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**Datasheet for the decision
of 27 September 2007**

Case Number: T 0134/06 - 3.2.02

Application Number: 93909037.9

Publication Number: 0634922

IPC: A61J 9/04

Language of the proceedings: EN

Title of invention:

Drinking vessel suitable for use as a trainer cup or the like

Patentee:

Haberman, Mandy Nicola

Opponents:

Jackel International Limited
Playtex Products, Inc.
OMSA Marketing & Sales B.V.

Headword:

-

Relevant legal provisions:

EPC Art. 100(b), (c)

Keyword:

"Novelty (yes)"
"Inventive step (yes, after amendments)"

Decisions cited:

-

Catchword:

-



Case Number: T 0134/06 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 27 September 2007

Appellant: HABERMAN, Mandy Nicola
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 14 November 2005
revoking European Patent No. 0634922 pursuant
to Article 102(1) EPC.

Composition of the Board:

Chairman: T. Kriner
Members: S. Chowdhury
A. Pignatelli

Summary of Facts and Submissions

- I. European patent No. 0 634 922 was granted on 10 June 1998 to Mandy Haberman, the inventor and proprietor. The patent claims a priority date of 07.04.92.
- II. The granted patent was opposed by Jackel Int. Ltd. (opponent I), Playtex Products, Inc. (opponent II) and OSMA Marketing and Sales B.V. (opponent III), on the grounds of Article 100(a) (lack of novelty and inventive step), Article 100(b), and Article 100(c) EPC.
- The opponents questioned the right to the priority date of 07.04.92 of the application underlying the patent in suit, and cited document D1 (US-A-5 186 347 published on 16.02.93, ie an intermediate document) as anticipating the claimed drinking vessel.
- III. With its decision posted on 18 July 2001 the opposition division held that the claim to the priority date of 07.04.92 was indeed invalid, and that the claims of the main and auxiliary request lacked novelty in view of D1.
- IV. The patent proprietor appealed this decision. Board 3.2.02 in a different and enlarged composition, upheld in T 1056/01 the findings of the opposition division, and remitted the case for examination of the second to fourth requests filed with appellant's letter of 07.04.03.

The renewed opposition proceedings culminated in a decision in which the main request consisting of the combination of original claims 1, 2, and 8 as granted

was found not to meet the requirements of Article 84 EPC and Article 123(2) EPC. The auxiliary request was considered to meet the requirements of Article 84 EPC and Article 123(2) EPC but the subject-matter of claim 1 thereof was found to lack novelty, having regard to document E5 (see VI below).

V. A notice of appeal against this decision was filed on 24 January 2006, and the appeal fee was paid on the same day. The statement of grounds was submitted on 23 March 2006.

VI. The following documents, cited during the opposition procedure, are of interest in the appeal procedure:

D1: US-A-5 186 347

E5: GB-A-2 169 210.

VII. The opponents I and II have formally withdrawn their oppositions, with their letters of 4 April 2000 and 10 August 2006, respectively, and the opponent OSMA Marketing and Sales B.V. stated, in its letter dated 4 June 2007, its intention of taking no further active part in the opposition proceedings, and indeed it has made no submissions.

All these parties were absent from the oral proceedings held on 27 September 2007, accordingly.

VIII. At the oral proceedings the appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the description columns 1 to 8, claims 1 to 6, and Figures 1 to 9, all filed during the oral proceedings.

IX. Claim 1 reads as follows: -

"A drinking vessel suitable for use as a trainer cup or the like, comprising: an open-mouthed generally cup-shaped container; (2,2'); a lid (5, 5') for the open mouth of said cup-shaped container, the lid (5, 5') having a mouthpiece (6) associated therewith; and valve means (1, 1') associated with the lid and adapted to prevent flow of liquid from the interior of the container through the mouthpiece and to enable a user to draw liquid through the mouthpiece, the configuration of the valve means (1, 1') being such that said valve means is adapted to open upon no more than a predetermined difference of pressure, greater within the vessel than outside, being present across the said valve, whereby said valve means (1, 1') prevents flow from the interior unless a predetermined level of suction is applied to the mouthpiece, and a user is enabled to draw liquid through the mouthpiece (6) by the sole application of suction thereto to provide said difference of pressure; wherein said valve means (1, 1') comprises a self-closing slit valve (18), characterised in that said valve means (1, 1') is a separate valve member (10, 10') detachably fitted to the lid and located in use between the cup-shaped container (2, 2') and the lid (5, 5'), and said valve means comprises a dome-shaped region (14, 14') concave towards the interior of the cup-shaped container and underlying the mouthpiece (6), the dome-shaped region (14, 14') having a slit (18) therein defining the self-closing slit valve."

