a new set of claims.

IV. Oral proceedings took place on 23 February 2017.

V. The appellants requested that the decision under appeal be set aside and grant of a patent on the basis of the claims submitted with the letter dated 30 January 2017 (main request), alternatively on the basis of the claims submitted during the oral proceedings.

VI. Claim 1 of the main request is based on the combination of independent claims 1 and 12 as originally filed, wherein the following further amendments as being indicated in bold have been made:

Plant (14) for extracting air from a kitchen (10) and for minimizing the discharge of foul-smelling molecules **selected from H_2S, or mercaptans,** outside the kitchen,

the plant comprising an extractor hood (16) which is equipped with a filter (20), and an extraction duct (18) which routes the culinary gaseous effluents (Eg) from the extractor hood (16) to the outside (EXT),

characterized in that the plant comprises an apparatus (22) for treating the culinary gaseous effluents (Eg) carried in the air extraction duct (18), said apparatus (22) comprising:
a storing unit (24) storing in a liquid form an odour destroyer nucleophilic active product (Pa), **comprising a carboxylate group** ~~**able to fix foul-smelling molecules in the form of inert salts**~~, and
a nebulizing and diffusing unit (26) which comprises:
- a nebulizer (60) which, at ambient temperature, vaporizes the active product (Pa) stored in the storage unit **in the form of fine droplets in suspension in a stream of compressed air (Ac) propelled by an air compressor (68),**
- a feed line (64) connecting the storage unit (24) and the nebulizer (60), wherein the flow of the compressed air stream (Ac), produced by the compressor (68), causes in the nebulizer (60), the active product (Pa) to be sucked up through the feed line (64), and the active product (Pa) to be vaporized in the compressed air stream (Ac),
- a feed line (66) connecting the air compressor (68) and the nebulizer (60),
- a diffusing duct (70) which connects the nebulizer (60) to the extraction duct (18).

Claims 2 to 8 of the main request concern preferred embodiments of the plant according to claim 1.

Claim 1 as submitted during oral proceedings differs from claim 1 of the main request in the definition of the nucleophilic active product (Pa) and reads

Plant (14) for extracting air from a kitchen (10)
and for minimizing the discharge of foul-smelling molecules **selected from H_2S, or mercaptans,**
outside the kitchen,
the plant comprising an extractor hood (16) which is equipped with a filter (20), and an extraction duct (18) which routes the culinary gaseous effluents (Eg) from the extractor hood (16) to the outside (EXT),
characterized in that the plant comprises an apparatus (22) for treating the culinary gaseous effluents (Eg) carried in the air extraction duct (18), said apparatus (22) comprising:
a storing unit (24) storing in a liquid form **an odour destroyer** nucleophilic active product (Pa), ~~**or an odour destroyer**~~, able to fix foul-smelling molecules ~~**in the form of inert salts**~~, and
a nebulizing and diffusing unit (26) which comprises:
- a nebulizer (60) which, at ambient temperature, vaporizes the active product (Pa) stored in the storage unit **in the form of fine droplets in suspension in a stream of compressed air (Ac) propelled by an air compressor (68),**
- a feed line (64) connecting the storage unit (24) and the nebulizer (60), wherein the flow of the compressed air stream (Ac), produced by the compressor (68), causes in the nebulizer (60), the active product (Pa) to be sucked up through the feed line (64), and the active product (Pa) to be vaporized in the compressed air stream (Ac),
- a feed line (66) connecting the air compressor (68) and the nebulizer (60),

- a diffusing duct (70) which connects the nebulizer (60) to the extraction duct (18).

VII. The arguments brought forward by the appellants can be summarised as follows.

The term "nucleophilic" in the context of the application was used for the apparent polar character of certain radicals as inferred from their higher relative reactivity with reaction sites of lower electron density. Nucleophilic reagents were Lewis bases. The active product was a Lewis base which could react with foul-smelling molecules selected from H_2S or mercaptans by acid/base reactions.

Claim 1 was amended by introducing additional features described on page 1, lines 12 to 14, page 4 lines 29 to 33, page 8, lines 12 to 14 and page 11, lines 1 to 5 of the application as originally filed.

In more detail the amendment of the definition of the odour destroyer nucleophilic active product (Pa) was based on the teaching on page 4, lines 29 to 30 as originally filed. The term "carboxylase" indicated on page 4 as filed was understood by the skilled person as representing an obvious error. The skilled person understood that the term "carboxylase" meant "carboxylate", since the statement on page 4 referred to organic groups. Moreover, the term "carboxylate" was the only possible correction for the term "carboxylase" taking into account that the active compound was a nucleophilic active which should react in an acid/base reaction with H_2S.

Therefore the teaching on page 4 could be corrected under Rule 139 EPC and formed a basis for the amendment to claim 1 as required by Article 123(2) EPC.

The further request submitted during the oral proceedings was clearly allowable, since the skilled person understood, that it was not essential for the active product to have the ability to fix foul-smelling compounds "in the form of inert salts".

Reasons for the Decision

1. **Amendments** (Article 123(2) EPC, Rule 139 EPC)

1.1 Claim 1 of the main request is based on the combination of independent claims 1 and 12 as originally filed.

The board accepts the argument of the appellants that the further amendments concerning the nebulizing and diffusing unit are based on claim 2, page 8, lines 12 to 28 and page 11, lines 1-5 as originally filed and that the limitation concerning the foul-smelling molecules is based on page 1, lines 12 to 14 as originally filed.

