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**Datasheet for the decision
of 28 March 2019**

Case Number: T 0505/16 - 3.2.03

Application Number: 12780406.0

Publication Number: 2756138

IPC: E03F5/22

Language of the proceedings: EN

Title of invention:
DRAINAGE UNIT AND USE THEREOF

Applicant:
Pah Bygge & Anlæg

Headword:

Relevant legal provisions:
EPC Art. 84, 56

Keyword:
Claims - clarity (no)
Inventive step - (no)

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0
Fax +49 (0)89 2399-4465

Case Number: T 0505/16 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 28 March 2019

Appellant: Pah Bygge & Anlæg
(Applicant) Kirsebøghaven 3
4000 Roskilde (DK)

Representative: Høiberg P/S
Adelgade 12
1304 Copenhagen K (DK)

Decision under appeal: Decision of the Examining Division of the
European Patent Office posted on 6 November 2015
refusing European patent application No.
12780406.0 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman G. Ashley
Members: E. Kossonakou
B. Miller

Summary of Facts and Submissions

- I. European patent application 12780406.0 ("the application") is directed to a drainage unit.
- II. The examining division refused the application on the grounds of lack of clarity (Article 84 EPC) and lack of inventive step (Article 56 EPC).
- III. This decision was appealed by the applicant (the appellant). With the statement setting out the grounds of appeal it filed amended claims 1 to 6, replacing all previous claims on file, and requested that the decision under appeal be set aside and that a patent be granted on the basis of these amended claims.
- IV. Independent claim 1 reads as follows:

"Drainage unit (1), comprising a housing (3), a pump swamp (5), a sewer line (6,6A,7), said sewer line is provided with a water closure (11), and where the drainage unit is adapted to drain off waste water being faecal and/or not faecal, and where there in the pump swamp (5) is provided a pump (8), that is adapted to pump the waste water from the pump swamp (5) the sewer line (6A) provided downstream the water closure (11) via a to the pump (8) connected pump sewer line (9), wherein the sewer line (6,6A,7) inside the housing (3) is formed with an overflow (7) characterized by the overflow (7) consisting of an upwards pointing open cut-out in the sewer line (6), said cut-out being placed above the pump swamp (5)."

Dependent claims 2 to 5 concern preferred embodiments of the drainage unit of claim 1. In particular, dependent claim 4 reads:

"Drainage unit according to claims 1 - 3, characterized in that the part that is cut-out is reinserted in on the sewer line."

Independent claim 6 reads:

"Use of a drainage unit according to the claims 1 - 5 for draining off water from a building such as a single-family house."

V. The following prior art documents have been cited in the proceedings of the application:

D1: US2,739,662;
D2: US3,020,922;
D3: US2,421,066;
D4: US2,549,204;
D5: DE 33 10 314 A1.

VI. With the summons to oral proceedings, the Board sent a communication pursuant to Articles 15(1) of the Rules of Procedure of the Boards of Appeal (RPBA) indicating to the appellant its preliminary opinion of the case.

VII. With a letter dated 25 February 2019 the appellant informed the Board, that it would not attend the oral proceedings. The appellant did not provide any further arguments.

VIII. Oral proceedings took place as scheduled on 28 March 2019 in the absence of the appellant in accordance with Rule 115(2) EPC and Article 15(3) RPBA.

IX. The reasons for the decision under appeal, as far as relevant to the Board's decision, may be summarised as follows:

The wording of claim 4 was unclear, since the overflow defined therein could not function.

Starting from D1 as the closest prior art it was obvious to provide a drainage unit wherein the overflow was formed by an upwards pointing cut-out in the sewer line.

X. The respective arguments of the appellant may be summarised as follows.

Starting from D1 it was not obvious to simply cut out the upper portion of a sewer line in order to provide an overflow which was simple and inexpensive in manufacturing and which did not generate flow resistance. The subject-matter of claims 1 and 4 was furthermore clearly defined.

Reasons for the Decision

1. Article 84 EPC

Claim 1 defines that the overflow consists of an upwards pointing open cut-out. According to the literal meaning of the term "open", the overflow is required to be uncovered. This interpretation of the word "open" is also confirmed by figure 1 of the application, which shows a sewer line inside a housing, whereby for a

certain length an overflow is generated by cutting out the upper half of the pipe.

