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**Datasheet for the decision
of 13 February 2019**

Case Number: T 0818/15 - 3.2.04

Application Number: 04721133.9

Publication Number: 1608253

IPC: A47L9/02, A47L9/06

Language of the proceedings: EN

Title of invention:

ACCESSORY FOR VACUUM-CLEANER HOUSEHOLD APPLIANCES

Patent Proprietor:

New Ermes Europe S.r.l.

Opponent:

Dyson Technology Limited

Headword:

Relevant legal provisions:

EPC Art. 123(2), 56

Keyword:

Amendments - extension beyond the content of the application
as filed (no) - unallowable intermediate generalisation (no)
Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0818/15 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 13 February 2019

Appellant: Dyson Technology Limited
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
11 February 2015 concerning maintenance of the
European Patent No. 1608253 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: G. Martin Gonzalez
W. Van der Eijk

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal, received on 17 April 2015, against the interlocutory decision of the Opposition Division of the European Patent Office posted on 11 February 2015 concerning maintenance of the European Patent No. 1608253 in amended form, and simultaneously paid the appeal fee. The statement setting out the grounds of appeal was received on 22 June 2015.
- II. Opposition was filed under Article 100(a) EPC based on lack of novelty and of inventive step. The Opposition Division held that the subject-matter of the amended claims according to the main request did not extend beyond the contents of the application as filed, was novel and involved an inventive step, having regard *inter-alia* to the following documents:
- (D2) WO 02/085174 A1
 - (D5) JP 09028638 A
 - (D5') English translation of D5
 - (D7) US 6,305,046 B1
- III. Oral proceedings before the Board were duly held on 13 February 2019.
- IV. The appellant-opponent requests that the decision under appeal be set aside and that the European patent No. 1608253 be revoked.

The respondent-proprietor requests that the appeal be dismissed and the patent be maintained as upheld by the opposition division (main request) or, alternatively, maintained on the basis of one of auxiliary requests 1-3, filed with letter of 30 October 2015.

V. The wording of claim 1 according to the main request reads as follows:

"Accessory for vacuum-cleaner household appliances, comprising suction mouths means (7) for sucking particles to be removed from a surface to be cleaned by making said particles to travel through conduit means (2) communicating with said suction mouth means (7), further comprising in an outer position with respect to, said suction mouth means (7), removable capturing means (4,5) for capturing further particles that have to be removed from said surface, said capturing means comprising a support element (4) provided with attaching means (11) by which a capturing organ (5) can be assembled on/disassembled from said support element (4), wherein said suction mouth means comprises at least two suction mouths (7) parallel supported by opposite parts to said support element (4), wherein said support element (4) comprises a flattened plate (10) and wherein between said flattened plate (10) and said suction mouths (7) interstices (12) are defined that are large enough to permit the passage of edges of said capturing organ (5) that are wrapped around said flattened plate (10)."

VI. The appellant-opponent argued as follows:

The subject-matter of claim 1 extends beyond the contents of the originally filed application documents. Furthermore, its subject-matter does not involve an inventive step in light of the teachings of D2, D5, D7 and common technical knowledge.

VII. The respondent-proprietor argued as follows:

The subject-matter of upheld claim 1 does not contain added subject-matter in the sense of Article 123(2) EPC. The subject-matter of claim 1 involves an inventive step over the cited prior art.

Reasons for the Decision

1. The appeal is admissible.
2. The invention relates to a cleaner accessory for a household vacuum cleaning appliance. In known vacuum cleaner suction tools, the contact of the tool with the surface to be cleaned raises part of the dust to the air, which is then not completely suctioned. In order to limit this effect, the claimed accessory is provided with a central support element carrying a capturing organ (a detachable cleaning wipe in the embodiment) wrapped around it and two parallel suction mouths arranged at opposite sides of the support element carrying the wipe (at the front and at the rear in the embodiment). The combined action of the capturing organ and the suction mouths minimizes the raising of dust.
3. Amendments - main request
 - 3.1 The appellant-opponent contests the conclusions in section 2.6 of the impugned decision that the amendments to claim 1 are allowable.
 - 3.2 Claim 1, as upheld by the Opposition Division, is based on a combination of originally filed claims 1,2,5 and 10 with two further amendments from the description. These amendments are that the support element is now

further specified as comprising a flattened plate and that the capturing organ is wrapped around said flattened plate. These features find their basis in the originally described detailed embodiment of the invention on page 3, lines 10 to 14.

- 3.3 The Opposition Division rejected the objection of the opponent that the introduction of the feature "a flattened plate", isolated from other features of the particular embodiment, represented an unallowable intermediate generalisation.
- 3.4 In appeal the appellant-opponent submits that the Opposition Division erred, since there is actually a clear structural and functional relationship between the flattened plate and other features disclosed in context but not included in the claim. These include shank 9, the attaching means for the disposable cloth located at least on the top face of the plate, a disposable cloth, the rotatable configuration of the suction pipe segments and the feature that the flattened plate is in the same plane as the suction mouth.
- 3.5 According to established case law it will normally not be allowable to base an amended claim on the extraction of isolated features from a set of features originally disclosed only in combination, e.g. in a specific embodiment in the description. Such a generalisation is justified only in the absence of any clearly recognisable functional or structural relationship among the features of the specific combination or if the extracted feature is not inextricably linked with those features (see Case Law of the Boards of Appeal (CLBA), 8th Edition, 2016, II.E.1.7).

