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**Datasheet for the decision
of 17 October 2019**

Case Number: T 1201/16 - 3.2.07

Application Number: 10191188.1

Publication Number: 2283931

IPC: B05C5/02

Language of the proceedings: EN

Title of invention:

Liquid dispenser having individualized process air control

Applicant:

Nordson Corporation

Headword:

Relevant legal provisions:

EPC Art. 56, 84, 123(2)

RPBA Art. 12(3)

Keyword:

Claims - clarity (yes)

Inventive step - (yes)

Amendments - added subject-matter (no)

Decisions cited:

Catchword:



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Case Number: T 1201/16 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 17 October 2019

Appellant: Nordson Corporation
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Representative: Eisenführ Speiser
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Decision under appeal: **Decision of the Examining Division of the
European Patent Office posted on 7 December 2015
refusing European patent application No.
10191188.1 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairman I. Beckedorf
Members: A. Cano Palmero
A. Pieracci

Summary of Facts and Submissions

I. The appellant (applicant) lodged an appeal within the prescribed period and in the prescribed form against the decision of the examining division to refuse the European patent application No. 10191188.1.

II. The examining division held that the subject-matter of claim 1 of the main request as filed with letter dated 9 October 2015 is not clear, extended beyond the original disclosure and did not involve an inventive step in view of the disclosure of D1 (EP 1 591 167 A) in combination with the teaching of D2 (US 2005/092775 A1). The then pending five auxiliary requests were either not admitted into the opposition proceedings or found unallowable by the examining division.

III. With the statement of grounds of appeal, the appellant requested

that the decision under appeal to be set aside
and

that a patent to be granted on the basis any of the sets of claims filed as main request with letter dated 9 October 2015 and as auxiliary requests 1 and 2 with the statement setting out the grounds of appeal.

IV. Independent claim 1 of the main request, forming the basis of the impugned decision and of the present decision, reads:

"A liquid material dispenser (120) adapted for use with pressurized process air from a pressurized air source (126), the dispenser comprising:

a manifold (122) adapted to receive liquid material and distribute a first liquid material stream and a second liquid material stream;

a first dispensing device (12b) communicating with said first liquid material stream, said first dispensing device (12b) adapted to communicate with the pressurized air source (126) through a path external to said manifold (122);

a second dispensing device (12b) communicating with said second liquid material stream, said second dispensing device (12b) adapted to communicate with the pressurized air source (126) through a path external to said manifold (122);

characterized by

a first external control (130) between the pressurized air source (126) and said first dispensing device (12b), said first external control (130) operative to adjust a first flow rate of process air entering directly said first dispensing device (12b) through an inlet port on the dispensing device (12b) after passing through said first external control (130); and

a second external control (130) between the pressurized air source (126) and said second dispensing device (12b), said second external control (130) operative to adjust a second flow rate of process air entering directly said second dispensing device (12b) through an inlet port on the dispensing device (12b) after passing through said second external control (130) independent of said first flow rate."

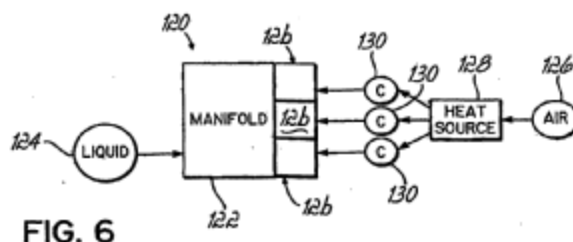
- V. The appellant argued that the claimed subject-matter of the main requests met the requirements of the EPC and that the examining division's objections to the main requests were unwarranted. The appellant's arguments form part of the reasons for the decision as discussed below.

Reasons for the Decision

1. The decision is issued in respect of the appellant's main request in written proceedings without holding oral proceedings.
 - 1.1 According to Article 12(3) RPBA, the Board may, subject to Article 113 and 116 EPC, decide the case at any time after the filing of the statement of grounds of appeal.
 - 1.2 With regard to the findings and the order of the decision under appeal, the appellant's third auxiliary request for oral proceedings in the event that the Board were minded not to allow the main request (or any higher ranking auxiliary request), is no longer relevant.
 - 1.3 The case is ready for decision on the basis of the appellant's written submissions and of the findings of the decision under appeal as reviewed by the Board.
 - 1.4 For this reason, the issuing of the decision in written procedure without oral proceedings is in compliance with the requirements of Article 113(1) EPC.
2. Clarity, Article 84 EPC
 - 2.1 In point 1.3, first paragraph of the reasons of the decision under appeal, the examining division held that the feature "external control unit" rendered the subject-matter of claim 1 of the main request unclear, since "it is not defined in respect of what this control is supposed to be external".

- 2.1.1 The Board, substantially following the appellant's arguments in point III.1 of the statement of grounds of appeal, cannot share this view.
- 2.1.2 In the preamble of claim 1, a path external to the liquid manifold (122) is defined. Through this path the pressurized air source (126) and a first (and second) dispensing devices (12b) are communicated.
- 2.1.3 In the characterising portion, the control units (130) are defined as **"external"** and further to be located between the pressurized air source (126) and the first and second dispensing devices (12b), respectively. The most obvious interpretation for the skilled reader is that the control units are external to the manifold and to the first and second dispensing devices.
- 2.1.4 The description paragraph [0047] and Fig 6 of the application as originally filed also confirm this most obvious interpretation of the claim text, so that the feature "external control unit" is considered clear (see for the confirmation of the text of a claim: Case Law of the Boards of Appeal of the EPO, 9th edition 2019, II.A.6.3.3, first paragraph).
- 2.2 In point 1.3, first paragraph of the reasons of the decision under appeal, the examining division held that there is a contradiction between the text of claim 1 and Fig. 6, and therefore the subject-matter of claim 1 of the main request lacks clarity.
 - 2.2.1 On the one hand, in the claim, the feature that the air enters the dispensing device "directly through an inlet port on the dispensing device after passing through this control" implied that the device does not include an air manifold. On the other hand, in the figure, the

examining division sees in "the arrows from the air source (126), via the heat source (128) and the controls (130) to the respective inlet ports on the dispensing device (12b) as the schematically [sic] representation of an air manifold".



