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**Datasheet for the decision  
of 9 February 2022**

**Case Number:** T 1169/20 - 3.3.05

**Application Number:** 12708174.3

**Publication Number:** 2675541

**IPC:** B01D17/02, B01D19/00, B01D21/00

**Language of the proceedings:** EN

**Title of invention:**  
IMPROVED REMOVAL DEVICE FOR MICRO-BUBBLES AND DIRT PARTICLES

**Applicant:**  
Flamco B.V.

**Headword:**  
Remonal device/Flamco

**Relevant legal provisions:**  
RPBA 2020 Art. 11

**Keyword:**  
Remittal - fundamental deficiency in first-instance proceedings (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 1169/20 - 3.3.05

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.05**  
**of 9 February 2022**

**Appellant:** Flamco B.V.  
(Applicant) Amersfoortseweg 9  
3751 LJ Bunschoten (NL)

**Representative:** EP&C  
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2280 GE Rijswijk (NL)

**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 14 November  
2019 refusing European patent application No.  
12708174.3 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** E. Bendl  
**Members:** J. Roider  
O. Loizou

## **Summary of Facts and Submissions**

- I. The appeal lies from the decision of the examining division to refuse the European patent application.
- II. In examination proceedings, the appellant (applicant) requested in the submission dated 23 November 2017 to amend page 12 of the description. This request was filed after the issue of the communication under Rule 71(3) EPC, but before the decision to grant.
- III. The examining division considered the requested amendment not allowable. After several further written communications and replies were exchanged on this matter, for instance those dated 26 October 2018 and 29 August 2019, the appellant withdrew the request for oral proceedings and requested a decision according to the state of the file.
- IV. On 14 November 2019, the examining division issued a refusal based on the state of the file using a standard form referring to previous communications. The reasons for the decision read:

*"In the communication(s) dated 21.07.2017, 06.12.2017, 26.04.2018 the applicant was informed that the application does not meet the requirements of the European Patent Convention. The applicant was also informed of the reasons therein.*

*The applicant filed no comments or amendments in reply to the latest communication but requested a decision according to the state of the file by a letter received in due time on 29.08.2019.*

*The European patent application is therefore refused on the basis of Article 97(2) EPC."*

- V. Together with the statement of grounds of appeal, the appellant referred to the set of claims listed in the communication according to Rule 71(3) EPC, together with the amendment proposed with the appellant's letter dated 23 November 2017, as the main request. Additionally, two auxiliary requests were presented.

The appellant furthermore held that a substantial procedural violation had occurred.

- VI. The claims of all requests presented in appeal proceedings are identical to the claims deemed patentable by the examining division in the communication according to Rule 71(3) EPC.

- VII. Independent claim 1 thereof reads as follows:

*"Removal device (10) for removing gas bubbles and/or dirt particles from a liquid in a liquid conduit system, the removal device comprising:*

- a housing (12) having an entry (14) and an exit (16), the housing defining an inner space (18) within the housing,*
- a main ongoing flow channel (20) which extends through the housing from the entry to the exit, wherein the main flow is defined along an axis (59) from the centre of the entry to the centre of the exit, wherein the main ongoing flow channel is free from obstacles between the entry and the exit,*
- a plurality of branch flow channels (32), each branch flow channel branching off from the main flow channel at a branch point (33), the branch flow channels being configured to - in use - branch off a small portion*

from a main flow,

- at least one quiet zone (40) which is provided at the ends (35) of the branch flow channels, such that in use the branch flow channels discharge into the at least one quiet zone, wherein the dimensions of the quiet zone is chosen relative to the combined discharge of the branch flow channels in such a way that in use, the velocity of the liquid in the at least one quiet zone is smaller than in the main flow channel and small enough to allow dirt to settle and/or gas bubbles to form and rise in the at least one quiet zone,

- at least one return flow channel (44) for a return flow from the at least one quiet zone back to the main flow channel, wherein the return flow channel merges with the main flow channel at a merge point (53), wherein the branch flow channels (32) are defined by curved plates (30) which extend from the main flow channel to the at least one quiet zone, wherein a number of lower curved plates (30) oriented substantially vertically and parallel to each other are positioned below the main flow channel, said lower curved plates defining between them lower branch flow channels (32) wherein the lower branch flow channels extend downward from the main flow channel to a lower quiet zone for dirt removal, wherein the lower curved plates have upper edges which define the entrances to the lower branch flow channels, wherein the upper edges (34) of the lower plates are located below the main flow channel, and/or

a number of upper curved plates (30) oriented substantially vertically and parallel to each other are positioned above the main flow channel, said upper curved plates defining between them upper branch flow channels (32), wherein the upper branch flow channels extend upward from the main flow channel to an upper quiet zone for gas removal, wherein the upper curved

*plates have lower edges which define the entrances to the upper branch flow channels, the main flow channel being located below the upper curved plates, wherein the curved plates extend in a horizontal direction from one side of the housing to the other side of the housing."*

VIII. In the main request, the sentence including the requested amendment (underlined) in the description on page 12 reads as follows:

*"The hydraulic separator 100 also functions as a dirt and gas removal device according to claim 1, and for this end is equipped with curved plates 30."*

Contrary to the view of the examining division, the appellant does not consider the insertion of the amendment to infringe the requirements of Article 82 EPC.

