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**Datasheet for the decision  
of 2 May 2022**

**Case Number:** T 1349/18 - 3.2.07

**Application Number:** 11759509.0

**Publication Number:** 2554341

**IPC:** B26B19/38

**Language of the proceedings:** EN

**Title of invention:**

ELECTRIC SHAVER

**Patent Proprietor:**

Panasonic Intellectual Property  
Management Co., Ltd.

**Opponent:**

THE PROCTER & GAMBLE COMPANY

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 123(2)

RPBA Art. 12(4)

RPBA 2020 Art. 12(2), 13(1), 13(2), 15(1)

**Keyword:**

Novelty - main request (no)

Amendments - added subject-matter (yes)

Late-filed document - admitted (no)

Late-filed auxiliary requests - admitted (no)

Late-filed objection - admitted (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

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Case Number: T 1349/18 - 3.2.07

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.07**  
**of 2 May 2022**

**Appellant:**

(Patent Proprietor)

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**Decision under appeal:**

**Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
29 March 2018 concerning maintenance of the  
European Patent No. 2554341 in amended form.**

**Composition of the Board:**

**Chairman**            I. Beckedorf  
**Members:**            V. Bevilacqua  
                              A. Cano Palmero

## **Summary of Facts and Submissions**

I. The patent proprietor and the opponent each lodged an appeal in the prescribed form and within the prescribed time limit against the interlocutory decision of the opposition division maintaining European patent EP 2 554 341 in amended form.

II. The patent proprietor requested at the outset of the appeal proceedings with their statement of grounds of appeal and their reply to the opponent's statement of grounds of appeal

that the appealed decision be set aside and that the patent be maintained as granted,

alternatively, that the patent be maintained in amended form on the basis of one of auxiliary requests 1 to 14 filed with the statement setting out the grounds for appeal,

alternatively, that the opponent's appeal be dismissed (auxiliary request 15);

as a further alternative, that the patent be maintained in amended form on the basis of one of auxiliary requests 16 and 17 filed with the reply to the statement setting out the grounds for appeal of the opponent (letter dated 10 December 2018);

and that the appeal fee be reimbursed.

The opponent initially requested

that the appealed decision be set aside and  
that the patent be revoked in its entirety.

- III. In preparation for oral proceedings the Board communicated its preliminary assessment of the case by means of a communication pursuant to Article 15(1) RPBA 2020 according to which the appeal fee was not to be reimbursed and the patent could be maintained on the basis of the set of claims according to auxiliary request 16.
- IV. With letter dated 2 March 2022 the opponent submitted a list of objections which they considered as having been implicitly raised against auxiliary request 16.
- V. With letter dated 1 April 2022 the patent proprietor withdrew auxiliary requests 3 to 5 and submitted new auxiliary requests 6A, 8A, 9A, 11A and 12A.
- VI. Oral proceedings were held on 2 May 2022. The factual and legal situation was discussed with the parties present during oral proceedings. During oral proceedings the patent proprietor withdrew their request for reimbursement of the appeal fee under Rule 103(1) (a) EPC. For further details of the course of the oral proceedings, reference is made to the minutes thereof.

At the end of oral proceedings the opponent requested

that the appealed decision be set aside and  
that the patent be revoked.

The patent proprietor requested

that the appealed decision be set aside and that the patent be maintained as granted, alternatively, that the patent be maintained in amended form on the basis of one of auxiliary requests 1, 2, 6 to 14 filed with the statement setting out the grounds for appeal, or auxiliary requests 6A, 8A, 9A, 11A and 12A filed with letter of 1 April 2022, alternatively that the opponent's appeal be dismissed (auxiliary request 15); as a further alternative, that the patent be maintained in amended form on the basis of one of auxiliary requests 16 and 17 filed with the reply to the statement setting out the grounds for appeal of the opponent (letter dated 10 December 2018).

At the conclusion of the oral proceedings the decision was announced.

VII. The following document mentioned in the appealed decision will be referred to:

D1: EP 1 930 137 A1.

The present decision also refers to the following document mentioned in the statement setting out the grounds for appeal of the opponent:

D3: US 5,185,933,

as well as to the following document mentioned in the letter dated 5 March 2020 of the opponent:

D4: EP 2 554 339 B1.

VIII. The lines of argument of the parties relevant for the present decision are dealt with in detail in the reasons for the decision.

IX. Claim 1 of the **main request** reads as follows:

"An electric shaver (1), comprising:  
a shaver main body (3);  
outer blades (11) having blade holes (36) defined by frames (32); and  
inner blades (13) provided inside the outer blades to move relative to the outer blades and cut body hair inserted into the blade holes,  
wherein a plurality of the outer blades (17, 19, 21) are formed into an arc-like shape projecting toward a skin surface and exposed on a top end surface of the shaver main body, the frames of at least one of the outer blades are provided with hair lifting frames (33) that come into contact with the body hair to lift the body hair from the skin surface when moving on the skin surface,  
the hair lifting frames (33) are provided only in a range (X) between a top (Y) of a first outer blade located on one side in a traveling direction and a top (Y) of a second outer blade (19) located on another side in the traveling direction when using the shaver main body (3),  
wherein the frames include transverse frames (35) extending in an inverted U-shaped manner in the travelling direction and vertical frames (30) extending in a longitudinal direction perpendicular to the traveling direction,  
characterized in that  
the vertical frames (30) include the hair lifting frames (33) and common frames (31) having a hair lifting ability lower than the hair lifting frames."

X. Claim 1 of **auxiliary request 1** reads as follows  
(features added with respect to claim 1 of of the main  
request are in bold, emphasis added by the Board):

"An electric shaver (1), comprising:  
a shaver main body (3);  
outer blades (11) having blade holes (36) defined by  
frames (32); and  
inner blades (13) provided inside the outer blades to  
move relative to the outer blades and cut body hair  
inserted into the blade holes,  
wherein a plurality of the outer blades (17, 19, 21)  
are formed into an arc-like shape projecting toward a  
skin surface and exposed on a top end surface of the  
shaver main body, the frames of at least one of the  
outer blades are provided with hair lifting frames (33)  
that come into contact with the body hair to lift the  
body hair from the skin surface when moving on the skin  
surface,  
the hair lifting frames (33) are provided only in a  
range (X) between a top (Y) of a first outer blade  
located on one side in a traveling direction and a top  
(Y) of a second outer blade (19) located on another  
side in the traveling direction when using the shaver  
main body (3),  
wherein the frames include transverse frames (35)  
extending in an inverted U-shaped manner in the  
travelling direction and vertical frames (30) extending  
in a longitudinal direction perpendicular to the  
traveling direction, **and wherein each of the blade  
holes (36) is defined by a pair of transverse frames  
(35) and a pair of the vertical frames (30);**  
characterized in that

the vertical frames (30) include the hair lifting frames (33) and common frames (31) having a hair lifting ability lower than the hair lifting frames."

XI. Claim 1 of **auxiliary request 2** reads as follows (features added with respect to claim 1 of of auxiliary request 1 are in bold, emphasis added by the Board):

"An electric shaver (1), comprising:  
a shaver main body (3);  
outer blades (11) having blade holes (36) defined by frames (32); and  
inner blades (13) provided inside the outer blades to move relative to the outer blades and cut body hair inserted into the blade holes,  
wherein a plurality of the outer blades (17, 19, 21) are formed into an arc-like shape projecting toward a skin surface and exposed on a top end surface of the shaver main body, the frames of at least one of the outer blades are provided with hair lifting frames (33) that come into contact with the body hair to lift the body hair from the skin surface when moving on the skin surface,  
the hair lifting frames (33) are provided only in a range (X) between a top (Y) of a first outer blade located on one side in a traveling direction and a top (Y) of a second outer blade (19) located on another side in the traveling direction when using the shaver main body (3),  
wherein the frames include transverse frames (35) extending in an inverted U-shaped manner in the travelling direction and vertical frames (30) extending in a longitudinal direction perpendicular to the traveling direction, and wherein each of the blade holes (36) is defined by a pair of transverse frames (35) and a pair of the vertical frames (30) **and each of**

**the vertical frames (30) of the pair of vertical frames (3) of a respective one of the blade holes (36) is a hair lifting frame (33) or a common frame (31);**

characterized in that

the vertical frames (30) include the hair lifting frames (33) and common frames (31) having a hair lifting ability lower than the hair lifting frames."

XII. Independent claim 2 of **auxiliary requests 6 to 15** reads as follows:

"An electric shaver (1), comprising:

a shaver main body (3);

a plurality of outer blades (11) having blade holes (36) defined by frames (32), wherein said plurality of outer blades (11) is composed of a first outer blade (17) and a second outer blade (19); and

inner blades (13) provided inside the outer blades (17, 19) to move relative to the outer blades and cut body hair inserted into the blade holes,

wherein the first outer blade (17) and the second outer blade (19) are formed into an arc-like shape projecting toward a skin surface and exposed on a top end surface of the shaver main body,

wherein the frames of the first outer blade (17) are provided with hair lifting frames (33) that come into contact with the body hair to lift the body hair from the skin surface when moving on the skin surface, and the frames of the second outer blade (19) are provided with hair lifting frames (33) that come into contact with the body hair to lift the body hair from the skin surface when moving on the skin surface,

wherein the hair lifting frames (33) are provided only in a range (X) between a top (Y) of the first outer blade (17) located on one side in a traveling direction and a top (Y) of the second outer blade (19) located on

another side in the traveling direction when using the shaver main body (3), wherein the frames of the first outer blade (17) and frames of the second outer blade (19) include transverse frames (35) extending in an inverted U-shaped manner in the travelling direction (25) and vertical frames (30) extending in a longitudinal direction (23) perpendicular to the traveling direction (25), and wherein the vertical frames (30) include the hair lifting frames (33) and common frames (31) having a hair lifting ability lower than the hair lifting frames."

XIII. Auxiliary requests 6A, 8A, 9A, 11A and 12A are based on auxiliary requests 6, 8, 9, 11 and 12 respectively whereby independent claim 2 thereof (see point XII above for the text of this claim) is cancelled.

XIV. Claim 1 of **auxiliary request 16** reads as follows:

"An electric shaver (1), comprising:  
a shaver main body (3);  
outer blades (11) having blade holes (36) defined by frames (32); and  
inner blades (13) provided inside the outer blades to move relative to the outer blades and cut body hair inserted into the blade holes,  
wherein a plurality of the outer blades (17, 19, 21) are formed into an arc-like shape projecting toward a skin surface and exposed on a top end surface of the shaver main body,  
the frames of at least one of the outer blades are provided with hair lifting frames (33) that come into contact with the body hair to lift the body hair from the skin surface when moving on the skin surface,

the hair lifting frames (33) are provided only in a range (X) between a top (Y) of a first outer blade located on one side in a traveling direction and a top (Y) of a second outer blade (19) located on another side in the traveling direction when using the shaver main body (3), wherein the frames include transverse frames (35) extending in an inverted U-shaped manner in the travelling direction and vertical frames (30) extending in a longitudinal direction perpendicular to the traveling direction, wherein each of the blade holes (36) is defined by a pair of transverse frames (35) and a pair of the vertical frames (30) and each of the vertical frames (30) of the pair of vertical frames (30) of a respective one of the blade holes (36) is a hair lifting frame (33) or a common frame (31), the vertical frames (30) include the hair lifting frames (33) and common frames (31) having a hair lifting ability lower than the hair lifting frames; and wherein the hair lifting frames (33) are provided in the first and second outer blades (17, 19) and the hair lifting frames (33) are provided in a third outer blade (21) other than the first and second outer blades (17, 19), wherein the third outer blade (21) is arranged between the first and second outer blades (17, 19)."

XV. Claim 2 of **auxiliary request 16** reads as follows:

"An electric shaver (1), comprising:  
a shaver main body (3);  
exactly two outer blades (11) having blade holes (36) defined by frames (32), wherein said two outer blades (11) are composed of a first outer blade (17) and a second outer blade (19); and

inner blades (13) provided inside the outer blades to move relative to the outer blades and cut body hair inserted into the blade holes,  
wherein the first outer blade (17) and the second outer blade (19) are formed into an arc-like shape projecting toward a skin surface and exposed on a top end surface of the shaver main body,  
wherein the frames of the first outer blade (17) are provided with hair lifting frames (33) that come into contact with the body hair to lift the body hair from the skin surface when moving on the skin surface, and the frames of the second outer blade (19) are provided with hair lifting frames (33) that come into contact with the body hair to lift the body hair from the skin surface when moving on the skin surface,  
the hair lifting frames (33) are provided only in a range (X) between a top (Y) of the first outer blade located on one side in a traveling direction and a top (Y) of the second outer blade (19) located on another side in the traveling direction when using the shaver main body (3),  
wherein the frames of the first outer blade (17) and frames of the second outer blade (19) include transverse frames (35) extending in an inverted U-shaped manner in the travelling direction and vertical frames (30) extending in a longitudinal direction perpendicular to the traveling direction,  
wherein each of the blade holes (36) is defined by a pair of transverse frames (35) and a pair of the vertical frames (30) and each of the vertical frames (30) of the pair of vertical frames (30) of a respective one of the blade holes (36) is a hair lifting frame (33) or a common frame (31),  
the vertical frames (30) include the hair lifting frames (33) and common frames (31) having a hair lifting ability lower than the hair lifting frames."

## Reasons for the Decision

1. *Revised Rules of Procedure of the Boards of Appeal (RPBA 2020) - transitional provisions*

The present proceedings are governed by the revised version of the Rules of Procedure which came into force on 1 January 2020 (Articles 24 and 25(1) RPBA 2020), except for Article 12(4) to (6) RPBA 2020 instead of which Article 12(4) RPBA 2007 remains applicable (Article 25(2) RPBA 2020).

2. Late filed documents - admittance

- 2.1 D3

- 2.1.1 D3 was filed by the opponent with the statement setting out the grounds of appeal (letter of 10 December 2018, point 2.2.3). The admittance thereof has been objected to by the patent proprietor on the basis of Article 12(4) RPBA 2007.

- 2.1.2 The opponent explains that D3 was submitted in reaction to a development of the discussion occurred during the oral proceedings before the opposition division as regards novelty of claim 2 of auxiliary request VII, being the version held by the opposition division to meet the requirements of the EPC, which was limited to two outer blades only (point 6.3 of the statement of grounds).

The opponent also argues that D3 was *prima facie* relevant for a patentability discussion of the claims of auxiliary request 16 and for these reasons should be

admitted into appeal proceedings.

- 2.1.3 The Board notes that the criterion of "*prima facie* relevance", to which the opponent refers in their justification, is not mentioned in Article 12(4) RPBA 2007. The Board also notes that the opponent failed to raise novelty objections against claim 2 of auxiliary request VII during opposition oral proceedings (see page 9 of the minutes, as well as point II.10.2 of the decision), and that a request with a claim directed to the embodiment with two outer blades was first submitted, together with supporting arguments, with the letter of the proprietor of 3 February 2017.

The Board therefore concludes that the opponent could and actually should have submitted D3 during the proceedings before the opposition division in reaction to the letter of the proprietor dated 3 February 2017 (Article 12(4) RPBA 2007), and decides to not admit D3 into appeal proceedings.

- 2.2 D4

- 2.2.1 Admittance of D4 has been objected to by the patent proprietor on the basis of Article 13(1) RPBA 2020.

- 2.2.2 The opponent argues that this document is relevant for the interpretation of the expression "hair lifting ability".

D4 was filed by the opponent with letter of 23 July 2020 (see point 1.3.a)), after their reply to the patent proprietor's statement setting out the grounds of appeal.

According to the opponent, D4 could not have been submitted earlier as this document was a response to the arguments on novelty submitted in the letter dated 26 July 2019 (points 2.2 (a) and 2.3 (d)) and in the reply to the statement of grounds of appeal of 10 December 2018 (2.2.1 (c)) of the patent proprietor.

2.2.3 The Board is not convinced by the opponent's justification for the late filing of D4.

Article 13(1) RPBA 2020 stipulates that any amendment to a party's appeal case after they have filed their grounds of appeal or reply is subject to the party's justification for their amendment and may be admitted only at the discretion of the Board.

The opponent refers, in their justification, to the claim interpretation at the basis of the novelty arguments submitted by the patent proprietor in the letter dated 26 July 2019 (points 2.2 (a) and 2.3 (d)) and in the reply to the statement of grounds of appeal of 10 December 2018 (2.2.1 (c)).

The opponent however fails to explain convincingly why these submissions justify the late filing of a new document.

This is because the above-mentioned claim interpretation chosen by the patent proprietor (grounds of appeal, point 2.2.1 (c)) was already discussed during opposition proceedings, as it is evident from the last sentence of point II.10.2 of the appealed decision (see also page 17, line 6).

Point 2.2.a of the letter dated 26 July 2019 also explicitly refers to the arguments already submitted with the grounds for appeal of the patent proprietor.

Based on all that, the Board decides to not admit D4 into appeal proceedings (Article 13(1) RPBA 2020).

3. Main request - Lack of novelty of claim 1

3.1 The opposition division found (appealed decision, point II.1.2) that the subject-matter of claim 1 of the main request lacked novelty over the content of the disclosure of document D1.

3.2 According to the patent proprietor, the opposition division disregarded, when comparing the subject-matter of claim 1 of the main request with the shaver disclosed in D1, the requirement that all three outer blades had at least "common frames".

The opposition division acknowledged that this requirement was comprised in the claim, so the patent proprietor, and this was apparent from section II.4.1 of the decision.

Novelty was to be acknowledged because D1 (reference was made to paragraph [0021] thereof) clearly failed to disclose this feature (see point 2.1.1 of the grounds).

3.3 The Board is not convinced by the above line of argument and concurs with the analysis given under point II.1.2 of the reasons of the appealed decision.

This is because the Board follows the interpretation of claim 1 proposed by the opponent, according to which the formulation thereof is not specific about where the

common frames are provided, but merely requires that "the frames", collectively, include vertical frames; and that "the vertical frames", collectively, include common frames.

