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Aktenzeichen / Case Number / N° du recours : T 182/86

Anmeldenummer / Filing No / N° de la demande : 83 200 089.7

Veröffentlichungs-Nr. / Publication No / N° de la publication : 0 085 454

Bezeichnung der Erfindung: A process method for cooling and/or heating and
Title of invention: an apparatus for that method
Titre de l'invention :

Klassifikation / Classification / Classement : F25B 49/00

ENTSCHEIDUNG / DECISION

vom / of / du 10 December 1987

Anmelder / Applicant / Demandeur : Avontuur, M.W.M.

Patentinhaber / Proprietor of the patent /
Titulaire du brevet :

Einsprechender / Opponent / Opposant :

Stichwort / Headword / Référence : Piston compressor/Avontuur

EPÜ / EPC / CBE Article 123(2) EPC

Kennwort / Keyword / Mot clé : "Added subject-matter - clear from drawing
in combination with the terminology used"

Leitsatz / Headnote / Sommaire

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Case Number : T 182/86

D E C I S I O N
of the Technical Board of Appeal 3.2.1
of 10 December 1987

Appellant : Avontuur, M.W.M.
Ganzenhof 12
NL - 4921 WC Made (NB) (NL)

Representative : Siemens A.M.E., Dipl.-Ing.
Siemens & Cie
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Decision under appeal : Decision of Examining Division 074
of the European Patent Office
dated 30 October 1985 refusing
European patent application
No. 83 200 089.7 pursuant to
Article 97(1) EPC.

Composition of the Board :

Chairman : P.E.M. Delbecque
Members : C.T. Wilson
F. Benussi

Summary of Facts and Submissions

I. European patent application No. 83 200 089.7, filed on 21 January 1983, and published under publication No. 0 085 454, was refused by decision of the Examining Division dated 30 October 1985. That decision was based on Claims 1 and 2 and pages 1 to 5 of the description, all filed on 26 August 1985, the claims reading as follows:

- "1. A system for refrigerating (and heating if desired) units, with a circuit for refrigerant, comprising at least a compressor (1), ventilator (2) for evaporator, pump (3) for evaporator, ventilator (4) for condensor, pump (5) for condensor, frequency-transformers (6) for motors, microprocessor (7), fed with data from sensors (9) for temperature and (10) for pressure, motor (8) for compressor, valves (12) and servodrives (13), evaporator (14), heat exchanger (15) and condensor (16),
characterised in that the compressor(s) (1) are reciprocating plunger compressors, the motor (8) of which being proportionally adjusted by frequency-transformers (6) controlled by the microprocessor (7), while each of the reciprocating plunger compressors (1) is individually lubricated by an independently operating closed oil pump (11) in a separate external position.
2. A method for reducing the input proportionally with refrigerating capacity, needed in a refrigerating unit, which is driven with compressor(s), characterised in that the compressor(s) are electrically driven reciprocating plunger compressors, the velocity head being diminishable from 100-15% of the nominal value by frequency-transformers, while the

lubrication of the reciprocating plunger compressor(s) is being carried out independently by a closed separate external oil pump for each compressor unit."

- II. The reason given for the refusal was that the present application had been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed, and does not, therefore comply with Article 123(2) EPC.

The amendments objected to were the following:

- (a) The expression "reciprocating" plunger compressors as used for example in Claims 1 and 2. The application as filed mentions only the broad general expression "piston compressor";
- (b) the references on page 2, lines 11 and 24, to "a range of 100-15%" and "of 30-60%" respectively; and
- (c) the reference on page 1, lines 4 and 5 to the application of the refrigerating system to "refrigerated cases, islands for frozen products, display cases, delicatessen receptacles".

- III. On 21 November 1985 the Appellant filed an appeal against that decision, paying the appropriate fee on 18 December 1985. In his Statement of Grounds filed on 10 February 1986, the Appellant claims that the objection to the expression "reciprocating" plunger compressors has arisen because of a linguistic problem, namely because of the translation from the priority Netherland patent application.

The expression "piston compressor" is the translation of "zuiger-compressor", which really means a straight cylinder

compressor, according to the Appellant, who has submitted various documents in evidence in an attempt to support this.

With reference to the objections against the percentages, "30-60% or "100 to 15%", it is observed by the Appellant that these are results of experiments, only given for the illustration of a certain considerable reduction of energy consumption and would not necessarily be subject of claimed rights.

