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D E C I S I O N
of 9 May 2000

Case Number: T 1083/98 - 3.2.1
Application Number: 90902082.8
Publication Number: 0464027 (WO 90/07674)
IPC: F16L 57/00

Language of the proceedings: EN

Title of invention:
Flexible double-containment piping system

Applicant:
Osborne, Keith, J.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Keyword:
"Added subject-matter - no - after amendment"

Decisions cited:
-

Catchword:
-



Case Number: T 1083/98 - 3.2.1

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 9 May 2000

Appellant: OSBORNE, Keith, J.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 30 June 1998
refusing European patent application
No. 90 902 082.8 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: F. Gumbel
Members: S. Crane
J. van Moer

Summary of Facts and Submissions

- I. European patent application No. 90 902 082.8 was refused by a decision of the Examining Division posted on 30 June 1998.

That decision followed oral proceedings held on 24 November 1997 at which the appellant had been informed by the Examining Division that it held the documents according to the main and first auxiliary requests submitted at the proceedings to infringe Article 123(2) EPC (addition of subject-matter), whereas the documents according to second auxiliary request submitted at the proceedings met all of the requirements of the EPC. Subsequently on 4 December 1997 the Examining Division posted a communication under Rule 51(4) EPC in which it stated its intention to grant a patent on the basis of the documents according to the second auxiliary request with some minor modifications. With his letter received on 16 April 1998 the appellant stated his disapproval of the text proposed in the communication under Rule 51(4) EPC and maintained his main and first auxiliary requests mentioned above, thus leading to the decision to refuse the application.

- II. A notice of appeal against this decision was filed on 9 September 1998 and the fee for appeal paid at the same time. The statement of grounds of appeal was received on 10 November 1998. The appellant requested grant of the patent on the basis of the main request or first auxiliary request rejected by the Opposition Division.

- III. With a letter received on 7 April 2000 the appellant submitted a further revised claim 1 according to a second auxiliary request and as a third auxiliary request requested grant of the patent on the basis of the documents accepted by the Examining Division.
- IV. Oral proceedings before the Board were held on 9 May 2000.

At the oral proceedings the appellant withdrew his previous main request and first and second auxiliary requests and submitted a new claim 1 forming the basis, together with the remaining documents as set out in the communication of the Examining Division under Rule 51(4) EPC (claims 2 to 11, description and drawings), for his new sole request for grant of a patent.

This claim 1 reads as follows:

"1. An underground piping arrangement for conveying fluid from an outlet port of a pump connected to an underground storage tank (13) to an inlet port of a fluid dispenser (35), comprising

- (a) an inner fluid supply pipe (22) of flexible material having inlet and outlet ends;
- (b) an inlet coupling and a dispenser coupling for releasably connecting the inlet end of the inner pipe (22) to said outlet port and the outlet end of the inner pipe (22) to said inlet port respectively, the inlet and dispenser couplings being accessible from above ground for coupling and release, the access to the inlet coupling

being via an underground access chamber (12) and the access to the dispenser coupling being at or about grade level or via a dispenser containment pan (138);

- (c) an underground outer pipe (19) of flexible material which surrounds the inner pipe (22) to define a containment space (27) around the inner pipe (22) and has respective end connections corresponding to the inlet and outlet ends of the inner pipe (22), the inlet end connection of the outer pipe (19) being to said underground access chamber (12), or being to an outer piping adapter of the inlet coupling, in the underground access chamber (12), and the outlet end connection of the outer pipe (19) being to a said dispenser containment pan (138), or being to an outer piping adapter of the dispenser coupling such that any leakage of fluid into said containment space (27) between the inner and outer pipes (22,19) is retained within said containment space (27) or is led thereby to a containment for such leaked fluid."

The appellant argued that the subject-matter of the claim was fully derivable from the original disclosure. Although the claim was broader in some respects than the original claim 1 this was justified by the fact that the original claim was inconsistent with various ones of the preferred embodiments described.

Reasons for the Decision

1. The appeal complies with the formal requirements of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.

2. In comparison with the original claim 1 the present claim has been broadened with regard to the nature of the connections of the inlet end and outlet end of the outer pipe. The original claim required respective connections to an outer piping adapter of the "pump coupling" (as the "inlet coupling" of present claim 1 was termed there) and to an outer piping adapter of the dispenser coupling. That requirement was however clearly inconsistent with what was described with respect to for example the embodiment of Figures 4, 5 etc. where the connections are to an underground access chamber and a dispenser containment pan respectively. These two alternative arrangements are now specified individually in the claim. There can be no objection under Article 123(2) EPC to an amendment of this type which was in fact accepted by the Examining Division.

Indeed, the only difference between present claim 1 and that proposed for grant by the Examining Division lies in the replacement of the term "pump coupling" by "inlet coupling" as mentioned above. In the opinion of the appellant the term "pump coupling" could be understood as suggesting a more intimate and specific relationship between the coupling involved and the pump itself than that which is disclosed in the preferred embodiments. The Board agrees. The term "inlet coupling" does not suffer from this defect and accurately reflects what the function of the coupling is, namely to transmit fluid conveyed by the pump into

the inlet end of the inner pipe.

The only other substantive amendment made to present claim 1 in comparison with the original claim 1 is in the restriction to the piping arrangement being underground. This is fully supported by the original description and has never been in contention.

Having regard to the above present claim 1 meets the requirement of Article 123(2) EPC.

3. After full examination the Examining Division came to the conclusion that the subject-matter of claim 1 according to the then second auxiliary request of the appellants was novel and involved an inventive step. As mentioned above the only difference between that claim and present claim 1 is one of terminology, namely the replacement of the term "pump coupling" by the term "inlet coupling". Since it is apparent that this change is not such as could affect the evaluation of the substantive merits of the claimed subject-matter the Board sees no cause to revisit these issues.

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 with the order to grant the patent on the basis of:
 - claim 1 presented at the oral proceedings;
 - claims 2 to 11, description and drawings as set out by the first instance in its communication under Rule 51(4) EPC dated 4 December 1997.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel