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**D E C I S I O N**  
of 26 October 1994

**Case Number:** T 0297/93 - 3.2.4

**Application Number:** 91200120.3

**Publication Number:** 0441422

**IPC:** A01G 9/10

**Language of the proceedings:** EN

**Title of invention:**  
Germination tray

**Applicant:**  
POLISETTE S.R.L.

**Opponent:**

**Headword:**  
Germination Tray/POLISETTE

**Relevant legal provisions:**  
EPC Art. 56

**Keyword:**  
"Inventive step (yes)"

**Decisions cited:**

**Catchword:**



Case Number: T 0297/93 - 3.2.4

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.4  
of 26 October 1994

**Appellant:**

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**Decision under appeal:**

Decision of the Examining Division of the  
European Patent Office dispatched on 22 December  
1992 refusing European patent application  
No. 91 200 120.3 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. A. J. Andries  
**Members:** P. Petti  
J. P. B. Seitz

### Summary of Facts and Submissions

- I. The European patent application No. 91 200 120.3, filed on 22 January 1991, was refused by a decision of the Examining Division dispatched on 22 December 1992. The reason the Examining Division gave for the refusal was that the subject-matter of Claim 1 filed with the letter of 20 October 1992 did not involve an inventive step within the meaning of Article 56 EPC.
- II. The Appellant (Applicant) lodged an appeal against this decision and simultaneously filed a statement setting out the grounds of appeal on 17 February 1993. The appeal fee was paid on 5 February 1993.
- III. In response to a communication of the Board the Appellant filed amended documents. The Appellant requested that the decision under appeal be set aside and that a patent be granted on the basis of the following documents:

Claims: Nos. 1 to 2, as filed with the letter of 20 July 1994;

Description: Pages 1, 1 bis and 1 ter, as filed with the letter of 20 October 1992;  
pages 2 and 7, as originally filed;  
pages 3 to 6, 8 and 9, as filed with the letter of 20 July 1994;

Drawings: Sheets 1/5 to 4/5 as originally filed;  
sheet 5/5, as filed with the letter of 20 July 1994.

Minor amendments to these documents were agreed between the Appellant and the Rapporteur of the Board in a telephone conversation on 25 October 1994. These amendments concern Claim 1 and the description (pages 1 bis and 3).

IV. The present Claim 1 reads as follows:

"1. A germination tray, of the type for stacking together with other identical trays, and comprising a plate (1) containing a plurality of upwardly flared seeding cells (10) each provided lowerly with a hole (13) for the discharge of water and a plurality of vertical through passages (2) which are interposed between said cells (10) and connecting the upper and lower faces of the plate to allow air to flow upwards therethrough, said passages being downwardly flared, characterised in that said passages have an enlarged lower mouth so as to partly overlie the surrounding cells (10) of an identical underlying tray in a stack, such that aeration ports are created which connect the cells to the passages of the same tray."

#### **Reasons for the Decision**

1. The appeal is admissible.

2. *Admissibility of the amendments*

2.1 The present Claim 1 combines the features of original Claims 1 and 2 with the features that the through passages are downwardly flared and allow air to flow upwards therethrough and that, with the help of an identical underlying tray, aeration ports are created which connect the cells to the passages of the same tray in a stack. These features can be derived from the original drawings (particularly from Figures 2 and 7) and from the original description (particularly from page 6, lines 13 to 17; page 6, line 31 to page 7, line 8).

2.2 Claim 2 corresponds to original Claim 3.

2.3 The amendments made to the description concern their adaptation to the new claims and the reference to the prior art. The amendment made to the drawings consists of the excision of Figure 11 because of its inconsistency with the present Claim 1.

2.4 There are therefore no objections to the amendments under Article 123 (2) EPC.

3. *Novelty*

The subject-matter of Claim 1 is novel within the meaning of Article 54 EPC, since there is no document available to the Board which discloses a tray provided with vertical passages, each having an enlarged mouth which - when the tray is stacked together with other identical trays - overlies the surrounding cell of an underlying tray.

4. *Closest prior art*

4.1 According to the Board document FR-A-2 145 024 (D1) reflects the closest prior art.

This document discloses (see particularly Figures 1 and 2) a tray suitable for the cultivation of plant varieties and, thus, also suitable for use in the germination stage, when the plant varieties have no foliage development. The tray comprises a plate 1 containing a plurality of upwardly flared seeding cells 2 each provided lowerly with a hole for the discharge of water and a plurality of vertical through passages 3. The vertical through passages, which are downwardly flared, are interposed between said cells and connecting the upper and lower faces of the plate to allow air to flow upwards therethrough in order to provide aeration under the foliage.

