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**Datasheet for the decision
of 31 January 2012**

Case Number: T 2296/09 - 3.2.07
Application Number: 99926841.0
Publication Number: 1108476
IPC: B05B 7/06, B05B 7/08
Language of the proceedings: EN

Title of invention:
Low-pressure atomizing spray gun

Patentee:
ANEST IWATA CORPORATION

Opponent:
SATA GmbH & Co. KG

Headword:

-

Relevant legal provisions:

EPC Art. 54, 56

Keyword:

"Novelty - yes, measurements taken from drawings cannot be considered "directly and unambiguously" derivable"
"Inventive step - no, measurements can be taken from drawings if true to scale, to reduce a teaching to practice (point 4.4.1)"

Decisions cited:

-

Catchword:

-



Case Number: T 2296/09 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 31 January 2012

Appellant: SATA GmbH & Co. KG
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 30 October 2009
rejecting the opposition filed against European
patent No. 1108476 pursuant to Article 101(2)
EPC.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
I. Beckedorf

Summary of Facts and Submissions

I. The appellant (opponent) has filed an appeal against the decision of the opposition division rejecting the opposition against European patent No. 1 108 476. It requested that the decision under appeal be set aside and that this European patent be revoked.

The respondent (patent proprietor) requested that the appeal be dismissed.

II. Claim 1 as granted reads as follows (with an added division of features)

(a) "A low-pressure atomising spray gun including an air spray gun body (10),

(b) a paint nozzle (1) screwed to the spray gun body (10), and

(c) an air cap (2) installed with a cover (3) thereof in the spray gun body (10) so as to cover the paint nozzle (1);

(d) the paint nozzle (1) and air cap (2) between them defining an annular slit (4) formed between a top portion of the nozzle (1) and a wall of a central opening formed in the air cap (2) and working cooperatively with each other to mix, in the atmosphere, compressed air and a paint just delivered from the nozzle (1) to atomize the paint;

(e) the said spray gun further comprising

- (f) a plurality of air grooves (1a) formed on the tip of the portion of the paint nozzle (1) convergently towards the centre of a delivery port (100) of the paint nozzle (1) so that the intersection of the bottom of the air grooves (1a) with the inside diameter of the paint nozzle (1) approximately coincides with the front end of the central opening in the air cap, and
- (g) each of the air grooves (1a) starts at or upstream of the inlet end of the annular slit (4), and being characterized in that:
- (h) the front end of the paint nozzle tip projects
- (i) 03 (correctly: 0.3) to 0.8 mm from the front end of the central opening in the air cap".

III. The following documents, considered in the decision under appeal, are referred to:

E1 JP-A-0 8196 950

E2 EP-A-0 544 087

E3 DE-A-1 109 568

IV. Impugned decision

The impugned decision can be understood with regard to the disclosure of E1 that this document, like documents E2 and E3, is completely silent concerning the range of values for the distance the respective front end of the

paint nozzle tip projects from the wall of a central opening formed in the surrounding air cap (feature (i)).

The drawings of these documents need to be considered conventional sketches which are not necessarily true to scale. Consequently the spray gun according to claim 1 is distinguished from the known spray guns by the characterising features of claim 1 (features (h) and (i)) and thus novel.

Concerning inventive step it has been concluded that since the characterizing features of claim 1 are not known from any of the citations, the aspect defined thereby is also not suggested by the prior art. The spray gun according to claim 1 has thus been considered as involving inventive step.

V. The submissions of the appellant can be summarised as follows:

- (a) A discrepancy between the result of the decision (the subject-matter of claim 1 involving inventive step and rejection of the opposition) and the result of the oral proceedings as minuted (lack of inventive step and "revocation of the opposition" in the text; rejection of the opposition on form 2309.2) makes at least the minutes unclear.
- (b) The drawings of E1 clearly disclose a spray gun as defined by the preamble of claim 1. Although the disclosure of E1 to be considered in the examination of novelty or inventive step is solely based on the drawings of this document, it has to be taken into account that these drawings are more

than conventional sketches and for that reason give more information. They are very accurate and show every detail of the spray gun concerned, as well as all elements the spray gun is made of, in their proper relationship. Thus the projection of the front end of the paint nozzle tip (feature (i)) clearly shown in the drawings has to be seen as a disclosed detail of the spray gun. In this respect it furthermore has to be taken into consideration that the drawings of E1 and of the patent in suit, coming from the same company and relating to spray guns of the kind concerned, show great similarity. Thus no reason exists to consider the same detail, namely the projection of the front end of the paint nozzle tip, which is shown in the same manner in both documents, differently: for document E1 as not directly and unambiguously derivable, but for the patent in suit as one of the characterising essential elements of the invention.