IX. The arguments by the appellant as to the procedural violation can be summarised as follows:

There had been no communications by the EPO issued on the dates indicated in the decision and therefore these communications could not contribute to the examining division's reasoning.

Since the appellant had filed letters with further arguments on 26 October 2018, thus more than a year prior to the decision, and additionally on 29 August 2019, the statement in the decision that the appellant had not filed comments in reply to the latest communication mentioned therein was effectively incorrect. The examining division had therefore not taken the appellant's replies into account when deciding the case.

Thus, the reasons for the decision were essentially missing, and the appellant's arguments had been disregarded.

- X. The appellant requested that the impugned decision be set aside and a patent be granted on the basis of the main request, or, in the alternative, on one of the two auxiliary requests, all requests as specified in the grounds of appeal.

Moreover, the appellant requested that the appeal fee be reimbursed.

### **Reasons for the Decision**

- 1. Procedural violation and reimbursement of the appeal fee

- 1.1 The decision to refuse the patent application was issued by means of a standard form referring to several earlier communications. This on its own does not constitute a defect.

According to the file, however, no communications relating to the case at issue were issued and sent to the appellant on the dates mentioned in the decision under appeal.

Only by comparing the communications that were actually received might the appellant be able to elicit some of the reasons that led to the refusal.

- 1.2 Moreover, the communications lack proper reasoning, as required by Rule 111(2) EPC.



The communication issued on 4 July 2017, which might be the communication referred to as "21 July 2017" in the decision, objects to the grant of the patent on the grounds that Article 82 EPC had been violated because the description should not cover more than one invention. However, the examining division did not include reasons that would enable a reader to understand why or how Article 82 EPC was violated.

The communication issued on 13 December 2017, which is possibly the communication referred to as "6 December 2017" in the decision, merely objects to "the inclusion of a non-unitary embodiment". The examining division again did not include reasons that would enable a reader to understand its conclusion.

The most comprehensive communication, issued on 7 May 2018, is possibly the communication referred to as "26 April 2018" in the decision.

From the appellant's letter preceding this communication, it is apparent that the applicant was not aware of which feature of the subject-matter of claim 1 the examining division considered to be undisclosed in Fig. 8.

Only in this communication did the examining division inform the appellant for the first time of its view that Fig. 8-11 did not show a main ongoing channel along an axis.

On 26 October 2018, the appellant contested that view, referring to the main channel between entry 106 and exit 107 in Fig. 8.

However, the examining division did not reply to the appellant's arguments, nor did it refer in its decision

to the arguments presented in the submission dated 29 August 2019, but instead issued a decision according to the state of the file making reference to communications which were obviously unsuitable to address the appellant's arguments.

- 1.2.1 Finally, the last sentence of the decision, according to which the applicant filed no comments or amendments in reply to the latest communication, is factually incorrect.
- 1.3 In spite of the obviously justified objections raised by the appellant against the decision under appeal, the examining division did not make use of the possibility of an interlocutory revision under Article 109 EPC.
- 1.4 In the present case, the Board considers the failure to comply with the requirement of Rule 111(2) EPC that "[d]ecisions of the European Patent Office which are open to appeal shall be reasoned" to be such a substantial and severe procedural violation that the entire basis of the appeal proceedings is affected and the purpose of the appeal proceedings to review the decision under appeal in a judicial manner (cf. Article 12(2) RPBA) has been rendered impossible, as it remains unclear what the reasons for the decision under appeal were.
- 1.5 Hence, the Board finds the reimbursement of the appeal fee in full to be equitable by reason of a substantial procedural violation pursuant to Rule 103(1)(a) EPC.
- 1.6 In view of the requirements of Article 11 RPBA, the Board, for the obvious reasons as set out above, finds that the fundamental deficiencies of the decision of the examining division are such that they constitute

the required special reasons. Therefore, the Board exercises its discretion to remit the case to the examining division for further prosecution.

## 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.
3. The appeal fee is reimbursed in full.

The Registrar:

The Chairman:



L. Malécot-Grob

E. Bendl

Decision electronically authenticated