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**D E C I S I O N**  
**of 6 March 2001**

**Case Number:** T 0495/99 - 3.2.1

**Application Number:** 96102443.7

**Publication Number:** 0717229

**IPC:** F16T 1/24

**Language of the proceedings:** EN

**Title of invention:**  
Condensate discharging device

**Applicant:**  
TLV CO. LTD.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**  
EPC Art. 76(1), 111(1)

**Keyword:**  
"Added subject-matter in divisional application (no, after amendment)"  
"Remittal for further prosecution"

**Decisions cited:**

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**Catchword:**

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Boards of Appeal

Chambres de recours

**Case Number:** T 0495/99 - 3.2.1

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.1**  
**of 6 March 2001**

**Appellant:** TLV CO. LTD.  
881, Nagasuna  
Noguchi-cho  
Kakogawa 675 (JP)

**Representative:** Wolf, Eckhard, Dr.-Ing.  
Patentanwälte Wolf & Lutz  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 11 December 1998  
refusing European patent application  
No. 96 102 443.7 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** F. Gumbel  
**Members:** S. Crane  
P. Mühlens

## Summary of Facts and Submissions

- I. European patent application No. 96 102 443.7, which is a divisional of European patent application No. 93 101 482.3, was refused by a decision of the Examining Division posted on 11 December 1998.
  
- II. The reason given for the decision was that claim 1 under consideration contained subject-matter which extended beyond the content of the parent application, contrary to Article 76(1) EPC. In particular, it was argued in the decision that the divisional application related to the invention defined in claims 1 and 5 of the parent application and that the omission of some of the technical features specified in that claim 5 constituted an inadmissible intermediate generalisation for which no basis could be found in the parent application.
  
- III. As appeal against this decision was filed on 6 February 1999 and the fee for appeal paid at the same time. The statement of grounds of appeal was received on 16 April 1999.
  
- IV. In response to a communication of the Board dated 29 September 2000 the applicants (appellants) filed, on 7 December 2000, a new set of claims 1 to 5 and requested that the case be remitted to the Examining Division for completion of the substantive examination.

New claim 1 reads as follows:

"A condensate discharging device comprising:

a condensate receiving chamber (3) provided with a condensate inlet opening (4) and a condensate outlet opening (5) as well as an operating high pressure fluid inlet (8) and outlet (9);

a float (21) of open or closed type disposed within said condensate receiving chamber (3) and adapted to rise and drop along with the water level;

an inlet valve (10) connected to said float (21 ) and used for opening and closing said inlet (8);

an exhaust valve (11 ) connected to said float (21 ) and used for opening and closing said outlet (9);

check valves (6,7), one arranged at said condensate inlet opening (4) and the other at said condensate outlet opening (5); and

a valve means connected to said float (21) to open and close said condensate outlet opening (5) independently of said check valves (6,7),

said valve means being adapted to close said condensate outlet opening (5) when the water level in said condensate receiving chamber (3) is low,

and to open said outlet opening (5) accompanied by a rise in the water level.

whereby after said float (21 ) closes said inlet (8) and opens said outlet (9), the condensate is introduced from said condensate inlet opening (4) into said condensate receiving chamber (3) until the water level in said condensate receiving chamber (3) reaches a predetermined water level, and said outlet (9) is closed and said inlet (8) is opened, the condensate thereby being discharged from the opened condensate outlet opening (5) when said predetermined water level is reached,

characterized in that

said valve means comprises an upper valve body (44) and a lower valve body (45), which both are adapted to be moved integrally with each other, an upper valve seat (42) with which said upper valve body (44) comes into and out of seating engagement and a lower valve seat (43) with which said lower valve body (45) comes into and out of seating engagement,

and means are provided for communicating pressure between the condensate receiving chamber (3) and a space under the lower valve seat (43)."

Dependent claims 2 to 5 relate to preferred embodiments of the device according to claim 1.

- V. The appellants argued that the replacement in claim 1 of the detailed structural features specified in dependent claim 5 of the parent application by features drawn in functional terms did not, having regard to the whole content of that application, constitute an addition of subject-matter contrary to Article 76(1) EPC.

## Reasons for the Decision

1. The appeal complies with the formal requirement of Articles 106 to 108 and Rules 1(1) and 64 EPC. It is therefore admissible.
  
2. The present divisional application relates to a condensate discharging device as specifically illustrated in the embodiment of Figure 5 of the parent application, this device including a balanced valve arrangement (44, 45) which eliminates the effect of overpressure in the main chamber or opening of the valve by the float. In particular, the means disclosed in this embodiment for communicating pressure between the condensate receiving chamber and a space under the lower valve seat, in order to balance the valve arrangement, consist of a clearance (49) between the float shaft (24) and the valve stem (47) and holes (51, 52) in the valve stem. Dependent claim 5 of the parent application referred to the provision of these means as "clearance portions (49, 51, 52)".

The essence of the contested decision is that these means had to be incorporated in claim 1 of the divisional application in order to avoid an objection of added subject-matter with respect to the parent application. The Board cannot agree. In its view the person skilled in the art would immediately recognise from the parent application as originally filed that these means are purely exemplary and not intended to be limitative; what is primarily important for achieving the envisaged technical effect is that there are means for communicating pressure between the chamber and the space involved, not the nature of the specific means

employed in the particular embodiment. Thus, the functional statement contained in the last feature of present claim 1 adequately expresses the technical teaching of the parent application in this respect as it would be understood by the person skilled in the art.

Accordingly, present claim 1 does not offend against Article 76(1) EPC. It is apparent from its communications that the Examining Division has not yet completed its evaluation of the substantive patentability requirement with respect to a device as defined in this claim. In correspondence with the request of the appellants the case is therefore remitted to the Examining Division for further prosecution (Article 111(1) EPC).

3. In their statement of grounds of appeal the appellants included a request for reimbursement of the appeal fees. No reasons for supporting this request were advanced and none are apparent from the file. It is accordingly rejected.

**Order**

**For these reasons it is decided that:**

1. The contested decision is set aside.
2. The case is remitted to the first instance for further prosecution.
3. The request for reimbursement of the appeal fee is rejected.

The Registrar:

The Chairman:

S. Fabiani

F. Gumbel