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D E C I S I O N
of 30 April 1996

Case Number: T 0247/96 - 3.2.1

Application Number: 91309782.0

Publication Number: 0482904

IPC: F16L 55/027, F16K 5/06

Language of the proceedings: EN

Title of invention:
Flow restrictor

Applicant:
Allen, Neil

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Amendments - deletion of a feature (admissible)"
"Amendments - added subject-matter solely disclosed in the
drawing (admissible)"

Decisions cited:
T 0169/83, T 0017/86

Catchword:
-



Case Number: T 0247/96 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 30 April 1996

Appellant:

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Representative:

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Decision under appeal:

Decision of the Examining Division of the European Patent Office posted 26 October 1995 refusing European patent application No. 91 309 782.0 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Gumbel
Members: M. Ceyte
G. Davies

Summary of Facts and Submissions

- I. European patent application No. 91 309 782.0 (publication number: 0 482 904) was refused by a decision of the Examining Division dated 26 October 1995.

The reason for the refusal was that the subject-matter of amended claim 1 on file extended beyond the content of the application as filed, contravening Article 123(2) EPC.

- II. On 18 December 1995 the appellant (applicant) lodged an appeal against this decision and paid the appeal fee on 22 December 1995.

The statement of grounds of appeal was filed on 23 February 1996.

- III. The appellant requested that the decision under appeal be set aside and a patent be granted on the basis of claims 1 to 3 filed with his letter of 23 June 1995.

Amended claim 1 reads as follows:

"1. A flow restrictor comprising a housing (1) defining a flow path (2) for fluid, and a restrictor member (8, 15) which is disposed in the flow path to define a restriction therein, the restrictor member being rotatable from outside the housing out of an operating position in which the restriction is substantially aligned with the flow path, and the restrictor member is rotatable through substantially 180° so that the fluid can flow in opposite directions through the restriction,

characterised in that the restriction comprises a parallel-walled bore which, at opposite ends, opens into respective recesses formed in the restrictor member.

Claim 2, a dependent claim, requires a pair of access holes forming a through-passage to be provided in the housing.

IV. Amended claim 1 differs from originally filed claim 1 which reads as follows:

"1. A flow restrictor comprising a housing (1) defining a flow path (2) for fluid, and a restrictor member (8, 15) which is disposed in the flow path to define a restriction (16) therein, the restrictor member being arranged such that it is rotatable out of its normal operating position, in which the restriction is substantially aligned with the flow path, to a second position in which the restriction is in register with an access hole (17) in the housing,

characterised by the fact that, in the second position of the restrictor member (8, 15), opposite ends of the restriction (16) are simultaneously in register with a pair of access holes (17, 18) in the housing so as to form a through-passage."

Claim 2, a dependent claim, requires the restrictor member to be rotatable through substantially 180°.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.

2. *Added subject-matter - Article 123(2) EPC*

2.1 Removal of the feature of the access holes from original claim 1.

2.1.1 The flow restrictor according to claim 1 as originally filed was characterised in that "in the second position of the restrictor member opposite ends of the restriction are simultaneously in register with a pair of access holes in the housing so as to form a through passage".

The above feature is entirely omitted in amended claim 1 on file. The Examining Division was of the opinion that the provision of access holes was an essential feature of the invention and took the view that it was required by Article 123(2) EPC that the feature in question be maintained in claim 1 as otherwise an unallowable broadening of the claim would result.

2.1.2 For the purpose of ascertaining whether the excision of the above feature may or not violate Article 123(2) EPC, it is necessary to examine whether there was a basis for the broadening in the original patent application:

In the description as originally filed, the invention is said to relate to flow restrictors, particularly but not exclusively for use in restricting the flow of water.

The original description continues with a reference to a prior art. The third paragraph of page 1 states:

"It has been proposed to place a flow restriction in the supply to taps and other appliances in order to restrict the rate at which water leaves the appliance. However, the presence of any restriction in a supply pipe can lead to blockages which are time consuming and costly to rectify."

As stated in the second paragraph of page 2, the object of the invention is to "provide means for restricting flow of water which is arranged such that any blockages which might occur can easily and quickly be rectified."

The application as originally filed continues with the summary of the invention which reads as follows:

"The present invention proposes that when the restrictor member is in its second position, opposite ends of the restriction are simultaneously in register with a pair of access holes in the housing so as to form a through-passage.

Thus, an obstruction can easily be blown or poked out of the restriction from the exterior of the housing without having to dis-assemble the flow restrictor or shut off the fluid supply.

Preferably the restrictor member is rotatable through substantially a full 180° so that the fluid can flow in the opposite direction through the restriction. In many cases this will be sufficient to clear any obstruction."

2.1.3 In the Board's view it can be seen from the above summary of the invention that the object of the invention may be achieved either by the solution according to claim 1 as originally filed, i.e. the provision of a pair of access holes or by the solution

according to claim 1 on file i.e. the rotation of the restrictor member through 180°, so that the fluid can flow in the opposite direction through the restriction.

It is true that the second solution, i.e the 180° rotation of the restrictor member, is said to be preferred and is claimed as a subsidiary feature in claim 2 as originally filed. However it is expressis verbis stated that in many cases this 180° rotation "will be sufficient to clear any obstruction". Consequently, the skilled reader is clearly informed that the defined object of the invention can also be achieved by the 180° rotation of the restrictor member alone, i.e. without recourse to the access holes. Hence, the Board cannot accept the finding of the Examining Division according to which the access holes are presented as an essential feature of the invention throughout the original description and are indispensable for the proper function of the invention.