1.2 However, an explicit disclosure does not exist in the application as originally filed for the further amendment concerning the active product, namely:

"in a liquid form an odour destroyer nucleophilic active product (Pa), **comprising a carboxylate group** ~~**able to fix foul-smelling molecules in the form of inert salts**~~".

1.3 The appellants pointed out that the application as originally filed disclosed on page 4, lines 29 to 30 which active products should be used in the extraction plant by stating the following:

"Such an active product Pa generally consists of organic groups from the carboxylase family".

The appellants argued that the skilled person would realise when reading this statement that an obvious error had occurred, since the term "organic groups" referred to chemical groups. Therefore it was evident for the skilled person that the term "carboxylase", which refers to enzymes, was an error. Moreover, the term "carboxylate" was the only possible correction for the term "carboxylase", taking into account that the active compound was a nucleophilic active intended to react in an acid/base reaction with H_2S.

1.4 The board does not agree with the submissions of the appellants for the following reasons.

1.4.1 According to established case law, the correction of an obvious error pursuant to Rule 139 EPC is only allowable, if both the presence of an error and its correction are obvious (see cases cited in the Case Law of the Boards of Appeal, Chapter II.E.4.2, 2016, 8th edition).

Even accepting the argument of the appellants that the skilled person would be aware that an organic group does not refer to an enzyme, such as carboxylase as mentioned on page 4 of the application, it is not evident which parts of the information presented on page 4 are erroneous, since the active product could be

in principle a member of the carboxylase family with the terms "organic groups" or "nucleophilic" being erroneous in this context.

1.4.2 Should the skilled person realise that the term "carboxylase family" was wrong, as argued by the appellants, it is further questionable whether he would consider "carboxylate" as the obvious correction.

Carboxylates in general refer to salts or esters from a carboxylic acid. However, neither of these possible interpretations provide a plausible correction of the term "carboxylase" for the following reasons:

(a) Salts of carboxylic acids are usually solid and not a liquid product as required by claim 1 of the application ("storing in a liquid form an odour destroyer nucleophilic active product (Pa), comprising a carboxylate group"). Hence the skilled person would not consider "carboxylate" in the sense of carboxylic acid salts as the only possible correction of the term "carboxylase", since it would contradict the further features defining the active product.

Furthermore, no teaching can be found in the application as filed that the intended reaction by the nucleophilic active product is in fact an acid/base reaction as the appellant repeatedly contended.Therefore the skilled person would not read the term "carboxylase" necessarily in the context of an acid/base reaction.

Moreover, the application as originally filed indicates on page 1, lines 12 to 16 that the foul-smelling organic compounds to be destroyed are not

only acidic compounds such as H_2S, but also include bases such as ammonia (NH_3). Therefore it cannot be concluded by a skilled person reading the application as filed that only bases are to be considered, since a base could not be used to react with another base such as NH_3. Hence the foul-smelling compounds presented in the application do not guide the skilled person to the single possible conclusion that the term "carboxylase" should be understood as "carboxylate" when carboxylic acid salts are considered, and accordingly corrected by this term.

(b) Esters from carboxylic acids can be liquid. However, esters from carboxylic acids are not a nucleophilic product as required by claim 1 and as defined on page 4, line 26 of the application as filed. Hence the skilled person would not consider "carboxylate" in the sense of carboxylic acid esters as the only possible correction of the term "carboxylase", since it would contradict the further features defining the active product.

1.4.3 The board concludes in summary, that the term "carboxylate" cannot be regarded as being an obvious correction pursuant to Rule 139 EPC of the term "carboxylase family" on page 4 as originally filed.

1.5 In the absence of an explicit teaching of an active product comprising carboxylate groups in the application as filed and in view of the finding that the term "carboxylate" is not an allowable correction of an error according to Rule 139 EPC, the board concludes that the amendment defining the active product (Pa) as comprising a carboxylate group adds

subject-matter that does not meet the requirements of Article 123(2) EPC.

2. Admissibility of the request filed during oral proceedings

2.1 On a prima facie evaluation, claim 1 of the request filed during oral proceedings does not fulfil the requirements of Article 123(2) EPC as explained below.

2.2 Claim 1 of this request contains the following amendments with respect to the active product compared to claim 1 as originally filed:

"storing in a liquid form **an odour destroyer** nucleophilic active product (Pa), ~~**or an odour destroyer**~~, able to fix foul-smelling molecules ~~**in the form of inert salts**~~"

2.3 According to amended claim 1 the nucleophilic active product (Pa) is not required to be able to fix foul-smelling molecules in the form of inert salts.

No general teaching of a nucleophilic active product can be found in the application as originally filed which is able to fix foul-smelling compounds independently from the ability to thereby form inert salts.

On the contrary, the application as originally filed consistently teaches that the nucleophilic active product (Pa) fixes foul-smelling molecules by forming inert salts (see claim 1, page 2, lines 15 to 17 and page 4, lines 28 and 33).

The deleted functionality is also not an inherent property of any nucleophilic active product, since a nucleophilic substitution usually does not lead to the formation of inert salts.

2.4 The board therefore reaches the conclusion that by deleting the required ability of the active product to form inert salts, the teaching of claim 1 of the request filed during oral proceedings has been extended beyond the teaching as originally filed and is prima facie not allowable under Article 123(2) EPC.

In view of the above the board decided not to admit the request into the appeal proceedings in accordance with Article 13(1) RPBA.

3. In summary, claim 1 of the main request contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC), the further request submitted during oral proceedings was not admitted into the proceedings (Article 13(1) RPBA).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar: The Chairman:

C. Spira G. Ashley

Decision electronically authenticated