- (c) It is furthermore apparent that these drawings, by their very nature, could immediately be used as a basis for the manufacture of the shown spray gun. In that respect it is evident that these drawings show the spray gun in reduced but proper scale. Consequently dimensions taken from the drawings of E1 by measurement can easily be transformed by enlargement on a copying machine into real size dimensions. The only further information required in this respect, namely the actual size of such a spray gun, is known considering that the spray gun according E1 (as well as according to the patent in suit) is a hand held tool which has to satisfy

certain dimensional requirements from which the actual size of the spray gun can be derived. For these reasons in the present case dimensions taken by measurement from the (enlarged) drawings, like the length of the projection of the front end of the paint nozzle tip (feature (i)) and correctly transformed into real size scale need to be considered as being part of the disclosure given by the drawings of E1.

- (d) The subject-matter of claim 1 lacks novelty over E1, E2 or E3. This is evident taking proper account of the disclosure of E1 since then not only the features of the preamble and the characterising feature of claim 1 according to which the front end of the paint nozzle tip projects (feature (h)) are known from E1 but also a value corresponding to the only further characterising feature defining a value range for this projection (feature (i)). This applies correspondingly with respect to documents E2 and E3.

- (e) In case a value in the value range according to feature (i) is not considered as being directly and unambiguously disclosed by the drawings of E1 but instead as the only distinguishing feature, it needs to be taken into account that it has not been proven that an effect is associated with this value range, which is different from that obtained with a value outside of the range. Furthermore it needs to be considered that the dimensions of the elements constituting the spray gun can be taken by the skilled person from the drawings. It is

evident that concerning the length of the projection of the front end of the paint nozzle tip then a value would result which lies inside the value range defined by claim 1 (feature (i)) or which at the most is close to its boundaries. Thus the claimed value range cannot contribute to subject-matter involving inventive step.

VI. The submissions of the respondent can be summarised as follows.

- (a) Concerning the disclosure of E1 it needs to be taken into account that the alleged disclosure is only based on the drawings in which, like in the remainder of E1, no dimensions are referred to. Only in the drawings of this document a projecting paint nozzle tip (feature (h)) is shown. A corresponding feature is neither mentioned in the remainder of this document nor is an associated effect referred to. This projection can thus not be recognised as being part of the disclosure but must merely be seen as a negligible pictorial deviation. This holds true in particular considering the large amount of prior art documents which disclose spray guns of the kind concerned and for which the front end of the paint nozzle tip does not show any projection.

- (b) Furthermore, since the drawings are conventional sketches as correctly considered in the impugned decision, measurements taken from them cannot be considered as forming part of their disclosure. Thus even if the projection of the front end of the paint nozzle tip (feature (h)) would be

considered as being disclosed by the drawings of E1, this certainly would not apply to the value range for this projection defined by the other characterising feature (feature (i)). From the drawings of documents E2 and E3 likewise no dimensions can be taken. As is evident from these drawings their disclosures have even less in common with the spray gun of claim 1.

- (c) The subject-matter of claim 1 is novel over E1 since it is at least distinguished therefrom by the characterising feature defining a value range for the projection of the front end of the paint nozzle tip (feature (i)). This applies even more with respect to E2 or E3 since the spray gun according to claim 1 differs even more from the spray guns according to these documents.
- (d) Selecting E1 as closest prior art in the examination of inventive step is based on hindsight since this prior art showing a spray gun with a projecting front end of the paint nozzle tip is untypical when compared with the large number of prior art documents disclosing spray guns without such a projection, to prevent it from being damaged in use.
- (e) Even if E1 would be considered as closest prior art, the paint spray nozzle defined by claim 1 involves an inventive step over the spray gun of this document, since only in its drawings a projecting front end of a paint nozzle tip (feature (h)) is shown. A corresponding feature is neither mentioned in the remainder of this

document nor is an associated effect referred to. Thus even if this feature would be considered as being encompassed by the disclosure of E1 inventive step has to be acknowledged, considering that according to claim 1 for this projection a value range is defined (feature (i)) for which no disclosure or indication in any of the prior art documents is given, as correctly stated in the impugned decision, and which leads to further advantages over the mere provision of a projection outside this range (feature (h)).

