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**Datasheet for the decision
of 15 June 2010**

Case Number: T 0759/09 - 3.2.04

Application Number: 04380130.7

Publication Number: 1491130

IPC: A47L 21/02

Language of the proceedings: EN

Title of invention:

Drying-polishing machine for cutlery and the like

Applicant:

Sammic, S.L.

Opponent:

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Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 56, 123(2), 111(1), 113(2)

Relevant legal provisions (EPC 1973):

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Keyword:

"Added subject-matter (yes)"

"Inventive step (no)"

Decisions cited:

G 0010/93

Catchword:

-



Case Number: T 0759/09 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 15 June 2010

Appellant: Sammic, S.L.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 3 February 2009
refusing European application No. 04380130.7
pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: A. de Vries
Members: M. Poock
C. Heath

Summary of Facts and Submissions

I. The Appellant lodged an appeal, received 26 March 2009, against the decision of the Examining Division posted 3 February 2009, refusing the European patent application No. 04 380 130.7. Simultaneously he submitted the statement setting out the grounds of appeal. The appeal fee was received 25 March 2009.

In its decision the Examining Division held that the application did not meet the requirements of Articles 84 EPC for lack of clarity. It also commented on added subject-matter and lack of inventive step, though these comments were said not to form part of the decision.

II. With the communication of 25 September 2009 pursuant to Rule 100(2) EPC the Board made preliminary observations concerning added subject-matter, Article 123(2) EPC, and lack of inventive step, Articles 52(1) and 56 EPC, for claim 1 of the sole request on file.

III. The Appellant requests that the decision under appeal be set aside and that a patent be granted on the basis of claim 1 of a *main request* as filed with the notice of appeal. The wording of this claim is as follows :

"Drying-polishing machine for cutlery and similar objects, the machine being of the type made of a structure, chassis or frame in stainless steel, comprised of a vibrating basin supported on a base (1) mounted on shock absorbers (7) and which incorporates a vibrating motor (5), characterized in that said vibrating basin having two entry slots (3) and (3')

through which the cutlery or similar objects are introduced along with a ground or crushed derivative of corncob, a first upward ramp (2) or channel for conveying the cutlery, a second upward ramp (4), an electric braking means to act on the vibrating basin and braking it instantaneously, and a thermostat support and control thermostats and heaters."

With letter of reply dated 13 November 2009 the Appellant states in relation to the expression that braking means act on the vibrating basin that "if this Board considers said expression may be inappropriate ... [it] would accept its withdrawal from claim 1." The Board interprets this statement as an *auxiliary request* to a correspondingly amended claim 1.

Reasons for the Decision

1. The appeal is admissible.
2. *Procedural issues : extend of scrutiny*

Though the decision under appeal mentions clarity, the Board has chosen to exercise the power afforded it under Article 111(1) EPC to examine the application for other requirements as foreseen in G 10/93 (OJ EPO 1995, 172), see headnote. For assessing compliance of amendments with Article 123(2) EPC this goes without saying.

As concerns inventive step the appealed decision in point 2 of the section "additional comments" said not to form part of the decision, refers to an objection

raised in paragraphs 2.4 to 2.7 of the communication of 19 October 2007 issued in examination and which the division still held to be valid. The relevant paragraphs set out in a reasoned manner the case against inventive step, starting from a document D1, that is EP-A-0 882 424. Even if this reasoning has not been included as formal ground in the decision under appeal - though it could and should have been (the underlying need for procedural economy would not require the reasoned statement of a communication under Rule 71(2) EPC to cover "all the grounds against the grant" unless the reasoning of a first instance decision under Rule 111 EPC were equally comprehensive) - it is evident that a first instance consideration of the issue of inventive step has already taken place. The Board has therefore also extended examination to this requirement.

3. *Background*

The application relates to a cutlery drying/polishing machine where cutlery is vibrated in a basin together with ground or crushed corncob acting as water absorbent and polishing agent. The basin is supported on a base on shock absorbers and is driven by a motor. The invention is concerned in first instance with providing entry slots for introducing the cutlery with ground material, and upward ramps for conveying the cutlery in the basin; but it is also directed at the use of heaters and thermostat control as well as the provision of an electric brake.

