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D E C I S I O N
of 3 April 1995

Case Number: T 0395/93 - 3.2.3

Application Number: 89202850.7

Publication Number: 0369534

IPC: E02B 3/00

Language of the proceedings: EN

Title of invention:
Method for treating sediment

Applicant:
HOLLANDSCHE BETON GROEP N.V.

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 111(1)

Keyword:
-

Decisions cited:
-

Catchword:
-



Case Number: T 0395/93 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 3 April 1995

Appellant: HOLLANDSCHE BETON GROEP N.V.
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Representative: de Bruijn, Leendert C.
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Decision under appeal: Decision of the Examining Division of the European
Patent Office dated 11 November 1992 refusing
European patent application No. 89 202 850.7
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: J. B. F. Kollar
L. C. Mancini

Summary of Facts and Submissions

- I. European patent application No. 89 202 850.7 (EP-A-0 369 534) was refused by decision of the Examining Division.
- II. The decision is based on a main request (ii) formed by a main claim filed per telefax on 26 October 1992 and on a fall back request (iii) formed by a main claim filed during the oral proceedings held 29 October 1992.
- III. The Examining Division argued in its decision in substance as follows:
 1. Nowhere in the original application is it suggested that the injection nozzles **cannot** or **do not** penetrate the sediment to be treated during the exercise of the method described in the claim in accordance with the main request (ii).

Nowhere in the original application is it suggested that the liquid jets emerging from the injection nozzles are directed **unhampered upon** the layer to be treated during the exercise of the method described in the claim in accordance with the fall back request (iii).

As a result of the above features introduced into the claims in accordance with the main request (ii) and the fall back request (iii), respectively, the skilled person is presented with information which differs from, and is not directly and unambiguously derivable from, that originally presented in the application.

Therefore, the application containing the claims in accordance with said requests (ii) and (iii) contravenes Article 123(2) EPC.

2. Apart from the above (Art. 123(2) EPC), the subject-matter of the claim in accordance with the main request (ii) as well as in accordance with the fall back request (iii) is rendered obvious based upon the disclosures of D1 and D2 and does not comply with Articles 52(1) and 56 EPC and the claims are thus not allowable.

IV. On 23 December 1992, a Notice of Appeal was filed, and the appeal fee paid.

V. On 9 March 1993 the Appellant filed a Statement of Grounds of Appeal together with a new set of Claims 1 to 5 and a new introduction to the description which should replace the documents on file.

Claim 1 reads as follows:

"A method for treating a sediment which has been deposited on the bottom of a water region, comprising lowering an injecting tube from a vessel onto said bottom and injecting a treatment agent which is composed of non-gaseous components, **characterized in that** the bottom comprises a live layer, which is exclusively treated by said treatment agent, which is injected through downwardly directed nozzles, wherein opening of the nozzles and the flow of the treatment agent are controlled such that a penetration depth of the treatment agent of 10-40 cm is obtained and a turbulent flow is generated around the outlet openings."

VI. The Appellant furthermore requested to be heard if the Board intends to confirm the Decision of the Examining Division.

Reasons for the Decision

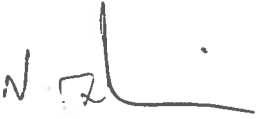
1. The appeal is admissible.
2. It follows from the Statement of Grounds of Appeal that the Appellant no longer wishes to apply for a European patent containing claims as previously examined and refused by the Examining Division; instead, he wishes to apply for a patent containing an amended set of claims clearly intended to meet the objections previously raised by the Examining Division, and has filed arguments in support of the allowability of the presently proposed claims. In the Board's judgement, the amendments to Claim 1 which the Appellant has proposed in the appeal proceedings require a substantial further examination in relation to both the formal and substantive requirements of the EPC and such further examination should be carried out by the Examining Division as the first instance.
3. In these circumstances, the Board has accordingly decided to exercise its power under Article 111(1) EPC to remit this case to the Examining Division, in order that it should examine and decide whether the amended text meets the requirements of the EPC.
4. The Board has noted that the Appellant has requested to be heard only as a precautionary measure. In view of the above, the Board does not therefore find it expedient to hold a hearing at this stage of the procedure.

Order

For these reasons it is decided that:

The case is remitted to the Examining Division for further prosecution in relation to the proposed amendments filed on 9 March 1993.

The Registrar:

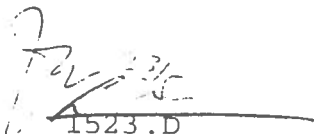


N. Maslin

The Chairman:



C. Wilson



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