

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 16 August 2011**

Case Number: T 0655/09 - 3.2.03

Application Number: 05104903.9

Publication Number: 1586840

IPC: F27B 9/18, F27B 9/24

Language of the proceedings: EN

Title of invention:
Rabble arm for a furnace

Applicant:
PAUL WURTH S.A.

Headword:
-

Relevant legal provisions:
EPC Art. 76(1)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Divisional application - extended subject-matter"

Decisions cited:
-

Catchword:
-



Case Number: T 0655/09 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 16 August 2011

Appellant: PAUL WURTH S.A.
32 rue d'Alsace
L-1122 Luxembourg (LU)

Representative: Office Freylinger
P.O. Box 48
L-8001 Strassen (LU)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 21 October 2008
refusing European patent application
No. 05104903.9 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: U. Krause
Members: C. Donnelly
K. Garnett

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division, posted on 21 October 2008, refusing European Patent application No. 05 104903.9. The application is a divisional of the earlier PCT application EP02/05114 published as WO-A-02086407 (D1) and corresponding to Euro-PCT application 02738048.4.
- II. In its decision the examination division held that the divisional application did not meet the requirements of Article 76(1) EPC since its content went beyond that of the parent PCT application D1. Essentially, it argued that D1 discloses a combination of a first feature (a): "through hole (sic) (50) in the rabble tooth (14) having the rabble portion (46) and the fixing portion (40)"; and a second feature (b): "the fixing means (40) cooperates with said fixing portion (48)...". However, the parent application makes no clear and unambiguous disclosure of feature (b) taken alone as defined in claim 1 of the divisional application as filed and in claim 1 filed with letter of 21 February 2007. Thus, in its opinion the subject-matter of the divisional application represents an undue generalisation of the original subject-matter in breach of Article 76(1) EPC since feature (a) had been omitted from claim 1.
- III. The applicant (hereinafter "the appellant") filed a notice of appeal against this decision on 29 December 2008 and paid the fee the same day. The grounds of appeal were filed on 27 February 2009.
- IV. In a communication dated 23 May 2011, pursuant to Article 15(1) RPBA annexed to the summons to oral

proceedings, the Board informed the appellant of its provisional opinion.

V. Oral proceedings before the Board were held on 16 August 2011. At the end of the discussions, the appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 as filed with the letter dated 21 February 2007 and claims 2 to 20 as filed with the original application.

VI. Claim 1 filed with letter of 21 February 2007 reads:

"A rabble arm for a furnace, said rabble arm comprising:

an elongated metallic support core (10);

a plurality of rabble teeth (14), each of said rabble teeth (14) having a rabble portion (46) and a fixing portion (48);

fixing means co-operating with said fixing portions (48) for fixing said rabble teeth (14) to said elongated metallic support core (10), said fixing means including a teeth support sleeve (40) supporting said rabble teeth (14), said teeth support sleeve (40) being slipped over said metallic support core (10);

characterised in that said teeth support sleeve (40) includes:

an inner metallic sleeve (42),
an outer metallic sleeve (44); and

an insulating material (146) arranged between said inner metallic sleeve and said outer metallic sleeve (44), so as to achieve a continuous insulation of the elongated metallic support core (10)."

VII. *Appellant's case*

The appellant argued that claim 1 of the divisional application defines a solution to the additional and separate problem of improving the insulation of the rabble arm against high temperatures whilst simultaneously making overhauling of this insulation easier. This problem is derivable from D1, page 3, lines 19 to 30. The original problem in D1 related to one of improving the fixing portion of the rabble teeth so as to reduce the frequency of teeth breaks as derivable from D1, page 3, lines 13 to 18 and page 4, lines 12 to 26. Thus, both problems were presented from the outset as being independent.

An insulated teeth support as defined in claim 1 of the divisional is directly and unambiguously derivable from D1, page 9, line 23 to page 10, line 14 since this passage provides a self-contained and independent description of an insulated teeth support sleeve without reference to a through hole. Hence, the skilled person would understand that the improvement to the insulation does not depend on the presence of a through hole in the fixing portion of the rabble teeth. Further, there is nothing in the disclosure of D1 that suggests the support sleeve cannot work in the absence of a through-hole in the fixing portion of the rabble teeth. In fact, page 8, line 11 to page 10, line 14 gives an explanation of a rabble arm according to

claim 1 of the divisional without any explanation as regards how the teeth are supported by the teeth support sleeve.

Reasons for the decision

1. The appeal is admissible.
2. *Article 76 (1) EPC*
 - 2.1 The contested decision is based entirely on Article 76(1) EPC and this is the only issue to be addressed.
 - 2.2 The appellant concedes that there is no explicit disclosure in the parent application D1 of anything other than a fixing portion including a through-hole in the rabble teeth.
 - 2.3 Therefore, the question to be addressed is whether the skilled person would understand, as the appellant asserts, that it is clearly and unambiguously derivable from D1 that the improvement to the insulation is not dependent on the presence of a through-hole in the fixing portion of the rabble teeth.
 - 2.4 In support of its case the applicant has in particular referred to the passage in the description of D1, from page 9, line 23 to page 10, line 14. Although this passage might not specify the presence of a through-hole in the fixing portion of the rabble teeth this is because it does not mention fixing portion means at all since it is concerned with describing the insulation. However, a failure to indicate a particular type of

fixing portion comprising a through-hole at one point in the description does not constitute a clear and unambiguous disclosure of all types of fixing portion arrangements in general.

2.5 Moreover, other parts of the description of D1 are more specific, in particular, at page 4, lines 20 to 24 under the heading "Summary of the invention" it is expressly stated that it is an important aspect of the invention that "the fixing portion does not include a dove tail or hook like fixing element, but simply includes a through hole (sic).....". In the following section of the description up to line 12, page 5, the advantages of a through-hole are given. Therefore, from the outset, the reader is left in no doubt that the fixing portion comprises a through-hole. The remainder of the description reinforces this message, since each time the fixing portion is mentioned it is in conjunction with "the through hole", see page 6, line 2; page 6, lines 23 to 24; page 10, lines 18 to 19; page 10, lines 26 to 28 and lines 29 to 30. The only fixing portion shown in the drawings comprises a through-hole.

2.6 Neither is the appellant's argument that the presence of a through-hole relates to a separate problem convincing. The passage at page 3, line 13 of D1 links a "first drawback" with a "rather high frequency of teeth breaks in the region of their dove-tail or hook-like fixing portion". An "insufficient protection against high temperatures" is indicated at page 3, lines 19 to 20 as being a "further drawback" i.e. in addition to but not separate from the first drawback.

2.7 In conclusion, the parent application D1 consistently presents the characteristics of the insulation in combination with the presence of a through-hole in the fixing portion of the rabble teeth. Thus, the requirements of Article 76(1) EPC are not met.

Order

For these reasons it is decided that:

The appeal is dismissed.

Registrar:

Chairman:

D. Hampe

U. Krause