- (f) Concerning the examination of inventive step it further needs to be taken into consideration that in general a prejudice exists towards a projection of sensitive parts since due to the resulting exposure it is evident that such projecting parts are likely to be damaged. This applies in the present case for the projection of the front end of the paint nozzle tip (feature (h)) for which a likelihood of being damaged exists not only under normal use conditions but even more for steps concerning the cleaning or exchange of the paint nozzle.

VII. In an annex to the summons to oral proceedings dated 27 October 2011 (in the following: the annex) it was i.a. indicated with respect to the examination of novelty, that the subject-matter of claim 1 appears to differ from the spray gun according to E1 by the value range defined for the projection of the front end of the paint nozzle tip (feature (i)).

With respect to the examination of inventive step it was indicated that it is questionable whether the alleged prejudice concerning the projection of the front end of the paint nozzle tip can be considered as proven.

Furthermore it was referred to a first line of arguments of the grounds of appeal according to which consideration of E1 is not limited to the direct and unambiguous disclosure of this document since information either derivable from the drawings of E1 or obvious in view of the disclosure of this document needs to be also taken into account.

VIII. Oral proceedings before the Board took place on 31 January 2012.

Reasons for the decision

1. *Procedural issue*

According to the appellant the minutes of the oral proceedings before the opposition division are inconsistent with regard to point 10 according to which "... the chairman notified that the subject-matter of claim 1 does not meet the requirements of inventive step in the sense of Article 56 EPC. It was decided to revoke the opposition." and the final order referred to therein, that "The opposition is rejected".

Considering that the final order as stated in the minutes corresponds to the order of the decision under appeal and that, undisputedly, the decision as such is clear and consistent with the order given therein the

Board concludes there is only an inconsistency in the minutes combined with a rather strange conclusion. As the appellant declared that it did not wish to submit a request concerning this issue, this decision does not have to deal with it any further. For completeness sake the Board notes that the appellant has not requested correction of the minutes and that the Board would in any case not have been the right addressee for such a request.

2. *Disclosure of document E1*

2.1 It is common ground that the relevant disclosure of E1 to be considered resides solely in its drawings and that these drawings, as can be derived from figure 2, disclose a spray gun of the kind defined by the preamble of claim 1.

Beyond that the parties are divided as to the extent of the disclosure derivable from these drawings.

2.2 According to the impugned decision (reasons, no. 4.2) and the respondent (cf. section VI. (a)) these drawings can only be regarded as conventional sketches. While the decision under appeal remains silent concerning the reasoning underlying this assumption the respondent referred to the intended use of these drawings. In its view these drawings are patent drawings which normally, and the present drawings making no exception, show in a general outline an embodiment according to the respective invention. Thus details not addressed as part of the invention in the description of E1 but only shown in the drawings, like it is the case for the projection of the front end of the paint nozzle tip as

shown in figure 2, cannot be considered as being part of the disclosure.

Consequently this projection cannot be considered as corresponding to the one defined by feature (i) of claim 1 of the patent in suit but merely as a negligible pictorial detail for which no reason is given in E1, or even as a drawing inaccuracy or an unforeseen deviation in the pictorial presentation of the spray gun concerned. This aspect becomes even more evident considering the large number of prior art documents which disclose spray guns of the kind concerned for which the front end of the paint nozzle tip does not project.

- 2.3 The Board in this respect finds, however, the arguments of the appellant (cf. section V. (b)) more convincing. Due to the accuracy and completeness of these drawings and due to the fact that apparently all elements constituting the spray gun as well as their relationships are shown in great detail, also the one clearly shown in figure 2, namely that, as defined by feature (h), the front end of the paint nozzle tip projects from the front end of the central opening of the air cap, is disclosed by E1.

From the drawings of E1 it cannot be concluded that only essential details relating to the invention referred to in the description are shown as asserted by the respondent. Furthermore it needs to be taken into consideration that the projection concerned is shown in the same order of magnitude as other elements (in particular ones with associated reference numerals) like the air grooves 1a and the annular slit 4 formed,

corresponding to feature (d), between an end portion of the nozzle and the central opening formed in the air cap.

