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D E C I S I O N
of 18 April 1995

Case Number: T 0553/93 - 3.2.4

Application Number: 89907211.0

Publication Number: 0373214

IPC: A01K 5/01

Language of the proceedings: EN

Title of invention:
Feeding trough for animals

Applicant:
ACO Severin Ahlmann GmbH & Co. KG

Opponent:
-

Headword:
Feeding trough/ACO

Relevant legal provisions:
EPC Art. 111(1), 116

Keyword:
"Remittal to the first instance"
"Oral proceedings - no"

Decisions cited:
T 0222/87, T 0924/91

Catchword:
-



Case Number: T 0553/93 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 18 April 1995

Appellant:

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Representative:

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Decision under appeal:

Decision of the Examining Division of the European
Patent Office dispatched on 20 January 1993
refusing European patent application
No. 89 907 211.0 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. A. J. Andries
Members: P. Petti
J. C. M. de Preter

Summary of Facts and Submissions

I. The European patent application No. 89 907 211.0, corresponding to the International application PCT/GB89/00642, was refused by a decision of the Examining Division dispatched on 20 January 1993. The reason the Examining Division gave for the refusal was that the subject-matter of the independent Claim 1 filed with the letter of 7 May 1992 did not comply with Article 84 EPC in respect of clarity.

II. The Appellant (Applicant) lodged an appeal against this decision on 26 March 1993 and filed a statement setting out the grounds of appeal on 21 May 1993. The appeal fee was paid on 25 March 1993.

The Appellant filed with the Statement of Grounds a new set of claims comprising method Claims 1 to 5 directed to a method of manufacturing a feeding trough and apparatus Claims 6 to 12 directed to a feeding trough.

With the Statement of Grounds the Appellant requested that the impugned decision be set aside. According to its main request, a patent should be granted on the basis of Claims 1 to 12 filed with the Statement of Grounds. According to its auxiliary request, a patent should be granted on the basis of only Claims 1 to 5 of the set of 12 claims filed with the Statement of Grounds. The Appellant also filed a conditional request for oral proceedings.

III. The independent Claims 1 and 6 read as follows:

"1. A method of manufacturing a feeding trough for accommodating a selected group of animals belonging to a desired animal species, the method comprising: forming an elongate trough member (10) sub-divided by vertical

partitions (12) spaced apart to define individual compartments (11) each having a predetermined width, a front wall (13) extending from a base (18) of the trough and having a predetermined height (3) over which the head of each animal can extend, and a rear wall (17) and canopy (16) defining a shape for restricting the space within each compartment into which the head of each animal can reach; determining dimensions for the feeding trough by dividing the range of possible weights of animals belonging to said species into a plurality of sub-divisions, selecting the group of animals having weights falling within one of said sub-divisions as being those to be accommodated by the feeding trough, statistically analysing the weights and physical dimensions of the animals belonging to said sub-division, and selecting statistically significant dimensions for the feeding trough on the basis of the statistical analysis; and adopting dimensions for said predetermined width, said predetermined height and said canopy which correspond to the selected statistically significant dimensions when forming the feeding trough."

"6. A feeding trough for accommodating a selected group of animals belonging to a desired animal species, said feeding trough comprising an elongate trough member (10) sub-divided by vertical partitions (12) spaced apart to define individual compartments (11) each having a predetermined width, a front wall (13) extending from a base (18) of the trough and having a predetermined height (3) over which the head of each animal can extend, and a rear wall (17) and canopy (16) defining a shape for restricting the space within each compartment into which the head of each animal can reach, characterised in that each one of the group of animals has dimensions and a weight falling within one of a plurality of sub-divided ranges within the possible range of dimensions and weights for animals belonging to

that species, and said width, said height and said shape each correspond to a respective one of a plurality of statistically significant dimensions determined on the basis of a statistical analysis of said one sub-divided range."

- IV. In a communication dated 19 December 1994 the Board expressed its provisional opinion that the independent Claim 6 according to the main request of the Appellant lacked the clarity required by Article 84 EPC and infringed the requirement of Article 123(2) EPC. The Board also informed the Appellant that it intended to remit the case to the first instance for the formal and substantive examination of the auxiliary request.

- V. By letter dated 16 February 1995, the Appellant agreed with the remital of the case to the Examining Division for the formal and substantive examination of the auxiliary request.

Reasons for the Decision

- 1. The appeal is admissible.

