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**D E C I S I O N**  
**of 19 August 2005**

**Case Number:** T 0130/03 - 3.2.4

**Application Number:** 98830177.6

**Publication Number:** 0882424

**IPC:** A47L 21/02

**Language of the proceedings:** EN

**Title of invention:**

Machine for drying, polishing and burnishing cutlery and metal tableware

**Applicant:**

HYPPOCAMPUS S.r.l.

**Opponent:**

-

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 52(1), 54, 56

**Keyword:**

"Novelty - yes"

"Inventive step - yes"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0130/03 - 3.2.4

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.4  
of 19 August 2005

**Appellant:** HYPOCAMPUS S.r.l  
14/18 Via Grandi  
I-25030 Torbole Casaglia (Brescia) (IT)

**Representative:** Sangiacomo, Fulvia  
BIESSE S.R.L.  
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I-25122 Brescia (IT)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 27 September 2002  
refusing European application No. 98830177.6  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** M. Ceyte  
**Members:** M. G. Hatherly  
C. Heath

## Summary of Facts and Submissions

I. The examining division's decision refusing the European patent application No. 98 830 177.6 was posted on 27 September 2002.

The appellant (applicant) filed an appeal on 21 November 2002, paid the appeal fee on 22 November 2002 and filed the statement of grounds on 22 January 2003.

II. The documents cited in the search report are:

D1: DE-B-1 226 906

D2: EP-A-0 400 516

D3: US-A-4 018 009

D4: US-A-3 407 542

D5: US-A-4 193 699

III. In the examining division's decision it was found that the most relevant state of the art was D1, that the objective problem could be defined as to optimise the layout of the D1 machine, and that the skilled person would envisage other locations of the D1 loading chute including a location in the centre of the tank without exercising inventive skill. Therefore the examining division considered the subject-matter of claim 1 then on file to be lacking in inventive step and so refused the application.

IV. Following a communication from the board the appellant submitted new pages for the application including a single claim which after very small corrections reads:

"Machine for drying, polishing and burnishing treatment of cutlery, crockery and metal tableware with the help

of a drying material, comprising a tank (11,21) suspended on springs (13,23) on a supporting base (12,22) and connected to a motor driven vibrator (14,24) in order to provoke continual vibration, said tank containing the drying material and being used to receive the objects to be treated with this material, wherein a loading chute (25) for the objects to be treated is provided in the center of said tank and on one side of the tank an exit chute (26) for the treated objects, whereby the objects move from the central loading chute around the central loading chute to the exit chute due to the vibrations."

- V. The appellant's requests are to set the examining division's decision aside and to grant a patent with the following documents:
- claim filed with the letter of 15 July 2005,
  - description pages 1 and 4 of the application as originally filed
  - description pages 2, 2a and 3 filed with the letter of 15 July 2005, and
  - drawings sheets 1/2 and 2/2 as originally filed.

## Reasons for the Decision

1. The appeal is admissible.
2. *Amendments made by the board*
  - 2.1 The pages filed with the appellant's letter of 15 July 2005 have been modified in minor respects by the board.
  - 2.2 In line 6 of the claim it is not clear if the mark over the word "where" is intended as a deletion of this word. As grammatically it makes sense to delete the word "where", the board has done this. In line 12 of the claim, for grammatical reasons, the board has amended the words "on moving" in line 12 to "move". In line 13 of the claim the spelling of the word "shute" has been corrected.
  - 2.3 A nought has been deleted from the number in line 14 of the description page 2a. In line 19 of the same page the words "the like" have been changed to "metal tableware" to be in line with the present claim and the originally filed application. In line 20 of the same page the word "an" has been changed to "a".
  - 2.4 In line 2 of the description page 3 the wording "claim 1" has been changed to "the claim". The spelling of "invention" in line 9 of the same page has been corrected.

3. *Comparison of the present application with that as originally filed*

3.1 The present claim is a combination of the originally filed claims 1 and 2 with the added features that the loading chute is central and that the objects move from the central loading chute around the central loading chute to the exit chute, which can be seen on the originally filed Fig. 2.

3.2 The new description page 2a merely acknowledges the most relevant prior art and summarises the invention.

The present description page 3 differs from the originally filed page 3 merely by explaining that the machine of Fig. 1 (which does not have a central loading chute) is not an embodiment of the invention.

3.3 Description pages 1 and 4 and the drawings sheets have not been changed since their original filing.

3.4 Therefore the present version of the application is not objectionable under Article 123(2) EPC.

4. *Novelty*

4.1 The machine of the claim has a loading chute in the centre of the tank.

In D1 there is a loading chute ("Trichter 62") but it is in the end (or side) of the container 12.

D2 discloses an annular tank body 1 with what looks to be an inlet on the right hand side of Figs. 1 and 2 (but which is not numbered or described).

The board can see no disclosure of an inlet in the machine of D3 and surmises that the items and the finishing media are merely tipped into the annular container. This also applies to D4.

