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**Datasheet for the decision
of 25 May 2011**

Case Number: T 2038/09 - 3.2.03

Application Number: 02745639.1

Publication Number: 1412582

IPC: E01C 21/00

Language of the proceedings: EN

Title of invention:
Recycled material mixing machine

Applicant:
Keanes Limited

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Amendments - added subject-matter (no)"

Decisions cited:
-

Catchword:
-



Case Number: T 2038/09 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 25 May 2011

Appellant: Keanes Limited
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London, Middlesex NW6 2HT (GB)

Representative: Schlich, George William
Schlich & Co
34 New Road
Littlehampton
West Sussex BN17 5AT (GB)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 16 April 2009
refusing European patent application
No. 02745639.1 pursuant to Article 97(1) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. European patent application EP-A-02 745 639 is based upon international application WO-A1-03/008710 and concerns a mixing machine for recycling building materials for use as backfill. The Examining Division was of the view that the amended claims submitted during examination introduced subject-matter contrary to Article 123(2) EPC, and hence decided to refuse the application.
- II. The above decision was posted on 16 April 2009. Notice of appeal was filed by the Appellant (Applicant) on 26 June 2009 and the appeal fee was paid on the same day. A statement containing the grounds of appeal was filed on 26 August 2009.
- III. In a communication dated 13 April 2011 the Board gave its opinion that the amended claims filed with the statement of the grounds of appeal appeared to meet the requirements of Article 123(2) EPC. However, there were doubts that the amended description was allowable under Article 123(2) EPC. In response, the Appellant filed with the letter of 20 May 2011 further amended description pages.
- IV. Requests
- The Appellant requests that the above decision be set aside and that the application be allowed on the basis of the following documents:
- Claims 1 to 3 of the main request filed with the statement of the grounds of appeal;

Description pages 1, 1a and 4, as filed with the statement of grounds of appeal, and pages 2 and 3, filed with the letter of 20 May 2011;

Figures 1 and 2 of the application as originally filed.

V. Claims

(a) The claims of the application as originally filed (WO-A1-03/008710) are as follows:

"1. A machine for recycling site-won spoil comprising predominantly non-granular cohesive material from an excavation for immediate re-use as a backfill, comprising means (4) for receiving excavated cohesive material, means (6,10) for adding a measured amount of powder material, mixing means (8) for thoroughly mixing the components and discharging them from the machine, and means (4,22,30,26) for breaking up the cohesive material before it enters the mixing means (8)."

"2. A machine as claimed in claim 1, wherein the mixing means comprises a pan mixer (8) having a rotary blade or vane."

"3. A machine as claimed in claim 1 or 2, wherein the means for adding a measured amount of powder material comprises means (6) for feeding lime onto the excavated cohesive material at an intermediate stage while the spoil is being broken up."

(b) Claim 1, which was the subject of the contested decision, reads as follows:

"1. A machine for recycling site-won spoil comprising predominantly non-granular cohesive material from an excavation for immediate re-use as a backfill, comprising means (4) for receiving excavated cohesive material, means (6,10) for adding a measured amount of powder material, mixing means (8) comprising a pan mixer (8) having a rotary blade or vane for thoroughly mixing the components and discharging them from the machine, and means (4,22,30,26) for breaking up the cohesive material before it enters the mixing means (8), a preliminary component (4) of the breaking means being in the receiving means."

(c) The claims of the main request before the Board are as follows. The claims of the original application have been amended to include the underlined wording.

"1. A machine for recycling site-won spoil comprising predominantly non-granular cohesive material from an excavation for immediate re-use as a backfill, comprising means (4) for receiving excavated cohesive material, means (6,10) for adding a measured amount of powder material, mixing means (8) comprising a pan mixer (8) having a rotary blade or vane for thoroughly mixing the components and discharging them from the machine, and means (4,22,30,26) for breaking up the cohesive material before it enters the mixing means (8)."

"2. A machine as claimed in claim 1, wherein the means for adding a measured amount of powder material comprises means (6) for feeding lime onto the excavated

cohesive material at an intermediate stage while the spoil is being broken up."

"3. A machine as claimed in claim 1 or claim 2, wherein the receiving means (4) comprises a rotary sizer machine which contains inclined blades which break up the cohesive material as it passes through onto a conveyor (20) located beneath the rotary sizer hopper (4)."

VI. Submissions of the Appellant

The Appellant submits that the amended set claims according to the main request and the amended description pages meet the objection under Article 123(2) EPC raised by the Examining Division.

Reasons for the Decision

1. The appeal is admissible.
2. Article 123(2) EPC
 - 2.1 The claim before the Examining Division had been amended to contain the feature that "a preliminary component (4) of the breaking means being in the receiving means" (see V(b) above). This amendment was considered by the Examining Division to add subject-matter contrary to Article 123(2) EPC because it encompasses more than the rotary sizer machine disclosed in the original application.

2.2 The offending feature has been removed from claim 1 of the main request, hence the objection of the Examining Division is no longer of relevance. Present claim 1 of the main request corresponds to claims 1 and 2 as originally filed. Dependent claim 2 corresponds to claim 3 as originally filed. The wording of dependent claim 3 is to be found at page 2, lines 9 to 11 of the original application.

The set of claims according to the main request thus meets the requirements of Article 123(2) EPC.

2.3 The description has been brought into agreement with the claims of the main request, hence the concerns expressed by the Board in its communication of 13 April 2011 that the amendments to the description were not allowable under Article 123(2) EPC have been addressed.

3. Further Examination

Other issues, such as novelty and inventive step, have not been dealt with by the Examining Division, and there is no indication in the contested decision of its views on these points. It therefore not possible to allow the application on the basis of the claims of the main request, as requested by the Appellant. Rather, the case must be remitted to the Examining Division for further examination, as has been accepted by the Appellant (see last paragraph of the letter of 20 May 2011).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examining Division for further prosecution.

The Registrar:

The Chairman:

D. Meyfarth

U. Krause