

**Internal distribution code:**

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

**Datasheet for the decision  
of 5 November 2021**

**Case Number:** T 2179/19 - 3.3.05

**Application Number:** 13751179.6

**Publication Number:** 2818236

**IPC:** B01F15/04, B01F3/08, G05D11/13

**Language of the proceedings:** EN

**Title of invention:**  
PROPORTIONAL MIXING SYSTEM

**Applicant:**  
Meiji Co., Ltd.

**Headword:**  
MIXING SYSTEM/Meiji

**Relevant legal provisions:**  
RPBA 2020 Art. 25(2)  
RPBA Art. 12(4)  
EPC R. 103(4)(c)

**Keyword:**  
Late-filed evidence - request could have been filed in first  
instance proceedings (yes)

**Decisions cited:**

T 0980/08

**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 2179/19 - 3.3.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 5 November 2021**

**Appellant:**  
(Applicant)

Meiji Co., Ltd.  
2-1, Kyobashi 2-chome,  
Chuo-ku,  
Tokyo 1048306 (JP)

**Representative:**

Novagraaf Technologies  
Bâtiment O2  
2, rue Sarah Bernhardt  
CS90017  
92665 Asnières-sur-Seine Cedex (FR)

**Decision under appeal:**

**Decision of the Examining Division of the  
European Patent Office posted on 19 March 2019  
refusing European patent application No.  
13751179.6 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** E. Bendl  
**Members:** J. Roider  
P. Guntz

## Summary of Facts and Submissions

- I. The appeal lies from the examining division's decision to refuse patent application No. 13 751 179.6 because the claimed subject-matter lacked inventive step.
- II. Together with the grounds of appeal, the appellant submitted a new main request and a new auxiliary request, replacing the only claim request that had formed the basis of the decision under appeal, in order to overcome the inventive-step objection raised by the examining division in the impugned decision.
- III. Claim 1 of the main request reads as follows (additions and deletions with respect to claim 1 considered in the decision under appeal have been indicated by underlining and strikethrough, respectively):

*"1. A proportional mixing system (1) for mixing a primary liquid being delivered from a primary liquid pump (20) to a mixer (26) through a primary liquid conduit (21) together with a secondary liquid being delivered from a secondary liquid pump (22a,22b,22c) to said primary liquid conduit through a secondary liquid conduit (23a,23b,23c) connected to said primary liquid conduit and thus being added to said primary liquid, said mixture of the primary and secondary liquids being performed according to a predetermined mixture ratio, wherein said proportional mixing system comprises:*

*a first flow rate control means (10) disposed in said primary liquid conduit and operated at every predetermined sampling period to detect the flow rate of said primary liquid in said primary liquid conduit for providing output in the digital forms in response*

to the detected flow rate and for controlling in the digital forms the flow rate of said primary liquid in said primary liquid conduit;

a second flow rate control means (11) disposed in said secondary liquid conduit and operated at every sampling period to detect the flow rate of said secondary liquid in said secondary liquid conduit for providing output in the digital forms in response to the detected flow rate and for controlling, in the digital forms, the flow rate of said secondary liquid in said secondary liquid conduit, characterized in that:

~~based on the flow rate of said primary liquid in said primary liquid conduit and the flow rate of said secondary liquid in said secondary liquid conduit that have been provided in the digital forms by said first flow rate control means and said second flow rate control means,~~

an instantaneous flow rate value computing means (2) for computing, based on the flow rate of said primary liquid in said primary liquid conduit and the flow rate of said secondary liquid in said secondary liquid conduit that have been provided in the digital forms by said first flow rate control means and said second flow rate control means, an instantaneous flow rate value of said primary liquid and an instantaneous flow rate value of said secondary liquid when said sampling period will have elapsed;

an actual integrated flow rate value computing means (3) for computing, based on flow rate of said primary liquid in said primary liquid conduit and the flow rate of said secondary liquid in said secondary liquid conduit that have been provided in the digital forms by

said first flow rate control means and said second flow rate control means, a primary liquid actual integrated flow rate value of said primary liquid and a secondary liquid actual integrated flow rate value when said sampling period will have elapsed;