Further, although it has been asserted that a large number of documents exists showing spray guns of the kind concerned without the front end of the paint nozzle projecting, with the result that the projection shown in figure 2 of E1 should be disregarded, no such documents have actually been cited or submitted and no convincing reason has been given as to why - and which - disclosure(s) of other documents not referred to in E1 should be taken into account in the assessment of the disclosure of this document.

At present it can be left open to what extent the above reasoning applies likewise to the argument of the appellant that in determining the disclosure of the drawings of E1 the rather similar drawings of the patent in suit and the corresponding description should be taken into account.

- 2.4 As can be derived from the above considerations the disclosure of E1 involves a spray gun according to the preamble of claim 1 in which, corresponding to feature (h), the front end of the paint nozzle projects from the front end of the central opening of the air cap.
- 2.5 Concerning the question of whether or not with the projection of the front end of the paint spray gun also a value for the length is disclosed which, as argued by the appellant (cf. section V. (c)), corresponds to a value of the value range defined by feature (i) the Board finds the arguments of the respondent (cf.

section VI. (b)) more convincing, according to which the impugned decision is correct in not considering measurements taken from the drawings of E1 as a disclosure by these drawings.

The reason given in the impugned decision is that the drawings can only be regarded as a conventional sketch which is not necessarily true to scale (reasons, no. 4.2).

- 2.6 According to the appellant it is evident in view of the impression given by these drawings, in particular their accuracy and completeness, that these drawings show the spray gun in reduced but true scale. Since the scale of the drawings and thus measurements taken therefrom can easily be transformed into values present in the actual size spray gun, like all dimensions shown in the drawings, the value for the length of the projection of the front end of the paint nozzle tip measured in figure 2 and transformed to its actual size needs to be considered as disclosed by E1. In this respect it should be taken into account that the transformation factor from the reduced scale of the drawings in E1 to the actual size of the spray gun can easily be determined taking the actual size of the spray gun into account, which can easily be determined considering its nature as a hand held tool.

Although at present it appears that by themselves the drawings of E1 can be considered as being true to scale the determination of the transformation factor referred to is subject to uncertainty, as the fact that the spray gun is a handheld tool does not lead to only one precisely determinable actual size. As a result, only a

range of sizes for spray guns satisfying the constraints imposed on their size due to their nature as hand held tool is possibly derivable from the drawings.

- 2.7 Since this leads to different values for the projection of the front end of the paint nozzle tip of figure 2, no specific value for the length of the projection (nor one specific range of values) can be considered directly and unambiguously derivable from E1.

3. *Novelty*

From the above assessment of the disclosure of document E1 it is immediately apparent that the spray gun according to claim 1 differs from the one disclosed by E1 by the value range defined by feature (i) for the length of the projection of the front end of the paint nozzle tip.

The subject-matter of claim 1 is thus novel over the spray gun disclosed by E1 (Article 54 EPC).

Concerning the further documents E2 and E3 it is apparent that they likewise do not disclose a value range for the projection of the nozzle tip corresponding to feature (i). Furthermore it has not been disputed that with respect to the spray guns of E2 and E3 additional distinguishing features result e.g. from different structures and arrangements of the air grooves.

Since, as can be derived from the following, the subject-matter of claim 1 cannot be considered as

involving an inventive step with respect to the spray gun according to E1 the examination of novelty and the disclosures of documents E2 and E3 needs no further pursuing.

4. *Inventive step*

4.1 *Impugned decision*

4.1.1 From the impugned decision it cannot be derived which one of cited documents E1, E2 and E3 has been considered as constituting the closest prior art in the examination of inventive step as required when the problem solution approach is followed.

Concerning the examination of inventive step E1, E2 and E3 have been considered as being completely silent about the range of values with which the front end of the paint nozzle tip projects (reasons, no. 4.2).

Based on this assessment of the disclosures of these prior art documents it has been concluded, unfortunately without reference to any effect associated with the assumed distinguishing features and any problem solved thereby over the prior art, that since the characterising part of claim 1 is not known from any of the citations, this aspect is also not suggested by the prior art and that therefore this claim's subject-matter is not obvious.

4.1.2 The decision under appeal, as far as it can be understood that it considers feature (i) as not being disclosed by E1, E2 or E3, corresponds to the result of

the examination with respect to novelty indicated above (cf. point 3).

4.1.3 According to the appellant the reasoning of the impugned decision that E1, E2 and E3 are completely silent about the range of values with which the front end of the paint nozzle tip projects is not correct. According to the respondent the assessment of inventive step according to the impugned decision is correct.