Based on the above interpretation, the common frames can be located on any of outer blades.

On the contrary, the claim interpretation proposed by the patent proprietor, namely that claim 1 stipulates that all three outer blades have at least common frames, is considered by the Board as not being supported by the wording of claim 1.

The reference of the proprietor to point II.4.1 of the appealed decision is not suitable to show that the opposition division did not assess the novelty of claim 1 of the main request correctly.

This is because point II.4.1 of the appealed decision deals with the interpretation of the last feature of claim 1 of auxiliary request II in opposition ("wherein the common frames (31) are provided in the top portion (27) of the third outer blade (21)"), and this feature is not comprised in claim 1 of the main request.

It is therefore not relevant, for the purpose of reviewing the appealed decision on the main request, if D1 discloses this feature or not.

- 3.4 The patent proprietor also argues in favour of novelty of claim 1 of the main request over D1, starting from the understanding of figure 9 of D1 as outlined in section II.8.2 of the decision under appeal (point 2.1.2 of the grounds).

The above line of argument is however also not suitable to show an error in the appealed decision on the main request, because the decision of the opposition division to not allow the main request was not based on the arguments set out in point II.8.2 of the appealed decision, which dealt with novelty of claim 1 of auxiliary request V.

3.5 As a consequence of the above, the patent proprietor has not convincingly demonstrated that the opposition division wrongly assessed that the subject-matter of claim 1 of the main request lacks novelty over D1.

4. Admittance of auxiliary requests 1 and 2

4.1 The opponent requests that auxiliary requests 1 and 2 not be admitted, arguing that they could and should have been submitted during oral proceedings before the opposition division at the latest (Article 12(4) RPBA 2007).

4.2 Auxiliary requests 1 and 2 were submitted for the first time with the proprietor's statement of grounds of appeal.

These requests were filed, so the patent proprietor, in reaction to a surprising change in the opposition division's interpretation of figure 9 of document D1 which occurred during oral proceedings, when novelty of present auxiliary request 9 (auxiliary request V in opposition, see section II.8.2 of the decision under appeal) was discussed.

The patent proprietor explained that the amendments made to claim 1 of auxiliary requests 1 and 2 were done to establish novelty over document D1, for the case

that figure 9 was (erroneously) interpreted as in section II.8.2 of the decision under appeal.

These auxiliary requests could not have been filed earlier, so the patent proprietor, because they specifically addressed issues raised by the surprising change in the opposition division's interpretation of figure 9 of document D1, which took place at the end of oral proceedings.

- 4.3 The Board agrees with the opponent, because the main purpose of appeal proceedings resides in a review of the appealed decision (Article 12(2) RPBA 2020) and discussing auxiliary requests 1 and 2 would go beyond the framework of such a review.

Auxiliary requests 1 and 2 are based on claim 1 of the main request, with amendments made in reaction to the grounds (see point II.8.2 of the appealed decision) for not allowing auxiliary request V.

The patent proprietor has not convincingly explained how amendments made to the main request in reaction to the grounds for not allowing auxiliary request V (II.8.2 of the appealed decision) could be considered as an appropriate reaction to the novelty objection on the basis of which the main request was not allowed. This is because the rejection of the main request was not based on the allegedly incorrect interpretation of figure 9 to which the proprietor objects.

The Board also notes that the proprietor had the opportunity to present new requests during oral proceedings before the opposition division, and that therefore if the filing of auxiliary requests 1 and 2 was done to overcome the novelty objections against the

main request, this could evidently have been done before the opposition division.

According to the case law (see Case Law of the Boards of Appeal [CLB], 9th edition 2019, V.A.4.11.1) appeal proceedings are not just an alternative way of dealing with and deciding upon an opposition.

The admission of auxiliary requests 1 and 2 would also compel the Board to give a first ruling on issues related to features extracted from the description and never discussed before, such as those raised by the opponent in its reply to the statement setting out the grounds for appeal (points 6-8).

The Board therefore decides, in exercising its discretion under Article 12(4) RPBA 2007, to not admit auxiliary requests 1 and 2 into the appeal proceedings.

5. Auxiliary request 6 - added subject-matter

5.1 Claim 2 of present auxiliary request 6 corresponds to claim 2 of auxiliary request I in opposition.

The opponent argued before the opposition division that the list of shaver components given in this claim was not exhaustive, and that for this reason claim 2 encompassed embodiments with more than two outer blades and therefore extended beyond the content of the originally filed documents.

This objection was dismissed by the opposition division (see point II.3.1 of the appealed decision) which concluded that the subject-matter thereof was limited to two outer blades only.

5.2 The opponent criticises the above conclusions of the opposition division (point 5.2 of the statement of grounds of appeal, point 15 of the reply to the proprietor's grounds of appeal) by explaining that the formulation of this claim ("comprising a plurality of outer blades...composed of a first outer blade and a second outer blade") did not exclude the presence of a third outer blade.

This claim, so the opponent, was directed towards an undisclosed generalization of the embodiment depicted in figure 10, which was limited to only three outer blades positioned in a well defined sequence in the travelling direction.

As a consequence of the above, claim 2 of auxiliary request 6 contravened the requirements of Article 123(2) EPC.

5.3 The patent proprietor refers to paragraphs [0040] and [0042] and Figure 11 of the original application and argues, in a first step of their argumentation, that claim 2 was limited to embodiments having two outer blades only, such that the conclusions of the opposition division were correct (point 5.1 of the statement setting out the grounds of appeal).

In a second step, the patent proprietor argues that figures 10 and 11, in combination with paragraphs [0005] to [0008] and [0027], [0028], [0038], [0042] and [0043] of the original description, provide support for the subject-matter of claim 2 even if this was considered as extending to embodiments having more than two outer blades.

This is because the above passages teach that the invention is not limited to a particular number of outer blades, and that the gist of the invention is to have the hair lifting frame only in the "range X" (see figures 10 and 11) between the respective tops of the two outermost blades.

Claim 2 complied with the requirements of Article 123(2) EPC, so the patent proprietor, because it also defined said range (X) to be between the two outer blades of the electric shaver in the traveling direction, such that any further outer blade carrying hair-lifting frames would inevitably be positioned in this range, irrespective of how many outer blades are foreseen.

- 5.3.1 The Board is convinced that claim 2 is not to be understood as being limited to embodiments having two outer blades only, and considers the claim interpretation chosen by the opposition division as excessively restrictive.

This is because, as established in the case law (see CLB, *supra*, II.A.6.2), the formulation "comprising" used in claim 2 ("an electric shaver (1) comprising... a plurality of outer blades") is to be construed as the indication that the claim is a non exhaustive list of the components of the shaver.

As the presence of further components (such as a third outer blade) could not be meaningfully excluded by a skilled reader (see figure 10), the Board disagrees with the conclusions of the opposition division that the above "open" interpretation of claim 2 would not make technical sense and be disregarded.

As a consequence of the above, claim 2 of auxiliary request 6 extends to non-disclosed shavers having, next to a plurality of outer blades composed by a first and a second outer blade, at least a third outer blade.

Clearly such an embodiment is not derivable from paragraphs [0038], [0040], [0042] and [0043] and figure 11 of the application as originally filed, which exclusively concern a shaver with exactly two outer blades.

Figure 10 and paragraphs [0027] and [0028], related to a shaver with only three outer blades, whereby the third outer blade is positioned between the first and the second outer blades, also do not provide support for claim 2.

This is because claim 2 is not only formulated in such a way that the third outer blade could also be positioned after the second outer blade in the travelling direction, but also extends to embodiments having more than three outer blades.

These passages do not disclose embodiments having a freely positioned third outer blade or more than three outer blades, as claimed.

The above discussion shows, following the arguments of the opponent, that claim 2 of auxiliary request 6 gives rise to an undisclosed generalization of the embodiment disclosed in figure 10, which was limited to only three outer blades positioned in a well defined sequence in the travelling direction.

For the above reasons auxiliary request 6 cannot be allowed (Article 123(2) EPC).

6. Auxiliary requests 7 to 15

Auxiliary requests 7 to 14 and auxiliary request 15 (corresponding to the version of the patent in amended form held by the opposition division to meet the requirements of the EPC) also contravene the requirements of Article 123(2) EPC and are therefore not allowable. This is because claim 2 of all these auxiliary requests is identical to claim 2 of auxiliary request 6, discussed above.

7. Auxiliary requests 6A, 8A, 9A, 11A and 12A.

7.1 Admittance of auxiliary requests 6A, 8A, 9A, 11A and 12A has been objected by the opponent on the basis of Article 13(2) RPBA 2020.

7.2 These requests are based on previously filed auxiliary requests 6, 8, 9, 11 and 12, the only amendment being that claim 2 thereof was removed, and were filed with letter of 1 April 2022, *i.e.* after the notification of the summons to oral proceedings and after the patent proprietor received the communication of the Board pursuant to Article 15(1) RPBA 2020.

These auxiliary requests should be admitted into appeal proceedings, so the patent proprietor, because they immediately address, with a straightforward amendment, the negative preliminary opinion of the Board on claim 2 thereof.

7.3 Article 13(2) RPBA 2020 stipulates that any amendment to a party's appeal case made after notification of the summons to oral proceedings shall, in principle, not be taken into account unless there are exceptional

circumstances, which have been justified with cogent reasons by the party concerned.

The patent proprietor justifies the deletion of claim 2 from auxiliary requests 6, 8, 9, 11 and 12 with the receipt of a communication of the Board pursuant to Article 15(1) RPBA 2020 containing an objection against claim 2 thereof (points 4.2 and 6).

This justification is not convincing, because the above objection was not raised in the communication of the Board for the first time, but was already in the statement setting out the grounds of appeal of the opponent, at point 5.2, to which the patent proprietor already reacted on time by filing, with letter of 10 December 2018, auxiliary requests 15 to 17.

As a consequence of the above, the patent proprietor fails to justify with cogent reasons that the filing of auxiliary requests 6A, 8A, 9A, 11A and 12A was occasioned by exceptional circumstances.

The Board therefore decides to not admit auxiliary requests 6A, 8A, 9A, 11A and 12A into appeal proceedings (Article 13(2) RPBA 2020).

## 8. Auxiliary request 16 - Admittance

8.1 Admittance of auxiliary request 16 has been objected to by the opponent on the basis of Article 12(4) RPBA 2007 with the argument that the patent proprietor failed to explain why this request was not filed at first instance.

The amendments made to auxiliary request 16 also fail to address, so the opponent, all the objections raised

against the higher ranking requests, especially those based on on articles 83, 84 and 123 (2) EPC.

Since the patent proprietor failed to properly substantiate this request by explaining why it was allowable, auxiliary request 16 should not be admitted.

8.2 The Board disagrees.

Auxiliary request 16 was submitted, together with auxiliary requests 15 and 17, with letter of 10 December 2018, in reply to the statement setting out the grounds of appeal of the opponent.

As put forward by the patent proprietor with said reply (see the points 3.1, 3.2 and 3.4) auxiliary request 16 is based on auxiliary request 15, which corresponds to the maintained version according to the appealed decision, and contains amendments (referred to as features 1 to 4 in this letter) aimed at overcoming the objections of added subject-matter against claim 1 (feature 3) claim 2 (feature 4) as well as the patentability objections based on document D1 (features 1 and 2, see point 3.4) raised in the statement setting out the grounds for appeal of the opponent against said maintained version.

As the arguments submitted in relation to compliance of auxiliary request 15 with the requirements of Articles 83 EPC (point 2.5) and 84 EPC (point 2.4) clearly also apply to auxiliary request 16, the Board disagrees with the allegation of the opponent that auxiliary request 16 was not properly substantiated.

As auxiliary request 16 is a timely reaction to the objections raised in the statement setting out the

grounds of appeal, the Board sees no reason to conclude that it could or should have been filed earlier (Article 12(4) RPBA 2007).

As a consequence of the above the Board decides to admit auxiliary request 16 into appeal proceedings.

9. Objections against auxiliary request 16 - Admittance

9.1 With letter dated 2 March 2022 the opponent raised objections against auxiliary request 16 and submitted that it was implicitly clear that these objections, which had been already submitted against higher ranking requests, were maintained against auxiliary request 16. Thus, objections had not been raised with the letter dated 2 March 2022 for the first time, and were therefore to be admitted into appeal proceedings.

9.2 The Board disagrees for the following reasons.

9.2.1 The only argument raised by the opponent against the allowability of auxiliary request 16 before receiving the communication issued by the Board under Article 15(1) RPBA 2020 was that objections formulated against the main request "apply likewise to the claims of each of the auxiliary requests" (letter dated 5 March 2020, bottom of page 4).

From the above statement it is not apparent, without any further explanation from the opponent, how objections raised against the main request, formulated even before auxiliary request 16 was filed at all, could "likewise" apply to auxiliary request 16 unknown to the opponent at that point in time.

It is not the task of a Board of Appeal to search and select between the objections of the opponent against higher ranking requests those which theoretically could apply to auxiliary request 16, and to adapt them taking the amendments contained in auxiliary request 16 into account.

This would contradict the purpose of appeal proceedings, which are aimed at a review in a judicial manner the contested decision, and the Board's duty to be impartial in *inter partes* proceedings.

The opponent therefore failed to submit any substantiated objections against auxiliary request 16 before notification of the summons to oral proceedings.

- 9.2.2 As a consequence of the above, the objections raised by the opponent against auxiliary request 16, to the extent mentioned in its letter of 2 March 2022, clearly constitute an amendment to the opponent's appeal case made after notification of the summons to oral proceedings.

According to Article 13(2) RPBA 2020 such an amendment shall, in principle, not be taken into account unless there are exceptional circumstances, which have been justified with cogent reasons by the party concerned.

- 9.3 The opponent requested that the objections raised against auxiliary request 16 with letter of 2 March 2022 be admitted arguing that the public interest in not maintaining an invalid patent should supersede procedural considerations based on the RPBA.

The opponent also requested that the Board introduces the above objections into appeal proceedings of its own

motion, arguing that a Board of appeal has a duty to examine the compliance with the requirements of the EPC.

- 9.4 The Board is not convinced that the opponent, by submitting the above lines of argument, justified with cogent reasons the presence of the exceptional circumstances sought for according to Article 13(2) RPBA 2020.

This is because disregarding the RPBA and introducing *motu proprio* new objections against the patent in suit is not compatible with a fair and impartial conduct of *inter partes* proceedings,

The objections raised by the opponent against auxiliary request 16, to the extent mentioned in its letter of 2 March 2022, are therefore not admitted into the proceedings.

As a consequence of the above, no admissible objection at all has been raised against auxiliary request 16, so that the patent in suit can be maintained in amended form on the basis of auxiliary request 16.

10. Adaption of the description

The patent proprietor adapted the description to the claimed subject-matter of auxiliary request 16 to which the opponent did not object.



The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated



**Beschwerdekammern**

**Boards of Appeal**

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**Case Number: T 1349/18 - 3.2.07**

**D E C I S I O N**  
**of the Technical Board of Appeal 3.2.07**  
**of 23 September 2022**  
**correcting an error in the decision**  
**of 2 May 2022**

**Appellant:**

(Patent Proprietor)

Panasonic Intellectual Property  
Management Co., Ltd.  
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**Representative:**

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**Appellant:**

(Opponent)

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**Representative:**

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**Decision under appeal:**

**Interlocutory decision of the Opposition**  
**Division of the European Patent Office posted on**  
**29 March 2018 concerning maintenance of the**  
**European Patent No. 2554341 in amended form.**

**Composition of the Board:**

**Chairman:** I. Beckedorf

**Members:** V. Bevilacqua

A. Cano Palmero

### **Summary of Facts and Submissions**

I. The present decision concerns the correction under Rule 140 EPC of the decision dated 2 May 2022, taken in case T 1349/18 concerning European patent application No. 11759509.0.

II. During oral proceedings before the Board, on **2 May 2022**, the patent proprietor filed new paragraphs [0008], [0012], [0029], [0030] and [0046] of the description in order to adapt the original filed description to the wording of the claims found allowable by the Board.

This amended version of the description, comprising the new paragraphs filed electronically as pdf file "P3070761EP - 20220502 - Amended Description" in clean and marked-up version on the day of the oral proceedings at 13:54h, was the basis and the subject of the order of the Board's decision announced at the end of the oral proceedings.

III. According to the order of the written decision, posted on 8 June 2022, and the minutes of the oral proceedings, however, paragraphs [0008], [0012], [0029], [0030] and [0046] of the description of patent to be maintained were received **during oral proceedings of 2 May 2020**.

### **Reasons for the Decision**

1. The order as mentioned in the written decision and in the minutes of the oral proceedings therefore contains

a typing error in the year specification, at which the adapted paragraphs of the description were filed by the patent proprietor and received by the Board.

2. This error is obvious, because the only oral proceedings before the Board held in case T 1349/18, at which the patent proprietor filed an adapted description of the patent, took place on 2 May 2022, and not on 2 May 2020, and because of the clear reference, in the order, to the only oral proceedings held.
3. Based on the above this obvious typing error can be and herewith is corrected by the Board of its own motion under the provision of Rule 140 EPC.

**ORDER**

For these reasons it is decided that:

Point 3 of the order of the decision of 2 May 2022 is corrected in the written decision and in the minutes of oral proceedings as follows:

**The case is remitted to the opposition division with the order to maintain the patent as amended in the following version:**

**Claims:**

**1 and 2                      filed with letter of 10 December 2018  
   as auxiliary request 16**

**Description, paragraphs:**

**[0001] to [0007],  
[0009] to [0011],**

[0013] to [0028],  
[0031] to [0045],  
[0047] and [0048] of the patent specification;

[0008], [0012],  
[0029], [0030] and  
[0046] received during oral proceedings of  
2 May 2022

Drawings, figures:

1 to 11 of the patent specification

The Registrar:

The Chairman:



G. Nachtigall

I. Beckedorf

Decision electronically authenticated