The Appellant has not commented in his Statement of Grounds on the objection (c) above.

- IV. In response to a telephone call from the Rapporteur to the Appellant, informing him that the Board was provisionally of the opinion that it would allow the expression "reciprocating plunger compressors", but not the other amendments, the Appellant filed the following request for the grant of a patent, withdrawing the offending amendments:

The specification, as revised with letter dated 22 August 1985, (received 26 August 1985), is to be modified as follows:

Page 1:

Lines 1-5 to be read as follows:

"The invention relates to an appliance system for refrigeration by means of an electrically driven compilation of components, comprising compressors, evaporators, condensers and pumps."

Page 2:

Line 11 to be read as follows:

"circuit, obtained by means of a frequency-"

Page 2:

Line 24 to be read as follows:

"energy consumed can be reached".

The Claim 2, as revised with letter dated 22 August 1985, (received 26 August 1985), is to be modified as follows:

Page 6:

Line 19 to be read as follows:

"being adjustable by frequency-".

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.
2. Claims 1 and 2 on which the contested decision is based differ from the independent claims filed on 4 February 1985 during the examination procedure by the fact that the expression "reciprocating plunger" has replaced the expressions "straight piston" and "piston". Objection had been raised in a communication from the Examining Division to the expression "straight piston" as adding subject-matter extending beyond the content of the application as filed. Since the expression "straight piston" is to be understood as equivalent to "reciprocating plunger", the Examining Division did not consider it necessary to write a further communication raising an objection to this expression as adding subject-matter. The Board agrees that it was not necessary, and the rejection of the application because of the use of "reciprocating plunger" is not therefore considered as infringing Article 113(1) even though the Appellant had no opportunity to present his comments in respect of the objection to this specific

expression. He had, however, had the opportunity to comment on the objection to "straight piston", which is equivalent.

3. An examination of the original application establishes that reference is made throughout the description and claims merely to "compressors" except on page 2, line 31, where reference is made to "piston compressors". However, whilst no specific reference is made in the original documents to a reciprocating piston (or plunger) compressor, it should be pointed out that the term piston compressor is normally understood by the man skilled in the compressor art to mean a reciprocating piston compressor, even though both rotary and oscillating compressors are also known. However, either of these would be referred to explicitly if intended.

A close examination of the figures in the original application confirms that indeed in this case a reciprocating piston compressor is intended. The symbol used shows quite clearly the rectangular cylinder and the round crankcase below it, with the inlet and outlets at the upper end of the cylinder. Even in the absence of any indication of a piston, piston rod or crankshaft within the symbol, it is quite clear that such a symbol, stated to show a piston compressor, can only be interpreted as a reciprocating piston compressor.

In summary, therefore, the symbol shown in the figures and described as a piston compressor, in combination with the fact that the term piston compressor is normally interpreted as reciprocating piston compressor in the absence of any indication that a rotary or oscillating piston compressor is intended, is considered to be a disclosure of the use of a reciprocating plunger compressor in the original application.

The arguments advanced by the Examining Division do not succeed in refuting this conclusion. In particular, the reference to the International Patent Classification confirms merely that different types of piston compressors are known. However, this has never been contested. What is contested is how the skilled reader would understand the use of the term "piston compressor" in combination with the symbol shown in the figures accompanying the original application. For the reasons set out above, this has now been interpreted as being a disclosure of a reciprocating plunger (or piston) compressor.

No objection therefore arises under Article 123(2) EPC to the use of this term in the application.

4. The Examining Division has not, however, yet examined in sufficient detail whether an apparatus according to the present Claim 1 is patentable. Under these circumstances, the Board deems it not timely to decide on this issue, but makes use of the power given to it by Article 111(1) EPC 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 on the basis of the following documents:

Claims 1 and 2 and pages 1 to 5 of the description, all filed on 26 August 1985, and amended in accordance with the request in IV above;

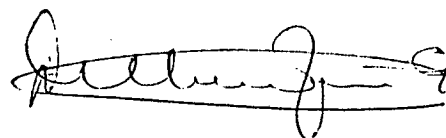
the drawings, filed 4 February 1985.

The Registrar:

S. Fabiani

S. Fabiani

The Chairman:



P.E.M. Delbecque