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**Datasheet for the decision
of 3 July 2013**

Case Number: T 0140/11 - 3.2.04

Application Number: 02774952.2

Publication Number: 1443842

IPC: A47L9/02, A47L9/24

Language of the proceedings: EN

Title of invention:

A FLOOR TOOL

Patent Proprietor:

Dyson Technology Limited

Opponent:

Wessel-Werk GmbH

Headword:

Relevant legal provisions:

EPC Art. 100(c), 123(2), 123(3)

Keyword:

Amendments - added subject-matter (yes) - extension beyond the content of the application as filed (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

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Case Number: T 0140/11 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 3 July 2013

Appellant:
(Patent Proprietor)

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 2 November 2010
revoking European patent No. 1443842 pursuant to
Article 101(2) EPC.**

Composition of the Board:

Chairman: A. de Vries
Members: J. Wright
T. Bokor

Summary of Facts and Submissions

- I. The Appellant (proprietor of the patent) lodged an appeal, received on 6 January 2011, against the decision of the Opposition Division of the European Patent Office posted on 2 November 2010 revoking European patent No. 1443842 pursuant to Article 101(2) EPC. The appeal fee was paid simultaneously. The statement setting out the grounds of appeal was received on 04 February 2011.

Opposition was filed against the patent as a whole and based inter alia on Article 100(c) together with 123(2) EPC.

The Opposition Division held that this ground prejudiced the maintenance of the patent.

- II. Oral proceedings were duly held before the Board on 03 July 2013 in the absence of the Appellant who had been duly summoned and who had informed the Board in a letter received 19 June 2013 that he would not attend the oral proceedings.

- III. The Appellant requests that the decision under appeal be set aside and the opposition rejected based on the patent as granted as main request, alternatively, that the decision under appeal be set aside and the patent be maintained in an amended form (implicit), according to the claims of one of first to third auxiliary requests filed with the grounds of appeal on 4 February 2011.

The Respondent (opponent) requests that the appeal be dismissed.

IV. Claim wording

The wording of claim 1 according to the *main request* (as granted) is as follows:

"1. A floor tool (200) for use in vacuum cleaning floor surfaces comprising a sole plate (250) for engaging with a floor surface, a supporting body (210) for the sole plate having means (221, 223) for allowing the body to ride along the floor surface, an outlet conduit (240) for coupling to a wand (16) of a vacuum cleaner, and a connecting arm (230) for connecting the outlet conduit (240) to the supporting body (210), a first end of the connecting arm (230) being pivotally connected to the outlet conduit (240) about a first pivotal axis (231), the second end of the connecting arm (230) being pivotally connected to the supporting body (210) about a second pivotal axis (232), the first and second pivotal axes (231, 232) being substantially parallel to one another, characterised in that the connecting arm (230) is pivotable, with respect to the means (221, 223) for allowing the body to ride along the floor surface, between lowered and raised positions, and substantially all of the connecting arm (230) is located between the second pivotal axis (232) and the means (221, 223) for allowing the body (210) to ride along the floor surface.

Claim 1 according to the *first auxiliary request* is the same as claim 1 of the main request with the feature of the "means (221, 223) for allowing the body to ride along the floor surface" amended to read (*italics* added by the Board to indicate added text):

"means (221, 223) for allowing the body to ride along the floor surface, *comprising at least one wheel or roller (221, 223),...*"

Claim 1 according to the *second auxiliary request* rewords the characterising portion of claim 1 of the main request to read as follows (~~strike through~~ added by the Board to indicate deleted text, *italics* added to indicate added text),

"...characterised in that the connecting arm (230) is pivotable, with respect to the means (221, 223) for allowing the body to ride along the floor surface, between lowered and raised positions, and ~~substantially all of the connecting arm (230) is located between the second pivotal axis (232) and the means (221, 223) for allowing the body (210) to ride along the floor surface~~ *that the connecting arm (230) is shorter than the supporting body (210) so that the connecting arm (230) does not protrude beyond the back of the supporting body (210) when the connecting arm is in the lowered position.*

Claim 1 according to the *third auxiliary request* rewords the characterising portion of claim 1 of the main request to read as follows (*italics* again added to indicate added text):

"...characterised in that the connecting arm (230) is pivotable, with respect to the means (221, 223) for allowing the body to ride along the floor surface, between lowered and raised positions, and substantially all of the connecting arm (230) is located between the second pivotal axis (232) and the means (221, 223) for allowing the body (210) to ride along the floor surface *and that the connecting arm (230) is shorter than the*

supporting body (210) so that the connecting arm (230) does not protrude beyond the back of the supporting body (210) when the connecting arm is in the lowered position.

V. The Appellant's arguments can be summarised as follows:

The basis for feature M11 (main, first and third auxiliary request) is in the drawings of the application as filed, in particular figures 3 and 4. As a technician or engineer involved with maintaining or designing vacuum cleaners the skilled person would be able to interpret such drawings and derive therefrom the structure and function of the feature M11. When working with engineering drawings the skilled person would normally measure the distance between rotating elements such as pivots and wheels by measuring the distance between their the axes. The word "between" should be read in this context.

"Substantially all of the connecting arm" should be interpreted broadly as meaning most but not necessarily all of the connecting arm, see figures 3 to 10.

The further feature M12 (second and third auxiliary request) finds *literal* support on published description page 7, lines 12 to 14.

VI. The Respondent's arguments can be summarised as follows:

The structure and function of the feature M11 is not clearly, unmistakably and fully derivable from the drawings by the skilled person. The description is not concerned with the arrangement and length of the connecting arm. Figures 3 and 4 are only schematic, while figures 5 to 10 give greater detail.

There is no disclosure that the connecting arm is located between the second pivotal axis and the means for allowing the body to ride along the floor surface. "Between" should be given its normal meaning.

From the published application it can be inferred that the arrangement of the second pivotal axis and orientation of the connecting arm are important, rather than the relative length of the connecting arm. Finally M11 is disclosed in the drawings and the corresponding parts of the description in a specific context in conjunction with other features, for example the U-shaped channel for receiving the connecting arm, and a hose 235. Isolating the feature results in an unallowable intermediate generalization.

Finally, deleting feature M11 (third auxiliary request) extends the scope of protection. The replacing feature M12 is taken out of context and is also an unallowable intermediate generalization.

Reasons for the Decision

1. The appeal is admissible.
2. Main request, and first and third auxiliary requests
 - 2.1 Claim 1 of these requests is based on claim 1 as filed but has been amended. Each version includes the feature "substantially all of the connecting arm (230) is located between the second pivotal axis (232) and the means (221,223) for allowing the body (210) to ride along the floor surface". The Board will refer to this feature as M11 as the parties have.

- 2.2 The Appellant acknowledges that this feature has no literal basis in the application as filed, but that this feature is to be inferred from the drawings of the application as filed, particularly in figures 3 to 10.
- 2.3 According to established case law, see the Case Law of the Boards of Appeal, 6th edition, 2010 (herein CLBA), III.A.2, and the decisions cited therein, it is normally not admissible under Article 123(2) EPC to extract isolated features from a set of features originally disclosed only in combination in a specific embodiment. An amendment of this nature would only be justified in the absence of any clearly recognisable functional or structural relationship between said features. Where features are added from drawings, the structure and function of such features must be clearly, unmistakably and fully derivable from the drawings by the skilled person, nor could any element simply be dropped, see for example CLBA, III.A.5, and the decisions cited therein.
- 2.4 Applying this approach the Board notes firstly that not all the features present in the drawings are incorporated into claim 1 with feature M11. For example, schematic figures 3 and 4, see paragraph [0015] of the patent specification, shows the connecting arm 230 formed either as an airflow conduit itself or as including a separate and flexible hose 235 is shown in dashed lines as an alternative thereto in figure 3. Both are described in paragraph [0015] of the patent specification. In both figures, moreover, the connecting arm 230 is pivotally connected to the sole plate 250. The same features are shown in greater detail in figures 5 to 10, see paragraph [0014]. From figures 7, 9 and 10, and specification paragraph

[0020], a flexible hose 235 likewise forms part of the floor tool of this embodiment. However neither a flexible hose nor an airflow conduit have been claimed in claim 1.

Whether the connecting arm is formed as an air conduit or includes a separate flexible hose, the arm is always associated structurally and functionally with some means that enables air flow from the floor tool to the wand, and without which the floor tool would not work. Similarly, the pivotal connection of arm and sole plate, present in all embodiments (see also figure 7), allows proper positioning of the latter on the floor and links plate and arm in a close structural and functional relationship. Therefore, even when considering the schematic figures 3 and 4 as well as 5 to 10 as basis for the feature M11, these features, which represent the specific context in which the arm is disclosed, should have been incorporated into claim 1 along with the arrangement of the connecting arm defined in feature M11. Inclusion of the feature of the arm in isolation out of its original structural and functional context constitutes an extension of subject matter beyond that of the application as filed.