Claims 2 to 6 are dependent claims.

Reasons for the decision

1. The appeal is admissible.

Article 100(c) EPC

2. Claim 1 is based on original claims 1, 2, and 8 and includes the additional feature that the valve means is a separate valve member detachably fitted to the lid. The latter feature finds ample support in the description, for example in column 5, lines 55 to 57. The patent has been limited to the embodiments described with reference to Figures 1 to 9 (i.e. Figures 10 to 15 have been cancelled). It meets the requirements of Article 123(2) and (3) EPC, accordingly.

Article 100(b) EPC

3. The Board does not consider this ground of opposition to have any substance. The claimed training cup is a simple mechanical device with a commonplace self-closing slit valve, and no reasons have been submitted during the appeal procedure which could support this ground of opposition. On the contrary, the Board assumes from the documents on file that the invention will function as intended.

Article 100(a) EPC

4. *Novelty*

- 4.1 The feeding device disclosed in E5 is a feeding bottle which is closed by a teat with a slit-valve at its end.

A baby cannot use this bottle on its own, its mother (or nurse, etc.) must first charge a teat with a fluid food by pressing on the teat, which closes a poppet valve between the teat and the bottle, and also expels air from the teat through its slit-valve.

The bottle is then inverted and the pressure on the teat released, whereupon the poppet valve opens and some of the contents of the bottle flow into the teat. This process is repeated until there is sufficient feed in the teat. The teat is then pressurised again to close the poppet valve anew and to expel the food through the slit-valve and into the baby's mouth.

For the above reasons alone the feeding bottle of E5 is not suitable for use as a training cup and it cannot anticipate the training cup of claim 1 of the patent in suit. However, there are also constructional features of claim 1 which are missing from E5.

The collar 4 of E5 performs a purely retaining function and not a closing-off function, and cannot be equated with the lid of a training cup. Moreover, a training cup has a permanently open spout, which causes the problem addressed by the patent in suit (spillage). The feeding bottle of E5 has a feeding teat which is not open but closed by a slit-valve. The feeding bottle of E5 also does not have a valve member detachably fitted to the lid.

4.2 For these reasons the feeding bottle of E5 does not anticipate the drinking vessel of claim 1.

5. *Inventive step*

5.1 The document D1 describes a drinking vessel suitable for use as a trainer cup having all the features of the preamble of claim 1, and represents the closest prior art.

Having regard to D1, claim 1 is characterised essentially by the features that the valve means has a slitted dome-shaped region, is detachably fitted to the lid, and located between the cup-shaped container and the lid.

5.2 Document E5 teaches the use of a detachable and slitted dome-shaped valve means located between a cup-shaped container and a lid for preventing spillage of feed from within a bottle. In this respect, the appellant disputed that E5 taught this, and argued instead that the only teaching of E5 in this respect was that the dome-shaped valve means of E5 prevented flow of feed back into the bottle from outside thereof.

The Board disagrees with this point of view, however, because the person skilled in the art would appreciate that, although the primary function of the valve means is to prevent flow of feed back into the bottle from outside thereof, the dome-shaped valve means would also be effective in preventing spillage of feed from inside the bottle (in particular see page 2, lines 13 to 16 and page 3, lines 77 to 82).

5.3 Nevertheless, starting from document D1, if the slit valve means thereof were to be made detachable to facilitate its cleaning, as taught by E5, then E5 also

teaches that the valve means should be held onto the cup-shaped container by means of a collar which is screwed on to the container.

The result would be a modification of the container of D1 wherein the valve means would be held on to the container 11 by a collar so that, in order to clean the valve or to re-fill the container, it would be necessary to first remove the lid 10 and then to unscrew the collar.

5.4 By contrast the valve means according to present claim 1 is detachably fitted to the lid. Thus, the simple act of removing the lid enables both the valve means to be exposed for detachment and cleaning, and also the container to be re-filled.

5.5 This modification and the resulting simplicity of operation are not taught in the prior art. Therefore, claim 1 involves an inventive step.

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 maintain the patent on the basis of the following documents:

Description columns 1 to 8

Claims 1 to 6

Figures 1 to 9

all filed during the oral proceedings.

The Registrar

The Chairman

V. Commare

T. Kriner