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Datasheet for the decision of 9 November 2018

Case Number: T 1329/15 - 3.2.04

Application Number: 08004652.7

Publication Number: 1969988

IPC: A47L9/24, A47L9/16, A47L9/10, A47L9/28

Language of the proceedings: EN

Title of invention:
Hand held vacuum cleaner

Patent Proprietor:
Aktiebolaget Electrolux

Opponents:
Dyson Technology Limited
BSH Hausgeräte GmbH

Headword:

Relevant legal provisions:
EPC Art. 56
RPBA Art. 13(1)
EPC R. 101

Keyword:
Admissibility of appeal - (yes)
Inventive step - (no)
Late-filed auxiliary requests - admitted (no)

Decisions cited:
T 1134/11, T 0183/09

Catchword:

Europäisches Patentamt
European Patent Office
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Beschwerdekammern

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Case Number: T 1329/15 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 9 November 2018

Appellant: (Opponent 2)	BSH Hausgeräte GmbH Carl-Wery-Strasse 34 81739 München (DE)
Respondent: (Patent Proprietor)	Aktiebolaget Electrolux 105 45 Stockholm (SE)
Representative:	Electrolux Group Patents AB Electrolux Group Patents 105 45 Stockholm (SE)
Party as of right: (Opponent 1)	Dyson Technology Limited Tetbury Hill Malmesbury, Wiltshire SN16 0RP (GB)
Representative:	Lerwill, Jonathan Ashley Ronald Dyson Technology Limited Tetbury Hill Malmesbury, Wiltshire SN16 0RP (GB)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 27 April 2015 concerning maintenance of the European Patent No. 1969988 in amended form.**

Composition of the Board:

Chairman	A. de Vries
Members:	J. Wright
	C. Heath

Summary of Facts and Submissions

I. The appellant-opponent II lodged an appeal, received 29 June 2015, against the interlocutory decision of the opposition division posted on 27 April 2015 concerning maintenance of the European Patent No. 1969988 in amended form. The appeal fee was paid at the same time. The statement setting out the grounds was received on 31 August 2015.

II. Two oppositions were filed against the patent as a whole and based, *inter alia*, on Article 100(a) together with Articles 52(1) and 56 EPC (lack of inventive step). The division held that the patent as amended according to the main request met all the requirements of the EPC. In its decision the division considered the following documents, amongst others:

D1: JP2002-85297 A, and its English language translation D1' (filed with opponent I's notice of opposition)
D2: EP1279362 A
D8: EP1070478 A

III. Oral proceedings were duly held before the Board on 9 November 2018 in the absence of the opponent I, party as of right, who had been duly summoned and who had informed the Board in a letter of 27 June 2018 that they would not attend the oral proceedings.

IV. The appellant-opponent II requests that the decision be set aside and that the patent be revoked.

The respondent-proprietor requests that the appeal be dismissed, in the alternative that the decision under appeal be set aside and that the patent be maintained

based on one of Auxiliary Requests 1 and 2 filed with letter dated 12 October 2018, and Auxiliary Request 3 filed as Auxiliary Request 1 with letter of 8 January 2016.

The opponent I has made no request.

V. The wording of claim 1 of the various requests is as follows:

Main request (as maintained by the opposition division):
"Hand held vacuum cleaner and an elongated shaft part, the handheld vacuum cleaner is removably secured to the elongated shaft part (10), the upper portion of the elongated shaft part is shaped as a handle (16), the handheld vacuum cleaner having a housing (20) comprising a motor-fan unit (22), a dust container (31) shaped as an elongated body with an open end and an inlet channel (27) opening into the dust container through which dust laden air is directed into the dust container, the vacuum cleaner also comprising at least one filter (39) arranged after the dust container as seen in the flow direction, characterised in that the dust container constitutes a part of or communicates with a cyclone separator arranged between the inlet channel (27) and the filter (39)".