2.2.2 The Board disagrees. The embodiment of Fig. 6 of the application as originally filed, on which claim 1 is based, is supported by paragraph [0047]. In this description passage it is explicitly stated that the liquid dispensing system (120) does **not** include an air manifold. Contrary to the examining division's assessment, the skilled person, in view of the description, cannot interpret those arrows of Fig. 6 as an air manifold, but would rather see any other possible way of guiding the air. Consequently, there is no contradiction between the figure and the text of claim 1, which is supported by the description as required by Article 84 EPC.

2.3 In conclusion, the examining division's unclarity objections to of claim 1 of the main request do not withstand a review in appeal.

3. Extension of subject-matter, Article 123(2) EPC

3.1 Claim 1 of the main request has been amended with respect to the originally filed claim 1 by adding the following underlined features:

"A liquid material dispenser (...);

characterized by
a first external control (130) between the pressurized air source (126) and said first dispensing device (12b), said first external control (130) operative to adjust a first flow rate of process air entering directly said first dispensing device (12b) through an inlet port on the dispensing device (12b) after passing through said first external control (130); and
a second external control (130) between the pressurized air source (126) and said second dispensing device (12b), said second external control (130) operative to adjust a second flow rate of process air entering directly said second dispensing device (12b) through an inlet port on the dispensing device (12b) after passing through said second external control (130) independent of said first flow rate."

- 3.2 The Board is not persuaded by the sole argument given by the examining division in point 1.3, first paragraph of the reasons of the decision under appeal, that the "misleading/unclear amendments also constitute an intermediate generalisation."
- 3.3 The Board sees in the original paragraph [0047] sufficient basis for the amendments and no unallowable intermediate generalisation. In particular, all features of the embodiment based on paragraph [0047] have been included in claim 1 of the main request, with exception of:
- (a) the feature of the external heat source (128), which is presented as facultative, and
 - (b) the feature that no air manifold is provided, which is a direct consequence of the fact that the process air is provided directly to the dispensing devices from the air source after passing through the controls.

3.4 As a result, contrary to the examining division's findings the subject-matter of claim 1 does not extend beyond the original disclosure and thus meets the requirement of Article 123(2) EPC.

4. Inventive step, Article 56 EPC

4.1 The examining division held in point 1.3, paragraph 3 et seq. of the reasons of the decision under appeal, that the subject-matter of claim 1 of the main request does not involve inventive step in view of D1, chosen as closest prior art, in combination with the teaching of D2.

4.2 The Board disagrees for the following reasons:

4.2.1 D1, which is also regarded by the Board as the closest prior art, discloses a liquid material dispenser from which the subject-matter of claim 1 differs not only in that the air path is external to the liquid manifold but also at least in the first and second external controls, suitable to adjust the first and second flow rates of process air entering directly the first and second dispensing devices. The Board does not share the opinion of the examining division that the control valves (38) of document D1 (see column 4, lines 24 to 26) can be considered as being the first and the second external control according to claim 1, but rather concurs with the appellant that this is not the case, since the air control valves (38) are not provided between the pressurized air source and the dispensing device, i.e. dispensing modules 14 (see the statement setting out the grounds of appeal page 7, third paragraph).

4.2.2 The Board concurs with the appellant, that, based on the distinguishing features above, the objective technical problem to be solved can be seen as providing a more compact and modular liquid material dispenser, with increased flexibility for different dispensing devices.

The Board cannot agree with the technical problem formulated by the examining division, essentially to provide an alternative way for guiding the liquid and air, since it does not appear to be properly linked to the distinguishing features of the claim, in particular the presence of a first and a second external controls.

The Board concurs with the appellant that the person skilled in the art would not consider document D2 to find a solution to the above problem, since document D2 is concerned with the problem of controlling the frequency of the oscillation of the liquid material dispensed (see paragraph [0006] of D2).

4.2.3 It can be acknowledged that D2 discloses separate liquid and air paths, however D2 discloses one single valve (i. e. a single control) for the air path.

4.2.4 The Board concurs with the appellant that the skilled person has therefore no hint in the prior art, relied upon by the examining division for its decision under appeal, of first and second controls external to the liquid manifold and between the pressurized air source and the first and second dispensing device. The Board also concurs with the appellant that even by a forced combination of both disclosures of D1 and D2, the skilled person would not arrive at the subject-matter of claim 1, which is therefore considered inventive.

Hence, the examining division's objection to inventive step of the subject-matter of claim 1 of the main request does not withstand a review in appeal.

5. The appellant has demonstrated in a convincing manner that the essential factual-technical and legal considerations underpinning the decision under appeal do not withstand a review in appeal.
6. Thus, the decision under appeal is to be set aside and a patent can be granted on the basis of the set of claims of the main request, filed with letter dated 9 October 2015.

Notwithstanding the aforementioned conclusion, it appears, that dependent claim 2 of said main request contains a clerical error in that the backreference was meant to be understood as being directed to "claim 1" rather than to a non-existent "claim 19". However, dependent claim 2 according to the application as originally filed contains the same backreference to "claim 19".

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the examining division with the order to grant a patent on the basis of claims 1 to 5 of the main request as filed with letter dated 9 October 2015, and a description to be adapted thereto.

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated