BESCHWERDEKAMMERN DES EUROPÄISCHEN PATENTAMTS

BOARDS OF APPEAL OF THE EUROPEAN PATENT OFFICE

CHAMBRES DE RECOURS DE L'OFFICE EUROPEEN DES BREVETS

Internal distribution code:
(A) [ ] Publication in OJ
(B) [ ] To Chairmen and Members
(C) [ ] To Chairmen
(D) [X] No distribution

D E C I S I O N
of 28 October 2003

Case Number: T 0650/03 - 3.2.7

Application Number: 99203931.3

Publication Number: 1008537

IPC: B65F 3/02

Language of the proceedings: EN

Title of invention:
A system, a truck and a collecting container for collecting domestic refuse

Applicant:
Bammens B.V.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 109(1)

Keyword:
"Interlocutory revision"

Decisions cited:
-

Catchword:
-

Europäisches Patentamt | European Patent Office | Office européen des brevets

Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 0650/03 - 3.2.7

D E C I S I O N
of the Technical Board of Appeal 3.2.7
of 28 October 2003

Appellant: Bammens B.V.
Straatweg 7
NL-3604 BA Maarssen (NL)

Representative: Land, Addick Adrianus Gosling
Arnold & Siedsma
Advocaten en Octrooigemachtigden
Sweelinckplein 1
NL-2517 GK Den Haag (NL)

Decision under appeal: **Decision of the Examining Division of the European Patent Office posted 4 November 2002 refusing European application No. 99 203 931.3 pursuant to Article 97(1) EPC**

Composition of the Board:

Chairman: A. Burkhart
Members: K. Poalas
C. Holtz

Summary of Facts and Submissions

I. The appellant (applicant) filed an appeal against the decision of the Examining Division refusing European patent application No. 99 203 931.3.

The Examining Division held that the subject-matter of claim 1 of the "final request of the applicant" being the "amended first auxiliary request" filed during the oral proceedings held on 9 October 2002 did not involve an inventive step according to Article 56 EPC (see points 6 of the decision of the Examining Division).

II. According to the minutes of the oral proceedings held on 9 October 2002 at the end of said oral proceedings the applicant maintained the amended auxiliary request 1 and the auxiliary request 5. During the oral proceedings the applicant was informed by the Chairman of the Examining Division that "the amended first auxiliary request is not allowable because of lack of inventive step of claim 1 according to Articles 52(1) and 56 EPC", see point 13 of the above mentioned minutes, and that the "auxiliary request 5 is allowable", see point 24 of the above mentioned minutes. The applicant asked by the chairman to abandon the amended auxiliary request 1 maintained said request, see point 25 of the minutes of the oral proceedings. Thereupon the Examining Division refused the European patent application.

III. With the notice of appeal filed on 14 January 2003 the applicant requested an interlocutory revision on the basis of the auxiliary request 5 "which was deemed allowable by the examining division". The refund of the appeal fee was also requested.

IV. During the consultation by telephone on 15 May 2003 between the appellant's representative and the first member of the Examining Division, the representative was "asked to file a clear copy of the description and claims of the 5th auxiliary request which was deemed allowable by the examining division during the oral proceedings held on 09.10.2002".

V. On 21 May 2003 the representative filed retyped claims and description as reaction to the above mentioned consultation by telephone.

VI. On 3 June 2003 the Examining Division signed the EPO Form 2701 deciding not to rectify its decision and to refer the appeal to the Board.

VII. With letter dated 17 October 2003 the appellant withdrew the request for a refund of the appeal fee.

Reasons for the decision

1. The appeal is admissible. In particular, the Board is satisfied that the notice of appeal dated 14 January 2003 also contains a sufficiently reasoned "statement setting out the grounds of appeal" within the meaning of Article 108 EPC. The contents of the notice of appeal which are quoted in paragraph III above make it

plain that the applicant no longer requests grant of the patent according to the amended first auxiliary request, but instead requests grant of the patent with the text according to the fifth auxiliary request as it was deemed allowable by the examining division during the oral proceedings held on 9 October 2002.

2. Furthermore the appeal is well founded, since the applicant in its notice of appeal dated 14 January 2003 has approved the text of the fifth auxiliary request which was deemed allowable by the examining division during the oral proceedings held on 9 October 2002.

3. The Board cannot understand why the Examining Division did not rectify its decision according to Article 109(1) EPC, since a request which was acknowledged during the oral proceedings as being allowable became through the appeal the sole and main request of the appellant (applicant). There is no information in the file why the Examining Division did not rectify its decision. Therefore, the Board considers that it is neither necessary nor appropriate to comment on this matter and that it should remit the case according to Article 111(1) EPC to the Examining Division for further prosecution.

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 for further prosecution.

The Registrar: The Chairman:

D. Spigarelli A. Burkhart