First auxiliary request: worded as for the main request but with deletion of the words "characterised in that" and, at the end of the claim, the addition of the words: "and wherein the shaft part comprises a floor nozzle (12), and a flexible tube passage (15) connecting the floor nozzle with the hand held vacuum cleaner".

Second auxiliary request: worded as claim 1 of the main request with the deletion of the words "characterised in that" and, at the end of the claim, the addition of the following wording: "wherein the inlet channel (27) extends from the front part of the housing to an outlet opening (28) arranged at the middle of the housing (20)".

Third auxiliary request: worded as claim 1 of the main request with, at the end of the claim, the following additional wording: "wherein the inlet channel (27) extends from the front part of the housing to an outlet opening (28) arranged at the middle of the housing (20)".

VI. The appellant-opponent II argued as follows:

The appeal is admissible.
Claim 1 of the main request and third auxiliary requests lacks inventive step, *inter alia*, starting from D2 combined with D1. D2 discloses a hand held vacuum cleaner which implicitly has a filter. The objective technical problem is to prevent too rapid clogging of the filter. The second and third auxiliary requests should not be admitted into the proceedings because they are divergent and not prima facie allowable.

VII. The respondent-proprietor argued as follows:

The opponent's appeal is inadmissible. D2 does not disclose a hand held vacuum cleaner with a filter. Instead of a filter it could use only a filter bag, a dust deflector or a cyclone separator. Therefore, starting from D2, the objective technical problem cannot be to prevent clogging of the filter. Even if D2

were considered to have a filter, claim 1 of the main and third auxiliary requests would involve an inventive step starting from D2 combined with D1 because their respective vacuum cleaners are incompatible for combination. The first and second auxiliary requests should be admitted into the proceedings.

VIII. The opponent I submitted no arguments or comments.

Reasons for the Decision

1. Admissibility of the appeal

The respondent-proprietor argued in their reply to the appeal that the appeal was not admissible because the notice of appeal contained no request and it was questionable whether the notice of appeal contained the appellant's address. Furthermore, they argued that the statement of grounds of appeal did not clearly indicate the reasons for setting aside the impugned decision and was structured more like an opposition notice than a grounds of appeal.

In a communication to the parties of 15 June 2018 (see section 2) the Board set out its reasoned preliminary opinion as to why the appeal of the opponent II was admissible. The opinion is reproduced in italics below:

"2. Admissibility of the appeal

2.1 In the Board's opinion, the appeal is admissible.

The impugned decision is appealable, Article 106 EPC. The appellant-opponent is adversely affected, Article 107 EPC and the notice of appeal and grounds were

timely filed and the fee paid on time, Article 108 EPC. The notice of appeal carried the name of the appellant and both the postal and physical addresses of the appellant-opponent II (see top and bottom of page). Furthermore, the impugned decision is identified by file and patent numbers. Therefore the requirements of Articles 106 to 108 and Rule 99(1)(a) and (b) EPC are fulfilled.

2.2 In accordance with established jurisprudence (see Case Law of the Boards of Appeal, 8th edition, 2016 (CLBA), IV.E.2.5.2.c, and the decisions cited therein), if the ruling in an opposition division decision relates to a single issue, a statement that this decision is appealed is implicitly a request for the decision to be set aside in its entirety.

In the present case, the impugned decision concerned solely the maintenance of the Patent No. 1969988 in amended form. Thus, although the notice of appeal contains no explicit request, the Board interprets the appellant-opponent II's statement that they appeal this decision as an implicit request to have the decision set aside in its entirety, thus that the patent be revoked. This is also consistent with their request in opposition (see notice of opposition, received 30 December 2011, page 1, first bullet-point). Therefore the notice of appeal fulfils the requirements of Rule 99(c) EPC.

2.3 The Board is also of the view that the statement of grounds of appeal fulfil the requirements of Rule 99(2) EPC. In this respect, the Board notes that Rule 99(2) EPC does not specify any particular structure for appeal grounds. Whether or not the reasoning given addresses particular points of the impugned decision,

it sets out over 19 pages and with reference to the facts and evidence relied on, why, in the appellant-opponent II's view, inter alia claim 1 as maintained lacks inventive step, in other words why the impugned decision should be set aside. Therefore the requirements of Rule 99(2) EPC are fulfilled.