It is clear that the tray described in document D1 is suitable for stacking with other identical trays in the germination phase of the plant varieties.

However, document D1 apart from Figure 2 does not explicitly indicate any features concerning the stacking. Therefore, no information can be directly and unequivocally derived from document D1 with respect to the possible communication between the vertical passages and the cells when the tray is stacked with other identical trays. Moreover, neither the description, nor the claims, nor the drawings of documents D1 (in particular Figure 2) permit the derivation of any unequivocal information concerning the dimensional relationship between the lower opening of passages 3 and the upper opening of cells 2. It seems, however, that apart from the raised peripheral rim (4) and the collar (6) Figure 2 rather suggests a downwardly flared passage (3) whose lower opening does not overlie the upper opening of the upwardly flared cell (2), since these upper openings lie in the upper surface of the tray (1) which is below the plane defined by the upper parts of both the peripheral rim (3) and the collar (6), see page 1, lines 20 to 23 and page 2, lines 7 to 9.

- 4.2 The information provided by document US-A-4 854 075 (D2) does not go beyond that provided by document D1. Moreover, according to document D2 (see particularly column 2, lines 41 to 63 and Figure 2) each tray is associated, in operation, with an upper water pipe 20 and a lower heating pipe 22, so that it is not possible to stack the trays directly on one another in the germination phase of the plants. Furthermore, it seems (see Figures 1 and 2) that the plant trays, each being made of a flat sheet provided with cups which can enter into the cups of the underlying tray, can be stacked

only when the cups are empty and not in the germination phase.

Document NL-A-7 908 582 (D3) shows a tray in which the vertical passages 7 are cylindrical (see particularly Claim 3 and Figure 5).

5. *Problem and solution*

The subject-matter of Claim 1 differs from the closest prior art in that the vertical passages have an enlarged lower mouth so as to partly overlie the surrounding cells of an identical underlying tray in a stack such that aeration ports are created which connect the cells to the passages of the same tray.

These features permit stacking of the trays directly on one another during germination. Thus, it is possible to ensure a sufficient aeration of the cells during germination even if the trays are stacked without intervening spacers. In other words, the germination can take place reliably within the scheduled time while making full use of the available space in the germination environment.

The problem to be solved can be seen as being to provide a tray improved with respect to the aeration and to its stacking possibilities and, in particular, permitting the reduction of the space occupied by a stack of trays during germination.

6. *Inventive step*

6.1 None of the documents D1 to D3 relates either explicitly or by implication to the stacking of trays during germination which represents the most important aspect of the problem to be solved. Therefore, none of these

documents can suggest the characterising features of Claim 1 which represents the solution to the problem.

6.2 The other documents cited in the Search Report are further away from the subject-matter of Claim 1.

6.3 It follows that the subject-matter of Claim 1 involves an inventive step within the meaning of Article 56 EPC.

7. The subject-matter as set forth in Claim 1 is, therefore, patentable within the meaning of Article 52 EPC, so that a patent based on this allowable Claim 1 and the dependent Claim 2, which concerns a particular embodiment of the tray according to Claim 1, the amended description and the originally filed Figures 1 to 10 may be granted.

## **Order**

### **For these reasons it is decided that:**

1. The decision under appeal is set aside.
2. The case is referred back to the Examining Division with the order to grant a patent on the basis of the following documents:


Claims: Nos. 1 to 2, as filed with the letter of 20 July 1994 and with the amendments to Claim 1 as agreed between the Appellant and the Rapporteur of the Board in the telephone conversation on 25 October 1994;

Description: Pages 1, 1 bis, 1 ter, as filed with the letter of 20 October 1992;

pages 2 and 7, as originally filed;  
pages 3 to 6, 8 and 9, as filed with the  
letter of 20 July 1994;  
and with the amendments to pages 1 bis and  
3 as agreed between the Appellant and the  
Rapporteur of the Board in the telephone  
conversation on 25 October 1994;

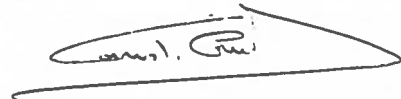
Drawings: Sheets 1/5 to 4/5 as originally filed;  
sheet 5/5, as filed with the letter of  
20 July 1994.

The Registrar:



N. Maslin

The Chairman:



C. ANDRIES