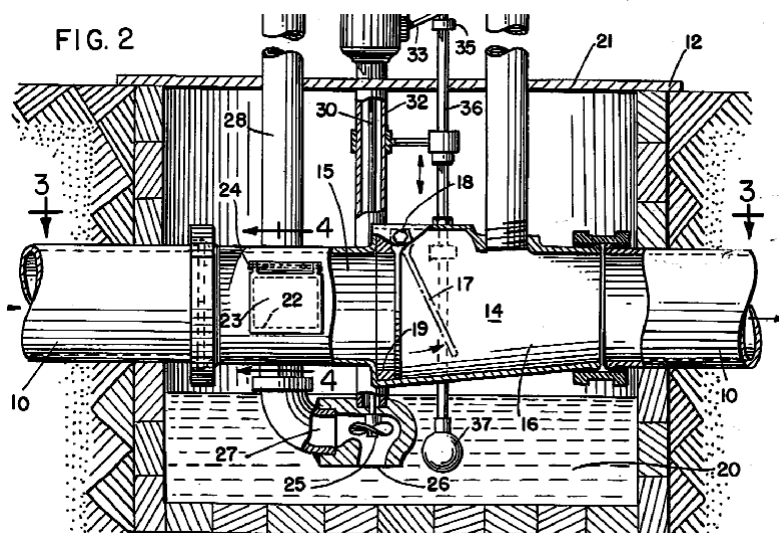
However, claim 4 contradicts this interpretation of the term "open" by defining that the cut-out portion is reinserted into the sewer line and therefore closes the overflow.

The subject-matter of claim 4 in combination with claim 1 is therefore not clearly defined and does not fulfil the requirements of Article 84 EPC.

2. Article 56 EPC

2.1 It is undisputed by the appellant that D1 discloses a drainage unit with an overflow and therefore represents a suitable starting point for the assessment of inventive step.

2.2 D1 discloses a sewer trap (drainage unit) comprising a pit structure or sump 20 (housing), a pump swamp, a sewage disposal pipe 10 (sewer line) connected to a check valve 17 (water closure) wherein the pump swamp is provided with a sump pump 25 that is adapted to pump the waste water from the pump swamp via pipe 28 (a pump sewer line) to the sewer line 10, see figure 2 of D1:



The spillway aperture 22 in sewer line 10 is a cut-out portion which is located at the side. It serves as a passage leading to the sump and is provided with a gate 23 hinged at 24 at its upper edge (column 1, line 68 to column 2, line 4).

2.3 The subject-matter of claim 1 differs in that the drainage unit comprises an overflow consisting of an upwards pointing open cut-out.

2.4 According to claim 4 of the application the cut-out can be reinserted in the sewer line. Page 2, lines 17 to 18 and page 3, lines 8 to 9 of the application confirm the wording of claim 4 by describing that the cut-out is reinserted in the sewer line for eliminating smell inconveniences and is loosely attached to the sewer line.

Hence, the term "open cut-out" in claim 1 in the context of claim 4 has to be interpreted against its literal meaning, as referring to an opening that is covered, but through which water can flow out.

2.5 This condition is met by the passage 22 disclosed in D1, since the gate 23 described in D1 is weighted so as to close the passage 22 (column 1, line 68 to column 2, line 4) in a similar manner as the reinserted cut-out defined by claim 4 of the application.

Hence, the passage 22 closed by the gate 23 according to D1 can be considered to be an "open cut-out" in the sense of the application.

It further follows that the upwards pointing cut-out of the embodiment according to claim 4 of the application does not provide less flow resistance as the hinged

gate 23 described in D1, since in both cases the same flow resistance is generated by the weight of the reinserted cut-out or gate respectively.

- 2.6 The appellant argued that providing an upward pointing cut-out was a simple and inexpensive way of manufacturing an overflow.

However, the final position of the cut-out has no bearing on the complexity of manufacture, since it does not matter during manufacture in which direction the cut-out is finally oriented in the drainage unit.

- 2.7 The objective technical problem can therefore be regarded as to provide an alternative drainage unit.

- 2.8 Arbitrarily changing the position of the cut-out forming the overflow from a position at the side of the sewer line as shown in figure 2 of D1 to a position pointing upwards would be a routine modification for the skilled person. In fact, the sewer line only has to be rotated slightly during the assembling step in order to arrive at a drainage system according to claim 1 having a cut-out pointing upwards.

Hence, the subject-matter of claim 1 is obvious in view of D1 and does not fulfil the requirement of Article 56 EPC.

Order

For these reasons it is decided that:

The appeal is rejected.

The Registrar:

The Chairman:



C. Spira

G. Ashley

Decision electronically authenticated