- 2. *Main request*
 - 2.1 The independent Claim 6 filed by the Appellant with the Statement of Grounds differs only slightly from the Claim 1 rejected by the Examining Division. The preamble of Claim 6 contains a plurality of technical features defining a feeding trough and a statement of purpose according to which the trough is suitable "for accommodating a selected group of animals belonging to a desired animal species". The characterising portion of Claim 6 contains a first statement which refers to a subdivided range of animals (from the words "each one of

the group of animals" to the words "belonging to that species"; lines 22 to 24) and a second statement which refers to the width, the height and the shape of the trough (from the words "said width" to the words "said one subdivided range"; lines 25 to 27).

The first statement in the characterising portion of Claim 6 relates to a range (or ranges) of dimensions and weights. While the application as originally filed explicitly refers to "ranges of weight" (see particularly page 3, lines 15 to 20), no basis for "ranges of dimensions" can be found in the application as filed.

Thus, the subject-matter of Claim 6 filed by the Appellant with the Statement of Grounds extends beyond the content of the application as filed (Article 123(2) EPC).

- 2.2 Furthermore, the first statement in the characterising portion of this Claim 6 does not define a technical feature of the trough but relates to the group of animals for which the trough is suitable. In any case this statement does not indicate any range of dimensions and/or weight of the animals with the result that it does not define the group of animals for which the trough is suitable any more precisely than the word "selected" used in the statement of purpose of the preamble of Claim 6.

The second statement in the characterising portion of Claim 6 defines a relationship between the width, the height and the shape of the trough and the statistically significant dimensions of said one subdivided range. Therefore, this statement attempts to define the dimensions of the trough with respect to certain dimensions of animals for which the trough is suitable.

Claim 6 lacks a statement of a clearly defined relationship between the dimensions of the trough which could unequivocally define the trough.

Therefore, according to the Board, none of the statements of the characterising portion of Claim 6 defines a clear technical feature of a feeding trough which limits the scope of the Claim 6 beyond the scope defined by the preamble. The statements in the characterising portion of Claim 6 do not permit the subject-matter defined by Claim 6 to be clearly distinguished from a feeding trough according to the preamble. Therefore, the Board agrees with the arguments put forward by the Examining Division in Sections 1.1 to 1.6 of the impugned decision. These arguments also apply for the present Claim 6 which, thus, lacks the clarity required by Article 84 EPC.

2.3 Therefore, the main request of the Appellant is rejected.

3. *Auxiliary request*

The auxiliary request filed by the Appellant with the Statement of Grounds is based only on Claims 1 to 5 of the filed set of Claims 1 to 12. The present Claim 1 is an independent claim of a different category to that to the claims examined by the Examining Division. Indeed, the present Claim 1 is directed to a method of manufacturing a feeding trough, whereas the examined Claim 1 was directed to a feeding trough.

Furthermore, the objections of lack of clarity raised in the impugned decision with respect to a claim directed to a feeding trough are not immediately applicable to a claim directed to a method of manufacturing the feeding trough.

For these reasons and, as agreed by the Appellant with the letter dated 16 February 1995, it is appropriate that the formal and substantive examination of Claims 1 to 5 filed by the Appellant with the Statement of Grounds (auxiliary request) be carried out by the Examining Division. In this way the right of the Applicant to have two levels of jurisdiction for his auxiliary request will be safeguarded.

Therefore, the case is remitted to the Examining Division (Article 111(1) EPC) for the formal and substantive examination of the auxiliary request.

4. The Appellant requested "oral proceedings in lieu of a decision to refuse the appeal" (see Statement of Grounds, page 2, last sentence). Since the case is being remitted to the first instance for examination of the auxiliary request, which would entail the cancellation of the impugned decision, there is no need to appoint oral proceedings (see decisions T 222/87, Section 5, not published and T 924/91, Section 10, not published).
5. The Board wants to emphasize that, in order to consider the subject-matter of an independent claim as an invention within the meaning of Article 52(1) EPC, the characterising portion must at least involve some technical contribution to the art, i.e. a contribution to the art in a technical field not excluded from patentability.

It appears that the statements in the characterising portion of the present method Claim 1 relate to a method of designing a feeding trough. Therefore, it must be examined inter alia whether the claims of the auxiliary request are not excluded from patentability according to

Article 52(2) EPC, particularly with respect to Article 52(2)(c) EPC (schemes, rules and methods for performing mental acts).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of Claims 1 to 5 filed with the Statement of Grounds.

The Registrar:



N. Maslin

The Chairman:



C. Andries