The container 10 of D5 has an opening 16 but this cannot be regarded as a central loading chute. Moreover the present claim calls for springs and a motor driven vibrator which plainly the manually operated container of D5 does not have.

4.2 Therefore the subject-matter of the claim is not disclosed by any of the citations of the search report and therefore is regarded as novel (Articles 52(1) and 54 EPC).

5. *Problem, solution and inventive step*

5.1 The claim is directed to a "Machine for drying, polishing and burnishing treatment of cutlery, crockery and metal tableware with the help of a drying material ...". The machine is intended for use in "restaurants, canteens, public service catering facilities" to remove limestone marks and gradually re-polish metal items that have been washed in commercial dishwashers.

The machine of D1 is for deburring, rounding edges, abrading and polishing components, presumably in a factory.

So there is a difference in application. The treatment material is different, the inventive machine uses "a drying material, usually granular, such as fragments of corncobs or other products." What is treated is different i.e. rough partly finished components as against cutlery.

Nevertheless the board considers that the D1 machine would be able to carry out the required work in a restaurant and can see no difference in principle between the machines. Further the appellant claims "Machine for ..." i.e. a machine that merely has to be suitable for the stated purpose.

Therefore the examining division was correct to carefully consider D1.

- 5.2 In the machine of the present claim "a loading chute (25) for the objects to be treated is provided in the center of said tank". In D1 there is a loading chute ("Trichter 62") but it is in the end (or one might say side) of the container 12.

The examining division correctly argued in its decision that the problem when starting from the machine of D1 was to optimise the layout of the machine.

- 5.3 The solution to this problem is, as set out in the present claim, to provide the loading chute at the centre of the tank and arrange for the path of the objects being treated to be from this central loading chute and around the central loading chute to the exit chute on one side of the tank. This shortens the



elongate footprint of the D1 machine. While of course the width is increased the more square footprint made possible by the objects passing around the central loading chute may make the machine easier to accommodate in restaurants, canteens and public service catering facilities.

- 5.4 The examining division stated on page 4 of its decision that "The skilled person would certainly choose the most appropriate location of the chute in order for the machine to work efficiently and in order to have a reduced size envisage possible other locations of said loading chute including a location in the center of the tank within its standard workshop without the exercise of an inventive skill."

This statement lacks any reference to any other prior art to back it up. Moreover the board cannot see that the skilled person would locate the loading chute in the centre of the machine of D1. The items to be treated enter the container 12 through the hopper 62 at the left hand end of the container 12, the items pass along the container being treated until they exit the container at the right hand end through exit 33. If the hopper 62 were put in the middle then the items would only be treated in the right hand half of the container. The left hand half of the container would be superfluous. If the superfluous left hand half of the container 12 were then removed then of course the hopper would once more be at the end of the container 12 rather than in the centre.

So the board cannot accept the examining division's view of the subject-matter of the claim being obvious when starting from D1.

5.5 As stated in section 4.1 above, D2 discloses an annular tank body 1 with an outlet (selection plane 10) and what looks to be an inlet on the right hand side of Figs. 1 and 2 (but which is not numbered or described). So apparently there is an inlet on one side of the tank and an outlet approximately on the other.

Thus also D2 would not guide the skilled person to providing an inlet in the centre of the tank.

5.6 As stated in section 4.1 above the board can see no disclosure of inlets in the machines of D3 and D4. Accordingly the board cannot see that either of these documents would point the skilled person towards the machine defined by the present claim.

The manually operated device disclosed by D5 is plainly irrelevant when considering the machine defined by the present claim.

5.7 The feature in the present claim of a central loading chute was contained in the originally filed claim 2 and so can be taken to have been searched by the search examiner D5. However the search report shows that this feature was not found.

The board cannot see that any of the documents cited in the search report, taken on its own or in combination with another cited document or documents would lead the

skilled person to the claimed subject-matter without involving him in inventive activity.

- 5.8 Thus the board finds the subject-matter of the claim to be inventive (Articles 52(1) and 56 EPC).

Accordingly a patent can be granted based on this allowable claim.

## **Order**

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

1. The decision under appeal is set aside.
2. The case is remitted to the department of the first instance with the order to grant a patent in the following version:
  - claim filed with the letter of 15 July 2005, wherein
    - the word "where" in line 6 is unambiguously deleted,
    - the words "on moving" in line 12 are amended to "move", and
    - the spelling of the word "shute" in line 13 is corrected to "chute",
  - description pages 1 and 4 of the application as originally filed,

- description page 2 filed with the letter of 15 July 2005,
- description page 2a filed with the letter of 15 July 2005, wherein
  - the number in line 14 reads EP-A-0 400 516,
  - the words "the like" in line 19 are changed to "metal tableware", and
  - the word "an" in line 20 is changed to "a",
- description page 3 filed with the letter of 15 July 2005, wherein
  - the wording "claim 1" in line 2 is changed to "the claim", and
  - the spelling of "invention" in line 9 is corrected, and
- drawings sheets 1/2 and 2/2 as originally filed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte