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**Datasheet for the decision  
of 8 May 2007**

**Case Number:** T 0272/05 - 3.2.03  
**Application Number:** 01955520.0  
**Publication Number:** 1332009  
**IPC:** B09B 3/00, B02L 17/00,  
B02L 19/12  
**Language of the proceedings:** EN

**Title of invention:**

Method for minutely crushing asbestos containing waste in  
condition of environmental safety

**Applicant:**

ECOTEC S.r.l.

**Opponent:**

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**Headword:**

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**Relevant legal provisions:**

EPC Art. 84, 83, 113(1)  
EPC R. 67

**Keyword:**

"Claims - interpretation in light of the description"  
"Disclosure - sufficiency - (yes)"  
"Basis of decisions - opportunity to comment (no)"  
"Substantial procedural violation (yes)"  
"Refund of appeal fee (no)"

**Decisions cited:**

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**Catchword:**

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Case Number: T 0272/05 - 3.2.03

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.03  
of 8 May 2007

**Appellant:**

ECOTEC S.r.l.  
Largo della Gancia, 2  
I-96100 Siracusa (IT)

**Representative:**

Di Cerbo, Mario  
Società Italiana Brevetti S.p.A.  
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I-00186 Roma (IT)

**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office posted 27 October 2004  
refusing European application No. 01955520.0  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** U. Krause  
**Members:** G. Ashley  
K. Garnett

## Summary of Facts and Submissions

- I. This appeal stems from the decision of the examining division to refuse European patent application No. 01 955 520.0 for lack of clarity of the amended claim 1 (Article 84 EPC) and insufficient disclosure (Article 83 EPC). The decision was posted on 27 October 2004.
- II. Notice of appeal was filed by the appellant (applicant) on 16 December 2004 and the appeal fee was paid at the same time. A statement containing the grounds of appeal was filed on 21 February 2005.
- III. The examining division, in its first communication, raised objections of lack of clarity (Article 84 EPC) and lack of novelty and inventive step (Articles 54 and 56 EPC). In response, the applicant filed a set of amended claims, which were also objected to in a second written communication for lack of clarity. Following a reply from the applicant in which further arguments were presented, the examining division issued an invitation to oral proceedings, together with a provisional opinion concerning clarity and inventive step, these being the issues to be discussed at the oral proceedings.

Three weeks prior to the oral proceedings, the applicant's attorney informed the EPO that he would not be attending the oral proceedings, since the inventor was, for unseen circumstances, unable to attend, and the attorney felt that, without the inventor, he could add nothing beyond his written submissions. The oral proceedings were held on the appointed day in the

absence of the applicant or the representative. At the end of the oral proceedings the examining division refused the application for lack of clarity and, in addition, for insufficient disclosure.

IV. Requests

The appellant requests that the decision of the examining division be cancelled, and a patent be granted on the basis of the claims filed as the main request, alternatively on the basis of the first, second and third auxiliary requests, all of which were submitted with the grounds of appeal.

The appellant also requests "at least a partial reimbursement of the appeal fee".

V. Claims

Claim 1 of the main request reads as follows:

"1. Method for crushing asbestos containing waste (ACW), in which the material to be crushed is subjected to the action of a ball mill operating under inert fluid, to obtain a product with a granulometry ranging from 5 to 500  $\mu\text{m}$  and a granulometric distribution suitable to subsequent aggregating or transforming steps aimed at the disposal thereof, characterized in that the material to be crushed is sealed in containers of plastics material, and in that the container is extracted substantially uncrushed at the end of the crushing cycle."

Dependent claims 2 to 5 concern preferred embodiments of the method of claim 1.

VI. Summary of the Submissions of Appellant

(a) Article 84 EPC

The examining division was of the opinion that claim 1 lacks clarity in so far as it is not clear how it is technically feasible to crush asbestos-containing waste, sealed in a container of plastic material, in a ball mill, while leaving the plastic container, which is also exposed to the crushing action of the balls of the ball mill, substantially uncrushed at the end of the crushing cycle.

The appellant submitted that the term "crushing" should be construed to mean the same as "grinding", which implies a size-reduction and breakage of the material in form of a powder. This is in contrast to the interpretation adopted by the examining division, which considered it to mean pressed so that there is breaking or injury; according to the appellant, this definition of "crushing" does not imply size-reduction.

The appellant argued that the former meaning should prevail because the term "grinding" is more appropriate than "crushing" for describing the action of a ball mill, in which adjacent balls subject a solid material to stress in order to reduce it to particles. According to the method of the invention, the asbestos-containing waste is crushed into smaller particles, whereas the plastic container is severely cut and shredded, but remains essentially in one piece, so it can be

extracted "substantially uncrushed", as defined in claim 1. The plastic container is thus broken, but not crushed, ie ground, in the ball mill. The appellant submitted experimental evidence to demonstrate this effect and maintained that the skilled person would not designate as "crushed" a plastic container that has been torn to shreds.

(b) Article 83 EPC

The appellant pointed out that the objection of insufficient disclosure under Article 83 EPC was raised for the first time at the oral proceedings which, after due notification to the European Patent Office, was not attended by the appellant. Since the appellant had no opportunity to present his comments on this objection as provided for in Article 113(1) EPC, a substantial procedural violation has occurred, which justifies the refund of at least part of the appeal fee.

The examining division was of the view that it is not clear to the skilled person how the desired result of "leaving the plastic container substantially uncrushed at the end of the crushing cycle" can be achieved. Notwithstanding the above submission concerning the procedural violation, the appellant argued that this result is an inevitable consequence of ball milling under the low-stress conditions described in the application, in particular, the use of water as an inert fluid and low density grinding balls.

## Reasons for the Decision

1. The appeal is admissible.
2. Article 84 EPC

The set of claims filed as the main request with this appeal is equivalent to that filed during the examination procedure on 7 September 2004 and upon which the decision of the examining division was based.

Claim 1 concerns a method for crushing asbestos-containing waste, in which the waste is sealed in plastic containers (typically plastic bags) and subjected to the action of a ball mill, at the end of which the plastic container is defined as being substantially uncrushed. The main issue here is the meaning of the expression "substantially uncrushed".

In arguing its decision, the examining division referred to the Oxford Advanced Learner's Dictionary of Current English, which defines crushing as pressing so that there is breaking or injury, and therefore interpreted "uncrushed" as meaning "not broken". It therefore held the view that it is not clear how it is technically feasible to crush waste, sealed in a plastic container, in a ball mill, whilst leaving the plastic container, which is also exposed to the crushing action, substantially undamaged or "uncrushed" at the end of the milling process. The appellant, on the other hand, referred to the Encyclopaedia of Chemical Technology, and submitted that "crushing", as used in the application and in particular in the

example, should be equated to grinding, wherein the material is reduced in size.

The Collins dictionary provides both definitions of crushing:

- "1. to press, mash, or squeeze so as to injure, break, crease, etc.
2. to break or grind (rock, ore, etc) into small particles."

The different definitions tendered by the examining division and the appellant are both plausible meanings for the term "crushed", and thus it is necessary to decide which one makes the most sense in the context of the method described in the present application.

It is apparent from the description and the experimental evidence submitted by the appellant, that after the process is completed, the asbestos-containing waste is in the form of small particles, whereas the plastic container, although ripped and cut, has not been shredded into smaller pieces by the grinding process and is substantially intact and therefore can be easily separated from the powder.

The appellant explains that this is a result of grinding under conditions of low stress, using a ball mill rather than rotating blades (the ball mill being run at a relatively low speed of 30 rpm, see the example), an inert fluid as the grinding medium and low density alumina grinding balls, which crush rather than cut. Indeed, as pointed out by the appellant, if it were desired to reduce a plastic material to small pieces in a ball mill, it would be necessary to render it brittle by freezing or the like. In the context of



the application, the skilled person would thus understand that, although the container is pressed and damaged, it remains substantially in one piece, and hence it is the second of the above definitions of "crushing" that is meant.

Since a meaning that is clearly not intended in the application should not be imposed when the intended meaning is readily apparent to the skilled person, the objection under Article 84 EPC is not well-founded.

### 3. Article 83 EPC

3.1 The objection under Article 83 EPC was mentioned for the first time in the minutes of the oral proceedings and in the decision. Because he felt that there was nothing further to be added to the submissions already made in writing, the appellant had quite properly notified the EPO that he would not be attending the oral proceedings.

Given that the appellant was not present at the oral proceedings, he would have learned of this objection only after the decision was taken. Since the appellant has not been given opportunity to comment on this ground of refusal, contrary to Article 113(1) EPC, this amounts to a substantial procedural violation on the part of the examining division.

However, this error had no influence on the outcome of the proceedings before the examining division, since they had already decided to refuse the application for lack of compliance with Article 84 EPC. In order to proceed further with the application, the appellant

would have had to lodge an appeal, whether or not the new ground had been mentioned in the decision. The appellant has requested at least a partial refund of the appeal fee. Rule 67 EPC does not provide for a partial reimbursement of the appeal fee, and given that the appellant had to appeal, refund of the appeal fee is not equitable.

- 3.2 The Board nevertheless makes the following comments about the objection raised under Article 83 EPC. This article requires that the application should disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

The application gives an example of how to carry out the method of the invention by providing an indication of a suitable ball mill, the size of the grinding balls and the material from which they can be made and a suitable milling fluid. There is thus sufficient information presented in the application to enable the skilled person to perform the method of claim 1, and hence there is no ground for objection under Article 83 EPC.

4. Further Examination

The decision under appeal gives no indication of the position of the examining division concerning *inter alia* novelty and inventive step of the currently claimed subject-matter. Therefore, the case must be remitted to the examining division for further examination.

**Order**

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

1. The claims filed together with this appeal meet the requirements of Article 84 EPC.
2. The case is remitted to the examining division for further examination.
3. The request for at least partial reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:

A. Counillon

U. Krause