2.1.4 It is also apparent from the original detailed description relating to the operation of the device that the main and normally sufficient means for achieving the object of the invention is the 180° rotation of the restrictor member. Indeed, the paragraph running from line 19 to 26 on page 4 states:

"In the event of a blockage occurring in the restriction 16, the spherical body 8 is rotated through 180° by the shaft 9 until the restriction is again aligned with the flow path 2. However, since the water pressure will now be acting in the opposite direction through the insert 15 this will tend to clear any blockages in the insert".

The description continues:

"**If this should fail**, the body 8 can be rotated to bring the restriction 16 into alignment with the holes 17 and 18, and after removal of the plugs 19 and 20, a piece of wire or the like can be pushed through the restriction 16 to clear any obstruction." (Emphasis added)

2.1.5 It follows from the foregoing that the deletion of the access holes from claim 1 is permissible for the purposes of Article 123(2) EPC, since the subject-matter of the amended claim 1 is to be found disclosed in the originally-filed application, as a distinct and normally satisfying alternative for achieving the object of the invention.

2.2 The introduction of the shape of the recesses into claim 1.

2.2.1 According to the established case law of the Boards (cf e.g. Decision T 169/83 OJ EPO 1985, 193) drawings are to be regarded as an integral part of a European patent application disclosing the invention. Hence, technical features may be transferred from the drawings to the claims provided that these features are clearly and fully derivable from the drawings. This requires that the structure and the function of the features should be immediately and clearly evident to a skilled person in the art.

It is not disputed that the recesses of the restrictor member are not described literally in the description and claims as originally filed. However these recesses are clearly and unequivocally shown in original Figure 1. The purpose of the recesses will be immediately understood by the skilled person from the original description and drawings.

Bearing in mind that the object of the invention is said to provide means for restricting flow of water which is arranged such that any blockages which might occur can easily and quickly be rectified (second paragraph of page 2) and shall be accomplished using a 180° rotation of the restrictor member, so that the fluid can flow in the opposite direction through the restriction (last paragraph of page 2), the skilled person immediately would realise that the effect of the recesses is to carry the debris during rotation of the restrictor member. It would be readily apparent to him that if the debris is not small enough to enter the bore of the restrictor member it will build up and form a blockage on the entry side of the respective recess. It is only by means of this recess that the debris can be carried through 180° to the downstream side as mentioned in the description, since otherwise it could not be transported to by-pass the wall of the housing.

2.2.2 For these reasons the Board concludes that this feature as such is clearly and fully derivable from the original drawings as regards structure and function by a skilled person and therefore does not contravene Article 123(2) EPC.

2.2.3 The Examining Division took the view that if the recesses were to be introduced into claim 1 their exact form shown in Figure 1 should also be introduced. There was no objection to the introduction of recesses but to the fact that the recesses now claimed were without reference to any particular shape, so as to include all possible shapes.

It is true than in certain circumstances it is not permissible to take from a disclosed embodiment one individual feature out of its disclosed context and to introduce it into an independent claim, if e.g. such a feature is said to be only used in combination with another feature not claimed (cf Decision T 17/86 OJ EPO 89, 297).

However, in the present case, it would be readily apparent to any skilled person that the dished shape of the recesses shown in Figure 1 is not significant and essential in relation to the function of the recesses. The purpose of the recesses is to collect debris which are too large to pass through the restriction and this can be achieved by any recess of whatever shape. Thus the isolated feature "recesses" on its own enables the desired result to be obtained and therefore can be dissociated from the particular shape shown in Figure 1.

Furthermore it is also observed that the EPC contains no provisions requiring that a claim be limited to details of a specific embodiment.

In the light of the above statements, it is not necessary and would be inequitable to confine claim 1 to recesses having a dished shape as suggested by the Examining Division.

- 2.4 Hence, in the Board's judgement the inclusion of a reference to the recesses into claim 1 without stating the particular shape thereof does not extend the content of the application as filed (Article 123(2)).

It follows that amended claim 1 on file does not contravene Article 123(2).

3. Since the Examining Division has not yet examined the application with regard to the other requirements of the EPC, the case is remitted to the Examining Division pursuant to Article 111(1) EPC.

Order

For these reasons it is decided that:

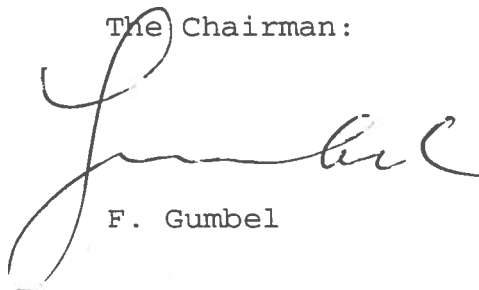
1. The decision of the Examining Division is set aside.
2. The case is remitted to the Examining Division for further examination under Article 96 EPC.

The Registrar:



S. Fabiani

The Chairman:



F. Gumbel

The following information was received from the
investigation conducted on the other side of the
case is referred to the examining officer
by reference to Exhibit (1) (2)

Page 2

The above information is as detailed above.

The location of the case is as detailed above.
The case is referred to the examining officer
by reference to Exhibit (1) (2)

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