3.6 The claim originally called for a support element for holding the capturing means. The support element is now specified in the upheld claim 1 as comprising a flattened plate. This feature appears in the specific embodiment of the description together with the other features listed above. In the present case, the Board must therefore examine whether there is a clearly recognisable functional or structural relationship between the specific choice of a flattened plate as support element and the other features of the originally described embodiment. In the judgement of the Board the answer to this question is negative. In the Board's opinion, the skilled person readily recognises the functional relationship of the flattened plate and the capturing organ that is wrapped around it, as that is the plate's function. That function is however independent of the other features mentioned, i.e. shank, specific attachment means, rotational connection, whether the cloth is disposable, or whether the plate and mouths are being in the same plane. Nor is it apparent to the Board that in the operation of the embodiment the interplay of plate and any of these elements would be pivotal and that the skilled person would recognize this. It is rather immediately clear to them that these features are merely exemplary and subsidiary to the interaction of plate, capturing organ and suction mouths on opposite sides. The skilled person would therefore be unable to identify any clearly recognisable link or relationship of the other allegedly unallowably omitted features with a change of shape of the support element.

3.7 The appellant-opponent submits that such a functional and structural relationship is immediately evident to the skilled person, since in the originally described embodiment the flattened plate only functions in

combination with the other elements. It submits two examples to illustrate this point: the flattened plate needs the shank to be supported and specific attaching means to be able to secure the disposable cloth.

In the Board's opinion this argument is without merit as it does not address the actual amendment to the claim. It applies to the support element per se, a feature already present in claim 1, but fails to demonstrate that there is a special relationship linking the specific shape of the support element as flattened plate with a supporting shank and specific attaching means. The appellant-opponent did not identify any such relationship, nor can the Board identify any.

3.8 As otherwise there is a clear basis for the claim in the originally filed application, the Board confirms the conclusion of the opposition division that claim 1 as upheld meets the requirements of Article 123(2) EPC.

4. Inventive step - main request

4.1 The appellant-opponent also challenges the Opposition Division's positive finding of inventive step for claim 1, starting from D5/D5' in combination with the teachings of D2 or common general knowledge and D7.

4.2 The embodiment of figures 1-3 of D5 (D5' English translation) is regarded as the closest prior art by both parties. This embodiment describes a cleaning nozzle with only one suction mouth 3 of a nozzle 1 at the front of the mop holder 4 and a mop 2 attached under the mop holder.

The claimed accessory differs from this prior art firstly in that two suction mouths are provided at opposite sides of the support element for the dust capturing organ, which support element comprises the flattened plate; and, secondly, in that interstices are defined between the flattened plate and the suction mouths to permit the passage of edges of the dust capturing organ, the capturing organ being wrapped around the support element in a replaceable manner.

- 4.3 The appellant-opponent argues, and the Board agrees, that two unrelated partial technical problems underlie these two differing features. The first difference provides an improved cleaning effect for both the forward and the rear strokes by way of two suction mouths.

The second difference addresses the problem of how to attach a replaceable capturing organ. In this regard the Board notes that D5 is silent in respect of how the mop 2 is attached to the holder 4. Thus, rather than providing an alternative attachment, as suggested by the appellant-opponent, the claimed feature specifies how to realize attachment of the mop to the holder in the known device of D5.

These two problems are clearly unrelated as are their respective solutions. Inventive step of each of the two groups of features is therefore to be assessed separately, see in this respect CLBA I.D.9.2.2.

- 4.4 Turning to the latter feature, the Board agrees with the respondent-proprietor that the configuration of D5 is such as to deter the skilled person from considering wrapping a dust capturing organ around the mop holder 4 as a way of attaching it thereto.

In particular, D5 states that the gap between the nozzle 1 of D5 and the mop is preferably such that no part of the mop 2 is sucked in, see D5' paragraph [0008]. Indeed figure 2 shows the piled mop 2 confined within a recess formed by the concave lower surface of the mop holder, with downward peripheral edges separating the mop from the suction mouths. Wrapping it around the holder 4 would place parts of the piled mop outside that recess and closer to the suction mouth 3, increasing the risk of it being sucked in, against the stated intention of D5. Apart from exposing the mop to a risk of being sucked in, wrapping the mop around the protruding peripheral edges would also move the mop away from the sunken inner area of the element and so compromise proper contact with the floor surface. In the light of the above the Board is convinced that the skilled person would not as a matter of course consider the teachings of D7 in search of an attachment method.

It is thus immaterial whether or not the skilled person would as a matter of obviousness then provide a cut-out for accommodating the part of the suction tube 5 contacting the holder's upper surface, if he were to wrap the mop around the holder element as in D7. Due to its incompatibility with D5 he would not consider D7 in the first place. Insofar it is argued that the skilled person might nonetheless modify the holder element of D5 to allow the mop to be wrapped around its edges, e.g. by dispensing with the element's peripheral edges and using mop cloth less susceptible to suction, such further adaptations imply a redesign of the structure and concept of the holder element of D5, together with further modifications of the mop cloth structure. However, combining all these steps goes beyond the normal skills of the person skilled in the art.

4.5 In the light of the above the Board is persuaded that the opposition division arrived at the correct conclusion that the combination of teachings of D5/D5' with D7 does not deprive the discussed combination of features of upheld claim 1 of inventive step.

In view of the above conclusion, the question whether the other set of differentiating features, related to the provision of two suction mouths, is inventive or not in the light of the teachings of D5/D5' in combination with common general knowledge or D2 is moot.

4.6 The Board therefore confirms the finding of the opposition division in its appealed decision that the subject-matter of upheld claim 1 involves an inventive step.

5. As all the objections raised by the appellant-opponent fail the Board confirms the decision of the opposition division.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated