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Aktenzeichen / Case Number / N^o du recours : T 680/89 - 3.4.2

Anmeldenummer / Filing No / N^o de la demande : 87 302 070.5

Veröffentlichungs-Nr. / Publication No / N^o de la publication : 0 242 046

Bezeichnung der Erfindung: Air Cleaners
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : B01D 46/02

ENTSCHEIDUNG / DECISION

vom / of / du 8 May 1990

Anmelder / Applicant / Demandeur : Thorne, John (GB)

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 84 and Rule 27(1)(d) EPC

Schlagwort / Keyword / Mot clé :
"Clarity (yes, after amendments)"
"Refund of the appeal fee (no)"

Leitsatz / Headnote / Sommaire

Europäisches
Patentamt

Beschwerdekammern

European Patent
Office

Boards of Appeal

Office européen
des brevets

Chambres de recours



Case Number : T 680/89 - 3.4.2

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 8 May 1990

Appellant : Thorne, John
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Decision under appeal : Decision of Examining Division 031
of the European Patent Office
dated 20 July 1989 refusing European
patent application No. 87 302 070.5
pursuant to Article 97(1) EPC

Composition of the Board :

Chairman : E. Turrini
Members : W. Hofmann
M. Lewenton

Summary of Facts and Submissions

- I. European patent application No. 87 302 070.5 (publication number 0 242 046) was refused by decision of the Examining Division.
- II. The reasons given for the refusal were that Claim 1, modified with respect to original Claim 1, lacked clarity (Article 84 EPC) and that the description defined the invention with a wording different from that of Claim 1 (Rule 27(1)(d) EPC).
- III. The Appellant lodged an appeal against the decision.
- IV. In the Statement of Grounds he filed new pages 4 and 5 of the description and new sheets 2/5 and 3/5 of the drawings.

In a communication the Board expressed its provisional view that Claim 1 was not acceptable in view of Article 84 EPC (lack of clarity). In response to this communication the Appellant filed a new set of claims and a new page 1 of the description.

- V. Current Claim 1 reads as follows:

Claim 1:

"An air cleaner (10) comprising a partition (12) for mounting between a dirty air inlet (14) and a clean air outlet (16), a number of filter elements (20) mounted in the partition (12), and means (28) for sealing the filter elements (20) in relation to the partition (12), characterised by a duct (32) for supplying clean air to the sealing means (28), and means arranged to allow the clean air to be at a pressure greater than that of the

dirty air to be filtered so as to prevent the escape of dirty air through the sealing means (28)."

Claims 2 and 3 are dependent on Claim 1.

- VI. The arguments of the Appellant contained in the Statement of Grounds need not be summarised here since they relate to Claim 1 and to page 1 of the description valid at that date, but meanwhile replaced with a new version.

Reasons for the Decision

1. The appeal is admissible.
2. The Board is satisfied that the present application documents do not contain subject-matter extending beyond the content of the application documents as originally filed (Article 123(2) EPC).

In particular, the new features of Claim 1 with respect to Claim 1 as originally filed are present in the original application.

Indeed, the newly added expressions "means (28) for sealing the filter elements (20) in relation to the partition (12)" and "through the sealing means" can be directly deduced from original page 1, lines 23 to 26 where reference is made to the seals between filter elements and partition in air cleaners of the prior art but similar to those of the invention, in connection with the embodiments of the invention (original Figures 2, 2a, 2b and 3 to 5; original description: page 4, lines 13 to 15, "felt ring 28", and lines 22, 23 "clean air rather than dirty air passes through the seals..."; page 5, line 13 "sponge seals 31" and lines 21 to 27 "felt ring 28").

Moreover, the newly added term "duct" is nothing but another name for any part guiding air to a specific place and is therefore disclosed in the general description of the invention, original page 1, line 35 to page 2, line 3 where a "hollow" space or a "plenum" may be provided to supply clean air, in connection with the embodiments of the invention (original Figures 2, 2a, 2b and 3 to 6; original description: page 4, line 10 "a hollow" and line 31 "a fail-safe way 13"; page 5, line 14 "the hollow", lines 17,18 "end plenum 32 and side plenum 34" and "a duct for clean air", line 23 "a plenum" and lines 32,33 "clean air passes down a tube 68 into the partition 12").

3. Clarity of Claim 1.

3.1 Claim 1 refers to an air cleaner comprising a number of filter elements, a partition for mounting the filter elements between a dirty air inlet and a clean air outlet, and means for sealing the filter elements in relation to the partition. Furthermore, the air cleaner comprises a duct and means arranged to allow the clean air to be at a pressure greater than that of the dirty air.

3.2 The text "for supplying clean air to the sealing means" provides a further specification of the duct since it indicates where the duct begins (at a place having clean air) and where it ends (near the sealing means).

3.3 In its decision, the Examining Division argued, in essence, that a duct could not be defined by the pressure of the air which passes through it. The obscurity arising from this fact is avoided in present Claim 1 since Claim 1 now provides separate "means" for achieving the "greater

pressure". The new wording does not exclude the possibility that obtaining clean air at a pressure greater than that of the dirty air to be filtered (which pressure difference is, in the Board's view, essential for keeping the seals out of contact with the dirty air and thus for solving the problem of avoiding the forming of holes in the seals) may require certain elements or arrangements in addition to the duct. The Board is convinced that a skilled reader of the present application is for himself able to find suitable specific means so that the desired pressure difference is provided.

- 3.4 Finally, the functional statement "so as to prevent the escape of dirty air through the sealing means" helps to further clarify the supply of clean air as to the quantity, pressure and local distribution of the supplied air.
- 3.5 Claim 1 is therefore in agreement with Article 84 EPC.
4. The definition of the invention on page 1 essentially corresponds to the wording of Claim 1. Therefore, the "statement of invention" fulfils the requirements of Rule 27(1)(d) EPC.
5. The Examining Division has not yet considered novelty and inventive step of the claimed subject-matter. The Board has therefore decided to allow the Appellant's request and remit the case for further prosecution to the Examining Division in accordance with Article 111(1) EPC.
6. Refund of the Appeal Fee.

According to Rule 67 EPC the reimbursement of appeal fees shall be ordered if it is equitable by reason of a substantial procedural violation. In the Board's view, the

finding of the Examining Division might be considered erroneous since it did not reflect sufficiently all circumstances of the present case which finally would have led to the removal of the objection raised by the Examining Division. Before issuing the attacked decision, the Examining Division could have contacted again the Appellant in order to clarify doubts still existing with regard to Article 84 EPC. However, the possible error of judgment and the failure to seek clarification from the Appellant do not constitute a substantial procedural violation (reference is made to decision T 19/87, OJ EPO 7/1988, 268, point 5 of the Reasons for the Decision). There is therefore no basis for ordering reimbursement of the appeal fee in accordance with Rule 67 EPC.

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 for further prosecution on the basis of the following documents:
 - Description: page 1 filed on 30 March 1990;
the last four words of page 1 as originally filed;
pages 2 and 3 as originally filed;
pages 4 and 5 filed on 30 August 1989.
 - Claims: 1 to 3 filed on 30 March 1990;

- Drawings: Figures 1, 1a, 6, 7 as originally filed;
Figures 2, 2a, 2b, 3 to 5 filed on
30 August 1989.

3. The appeal fee shall not be refunded.

The Registrar:

The Chairman:

M. Beer

E. Turrini