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D E C I S I O N
of 15 November 1995

Case Number: T 0571/95 - 3.4.2
Application Number: 91105726.3
Publication Number: 0464322
IPC: B01D 61/22, C12H 1/06, C12G 3/06

Language of the proceedings: EN

Title of invention:

Automatic plant for the microfiltration of liquids, in particular of wines

Applicant:

PERDOMINI SpA

Opponent:

-

Headword:

-

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step: yes"

Decisions cited:

-

Headnote:

Arguments of the appellant (applicant) concerning as well the starting point as the improvement achieved by a team of specialists and resulting in an invention, which cannot be refuted in view of the prior art consisting of documents representing only the remote background of the technical field, are to be accepted.



Case Number: T 0571/95 - 3.4.2

D E C I S I O N
of the Technical Board of Appeal 3.4.2
of 15 November 1995

Appellant: PERDOMINI SpA
Via Salvo d'Acquisto 2
I-37036 San Martino Buon Albergo (VR) (IT)

Representative: Petraz, Gilberto Luigi
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Decision under appeal: Decision of the Examining Division of the European Patent Office dated 11 April 1995 refusing European patent application No. 91 105 726.3 pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: E. Turrini
Members: M. Chomentowski
B. J. Schachenmann

Summary of Facts and Submissions

- I. European patent application No. 91 105 726.3 (publication No. 464 322) was refused on the grounds that the claims, which were the original claims, lacked an inventive step.

The Examining Division took the view that, taking into account the filtration plant according to the pre-characterizing part of claim 1 as the acknowledged prior art, the only problem of said plant was the need for automatic operation, this problem being solved by providing the generally known means mentioned in the second part of the claim, whereby the problem and its solution would be obvious for any team of technicians comprising a person skilled in the field of filtration plants and a person skilled in the field of automation; in this respect, further advantages of the claimed plant were found as being a direct consequence of the automation. Moreover, according to the decision, the disclosure concerning the way of operating the illustrated plant was considered as insufficient and, additionally, there was inconsistency between the description and the claims regarding the essential features of the invention.

- II. The appellant (applicant) lodged an appeal against this decision. He filed with letter dated 27 June 1995 a statement of grounds of appeal containing a new description with pages 1 to 9 and a set of claims with claims 1 to 6, and requested that a patent be granted on the basis of these new documents and of sheet 1/1 of the drawings as originally filed. The only independent claim, i.e. claim 1, reads as follows:

"1. Automatic plant (10) for the microfiltration of liquids, in particular of wines, comprising at least one liquid inlet pipeline (A) and a liquid outlet pipeline (B), a pre-filtration section (11) and a pair of microfiltration sections (12, 13), each of said sections (11, 12, 13) being provided with at least one porous filtration membrane being disposed between said (read "said") at least one inlet and one outlet pipelines (A, B) and with a breather pipe (J, K, L) controlled by respective electrovalves (30-32), further comprising first means (33-38) for detecting the membrane state, said first means being constituted by pressure differential transducers emitting electrical signals, second electrically and/or pneumatically operable means (M, 39) suitable for allowing said pipelines (A, B) and said pre-filtration and filtration sections (11, 12, 13) to be washed, third electrically and/or pneumatically operable means (N, 40, 41) suitable for injecting into said pipelines (A, B) conservating and regenerating chemical elements for said at least one porous filtration membrane, further comprising fourth electrically and/or pneumatically operable means (C-H, 24-29) for draining the liquid contained in said plant (10), fifth electrically and/or pneumatically operable means (14; 15, 16; 17, 18; 19, 20) for stopping the liquid flow disposed upstream and downstream of said pre-filtration (11) and microfiltration (12, 13) sections, sixth means for data storing and processing, said sixth means being suitable for emitting electrical signals which are respectively able to switch on or off, according to predetermined sequences, said first (33-38), second (39), third (40, 41), fourth (24, 29) and fifth (15-20) means, and seventh electrically and/or pneumatically operable means (21-23) for bypassing the liquid flow towards each of said pre-filtration (11) and microfiltration (12, 13) sections."

The appellant submitted the following arguments in support of his request:

A skilled person, in particular one skilled in the field of wine treatment, can find in the present application all elements for carrying out the invention. Moreover, the amendments resulting in the present application meet the objections of lack of clarity in the decision under appeal. Concerning patentability, the present invention starts from a plant, in particular a wine microfiltration plant, which is not to be seen as a "multifunctional plant", but rather as constituted by one or more individual, mono-functional filtration sections which are completely independent from each other, individually connected to the feeding lines, and which are manually operated in accordance to different wine processing requirements, depending of the product. Different problems caused by this manual operation of individual filtration stations which can be at different, remote locations, are solved by the present invention, which does not result only from rendering automatic a known process, but comprise linking together different previously manually operated plants able to perform a microfiltration process of a plurality of liquid foodstuffs and, particularity, of any kind of wine, this being done in a completely automatic way. Therefore, taking also into account that the European Search Report does not comprise any relevant document, it is to be concluded that the subject-matter of present Claim 1 involves an inventive step.

Reasons for the Decision

1. The Board of Appeal is satisfied that, since the present written statement setting out the grounds of appeal required by Article 108 EPC, last sentence, contains a text of the present application proposed by the appellant and which is signed, the requirement of Rule 36(3) EPC, first sentence, that all documents, with the exception of annexed documents, filed after filing of the European patent application must be signed, is met. Therefore, the appeal is admissible.

2. *Allowability of the amendments*

Present claim 1 results from the combination of claim 1 and dependent claims 2 and 4, all as originally filed, whereby present dependent claims 2 to 6 are based on original dependent claims 3 and 5 to 8, respectively. The amendments in the description concern mainly the example on pages 8 and 9, wherein in some of the phases or steps of the sequence in the plant, in particular in phases 2, 22 and 30, valves are mentioned which are different from those originally cited. However, these amendments concern only some steps of a process using the plant, and not the plant itself, i.e. a device; moreover, these amendments are only related to a particular example of such process, whereby there is no indication that these amendments could result in a plant, i.e. a device, which does not correspond to the plant as originally disclosed. Therefore, the present application satisfies the requirement of Article 123(2) EPC that a European patent application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

3. *Disclosure of the invention*

Although the decision under appeal contains a statement according to which the original disclosure suffers from an insufficiency of the disclosure concerning the way of operating the illustrated plant and reference is made in this respect to the content of the first official communication, relating in particular to the operation of the means (14) to (20), i.e. valves, this was not the indicated ground for refusing the application. In any case, it is not derivable from said decision that the insufficiency is of such nature that it would effectively be impossible for a person skilled in the art to carry out the invention and use the plant. Moreover, although the technical explanations in the application concerning the way of operating the plant are succinct, no such deficiency could be detected in the present, amended text of the application with respect to the plant itself. Therefore, the requirement of Article 83 EPC, that the European patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, is satisfied.

4. *Clarity*

Although the decision under appeal contains a statement pointing out inconsistencies between the main claim and the description concerning the essential features of the invention, which objection had been made in a prior official communication and which concerned principally the seventh means (21-23) for in particular stopping the liquid flow and the breather pipe (J, K, L) controlled by respective electrovalves (30-32), this was not the indicated ground for refusing the application, either. Moreover, since present claim 1 comprises said features, this objection is without object. In this respect, it is

to be noted that although no reference sign J, K or L can be detected in the drawing, this does not lead to an ambiguity since the corresponding respective electrovalves (30-32) are indeed indicated on the Figure. It is further to be noted that present claim 1 is not limited to only one filtration section, but comprises at least a pre-filtration section (11) and a pair of microfiltration sections (12, 13), in agreement with the whole content of the application. Moreover, it is to be noted that Rule 29(1) EPC specifies that the claims shall contain said two parts, wherever appropriate and, since in the present case no document has been mentioned which would be adequate for drafting the first part of the claim, the present form thereof is acceptable. Therefore, the requirement of clarity of the claims of Article 84 EPC is satisfied.

5. *Novelty and inventive step*

The appellant has argued that the present invention starts from a plant, in particular a wine microfiltration plant, which is not to be seen as a "multifunctional plant", but rather as constituted by one or more individual, mono-functional filtration sections which are:

- completely independent from each other,
- individually connected to the feeding lines, and
- which are manually operated.

In said technique, each time a section has completed its cycle, the product is harvested in a vessel, is draught from the vessel and is fed again to the feeding line for beginning a cycle in another section; the section having

carried out the previous process is then rinsed and sterilised; these operations are performed manually, and they are different in accordance to different wine processing requirements.

As set forth in the present application (see page 2, line 16 to page 3, line 10), different problems are caused by the necessary manual operation of such a plant, due on the one hand to the manual operation of valves and gates which are disposed in the same range of action of the valves which control the process development and, on the other hand, to the required high degree of familiarity of the operator with the different filtration processes for different products, whereby anyway said operator is always susceptible to commit errors; moreover, the membranes of the filtration sections must constantly be kept under control for detecting eventual breakings or obstructions. The appellant has stressed that, since the starting point of the present invention is not constituted by a single, multi-functional, manually operated plant, the problem underlying the present invention is not of rendering automatic a manually operated, multi-functional plant, but rather the problem of

- (1) linking together different manually operated plants able to perform a microfiltration process of a plurality of liquid foodstuffs and, particularly, of any kind of wine,
- (2) in a completely automatic way;

thus, although microfiltration of liquids and automation are both known, the present invention solves a plurality of problems, in particular to prevent breakings or obstructions of membranes through automatic controlling of the pressures, by an improvement with detection means

which does not result only from rendering a known process automatic.

It is to be noted that the documents cited in the European search report are presented therein, with the "A"-code, without indication of relevant text locations or of concerned claims, as representing the remote background of the technical field. Said documents have not been taken into account during the examination procedure, which has relied only on the general knowledge of skilled persons of a team. Moreover, there is no indication "prima facie" that these documents show something else than isolated features of the presently claimed plant, without any clear incentive for bringing them together. It is also to be noted that, without supporting documents, it is not apparent on which basis an objective assessment of the general knowledge of each of the persons of a team of specialists, or of the team as such, could be made for refuting the appellant's arguments concerning as well the starting point as the improvement resulting in the invention. Therefore, in these conditions, the appellant's arguments are to be accepted. Incidentally, although most of these arguments are concerned with wine treatments, there can be seen no reason, without relevant prior art documents, to restrict the scope of the claims to this specific technical field. Therefore, the subject-matter of present claim 1, which as mentioned in paragraph 2 here above results from the introduction of features in claim 1 of the decision under appeal, which in any case had not been objected on the grounds of lack of novelty, and thus concerns a more specific plant, is novel in the sense of Article 54 EPC and involves an inventive step in the sense of Article 56 EPC, so that a patent can be granted (Article 52(1) and 97(2) EPC).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the first instance with the order to grant a patent on the basis of the following documents:

Description: Pages 1 to 9 and

Claims: Nos. 1 to 6 contained in the statement of grounds of appeal dated 27 June 1995, and

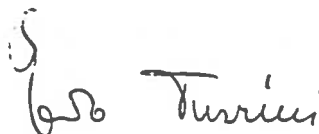
Drawings: Sheet 1/1 as originally filed.

The Registrar:



P. Martorana

The Chairman:



E. Turrini

MLH

B. Sch.