an estimated integrated flow rate computing means (4) for computing, based on the computed actual integrated flow rate value of said primary liquid and secondary liquid actual integrated flow rate value, an estimated primary liquid integrated flow rate value being expected as the value at the time when next sampling period successively following said elapsed sampling period during which said actual integrated flow rate value was computed will have elapsed for said primary liquid ~~and/or~~ an estimated secondary liquid integrated flow rate value being expected as the value at the time for said secondary liquid when next sampling period successively following said elapsed sampling period during which said actual integrated flow rate value was computed will have elapsed for said secondary liquid; and

based on the computed result provided in the digital forms by said estimated integrated flow rate value computing means and said predetermined mixture ratio, a third flow rate control means (5) for controlling an instantaneous flow rate of said primary liquid in said primary liquid conduit ~~and/or~~ an instantaneous flow rate of said secondary liquid in said secondary liquid conduit."

- IV. Claim 1 of the auxiliary request is based on claim 1 of the main request, with the third flow rate control means being further limited by two alternatives.

- V. In the communication according to Article 15(1) RPBA, the board *inter alia* expressed doubts as to whether the the new requests should be admitted into the proceedings. Moreover, the new amendments to claim 1 appeared *prima facie* to contravene the requirements of Article 123(2) EPC and Article 84 EPC.
- VI. On 14 October 2021, the appellant withdrew the request for oral proceedings, so the board cancelled the scheduled oral proceedings.
- VII. The appellant requests that the decision under appeal be set aside and a patent be granted on the basis of the new main request or the auxiliary request, both submitted together with the statement of grounds of appeal.

## **Reasons for the Decision**

### 1. Admissibility

- 1.1 The statement of grounds of appeal was filed on 18 July 2019. Under Article 25(2) RPBA 2020, Article 12(4) RPBA 2007 applies to any such case. Consequently, everything presented by the appellant is to be taken into account, and the board has the discretion to hold inadmissible requests which could have been presented in the first-instance proceedings, for example.

The primary object of appeal proceedings is to review the decision under appeal in a judicial manner (Article 12(2) RPBA 2020), not to continue examination by other means (see T 980/08).

1.2 The impugned decision was based solely on an objection raised under Article 56 EPC, and the reasons for the objection had been communicated to the appellant with the examining division's communication on 23 July 2018.

In response to this objection, the appellant did not file any amended claims or auxiliary requests, nor did it request oral proceedings. The appellant thus did not exhaust all means available to it in order to overcome the objections during the examination phase.

1.3 With the statement of grounds of appeal, the applicant for the first time filed two new sets of claims, forming the main and auxiliary request. Both sets of claims had been amended to a considerable extent with respect to the claims forming the basis of the decision under appeal. No basis for the amendments was indicated.

1.4 The board is thus faced with two sets of claims that are very different from those forming the basis of the impugned decision and thus require a further detailed examination in relation to Article 123(2) EPC and Article 84 EPC, for instance to clarify the meaning of all the amendments made and their basis in the application as originally filed. Moreover, new deficiencies have become apparent even on a *prima facie* level, as outlined in the board's communication dated 3 August 2021. These necessitated further amendments, which would thus have resulted in the examination proceedings being continued, contrary to the requirements of Article 12(2) RPBA 2020.

1.5 The board therefore concludes that the claim requests filed with the statement of grounds of appeal should have been filed in response to the aforementioned



communication in the examination proceedings.

- 1.6 Consequently, the main request and the auxiliary request are not taken into consideration (Article 12(4) RPBA 2007 and Article 25 RPBA 2020).
2. Since the appellant withdrew its request for oral proceedings within one month of the communication dated 20 September 2021 issued in preparation for the oral proceedings, thus allowing the board to give a decision in writing, Rule 103(4)(c) EPC applies.

## Order

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

1. The appeal is dismissed.
2. The appeal fee is to be reimbursed at 25%.

The Registrar:

The Chairman:



C. Vodz

E. Bendl

Decision electronically authenticated