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**Datasheet for the decision
of 10 August 2016**

Case Number: T 0311/12 - 3.2.02

Application Number: 04708811.7

Publication Number: 1601409

IPC: A61M35/00, B05B15/12

Language of the proceedings: EN

Title of invention:

TANNING BOOTH

Patent Proprietor:

Beauty Source Ltd

Opponent:

(withdrawn)

Headword:

Relevant legal provisions:

EPC Art. 100(c), 111(1)

Keyword:

Grounds for opposition - added subject-matter (no)

Decisions cited:

Catchword:



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Case Number: T 0311/12 - 3.2.02

D E C I S I O N
of Technical Board of Appeal 3.2.02
of 10 August 2016

Appellant: Beauty Source Ltd.
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Chilwell, Nottingham
NG9 6QG (GB)

Representative: Potter Clarkson LLP
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted on 28 December
2011 revoking European patent No. 1601409
pursuant to Article 101(3)(b) EPC.

Composition of the Board:

Chairman E. Dufrasne
Members: P. L. P. Weber
M. Stern

Summary of Facts and Submissions

- I. The appeal of the patent proprietor is against the decision of the Opposition Division posted on 28 December 2011 to revoke the patent.

The Opposition Division considered that the subject-matter of the patent extended beyond the content of the application as filed (Article 100(c) EPC), and that there was extension of the protection after amendment (Article 123(3) EPC).

- II. The appellant/patent proprietor (re)filed the notice of appeal on 14 February 2012, which had first been filed on 27 January 2012 by a person not authorised to do so. The appeal fee was paid on 27 January 2012.

The statement setting out the grounds of appeal was filed on 4 May 2012.

- III. The appellant/patent proprietor requests that the decision under appeal be set aside and that the patent be maintained as granted, or on the basis of the first or second auxiliary requests, both filed with the statement setting out the grounds of appeal.

- IV. The opponent/respondent did not reply to the statement setting out the grounds of appeal, and withdrew its opposition on 31 May 2012.

- V. Claim 1 as granted reads as follows:

"1. A booth for accommodating a person, the booth defining a booth volume (4) and comprising:

a base portion (6) and a top portion (8);

flow means for causing air to move in a downward airflow within the booth, the downward airflow defining a predetermined volume within the booth;

recirculating means (18) for recirculating the air within the booth;

filtering means (20) for filtering the air within the booth; and

projecting means (100;30) for projecting a product into at least some of the booth volume and onto a body of a person positioned in the booth,

wherein the flow means comprises a first plenum (10) of positive pressure located in the top portion of the booth, and a second plenum (12) of negative pressure located in the base of the booth, one or more air input grills (104) associated with the first plenum and one or more foot grates (102) associated with the second plenum, wherein the first and second plenums are connected to one another via a duct (16), characterised in that

the filter means comprises a first filter (20a) for filtering wet particulate material; and a second filter (20d) for filtering dry particulate material, wherein the first filter is positioned within the duct in a lower portion of the duct associated with the second plenum and the one or more foot grates (102), and the second filter is associated with one or more input grills."

Reasons for the Decision

1. The appeal is admissible. The second filing of the notice of appeal - by an authorised representative - was still within two months of the notification of the decision pursuant to Article 108 EPC.

2. The invention

The invention concerns a tanning booth. Instead of applying a sunless tanning lotion by hand, as in the prior art, it is applied in a tanning booth by air brushes or spraying nozzles. Furthermore, inside the booth an air stream circulates constantly so as to remove the particles not deposited on the body, and thus prevent them from being inhaled by either the person being treated or the beautician.

3. Added subject-matter (Article 100(c) EPC)

3.1 The critical feature of claim 1 of the patent as granted is the following:

"wherein the first filter is positioned within the duct in a lower portion of the duct associated with the second plenum and the one or more foot grates (102)".

3.2 That the first filter (for filtering wet particulate material) should be in a lower portion of the duct was considered not to be disclosed in the application as originally filed. The Opposition Division considered that the specific embodiment described (page 19, line 24 to page 21, line 6 and Figures 6a, 6b and 8) could not be a basis for the above feature because it was clear that in that embodiment the first filter for wet particulate was in the second plenum and not in the

duct 16. It further considered that the general part of the description could not be a basis for it either, because the sentence on page 6, lines 23 to 25 was not about wet particulate material, and when this material was mentioned it was in relation to the foot grate in the second plenum, not to the duct.

3.3 The Board does not agree.

While it is accepted that in the specific embodiment shown in Figures 6a and 6b the first and second filters (20a and 20b) for wet particulate material are positioned in the second plenum (12), the general part of the description is far less specific.

On page 6, lines 23 to 25 read as follows:

"The filter means may be placed within the duct, preferably in a lower portion of the duct associated with the second plenum and the one or more foot grates."

This passage does not mention either a first filter or that it is for filtering wet particulate material. However, there is such a mention at the top of page 7: *"Preferably the filter means comprises a first filter for filtering wet particulate material."*

Hence, if according to the first passage the filter can be placed within the duct in a lower portion of the duct associated with the second plenum and the one or more foot grates, and if according to the second passage this filter comprises a first filter for filtering wet particulate material, then this first filter which is part of the "filter means" of the first passage can also be positioned in the same way as the "filter means".

- 3.4 Therefore, in the opinion of the Board, support for the feature in question can be found in these paragraphs.
- 3.5 Hence, the objection of added subject-matter (Article 100(c) EPC) in the impugned decision does not prejudice the maintenance of the patent as granted.
4. Since that decision did not address the other objections raised, the Board considers it appropriate to remit the case to the department of first instance for further prosecution pursuant to Article 111(1) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the department of first instance for further prosecution.

The Registrar:

The Chairman:



I. Aperribay

E. Dufrasne

Decision electronically authenticated