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12

Aktenzeichen / Case Number / N° du recours : T 114/86

Anmeldenummer / Filing No / N° de la demande : 83 902 464.3

Veröffentlichungs-Nr. / Publication No / N° de la publication : WO 84/00901

Bezeichnung der Erfindung / Absorbtion material for filter arrangement  
Title of invention:  
Titre de l'invention :

Klassifikation / Classification / Classement : B 01 D 39/00

### ENTSCHEIDUNG / DECISION

vom / of / du 29 October 1986

Anmelder / Applicant / Demandeur : Eriksson, Hans

Patentinhaber / Proprietor of the patent /  
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Foam plastic filter/Eriksson

EPO/EPC/CBE Articles 52(1), 54

Kennwort / Keyword / Mot clé :

Novelty; implicit disclosure; difference in  
wording

#### Leitsatz / Headnote / Sommaire

- I. A description of results obtained when using a device e.g. a filter, can disclose a method of using the device, e.g. a method for filtering (following up T 4/83, para. 4, OJ 1983, 501).
- II. A mere difference in wording (closed cells having perforated walls: VS. ruptured cellular walls) is insufficient to establish novelty (following up T 12/81, OJ 8/82, 296; T 198/84, OJ 1985, 209; T 248/85, OJ 1986, 261).

Europäisches  
Patentamt

Beschwerdekammern

Case Number : T 114 /86

European Patent  
Office

Boards of Appeal

Office européen  
des brevets

Chambres de recours



**D E C I S I O N**  
of the Technical Board of Appeal 3.4.1  
of 29 October 1986

**Appellant :** Eriksson, Hans  
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**Representative :** Lautmann, Kurt  
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**Decision under appeal :** Decision of Examining Division 031 of the European Patent Office dated 28.01.86 refusing European patent application No 83 902 464.3 pursuant to Article 97(1) EPC

**Composition of the Board :**

**Chairman :** K. Lederer

**Member :** J. Roscoe

**Member :** O. Bossung

Summary of Facts and Submissions

I. European patent application No. 83 902 464.3 filed under the Patent Cooperation Treaty on 18 July 1983 under the international application number PCT/SE83/00283, (international publication number No. 84/00901) was refused by a decision of the Examining Division 031 dated 28 January 1986. The decision was based on Claims 1 to 3 filed on 14 September 1985.

The reason given for the refusal was that the application did not satisfy the requirements of Article 83, Article 84, Rule 27(1)(c) and Rules 35(2), 36(1) EPC.

II. On 13 February 1986 the appellant lodged an appeal against the decision. The appeal fee was paid and the Statement of Grounds filed in due time. With the Statement of Grounds a new set of claims, numbered 1 to 6 was filed to replace those on file together with a new page of description.

III. In a communication pursuant to Article 110(2) EPC the rapporteur stated inter alia that the subject-matter of the new Claim 1 was not novel having regard to the disclosure of US-A-2 961 710 hereafter doc. (1) on which objections had been based during the examination procedure and gave reasons why the subject-matter of the appendant claims was either not novel or was considered to be lacking in inventive step. The subject-matter of Claim 4 was said to be lacking in novelty.

IV. The appellant in reply to this communication submitted a new set of Claims 1 to 5 and new pages 1 and 1a of description containing a discussion of doc. (1). Claim 1, the sole independent claim of the new set, was said to have the

feature of superseded Claim 4, i.e. that the foam plastic body was elastic but in fact it differs from the superseded Claim 1 solely by insertion of the word "flexible" to qualify "foam plastic body".

There was no comment in the appellant's reply on the objection of lack of novelty raised by the rapporteur even though this had extended to what was now in substance, and was intended to be, the subject-matter of new Claim 1.

Enclosed with the appellant's reply was what was described as an expert's report which was said to show the excellent character of the filtering method according to the invention. This report consists of a sheet entitled "Notes concerning the oil mist filter" by Arne S. Lundberg, Dr. of Technology, and 3 sheets entitled Enclosures 1, 2 and 3 to which the notes refer.

V. Though the appellant does not explicitly say so it is clear the he is requesting cancellation of the decision and grant of a patent on the basis of Claims 1 to 5 filed on 1 September 1986. Claim 1, the only independent claim, reads as follows:

1. A method for filtering primarily gaseous media which contains liquid particles or a gas which is converted to a liquid at a drop in temperature, characterized by that it comprises passing said gaseous media through an absorption material comprising at least one flexible foam plastic body having closed cells, the walls of the closed cells of said at least one body being perforated, and separating said gaseous media from said liquid contained therein.

Reasons for the Decision

1. The appeal complies with the requirements of Articles 106 to 108 and Rule 64 EPC; it is therefore admissible.
  
2. In document (1) which relates primarily to methods of making a foamed polyurethane filter it is stated that the author has found the foams to be capable of greater pick-up efficiencies for liquid particles entrained in a gas being treated than in heretofore known filtering arrangements and that foams treated in accordance with the invention are capable of passing a large volume of gas in a given time (col. 2, lines 3-9). By describing the results obtained when using the filter, there is thus disclosed a method of filtering primarily gaseous media containing liquid particles which involves passing the media through an absorption material comprising a flexible foam plastic body (col. 2, lines 28-29) and separating said gaseous media from said liquid contained therein.
  - 2.1. The only additional requirement of Claim 1 is that the plastic body should have closed cells the walls of which are perforated. Document (1) does not describe the structure of the cells of its foam in these terms but this verbal distinction does not represent a real difference in structure. The Board indicated in its communication pursuant to Article 110(2) EPC that it could see no difference in structure between perforated closed cells and the interconnected cells constituting an open-cell structure and the appellant has made no attempt to establish that there is a difference and if so what the difference is.
  
  - 2.2. Whereas in document (1) it is pointed out that the structure has a multiplicity of interconnected cells or voids, in other words an open-cell structure (col. 2 lines 26-28), it is later stated (col. 2 lines 57-60) that a large number of

cells making up the foam are initially not interconnected - they are therefore closed cells - and various alternative treatments are proposed to rupture the cell walls or membranes (col. 4 lines 14-18; 24-27; and 37-41).

The structure resulting from these treatments can therefore properly be said to comprise closed cells with perforated walls just as can closed cells the walls of which have been punctured by a needle punching apparatus or broken in a great variety of ways, procedures which the applicant himself regards as suitable ways of producing the perforations in the foams of the invention (see para. 3 of the Statement of Grounds). Therefore even if Claim 1 is narrowly construed to require the body to have initially closed cells which have subsequently been subjected to a perforating step (cf. page 1 lines 13-16 of the original description) its subject-matter is still not novel in relation to the disclosure in document (1).

This interpretation of Article 54(1) is in conformity with earlier decisions of the Boards of Appeal (e.g. T 12/81, 296, paragraphs 5 to 7; T 198/84, OJ 1985, 209, paragraph 4).

- 2.3. The expert's report referred to in IV above is not pertinent to the issue of novelty. It is, however, observed that in the report and accompanying enclosures the sole reference to the internal structure of the filter described in the patent application is in the notes themselves where, in an attempt to explain its improved maintenance-free performance, it is stated that the continuous running off of the oil and metal particles from the surfaces of the filter material in such filters does not occur when cells of plastic foams are

treated in such ways that the openings are not of capillary dimensions. The implication of this is that in the foams described in the patent application the openings are of such dimensions.

This is however not a feature of any of the claims, is not referred to in the description and cannot be deduced from the described method of manufacture in which the perforation forming step is not disclosed.

- 2.4 The subject-matter of Claim 1 is, therefore, not novel (Article 54 EPC) and the claim is therefore not allowable (Article 52 EPC).
3. The remaining claims of the set of claims on the basis of which the grant of a patent is requested are all dependent on Claim 1. As the independent claim is unallowable there is no basis for the allowability of these dependent claims.

Order

For these reasons it is decided:

The appeal is dismissed.

The Registrar:



The Chairman:

