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**D E C I S I O N**  
**of 22 March 1999**

**Case Number:** T 0410/97 - 3.2.3

**Application Number:** 91610094.4

**Publication Number:** 0489678

**IPC:** B08B 3/02, F16K 5/06

**Language of the proceedings:** EN

**Title of invention:**  
Cleaning equipment

**Applicant:**  
SCANIO FLOW-EQUIPMENT AS

**Opponent:**  
-

**Headword:**  
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**Relevant legal provisions:**  
EPC Art. 111(1), 113(1)  
EPC R. 67

**Keyword:**  
"Decision re appeals"  
"Basis of decisions"  
"Reimbursement of the appeal fee (no)"

**Decisions cited:**  
T 0999/93

**Catchword:**  
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Case Number: T 0410/97 - 3.2.3

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.3  
of 22 March 1999

**Appellant:** SCANIO FLOW-EQUIPMENT A/S  
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**Representative:** Pedersen, Soeren Skovgaard  
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**Decision under appeal:** Decision of the Examining Division 2.3.09.113 of  
the European Patent Office dated 27 November 1996  
refusing European patent application  
No. 91 610 094.4 pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** C. T. Wilson  
**Members:** F. Brösamle  
J.-P. Seitz

## Summary of Facts and Submissions

- I. With decision dated 27 November 1996 the examining division refused European patent application No. 91 610 094.4 in the light of
- (D1) US-A-3 429 508.
- II. The applicant - appellant in the following - lodged an appeal on 27 January 1997 against the above decision paying the appeal fee on the same day and filing the statement of grounds of appeal on 21 March 1997.
- III. He requested to set aside the impugned decision and to grant the patent on the basis of documents according to the communication under Rule 51(4) EPC dated 13 December 1993.
- IV. Claim 1 thereof reads as follows:
- "1. A cleaning equipment, switchable between washing operation for washing with tap water and foam application with a cleaning agent mixed with the water via an injector system, and having interchangeable nozzles for the various operations connected to the equipment by a hose, characterized in that the injector system is constituted by a change-over valve with a rotary-symmetrical valve body (14) in a flow passage (4,6) of a valve housing (2), said valve body having two crossing channels, one having a relatively large cross section, and constitutes the washing channel (16), while the other has a minor cross section, and constitutes the injection channel (20,22), and the valve body (14) being rotatable between a position where the washing channel (16) is in alignment with the flow passage (4,6) of the valve housing for delivering water without addings, and a transverse position, where

the washing channel is in connection with an adding intake (8) in the side of the valve housing for intake of adding agents, and where the injection channel (20,22) is in alignment with the flow passage (4,6) of the valve housing for procuring of an injection effect for suction of adding agents and mixing thereof into the water."

V. Appellant's arguments substantiating his appeal can essentially be summarized as follows:

- (D1) is not seen as the closest prior art since it relates to a completely different type of cleaning equipment than the claimed invention;
- the most relevant state of the art is discussed and indicated as background art in the introductory part of the description whereby the appellant is not aware of any document reflecting this state of the art;
- in contrast to the system of (D1) a foam agent is mixed in the water via an injector system; a skilled person would immediately realize that the system of (D1) cannot be used for the application of foam so that the problem to be solved by the invention with respect to the system of (D1) is to provide an equipment suitable for applying foam and suitable for choosing different nozzles and suitable for changing the modes in response to the applied nozzle;
- since (D1) is not the nearest prior art the objectively remaining problem to be solved by a skilled person is to provide a cleaning equipment based on an injector system as the mixing unit of tap water and foam which is simple and more convenient to operate;

- the solution to this problem is laid down in claim 1 set out above and is novel and not rendered obvious by the teachings of (D1);
- under these circumstances the patent should be granted on the basis of documents according to the communication under Rule 51(4) EPC dated 13 December 1993 so that the former main request according to the notice of appeal (telefax dated 27 January 1997) following the board's communication pursuant to Article 110(2) EPC dated 25 June 1997 in which the main request was declared unallowable should no longer be considered by the Board.

### Reasons for the Decision

1. The appeal is admissible.
2. The formal deletion of appellant's former **main** request according to his telefax dated 27 January 1997 results in a situation in which only **one request** has to be considered by the Board (see appellant's telefax dated 23 December 1997).
3. The appellant has now directed his only request to the text of the application documents in which the examining division had intended to grant a patent according to its communication under Rule 51(4) EPC. Since, evidently, the appellant no longer feels adversely affected by the intention of the examining division, there is no reason for the board to continue the appeal procedure by examining the text already accepted by the examining division (see decision T 0999/93 of 9 March 1995 (unpublished), in particular "Reasons for the Decision", remark 2, first paragraph).

4. Under these circumstances the impugned decision cannot be upheld, rather the case is remitted to the first instance for further prosecution on the basis of the text of the application communicated to the appellant under Rule 51(4) EPC on 13 December 1993.
  
5. In remark 4 of the statement of grounds of appeal, telefax received on 21 March 1997, the appellant expressed the view that the examining division has disregarded the **auxiliary** request, namely the documents underlying the communication pursuant to Rule 51(4) EPC.

This view is not shared by the board since the examining division could not refuse the **main request** and at the same time and in the same decision grant the patent on the basis of the **auxiliary request**, since the instrument of an "interlocutory decision" (at present) is not available in a **pre-grant** proceedings for the examining division (in contrast to opposition cases).

The proceedings followed by the examining division in the present case, namely first sending out a patent version which is seen to be allowable in their opinion (see communication pursuant to Rule 51(4) EPC), and, then refusing a **different request** of the appellant, (main request), is the only possible way to deal with such an application in the pre-grant proceedings, and is not open to objection.

6. Even if the appellant would have requested reimbursement of the appeal fee this request would have been unallowable, Rule 67 EPC, since the appeal as far as the former **main request** is concerned is not deemed to be allowable.

**Order**

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

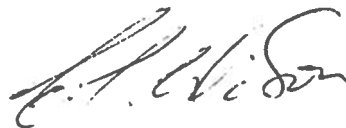
1. The decision under appeal is set aside.
2. The case is remitted to the first instance for further prosecution on the basis of the text of the application communicated to the appellant under Rule 51(4) EPC on 13 December 1993.

The Registrar:



N. Maslin

The Chairman:



C. T. Wilson

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