- 2.5 Secondly, the terms used in the formulation of feature M11, which as noted have no literal basis in the application as filed, are themselves vague and open to interpretation. What is meant by "*substantially all* of the arm" and what are the exact boundaries of the region "*between* the second pivotal axis and the means for allowing the body to ride"? The Appellant would have this region lying between the axis of wheel 221 and the second pivot axis, but a reading that takes the inner edge of the wheel 221 (see figure 3) as boundary is equally valid. In the latter reading, in figure 3 an

important part of the arm, namely the part bearing first pivot 231 would lie outside the region. If feature M11 is given the Appellant's reading, then the embodiment shown in figures 7 and 9 would also not meet this requirement. There also an important part of the arm 230, namely that part including the first pivotal axis 231 is shown in the detailed drawings of figures 7 and 9 lying to the left of what can be inferred to be the axis of the wheel 221, outside the region the Appellant considers to be between the wheel and the second pivot axis, see point 2.10 of the statement of grounds and accompanying drawing E19. Figures 5 to 10 are meant to be detailed representations of the embodiment of figure 4 in particular, which is only schematic, (see the patent specification, column 3, lines 10 to 27), so that figures 7 and 9 will naturally carry more weight for the skilled person if he wants to derive information regarding positional relationships of components. Insofar he is able to derive any clear information from the figures regarding the location of the arm vis-a-vis the wheel and second pivot axis, this seems to flatly contradict feature M11.

- 2.6 The Board is finally unable to see the particular significance of this feature. As argued by the Respondent in reference to figures 13 and 14 and corresponding paragraphs [0029] to [0033] the deciding factor for preventing the sole plate from peeling off the ground is the point of action of the force exerted by the user, via the connecting arm, on the supporting body relative to the position of the sole plate. In the prior art, figure 13, this is the point A, laterally removed from the sole plate. According to the invention, figure 14, it is the point E located directly above the sole plate. That the arm should be somewhere between wheel and second pivot axis plays no

discernible role in this context, nor is any such role apparent from the Appellant's submissions or otherwise evident to the Board.

2.7 For all of the above reasons, the Board concludes that neither the structure nor function of the feature M11 is clearly, unmistakably and fully derivable from the drawings of the patent, whether in isolation or in conjunction with other features shown in the figures. Therefore, also for this reason, the amendment to claim 1 of the main request, first auxiliary and third auxiliary requests contains subject matter extending beyond the application as filed. Thus the Appellant's main request, and first and third auxiliary requests must fail.

3. Second auxiliary request

3.1 Claim 1 of the second auxiliary request differs from that of the main request in that the above feature M11 is replaced by another feature, M12, relating to the length of the connecting arm. The feature M12 reads: *"the connecting arm (230) is shorter than the supporting body (210) so that the connecting arm (230) does not protrude beyond the back of the supporting body (210) when the connecting arm is in the lowered position"*.

3.2 Feature M11 appears in claim 1 as granted and in defining the subject-matter for which protection is sought represents a structural limitation of the scope of protection conferred by the patent. By removing this limitation the protection conferred is extended. In the absence of any arguments from the Appellant addressing this point, which was duly raised in the annex to the summons to oral proceedings, paragraph 1.1 last

- sentence, the Board concludes that this amendment is contrary to the requirements of Article 123(3) EPC.
- 3.3 The Board adds that here also the feature has been incorporated into claim 1 in isolation from the context in which the feature originally appears. The Appellant cites as basis the last four lines of the passage corresponding to specification paragraph [0020]. The passage relates to figure 6 which is a rear view of the figure 5 tool, described in detail in specification paragraphs [0020] to [0026] in reference to further figures 7 to 10. It is not immediately apparent to the Board why the skilled person might consider those four lines cited in isolation from the rest of the description dealing with this particular embodiment. Nor has the Appellant indeed addressed this point already raised by the Respondent in his reply to the statement of grounds, and noted also in the annex to the summons. The Board concludes that this amendment results in an intermediate generalization of the specific disclosure of this embodiment, which adds subject-matter going beyond the original disclosure contrary to Article 123(2) EPC.
- 3.4 The Board holds that for both these reasons the second auxiliary request must likewise fail.
4. As set out above, the subject matter of claim 1 of all requests extends beyond that of the application as originally filed, contrary to Article 123(2) EPC. Furthermore the subject matter of claim 1 according to the second auxiliary request extends the subject matter beyond that of the patent as granted, contrary to Article 123(3) EPC. Since none of the requests on file are allowable, the Board confirms the decision of the Opposition Division to revoke the patent.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated