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D E C I S I O N
of 9 July 2002

Case Number: T 0996/97 - 3.3.5

Application Number: 93911200.9

Publication Number: 0640000

IPC: B01D 3/02

Language of the proceedings: EN

Title of invention:

Improved fluid distillation apparatus and method

Applicant:

LEE, Naisin

Opponent:

-

Headword:

Fluid distillation/LEE

Relevant legal provisions:

EPC Art. 52(1), 54(1)(2)
EPC R. 67

Keyword:

"Novelty (no)"
"Reimbursement of appeal fee (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 0996/97 - 3.3.5

D E C I S I O N
of the Technical Board of Appeal 3.3.5
of 9 July 2002

Appellant: LEE, Naisin
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 14 May 1997
refusing European patent application
No. 93 911 200.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: R. K. Spangenberg
Members: B. P. Czech
J. H. Van Moer

Summary of Facts and Submissions

- I. The appeal is from the decision of the examining division to refuse the European patent application No. 93 911 200.9.
- II. The contested decision was taken on the basis of a set of claims amended during the substantive examination of the application. Claim 1 thereof had the following wording:

"1. Apparatus for distilling a fluid comprising:
a housing having an outer wall defining a hollow space therewithin;
means near the bottom of the housing for forming a reservoir for receiving condensed water vapor;
a first chamber in the housing for receiving water to be heated;
heater means in the first chamber near the upper level of the water thereof for heating the water to a boiling temperature whereby the water will form a water vapor which will move out of the chamber to the space adjacent to the water level;
a second chamber in the housing adjacent to the first chamber and having no heater therein, said second chamber including means for channelling the water vapor from the first chamber to the reservoir and being adapted to contain water to a level approximating the water level of the first chamber; and
aerator means in the housing for aerating the water in said chambers."

The examining division held that the subject-matter of this claim lacked novelty over the disclosure of document D1 = US-A-4 976 824, inter alia over the

embodiment shown in Figure 5 of D1. In particular, the examining division argued that the central space 88 and the compartments 80 and 82 shown in Figure 5 had to be considered as "chambers" in the sense of claim 1 and were in fluid communication. Therefore, the water contained in all of them must be aerated by means of the aerator 94.

- III. In his statement of the grounds of appeal, the appellant (applicant) submitted that a substantial procedural violation had occurred in refusing the application after only one communication although the claims had been amended. Moreover, referring to Figure 1 of D1, he contested the findings of the examining division and submitted a further set of amended claims as a "conditional submission".
- IV. In a first communication, concerning both sets of claims then on file, the board made observations as to the possible non-compliance of the claims on file with various patentability requirements of the EPC. In particular, the board questioned the novelty of the claimed apparatus in view of Figure 5 of D1, and suggested the incorporation of certain features, inter alia of the feature of a **bubble** generation in **both** chambers, in order to better differentiate the claimed apparatus from this prior art. The board also expressed its preliminary opinion that the requirements of Rule 67 EPC were not met.
- V. With his reply dated 14 December 2001, the appellant filed an amended set of claims to replace the ones on file. Claim 1 of this set read as follows:

"1. Apparatus for distilling a fluid comprising:

a housing (12) having an outer wall defining a hollow space therewithin;

a reservoir (55) near the bottom of the housing for receiving condensed water vapor;

a first chamber (22) in the housing for receiving water to be heated;

heater means (42) in the first chamber near the upper level of the water thereof for heating the water to a boiling temperature whereby the water will form a water vapor which will move out of the chamber to the space adjacent to the water level;

a second chamber (24) in the housing adjacent to the first chamber, said second chamber (24) including a channel to channel the water vapor from the first chamber (22) to the reservoir (55) and being adapted to contain water to a level approximating the water level of the first chamber; and

aerator means (32) in the housing for aerating the water in said chambers.

Characterised in that the second chamber (24) has no heater therein and said aerator means (32) also aerates the water in said second chamber."

The appellant argued that the claims had been amended to overcome the objections raised and were generally in accordance with the suggestions of the board. He pointed out that the feature of the second chamber being aerated had been added to claim 1.

He requested oral proceedings before any decision adverse to the appellant was taken.

VI. The appellant was summoned to oral proceedings. In the annex to the summons, the board inter alia expressed its opinion that despite the amendments carried out,

the novelty of the subject-matter of claim 1 still appeared to be questionable in view of D1, Figure 5.

- VII. With his reply dated 27 June 2002, the appellant submitted two further amended sets of claims, labelled main and first auxiliary requests respectively, to replace the claims on file.

The respective claims 1 according to both the main and the first auxiliary requests differ from claim 1 as previously on file in that the feature "and being adapted to contain water to a level approximating the water level of the first chamber", relating to the second chamber, had been omitted.

In claim 1 according to the first auxiliary request, the feature "aerating the water in said first chamber" has been supplemented by the feature "by generating air bubbles therein".

- VIII. The appellant was informed by the registrar that the oral proceedings would not be cancelled. In a telefax received on 5 July 2002, the appellant's representative indicated that he would not attend the oral proceedings.

- IX. The oral proceedings were held on 9 July 2002 in the absence of the appellant, in accordance with Rule 71(2) EPC.

- X. The appellant had requested in writing (see item VII.) that the contested decision be set aside and the application be remitted to the examining division for further consideration on the basis of any of the sets of claims filed with letter dated 27 June 2002 as main

and first auxiliary requests, respectively.

Additionally, the appellant had requested the reimbursement of the appeal fee in accordance with Rule 67 EPC.

Reasons for the Decision

1. The main issue in the present case is the issue of novelty.
2. *Claim 1 - main request*
 - 2.1 In its first communication the board had pointed out that, irrespective of the words chosen for identifying certain constructional elements, the novelty of the then claimed apparatus was objectionable in view of D1. By comparing Figure 5 of the present application with Figure 5 of D1, it was immediately apparent that the only difference between these two devices was that according to D1 no bubbles were generated in the heater-free outer (second) chamber, located between wall members 74 and 78 and including vapour channels 84 and 86. However, the water comprised in all chambers was subject to aeration by one and the same aerator means via **dissolved** air, since all the chambers were in fluid communication via the openings 100.
 - 2.2 In his reply to this communication, the appellant did not contest the above findings of the board. The appellant merely pointed out that the amended claim 1 presented with this reply now comprised the feature of the water in the second chamber being aerated, which

feature, in the board's view, was already present in claim 1 as filed, see "aerating the water in said chambers".

2.3 In the annex to the summons to oral proceedings, the board has pointed out that the aeration - in a broader sense - of the water in the second chamber did not necessarily require a bubble generating aerator box located therein, as referred to on page 4, lines 14 to 16 of the present description as filed.

2.4 In comparison to claim 1 previously on file, present claim 1 (main request) has been broadened by deleting the feature mentioned under VII. here above. Hence, this amendment cannot possibly alter the result of the assessment of novelty.

Moreover, in his reply to the summons to oral proceedings, the appellant has not contested the board's evaluation of the disclosure of Figure 5 of D1, according to which the aerator 94 arranged in the central space (the "first chamber" according to present claim 1) of the apparatus would also aerate the water in the concentrically arranged compartments 80 and 82 (belonging to the "second chamber" in the sense of present claim 1) by means of the opening 100 permitting fluid communication and hence the passage of dissolved air into the outer compartments. The appellant did not point out any constructional differences between the two apparatuses.

3. *First auxiliary request*

3.1 In comparison to claim 1 according to the main request, claim 1 according to the first auxiliary request

additionally specifies that the "aerating the water in the first chamber" is done "by means of air bubbles".

- 3.2 The apparatus according to Figure 5 of D1 also comprises an aerator generating bubbles in the first chamber. In the board's view, the amended claim language does not imply that the aeration of the water in the second chamber is to be carried out by providing aerator **means within** the second chamber and by generating **bubbles within** the second chamber. According to D1, air bubbles are only generated by means of an aerator located in the first chamber. However, the water contained in the second chamber will, due to its communication with the water in the first chamber via passages 100, be aerated up to a certain degree, although possibly a low degree by means of dissolved air. In other words, the bubble generating aerator means 94 located in the first chamber also aerates the water in the second chamber.
4. Summarising, the applicant has not indicated any technical features distinguishing the subject-matter of the respective independent claims 1 according to both the main and the first auxiliary request from the apparatus shown in Figure 5 of D1. The board has not identified any such differences either. Hence, the said subject-matter lacks novelty.
5. Since, for the stated reasons, the appeal is not held allowable, the reimbursement of the appeal fee cannot be ordered (Rule 67 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

R. Spangenberg