4. *Main request : added subject-matter*

4.1 In section 1 of its communication under Rule 100(2) EPC the Board gave its provisional opinion regarding *added subject-matter*:

"Though the amendments to claim 1 appear to address the decision's finding of lack of clarity they add subject-matter, contrary to Article 123(2) EPC. In particular the indication that the electric braking means acts on the vibrating basin is not directly and unambiguously derivable from the original disclosure. The relevant passages, description paragraphs [0019],[0020] and [0027] do not provide much detail of the brake, other than that it instantaneously stops the basin. This may be effected by acting on the vibrating motor rather than on the basin itself, cf. specification paragraph [0019] referring to switching from high RPM to 0."

4.2 Other than stating that it was not the intention to add new material and that it would accept removal of the feature from claim 1, the Appellant does not address this observation in the letter of reply. The Board thus has no reason to depart from its preliminary opinion as expressed in the communication and concludes that amended claim 1 as filed with the notice of appeal introduces subject-matter extending beyond the content of the application as filed, Article 123(2) EPC.

5. *Auxiliary request : inventive step*

5.1 In its communication under Rule 100(2) dated 25 September 2009, section 2, the Board made a provisional assessment of inventive step for the

machine defined in claim 1 "if interpreted within the confines of the original disclosure as relating to an electric braking means that instantaneously stops the vibrating basin". Such a claim 1 corresponds to that of the auxiliary request. It was "not seen to define inventive subject-matter, contrary to Article 52(1) with Article 56 EPC."

Subsections 2.1 to 2.5 of the communication stated:

"2.1 EP-A-1 304 068 cited in the search report appears to represent the closest prior art. As is clear from the abstract it relates to the same type of vibratory, granule assisted drying machine as the present application. The main components, base or tank 11 with a basin (figure 2), vibratory motor 14 and shock absorbers in the form of springs 12 are shown in the figures, see also paragraphs [0012],[0013]. The basin has a central loading mouth 18 with a ramp and necessarily includes "entry slots" to feed cutlery from the top onto a surrounding upward spiral channel made up of individual segments 14, each effectively an upward ramp, see paragraph [0014]."

"2.2 The device of claim 1 appears to differ from this prior art in the features of heaters and supported thermostat control, as well as of the electric brake for instantaneously stopping the basin."

"2.3 Heaters and thermostat control are fairly standard in one form or another in vibratory, granule assisted drying, see any of the prior art cited in paragraph [0003], namely WO 228265, EP 282937 and EP400516 (family documents of the two Spanish applications).

There they serve to heat up and dry the granules at a controlled temperature."

"2.3 The electric brake - understood to mean a brake that is electrically activated - serves to bring the vibrating basin to a rapid, momentary and controlled standstill, the underlying technical objective problem, cf. paragraphs [0019] and [0027]. This feature and its effect is clearly technically unrelated to the first difference and can be treated independently."

"2.4 The generally known purpose of brakes is to stop movement in a controlled and swift manner. To apply them to this end in the present context appears obvious. Given that the vibrating device is electrically operated, it moreover appears an obvious choice to use an electrical, rather than a manually operated brake."

5.2 The Appellant does not reply in substance to these observations. In section 3 of his reply of 13 November 2009 he refers to "considerations made in our previous reply", but these merely highlight the "restraining device" (understood to be the braking means) as difference with respect to D5, that is DE-A-2 731 674. This consideration can have little bearing on the Board's preliminary assessment, which starts from another document. The Board therefore sees no reason to depart from its preliminary opinion as expressed in its communication.

5.3 The Board concludes that the subject-matter of claim 1 of the auxiliary request lacks inventive step over EP-A-1 304 068 in combination with the prior art acknowledged in paragraph [003] of the published

application and common general knowledge, Articles 52(1) and 56 EPC.

6. As neither request - main or auxiliary - meets the requirements of the EPC, the appeal must fail.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

G. Magouliotis

A. de Vries