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Bezeichnung der Erfindung: Settling of liquid dispersions
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : B01D 17/06, B03C 5/00, C10G 33/02

ENTSCHEIDUNG / DECISION

vom / of / du 17 January 1986

Anmelder / Applicant / Demandeur : University of Bradford

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Article 111(1)
"Remittal for further prosecution"

Leitsatz / Headnote / Sommaire

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Case Number: T 111 / 85

DECISION
of the Technical Board of Appeal 3.4.1
of 17 January 1986

Appellant: University of Bradford
Bradford, West Yorkshire, BD 7 1 DP
United Kingdom

Representative: Harrison, M.R. et al
Urquhart-Dykes & Lord
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Decision under appeal: Decision of Examining Division 031 of the European Patent
Office dated 28 November 1984 refusing European patent
application No 81 305 155.4 pursuant to Article 97(1)
EPC

Composition of the Board:

Chairman: O. Huber

Member: J. Roscoe

Member: F. Benussi

SUMMARY OF FACTS AND SUBMISSIONS

- I. European patent application No. 81 305 155.4 filed on 30 October 1981 and published on 12 May 1982 under publication No. 0 051 463, claiming priority from two earlier applications (GB-8 035 196 and GB-8 123 653) made in Great Britain on 1 November 1980 and 3 August 1981 respectively, was refused by a decision of the Examining Division 031 of the European Patent Office dated 28 November 1984. That decision was based on Claims 1 to 10 as originally filed.
- II. The reasons given for the refusal were that:
- (i) Claims 1 to 10 did not relate to inventive subject-matter having regard to the disclosure in BE-A-674 733 (document 1), DE-A-2 743 417 (document 2) and common general knowledge; and
 - (ii) Claims 2 to 7 and 9 did not satisfy the requirements of Article 84 and Rule 29(1) EPC.
- III. On 30 January 1985 the Applicant lodged an appeal against the decision and paid the appeal fee in due time. A statement setting out the grounds of appeal was filed on 30 March 1985. The statement was accompanied by a new set of Claims 1 to 6 to replace the claims on file and presented new arguments in support of these new claims.
- IV. In response to a communication from the rapporteur of the Board in which certain formal objections were raised to the new claims the Applicant lodged, on 30 November 1985, two further sets of claims, designated Set A and Set B respectively and each consisting of an independent Claim 1 and dependent Claims 2 to 6.

The appellant requests that the decision be set aside and that the Board refer the case back to the Examining Division for pursual of the examination on the basis of the claims of Set A. In the event that the Board should find this set of claims unacceptable the appellant requests oral proceedings.

Claim 1 of Set A reads as follows:-

1. A method for aiding the separation of the components of a dispersion of an electrically conductive liquid in an insulating liquid, the method comprising passing said dispersion along a flow path, and applying, by means of at least one pair of electrodes, a unidirectional electrostatic field pulsed between zero voltage and an appropriately high voltage across at least a portion of the flow path, and the or each electrode to which the relatively low voltage is applied being uninsulated from the dispersion, characterised in that the electrostatic field is pulsed at a frequency up to 60 Hz, the maximum field strength across the flow path is below 1100 V/cm, and the or each electrode to which the relatively high voltage is applied is electrically insulated from the dispersion.

Claim 1 of Set B differs from this only in the substitution of "in the range 0.5 to 60 Hz" for "up to 60 Hz" on the tenth to eleventh line.

V. For details of the original claims and description reference is invited to the published specification EP-A-51 463.

REASONS FOR THE DECISION

1. The appeal complies with Articles 106-108 and Rule 64 EPC and is, therefore, admissible.
2. The claims of Set A are adequately supported by the description as originally filed (Article 84 EPC) and the amendments made do not result in the application containing subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).
 - 2a. Thus, the preamble of Claim 1 derives its support from the passage at page 2, line 31 to page 3, line 5 of the original description in association with page 3, lines 13-15 and 22-24, and from the embodiment described with reference to Figure 1, in which the electrode at the relatively low voltage (earth) is uninsulated with respect to the dispersion.

With regard to the characterising features the limitation on the field strength comes from original Claim 7, the upper limit on the pulsing frequency from table I, where it is the highest frequency investigated, and the requirement that the electrode(s) to which the relatively high voltage is applied be electrically insulated from the dispersion comes from Claim 6.

The features of Claims 3, 4 and 6 are to be found in original Claims 5, 9 and 8 respectively and those of Claims 2 and 5 in page 4, lines 7 to 9 and page 3, line 28 respectively.

- 2b. The generic part (preamble) of Claim 1 includes all the features of the claim which are disclosed in combination in document 2, which is in the opinion of the Board the closest prior art document. In the characterising part

are set out the technical features which in combination with the features of the preamble it is desired to protect. The claim thus also meets the requirements of Rule 29(1) EPC.

3. In addition none of the claims is open to the objection under Article 84 and Rule 29(1) EPC referred to in item 11 of the appealed decision.
4. After careful consideration of all the documents cited in the Search Report, and the additional US patent documents to which the appellant draws attention in his statement of grounds, the Board is satisfied that none of them discloses a method as claimed in Claim 1.

The only ones of these documents in which the use of a pulsed unidirectional field is mentioned are document 2, US-A-4 226 690, cited in the Search Report, and US-A-2 382 697 and -2 364 118 referred to by the appellant. In US-A-4 226 690, however, none of the electrodes through which the field is applied is insulated from the dispersion and each of the other documents fails to disclose at least one of the characterising features of the claim.

The subject-matter of Claim 1 and hence that of the appendant Claims 2 to 6 of Set A is therefore novel (Article 54 EPC).

5. The appealed decision was based on the claims as originally filed. Although Claim 1 of Set A is, in essence, a combination of features which appeared in various combinations in the original appendant claims, the particular combination it represents did not form the exclusive subject-matter of any of the claims

rejected in the decision, which moreover did not deal in detail with the merits of the individual features of appendant claims. The Examining Division therefore had no real opportunity to consider whether this combination of features involves an inventive step, nor, of course, to weigh the arguments first advanced in its defence in the statement of grounds of appeal.

In these circumstances and in order not to deprive the Applicant of the right to an examination before two instances the Board deems it appropriate, exercising its discretion under Article 111(1) EPC, to remit the application to the first instance for further prosecution on the basis of the claims of Set A.

There is therefore no reason for the Board to deal with the claims of Set B.

ORDER

For these reasons, it is decided that:

1. The decision under appeal is set aside.
2. The application is remitted to the Examining Division for further prosecution on the basis of Claims 1 to 6 of Set A filed on 30 November 1985 and the description and drawings as originally filed.

The Registrar:

J. Rückerl

The Chairman:

O. Huber