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File No.: T 1079/92 - 3.4.2
Application No.: 90 203 023.8
Publication No.: 0 430 331
Classification: B01D 53/22
F02M 25/08
Title of invention: Purification of air

D E C I S I O N
of 8 September 1993

Applicant: NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-
NATUURWETENSCHAPPELIJK ONDERYOEK TNO
Proprietor of the patent:
Opponent:
Headword:
EPC: Art. 123(2)
Keyword: "Feature not disclosed originally"

Headnote
Catchwords



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Boards of Appeal

Chambres de recours

Case Number: T 1079/92 - 3.4.2

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 8 September 1993

Appellant: NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-
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Decision under appeal: Decision of the Examining Division of the
European Patent Office dated 5 August 1992
refusing European patent application
No. 90 203 023.8 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: E. Turrini
Members: C. Black
L. C. Mancini

Summary of Facts and Submissions

- I. The Appellant (Applicant) lodged an appeal against the decision of the Examining Division to refuse the application No. 90 203 023.8 (publication number 0 430 331).

The Examining Division had expressed the view that the application did not meet the requirements of Article 56 EPC.

- II. The Appellant requested that the decision under appeal be set aside and a patent granted on the basis of the following documents:

Description: Pages 1 to 6 received on 27 November 1992 with letter of 25 November 1992.

Claims: Number 1 to 6 received on 27 November 1992 with letter of 25 November 1992.

Drawing(s): Sheets 1/1 (Figures 1 and 2) as originally filed.

- III. The wording of Claim 1 according to the single request identified in paragraph II above, reads as follows:

"Method for removing organic substances from air, the air being guided along one side of a membrane for separating gaseous media - the retentate side - and the organic substances under the influence of a driving power being able to permeate to the other side of the membrane - the permeate side, characterized in that the membrane is non-porous and that along its permeate side flows a liquid, which has an affinity to the substance

to be removed, corresponding to a distribution coefficient of more than 1000."

IV. The Appellant essentially argued as follows:

As to Claim 1, the added features that the membrane is non-porous and that a distribution coefficient of more than 1000 is obtained, are implicitly disclosed in the application as filed.

Reasons for the Decision

1. According to the wording of Claim 1, the method for removing organic substances from air is defined in terms of the criterion for selecting the liquid which flows along the permeate side, that is, its affinity to the substance to be removed is such that a distribution coefficient of more than 1000 is obtained. The feature "affinity - corresponding to a distribution coefficient of more than 1000" replaces "great affinity" in the claim forming the basis for refusal of the application. The amendment clearly seeks to overcome the Examining Division's rejection on the grounds of lack of clarity and, to the extent that the claim could therefore be interpreted, lack of inventive step. *Prima facie*, as set out in its communication dated 16 February 1993, the Board can agree with the Examining Division. The said feature, however, is not disclosed, either explicitly or implicitly, in the application as filed, as was also set out in the said communication from the Board.

The meaning of the expression "distribution coefficient" is mentioned by the Applicant in his letter of 25 November 1992. On page 2 of the statement setting out the grounds of appeal, it is stated that this

coefficient indicates how the substance to be removed is distributed at equilibrium over the liquid and the gaseous phases. The mention of a range for the distribution coefficient is to be seen as an attempt to define the meaning of the expression "great affinity" of the liquid phase to the substance to be removed, which expression was used in the original Claim 1.

Although the concept of "distribution coefficient" is not explicitly referred to in the original disclosure, it may be assumed that its meaning, as above mentioned, is known to the person skilled in the art. The skilled person should, according to what the Appellant states on page 2 (see first paragraph) of his letter of 2 April 1993, be able to compute the value of the distribution coefficient for each of the examples 1 to 3 of the application as filed by using the data reported in said examples in a suitable computer programme named "ASPEN PLUS". The Appellant, however, instead of giving the exact results achieved, mentions the range 3000 to 5000 that should then, in his view, form part of the implicit disclosure of the application.

As to this range, it is not clear that the cited examples report all the data that is needed for running the programme; if this is not the case, further input values would have to be used that are not disclosed in the application as filed. Moreover, the results achieved depend on the computing method, in particular the assumptions, on which the programme is based. This means that the said range of values cannot be presented as a result at which the skilled person would necessarily arrive while reading the application and, therefore, cannot be part of the implicit disclosure. It must also be concluded that the claimed distribution coefficient of more than 1000 is, a fortiori, not originally disclosed, because it is intended to cover values which

could not be derived from the application and, moreover, is based on a lower limit arbitrarily chosen.

For these reasons, Claim 1 has been amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (Article 123(2) EPC).

Order

For these reasons, it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Martorana

E. Turrini