4.2 *Closest prior art*

The appellant argues that the spray gun of E1 can be considered as closest prior art for inventive step since, as can be concluded from the examination of novelty (cf. point 3 above) this document discloses a spray gun having all features in common with the spray gun according to claim 1 with the exception of feature (i).

According to the respondent already the selection of E1 as closest prior art out of the large number of available documents relating to spray guns, among which there are more with the paint nozzle tip not projecting as defined by feature (h) is based on the knowledge of the spray gun as defined by claim 1 and thus, inadmissibly, on hindsight.

The Board does not find this argument convincing. It is true that knowledge of the patent in suit is to be taken into consideration when it has to be decided which prior art document is to be considered as the starting point (and thus as closest prior art) for the examination of inventive step based on the generally

applied and accepted problem solution approach. If various documents are available the one is usually chosen as closest prior art which is closest to the claimed subject-matter in terms of features and purpose. The documents available for such a choice are at present E1, E2 and E3. Although the respondent has alleged this to be a large number of other prior art documents showing spray guns without a projecting paint nozzle tip it could not, upon request by the Board, cite any document other than the documents already considered in the impugned decision (E1, E2 and E3) and referred to in the grounds of appeal which had, in addition, to be considered in the selection of the closest prior art.

Moreover it is generally accepted that in order to satisfy the requirement of Article 56 EPC inventive step has to be acknowledged over any feasible prior art document relating to the technical field of the invention. It is evident from the above considerations for novelty that E1 relates to the technical field of the invention and to its purpose, having a projecting paint nozzle tip.

The spray gun disclosed by the drawings of E1 is thus considered as representing the closest prior art.

4.3 *Distinguishing feature, effect and problem to be considered with respect to E1*

4.3.1 As can be derived from the result of the examination with respect to novelty (cf. point 3 above) the subject-matter of claim 1 is distinguished from the spray gun of E1 by feature (i) defining a value range

of 0.3 to 0.8 mm for the projection of the front end of the paint nozzle tip.

- 4.3.2 It is undisputed that the projection of the paint nozzle tip as such, as defined by feature (h), has the advantageous effect stated in the patent in suit (cf. section [0036]) in that it contributes "to prevent the paint from adhering to the air cap 2 and thus assure a stable spraying of the paint".

This effect is, however, already present in the spray gun of E1 since as indicated above (cf. points 2.3 and 2.4 above) this spray gun is of the kind having a projecting paint nozzle tip as defined by feature (h). This effect is furthermore evident since the projection leads to a distance between the front end of the nozzle tip and the area of the air cap adjacent to it. It is thus unlikely that paint leaving the paint nozzle is directed to the portion of the air cap immediately surrounding the paint nozzle.

- 4.3.3 According to the appellant the value range defined by feature (i) encompasses values for the projection of the paint nozzle tip for which only the effect attributed to feature (h) can be obtained but no further effect, which moreover is neither proven nor evident. The value range of feature (i) is thus the result of an arbitrary proposition of values for the projection according to feature (h) already known from E1.

According to the respondent it is evident that the value range according to feature (i) is the result of an inventive proposition since a projection of the

paint nozzle tip in the defined value range not only leads to an enhancement of the effect attributed to feature (h) but moreover to an improvement of the flow of the paint particles in that atomization of the paint will be improved so that this paint flow is more uniform while the negative impact of shear forces on the flow will be minimised.

- 4.3.4 For the Board, the effects attributed to feature (i) are not referred to in the patent in suit and no evidence concerning their occurrence has been provided. The respondent referred to favourable test results having been obtained but failed to submit them for consideration.

Moreover upon request by the Board the respondent could not rule out that, even if such further effects would be considered, they solely could be considered as being caused by feature (h).

Consequently no effect can be considered as being caused by feature (i).

- 4.3.5 The problem to be considered starting from the spray gun according to E1 thus does not go beyond the necessity to fill the gap in the disclosure of this document with respect to the value for the projection of the paint nozzle tip or, in other words, to give a value for the projection of the paint nozzle tip which is shown in figure 2 but for which no dimension is given.