2.4 In view of the above, none of the reasons for rejecting the appeal as inadmissible according to Rule 101 EPC apply. Therefore, the Board considers that the appeal is admissible".

1.1 Following the communication, the respondent-proprietor made no further comment on this issue in subsequent letters of 8 and 12 October 2018. At oral proceedings before the Board, their only comment in this regard was to refer the Board to their written submissions.

1.2 In view of the above, the Board sees no reason to deviate from their previous preliminary opinion on this issue, as expressed above. Therefore, the Board concludes that the appeal is admissible.

2. Background

The invention relates to a hand held vacuum cleaner comprising, *inter alia* at least one filter (see published patent specification, paragraph [0001]). According to the patent (see paragraph [0002]) a known hand-held vacuum cleaner has a problem with the filter clogging. A purpose of the invention is to create an arrangement which eliminates a too fast clogging of the filter (specification, paragraph [0008]).

3. Main request, inventive step starting from D2 in combination with D1/D1'

3.1 It is not in dispute that D2 (see paragraph [0022] with figure 1, reference 1) discloses a hand held vacuum cleaner.

3.2 In the Board's view, D2 also discloses an elongated shaft part as claimed. The vacuum cleaner 1 (see paragraphs [0025] and [0032] and [0033] and [0036] with figures 2, 3 and 7) is removably securable to a caddy part 15. Contrary to the respondent-proprietor's opinion, the Board agrees with the appellant-opponent in considering that the caddy 15 with the upper handle portion 51 (see column 10, lines 56 to 57; figure 7) is an elongated shaft part as claimed.

The caddy 15, with its support member 17 is elongate (see column 7, lines 31 to 35 with figure 2): it comprises a "substantially elongate...support member 17". As figure 7 shows, the upper handle portion 51 is shaped as a handle. When assembled together, the caddy 15 and handle portion 51 form an elongated shaft part, to which the hand-held vacuum cleaner can be removably secured, irrespective of the fact (cf. D2, paragraph [0037]) that the upper handle portion is detachable from the the caddy 15. Therefore, D2 discloses an elongated shaft part as claimed.

3.3 The hand held vacuum cleaner of D2 (see paragraph [0022] with figure 1) also has a housing and a motor-fan unit (column 6, last three lines). It likewise has a dust container shaped as an elongate body (column 6, lines 54 to 55 with figure 1, nose cone 3) with an open end, for dust laden air, as indicated in figure 1 by the arrow 10.

3.4 It is not in dispute that D2 does not explicitly disclose that the hand-held vacuum cleaner 1 has a filter. Indeed D2 gives scant information about the configuration of the hand held vacuum cleaner itself, mainly relying (see paragraph [0023]) on references, *inter alia* to D8, for the skilled person to learn details of a suitable hand held cleaner. In the Board's view, however the vacuum cleaner 1 of D2 is configured, it is implicit that it has a filter arranged after the dust container in the [air] flow direction.

3.4.1 As with explicit disclosures, the standard applied is the direct and unambiguous disclosure of a feature. In this context "implicit disclosure" means a disclosure which any person skilled in the art would objectively consider as necessarily implied by the explicit content, (cf. CLBA, I.C.4.3, and the decisions cited therein).

3.4.2 According to the respondent-proprietor, there are only four ways of separating dust from dust-laden air. These are a filter, a cyclone separator, a dust deflector and a filtering dust collection bag.

It may well be that vacuum cleaners with a dust collection bag do not always have a filter upstream of the dust container, since the bag filters air before it enters the motor/fan unit and then leaves the vacuum cleaner. However, the Board considers that the vacuum cleaner of D2 does not have a dust collection bag as the respondent-proprietor has argued it could.

D2 discloses (see column 6, lines 54 to 55) that the nose cone itself "acts as a dust collecting module", which can but mean that nose cone and dust collection module are one and the same. In other words, dust is

collected in the nose cone itself rather than in a bag within the nose cone. In the Board's view, the subsequent passage (column 7, lines 4 to 7) confirms this view. There it is stated that on removing the nose cone, the dust collection module [nose cone] can be emptied. Thus, the nose cone itself is emptied rather than a dust collection bag being removed for disposal or emptying. Therefore, in the Board's opinion the vacuum cleaner of D2 collects dust directly in its nose cone, in other words it has no bag.

3.5 This leaves only the possibilities that the hand-held vacuum cleaner of D2 separates dust by filtering (which inevitably requires a filter), a cyclone separator, a dust deflector or combinations of these. It appears not to be in dispute that it is at least well known to provide a filter in a vacuum cleaner having a dust deflector (see for example D8, column 8, lines 17 to 20 and 28 to 45 with figure 1 - filters 34 and deflectors 44 and 36) and cyclone separator (see for example D1', paragraph [0014]).

In the Board's view, if D2's vacuum cleaner 1 has a dust deflector or cyclone separator, then not only is it likely but it is inevitable that it also has a filter arranged after the dust container in the flow direction. The Board holds that when D2 was published in 2003 (whether or not this is still true), such separators did not separate fine dust to the extent that, without a filter, the upstream motor would not become clogged and damaged and the user exposed to dust laden air.

According to established jurisprudence of the Boards of Appeal (see CLBA, III.G.5.1), each party bears the burden of proof for the facts it alleges.

In the present case the respondent-proprietor contends that a filter is *not* inevitably present in the vacuum cleaner of D2. With D2's vacuum cleaner not having a bag (and filter separation requiring a filter), the respondent-proprietor's contention (D2 has no filter) hinges on filterless vacuum cleaners with a cyclone or deflector dust separator having existed in 2003.

Following the above jurisprudence, the onus lies with the respondent-proprietor to demonstrate that this was so. However, the respondent-proprietor has provided no evidence that might have convinced the Board that their contention is correct, nor have they been able to identify any document on file having such an arrangement (a filterless cleaner with a cyclone or deflector separator). Rather, they have merely asserted, without providing supporting evidence, having a vacuum cleaner at home with a cyclone separator and an optional filter and having seen advertisements for a filterless vacuum cleaner with a cyclone separator at some time in the past.

The Board concludes that the respondent-proprietor's arguments have not convinced the Board that D2's vacuum cleaner could have had no filter. Put differently, it is implicit that D2 discloses a filter.

3.6 It follows that the subject matter of claim 1 differs from the disclosure of D2 only in respect of having an inlet channel and in that the dust container constitutes a part of or communicates with a cyclone separator arranged between the inlet channel and the filter. D2 does not disclose whether or not air enters the vacuum cleaner 1 via a channel. D2 merely discloses (see column 6, lines 52 to 55 with figure 1, arrow 10)

that air enters the dust container via an inlet. Nor does D2 disclose any path followed by dust-laden air between the inlet and the filter, let alone that it is swirled in a cyclone separator.

3.7 In the Board's view, the technical effect of both these differences (inlet channel and cyclone separator) is to prevent clogging of the filter. The inlet channel directs air into the inlet of the cyclone separator (see published patent specification, column 4, line 53 to column 5 line 2) and the cyclone separator, being located between inlet channel and filter, separates heavier particles before they reach the filter (see published patent specification, column 5, lines 2 to 5 and column 4, lines 4 to 11). This is consistent with the stated purpose of the invention (see published patent specification paragraph [0008]), *inter alia*, "to create an arrangement which eliminates a too fast clogging of the filter".

3.8 The objective technical problem can therefore be expressed as how to modify the vacuum cleaner of D2 in order to prevent the filter from clogging too fast.

3.9 The skilled person would be aware of document D1 (in the following text passages refer to translation D1') since it discloses a hand held vacuum cleaner (see paragraph [0011] and page 12, lines 10 to 13 with figure 4).

Furthermore, D1 offers a solution to the objective technical problem posed. D1 explains that, to prevent clogging of the filter, a cyclone system is used. The idea is introduced on page 7 (see translation D1', paragraph [0014]), stating that the cyclone system, results in "less clogging due to dust adhering to the

filter element". This advantageous idea is repeated on page 8 (lines 8 to 13) "dust which travels towards the filter element is lifted [away from the filter]... because of the...cyclone system and the filter is unlikely to become clogged" and again on page 9 (lines 9 to 22 with reference to, *inter alia*, figure 1) [with the cyclone system] "it is possible to reduce the adhesion of dust to the filter element 31".

3.10 The Board holds that, in the light of the above, the skilled person, who has their mind focused on solving the objective technical problem (filter clogging), will, as a matter of obviousness, modify the hand held vacuum cleaner of D2 by incorporating a cyclone system as known from D1.

3.11 To make such a modification, the skilled person will learn from D1 how to implement a cyclone system. D1 teaches (page 7, line 28 to 34, page 9, lines 9 to 12) that an intake port must be provided on the peripheral surface of the dust collection case, so that air is swirled along the surface. Furthermore (see paragraph [0015] with figure 4), this swirling flow must be near the filter (located between the dust container and motor) so that, even when used inverted (for example to clean a ceiling) "dust which travels towards the filter element is lifted [away from the filter] by the swirling flow". Figure 1 shows how this is achieved in detail. Air enters the vacuum cleaner via a suction [inlet] part 26 and is conducted through a channel to an air intake port 37 on the peripheral surface of the dust container 32, close to the filter where the cyclone needs to be generated. Thus, whether or not the channel of D1 also serves to accommodate a telescopic extension pipe 23 (cf. paragraph [0028]), the channel

must end at the top of the dust container 32 in order to form the cyclone there.

3.11.1 In modifying the hand held vacuum cleaner of D2 (see figure 1), the skilled person would therefore provide a channel between the air inlet 10 and the top of D2's dust container 8, so that air is swirled in a cyclone around the internal periphery of the dust container 8, carrying dust away from the filter and thereby prevent it from clogging too quickly.

In so doing the skilled person would arrive at all the features of claim 1 in an obvious manner.

3.12 The Board is not convinced by the respondent-proprietor's argument that the skilled person would not, as a matter of obviousness, consider combining the teachings of D1 and D2 because they are incompatible.

3.12.1 It is true that the external structures of D1 and D2's hand-held vacuum cleaners differ. For example, as the respondent-proprietor has explained (see D2, abstract and figure 10), D2's vacuum cleaner 1 has its own handle and is arranged to be secured to a caddy 15 which can be used with or without a different longer handle 51, whereas (see D1, see paragraphs [0021] and [0025] with figures 2, 3 and 4) D1's vacuum cleaner is always held by the handle integrated into the hand-held vacuum cleaner itself. Similarly, whereas a floor plate may be attached to D2's caddy (figure 10 again), in D1 (see figure 3 with paragraph [0021]) a floor plate unit 44 can be attached to an extension pipe 39.

3.12.2 However, the skilled person is focused on solving the objective technical problem (filter clogging). In this regard, as already explained, D1 (see paragraphs

[0014], [0015] and [0019]) consistently explains that clogging of the filter is prevented by the cyclone separator that swirls the air in a helical fashion to carry dust away from the filter, not by any other features of D1's vacuum cleaner. The skilled person would immediately recognise that the cyclone is functionally independent of other structural features such as the arrangement of a handle, floor plate or extension pipe (whether telescopic or not). Put differently, the skilled person will, as a matter of obviousness, abstract just the idea of using a cyclone separator as known from D1 to modify D2's vacuum cleaner in the way already explained, without changing other features of D2. Thus, although the skilled person may well see structural differences between the vacuum cleaners of D2 and D1, this will not prevent them from combining their teachings as explained.

3.12.3 Similarly, the Board is not convinced that any differences in size there might be between the portable vacuum cleaners of D2 and D1 would dissuade the skilled person from combining their teachings (cf. impugned decision, reasons, points 23 and 24).

D2 (see abstract and figures 1, 2 and 10) does not define the size of the the hand held vacuum cleaner 1, nor would it appear to be subject to any particular size restrictions, with its similarly dimensioned support caddy 15, other than it should be usable when held in the hand.

The same is true of the D1's vacuum cleaner (cf. page 12, lines 10 to 13 with figure 4). Furthermore, D1 shows the skilled person that a cyclone separator is small enough to be incorporated into a hand-held vacuum cleaner.

In any case, considerations of size and dimension fall within the routine design skills of the skilled person, an engineer designing vacuum cleaners. Thus, in adopting the cyclone arrangement of D1 in a vacuum cleaner as in D2 they will size it accordingly.

3.13 From the above, the Board concludes that the subject matter of claim 1 lacks inventive step.

4. Admissibility of auxiliary requests 1 and 2

4.1 The auxiliary requests 1 and 2 were filed with letter of 12 October 2018, just four weeks prior to the oral proceedings before the Board.

4.2 The requests thus amount to an amendment to the Appellant-proprietor's case in the sense of Article 13 of the Rules of Procedure of the Boards of Appeal (RPBA). Under paragraph (1) of that article the Board exercises discretion in admitting such amendments in view of, *inter alia*, complexity of the subject-matter, the state of the proceedings and the need for procedural economy. Furthermore, under Article 13(3) RPBA any amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the parties cannot reasonably be expected to deal with without an adjournment.

4.3 An approach frequently adopted by the Boards when exercising their discretion in admitting an amendment filed during oral proceedings can be summarised as follows: Unless good reasons exist for filing the amendment so far into the proceedings - for example if it is occasioned by developments in the proceedings -

it will be admitted only if it does not extend the scope or framework of discussion as determined by the decision under appeal and the statement of the grounds of appeal, and is moreover clearly allowable, see CLBA IV.E. 4.2.6 b) and the case law cited therein.

4.4 Regarding the framework of discussion, new auxiliary requests filed in appeal proceedings are, in accordance with settled jurisprudence (cf. CLBA, IV.E.4, 4.4.4), expected to be convergent with the previous requests on file, i.e. to develop and increasingly limit the subject-matter of the independent claim in the same direction and/or in the direction of a single inventive idea. Whether the claims of auxiliary requests converge is to be understood in the sense that the subject-matter of the lower ranking requests is further defined i.e. with the intention to counter objections with regard to the preceding requests (see **T 1134/11**, see reasons 10.6).

4.5 Moreover, in accordance with established jurisprudence, amended claims are clearly allowable if the Board can quickly ascertain that they overcome all outstanding issues without raising new ones (see for example **T 183/09**, reasons 4).

4.6 In the present case, no circumstances are apparent to the Board which would justify such a late filing of the auxiliary requests. The respondent-proprietor has argued (letter of 12 October 2018, page 3, section 2) that the requests are filed because the Board's communication expressed a preliminary opinion that differed significantly from the line taken in the impugned decision.

In whatever way the Board's communication differed from the decision, the underlying framework of discussion remains the same as in first instance, namely inventive step, *inter alia*, starting from D2 in combination with D1. Therefore, the Board considers that the respondent-proprietor was in a position to file suitable auxiliary requests with their reply to the appeal.

4.7 Furthermore, in the Board's view, auxiliary requests 1 and 2 are neither convergent with the main request, nor with each other. Claim 1 of the main request concerns the idea of adding a cyclone separator to the hand held vacuum cleaner (see characterising portion). Rather than further developing this idea, claim 1 of the first auxiliary request adds the feature of a floor nozzle and its flexible hose connection. Likewise, instead of adding features of the cyclone separator or the floor nozzle, the second auxiliary request abandons the floor nozzle features and instead adds features concerning the position of air outlet openings in the housing of the hand held vacuum cleaner.

4.8 In this regard, the Board is not convinced by the respondent-proprietor's argument that the features added to each request optimise airflow through the vacuum cleaner and this common idea makes the requests convergent. The patent (see published specification, column 2, lines 35 to 39 and paragraph [0019], last sentence) is silent as to how air-flow might be optimised by using a flexible tube passageway to connect the floor nozzle, nor does it disclose any other advantage to this feature. By the same token, the patent (see specification, column 3, lines 14 to 16 and column 5, lines 8 to 10 with figure 7, reference 26) discloses no particular advantage or technical effect

associated with positioning air outlet openings on the top of the vacuum cleaner.

The Board is also unconvinced by the respondent-proprietor's suggestion that discussing the requests in a particular order might render them convergent. The Board examines convergence based on the features of the claims, independently of the order in which they are considered.

4.9 Furthermore, the Board is not convinced that these requests are clearly allowable.

Regarding the first auxiliary request, the idea of using a floor nozzle is known from D1 and D2 (see for example D2, figure 10 and D1 figures 2 and 3). If, as it appears from the patent (see above), a flexible hose is merely an alternative form of hose having no particular technical advantage, this feature, prima facie, does not appear to render claim 1 clearly allowable in the sense of its subject matter being non-obvious vis-à-vis D2 with D1.

Similarly, concerning the second auxiliary request, locating the air outlet on top of the vacuum cleaner appears, *prima facie*, merely to be an alternative to a side location as is known from D2 (see sentence bridging columns 6 and 7 and figure 1, reference 9). Therefore, the Board is not able to immediately see that this feature renders the subject matter of claim 1 to involve an inventive step. In other words the claim is not clearly allowable.

4.10 For all these reasons the Board decided to exercise its discretion under Article 13(1) and 13(3) RPBA and not

to admit Auxiliary requests 1 and 2 into the proceedings.

5. Third auxiliary request

5.1 The feature added to claim 1 of the third auxiliary request vis-à-vis the main request can be summarised as the inlet channel extending from the front part of the housing to an outlet at the middle of the housing". As the appellant-opponent has argued, the wording "middle of the housing" could, *inter alia* mean precisely half the way between the two extremities of the housing or a middle area. Where the skilled person encounters such an ambiguity, they will consult the description to help interpret the claim. There (see published patent specification, column 3, lines 16 to 18) the inlet channel is said to extend to an outlet arranged at "the middle part" of the housing, rather than merely the middle. Thus, the Board considers that the feature should be interpreted to mean a part of the housing, in other words an area around the middle of the housing, rather than the precise mid-point between the housing's extremities. Nor does the respondent-proprietor argue differently. In their opinion, the skilled person would understand the claim wording "middle of the housing" to mean an area in the middle third of the housing's length.

5.2 As already explained in connection with the main request (see above, point 3.11.1), the Board is of the opinion that it would be obvious for the skilled person to modify the hand held vacuum cleaner of D2 (see figure 1) by providing a channel between the air inlet 10 and the top of D2's dust container 8.

D2 (see figure 1) discloses that the top of the dust container is in an area somewhere near the midway point between the two extremities of the housing. Certainly it is in the middle third of the housing. Thus, for the same reasons as apply to the main request, the skilled person will, as a matter of obviousness, modify D2's vacuum cleaner by adding a channel between the dust container inlet at the front of the housing and the middle of the housing (the top of the dust container) as claimed. Therefore, the subject matter of claim 1 of the third auxiliary request lacks inventive step for the same reasons as apply to the main request.

6. The Board concludes that the subject matter of claim 1 of the main and third auxiliary requests lacks inventive step, Article 56 EPC. The remaining auxiliary requests 1 and 2 have not been admitted into the proceedings. Therefore, none of the requests admitted into the proceedings meet the requirements of the EPC. Consequently, the patent must be revoked pursuant to Article 101(3)(b) EPC.

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. Magouliotis A. de Vries

Decision electronically authenticated