4.4 *Obviousness*

4.4.1 The Board considers the argument of the appellant as convincing that, even if it is considered that E1 does not directly disclose a value within the range defined by feature (i) for its spray gun with the projecting front end of the paint nozzle, starting from E1 in an attempt to reduce the spray gun according to this document to practice, information concerning the length of this projection can be arrived at from this document taking the approach based on a measurement taken from figure 2 of E1 as outlined in connection with the disclosure of E1 (cf. point 2.6 above). The Board furthermore concurs with the view expressed by the appellant that such an approach is obvious since it comes within customary design practice.

Thus in order to actually build a spray gun as disclosed by E1 measurements of the dimensions of the various elements of the spray gun and their respective relationships have to be taken from the drawings. These measurements can then be transformed, from the reduced scale of the drawings, into a scale representative for the actual size of such a spray gun, this approach being justified since the drawings are considered true to scale, accurate and complete.

Since in this case the information derived via measurements from these drawings is not limited by the condition that it should be directly and unambiguously disclosed, but serves to determine dimensions which are necessary as starting points for the manufacture of the spray gun of E1, it is irrelevant that, as indicated with respect to the disclosure of E1 for the purpose of

novelty (cf. point 2.6 above), the determination of the transformation factor, to transform measurements taken from the drawings into equivalent dimensions corresponding to the actual size of the spray gun is subject to uncertainties.

In any event such uncertainties or ambiguities cannot be considered as being such that the values obtained in this manner cannot fulfil their purpose of starting values for the manufacture of the disclosed spray gun. These starting values will be, depending on circumstances, in any case subject to further modification e.g. in order to optimise such a spray gun in view of its intended use (which depends on a variety of parameters neither addressed in E1 nor the patent in suit) like e.g. the cross-section of the annular slit and of the air grooves, material properties of the paint particles to be sprayed and the air pressure provided.

- 4.4.2 Determining the value for the length of the projection of the paint nozzle tip in the outlined manner the Board finds the argument of the appellant convincing that such a value is of a magnitude that it lies within the value range of feature (i) or is so close to it that the claimed range cannot involve inventive step, by lack of a particular effect only obtained in this range (see point 4.3.4 above).

Concerning the lower limit of 0,2 mm for his length, the Board observes that this appears to be in any case necessary to surpass any tolerances which will have to be allowed for the position of the paint nozzle tip

relative to the front end of the central opening in the air cap.

- 4.4.3 Considering that the spray gun as defined by features (a) to (h) is already known from E1 as outlined above the spray gun according to features (a) to (i) of claim 1 is obvious in view of E1.

It thus can be left open whether consideration of E2 or E3 by itself or in combination with E1 would also have led to the same result.

The spray gun of claim 1 thus cannot be considered as involving inventive step (Article 56 EPC).

- 4.4.4 The above result holds true considering the following arguments of the respondent:

According to a first argument a technical prejudice exists against a projection of the paint nozzle tip as defined by features (h) and (i), the reason being that the skilled person would rather seek to protect the protruding front end of the paint nozzle tip than to expose it to any possible damage. Concerning this argument it has been indicated by the Board in the annex (point 7.5.1) that it appears to be necessary to determine whether such an alleged prejudice can be considered as proven. The argument concerned has been repeated by the respondent during the oral proceedings, in particular with respect to cleaning or exchanging of a nozzle, however, without any further supporting evidence.

While it can be agreed that the risk of damage due to a projection of the front end of the paint nozzle is to be avoided it is evident that in case the apparent advantage of such a projection is to be obtained (cf. point 4.3.2 above) the associated exposure of the front end of the paint nozzle tip is "part of the bargain".

Thus the advantage and the disadvantage of the projection concerned need merely to be weighed against each other, as has done the inventor of E1, because it is undeniable that the paint nozzle tip does project out of the air cap, as shown in figure 2. This is quite different from the existence of a prejudice.

For completeness sake the Board observes that the alleged prejudice concerned only the projection of the front end of the paint nozzle tip as defined by feature (h) already known from E1 and not the range of values for such a projection according to feature (i) and thus not with respect to the distinguishing feature as determined by the Board.

According to a second argument E1 does not mention in its description any benefit for the projection of the paint nozzle tip, such that the skilled person would have disregarded the disclosure of such a projection given by figure 2. This argument has (indirectly) already been dealt with in connection with the determination of the disclosure of E1 (cf. point 2.3) where it has been concluded that feature (h) is part of the disclosure of E1.

Furthermore in this connection it needs to be considered that the effect attributed to feature (h)

arises automatically due to the projection of the front end of the paint nozzle tip without any further measures being necessary (cf. point 4.3.2 above).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders