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**Datasheet for the decision  
of 6 December 2023**

**Case Number:** T 2150/21 - 3.2.01

**Application Number:** 14800081.3

**Publication Number:** 3071376

**IPC:** B26B19/06

**Language of the proceedings:** EN

**Title of invention:**

HAIR CUTTING APPLIANCE AND BLADE SET

**Patent Proprietor:**

Koninklijke Philips N.V.

**Opponents:**

1. Babylics Faco SRL
2. THE PROCTER & GAMBLE COMPANY
3. Mathys & Squire LLP
4. Zhejiang Anda Electric Co. Ltd.

**Headword:**

**Relevant legal provisions:**

EPC Art. 100, 54, 56, 83, 105, 123(2)  
EPC R. 103(1)(a), 111(2)  
RPBA 2020 Art. 11, 15(1)

**Keyword:**

Grounds for opposition - insufficiency of disclosure (no) -  
added subject-matter (no) - lack of patentability (no)  
Appealed decision - sufficiently reasoned (yes) - substantial  
procedural violation (no)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
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Case Number: T 2150/21 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 6 December 2023**

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(Opponent 2)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 12 October 2021  
rejecting the opposition filed against European  
patent No. 3071376 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** A. Pieracci  
O. Loizou

## **Summary of Facts and Submissions**

- I. An appeal was filed by opponents 1 and 2 respectively in the prescribed form and within the prescribed time limit against the decision of the opposition division to reject the oppositions against the European patent No. 3 071 376.
- II. Opponent 4 (intervener) intervened in the appeal proceedings according to Article 105 EPC.
- III. In preparation for the oral proceedings the Board communicated its preliminary assessment of the case with a communication pursuant to Article 15(1) RPBA, according to which the appeals of the opponents 1 and 2 were likely to be successful.
- IV. The patent proprietor reacted with letter dated 13 September 2023 to the above communication of the Board.
- V. Oral proceedings before the Board took place on 6 December 2023. At the end of the oral proceedings the decision was announced. For further details of the proceedings reference is made to the minutes thereof.
- VI. The final request of opponent 1 is:

that the appealed decision be set aside and the patent be revoked.
- VII. The final request of opponent 2 is:

that the case be remitted to the opposition division because of a substantial procedural violation and the appeal fee be reimbursed (main

request), or in the alternative, that the appealed decision be set aside and the patent be revoked.

VIII. Opponent 3 did not participate in the appeal proceedings and had no requests.

IX. The final request of opponent 4 (intervener) is:

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

X. The final requests of the patent proprietor (respondent) are:

that the appeals be dismissed and that the patent be maintained as granted (main request), or in the alternative, that the patent be maintained in amended form on the basis of one of the sets of claims according to one of auxiliary requests 1, 1A, 2, 2A, 2B, 3, 4, 5, 7, 8 and 9 filed with the reply.

XI. The following documents are referred to in the present decision:

D3: US 2 323 655 A;  
D5: WO 2013/072840 A1;  
D8: US 2010/0299930 A1;  
D7: US 2 102 529 A;  
D9: US 5 579 581 A;  
D10: JPH09-253353 A;  
D10T: English translation of D10;  
D11: WO 2009/081301 A;  
D12: US 2011/225826 A;  
D14: US 2 290 326 A;  
D15: US 2 151 965 A;

D17: Milady, "Milady's Standard Professional Barbering", 5th Edition, 2011, cover page and page 113.

XII. The arguments of the parties are dealt with in detail in the reasons of the decision.

XIII. Claim 1 of the patent as granted (main request) reads as follows (features designation according to the decision of the opposition division):

"1. A blade set (20) of a hair cutting appliance (10), said blade set (20) being arranged to be moved through hair in an assumed moving direction (28) to cut hair,

2. said blade set (20) being configured to pivot or swivel with respect to a housing of the hair cutting appliance (10), said blade set (20) comprising:

3. - a stationary blade (22) comprising at least one toothed cutting edge (32, 34), and a lateral end (30),

4. wherein the stationary blade (22) further comprises a first surface (48) that is arranged, when in use for shaving purposes, as a skin-contacting surface,

5. - a movable blade (24) comprising a toothed cutting edge (32, 34), wherein the movable blade (24) is arranged to be reciprocally moved with respect to the stationary blade (22) in a cutting direction (Y) that is basically perpendicular to the assumed moving direction (28);

6. the blade set (20) further comprises a lateral protecting element (56) associated with the lateral end

(30), thereby defining a lateral end cap of the stationary blade (22),

7. wherein the lateral protecting element (56) laterally shields a lateral edge (40) of the lateral end (30), such that, when in use, skin contact of the at least one lateral edge (40) is prevented,

8. and wherein the lateral protecting element (56) and the lateral end (30) cooperate so as to prevent hairs from being trapped there between,

9. wherein the stationary blade (22) and the movable blade (24) are at least partially made from steel, and the lateral protecting element (56) is made from plastic material."

## **Reasons for the Decision**

1. Alleged procedural violation

1.1 Opponent 2 (see the statement setting out the grounds of appeal, point 3, pages 3 and 4) argues that the decision of the opposition division is not sufficiently reasoned within the meaning of Rule 111(2) EPC.

The opposition division found the subject-matter of claim 1 of the patent as granted to be inventive over the combination of D9 with D3 on the basis that both documents lack feature 8 (see point XIII above) as indicated in the reasons of the impugned decision, page 18, point 4.8, reading in particular in lines 2 to 4:



"Also D3 has been found to miss the lateral protecting element according to feature 8 of the patent in suit (see explanation under 4.5)".

However, so opponent 2, neither in point 4.5 nor in any other part of the decision it is explained why feature 8 is not disclosed in D3. This lack of reasoning entails a substantial procedural violation warranting the remittal to the opposition division and the reimbursement of the appeal fee.

- 1.2 The Board does not share the view of opponent 2 that a logical chain of reasoning in the finding of the opposition division is missing to the extent that the decision is to be seen as being flawed because of insufficient reasoning.

In point 4.4 of the reasons of the impugned decision it is indicated that according to opponent 3 D9 differs from the subject-matter of claim 1 by feature 8, which is allegedly shown in D3, figure 7 and page 2, lines 36-45 and 63-72, so that the combination of D9 with D3 would lead to the subject-matter of the claim.

The finding of the opposition division in point 4.8 of the reasons of the decision that D3 does not disclose "the lateral protecting element according to feature 8" implies that the opposition division has not been convinced that the passages of D3 indicated by opponent 3 disclose the disputed feature. This is considered to be in the present case as an indication sufficient for the Board and the parties to understand the reasons which lead the opposition division not to follow the arguments of lack of inventive step of opponent 3.

The above finding of the Board has been communicated to the parties with the annex to the summons to oral proceedings.

Opponent 2 did not react to the preliminary opinion of the Board either in writing or at the oral proceedings. Thus, after having reconsidered all the legal and factual aspect of the case, the Board confirms its preliminary opinion as final.

The decision of the opposition division is thus considered to be sufficiently reasoned and consequently a procedural violation cannot be identified so that the request of remittal of the case to the opposition division and the request of reimbursement of the appeal fee cannot be granted at least for this reason (Rule 103(1) (a) EPC and Article 11 RPBA).

2. Added subject-matter of claim 1 of the patent as granted (Article 100 c) and 123(2) EPC)

2.1 Claim 1 of the application as originally filed and published (WO 2015/075159 A1) claims a blade set comprising a stationary blade and

"a movable blade (24) comprising a toothed cutting edge (32, 34), wherein the stationary blade (22) and the movable blade (24) **are arranged to be reciprocally moved with respect to each other** in a cutting direction (Y) that is basically perpendicular to the assumed moving direction (28)",

whereas claim 1 of the patent as granted claims a blade set comprising a stationary blade and

"a movable blade (24) comprising a toothed cutting edge (32, 34), wherein the movable blade (24) **is arranged to be reciprocally moved with respect to the stationary blade** (22) in a cutting direction (Y) that is basically perpendicular to the assumed moving direction (28)."

- 2.2 The opposition division found (see point 2.2 at page 8 of the reasons of the impugned decision) that the expression "reciprocal movement" between two elements encompasses three options, namely that both elements can move with respect to each other, the first element can move with respect to the second or the second element can move with respect to the first.

Considering that a blade is indicated in claim 1 as originally filed as being stationary and the other as being movable, claim 1 as granted presents just a clarification of the wording of claim 1 as originally filed and is consistent with the description and the drawings of the application as originally filed. The opposition division concluded that the above combination of features of claim 1 as granted does not add subject-matter with respect to the application as originally filed.

- 2.3 Opponent 2 contested that in claim 1 as originally filed it is not claimed that there is a relative motion between the blades but that both blades are to be moved with respect to each other and that this is also mentioned in the description (see the statement setting out the grounds of appeal, page 16 to 17, point 7.2).

- 2.4 Opponent 2 argued that the passages of the description as originally filed (see WO 2015/075159 A1, on page 15 lines 27 to 28 and on page 19, lines 4 to 6) indicated by the patent proprietor for supporting the fact that

that the movable blade can be moved relative to the stationary blade, namely:

"the movable blade 24 can be housed in the stationary blade 22 for lateral movement with respect to the stationary blade 22"

and

"With further reference to figure 6, a drive engagement slot 70 is illustrated through which the movable blade 24 can be engaged and operated, so as to generate the relative motion between the stationary blade 22 and the movable blade 24"

describe the relative motion together with other features. These features, such as the housing of the movable blade and the drive engagement slot, so the opponent, are inextricably linked to the relative motion of the blades and should be present in the claim not to offend the requirements of Article 123(2) EPC.

- 2.5 The Board disagrees and shares the view of the patent proprietor that the amendments carried out during prosecution of the application clarify the contradictions present in claim 1 as originally filed in which on one side one blade is meant to be "stationary" and the other "movable" and on the other side the (both) blades are said to be "arranged to be reciprocally moved with respect to each other". By specifying that the movable blade is "arranged to be reciprocally moved with respect to the stationary blade" this contradiction has been clarified. Since this clarification is in line with the example of the application as originally filed, and no example is present showing that both blades are movable, the Board

concludes that claim 1 as clarified during prosecution and then granted does not provide the person skilled in the art with a new technical teaching and thus subject-matter has not been added extending beyond the content of the application as originally filed.

3. Sufficiency of disclosure (Article 100(b) and 83 EPC)

3.1 Opponent 2 argues that feature 8 of claim 1 (see feature analysis in point XIII above), namely:

"wherein the lateral protecting element (56) and the lateral end (30) cooperate so as to prevent hairs from being trapped there between"

amounts to a parameter range feature, i.e. the range of the dimension of the slot between the lateral protecting element and the lateral end allowing the hairs not to be trapped. Since the ends of this range are not defined in the patent, experiments are needed to identify them.

3.2 Furthermore a number of non-working embodiments are comprised in the claim and the patent does not contain enough information for deriving appropriate working alternative, i.e. sizes of the slot, with reasonable effort.

3.3 Moreover, the information of the range of 0 to 150 microns set out in paragraph [0027] leads to a large number of non working embodiments. Since the human hair is generally understood to vary in diameter from about 17 to 181 micron, a large part of that range is approximately of the same size as the diameter of some hairs, leading to an increased probability of hair trapping.

- 3.4 The invention as claimed according to claim 1 is thus insufficiently disclosed.  
This is further exacerbated by claim 4, since therein the gap is defined as being "adapted to an assumed cross-sectional extension of a hair filament", so that referring implicitly to paragraph [0027] also includes a number of non-working embodiments. Furthermore, claim 4 does not specify anything about other features such as depth and shape of the slot, the type of hair and the hair cutting device operating characteristics which appear to be prima facie relevant for hair trapping.
- 3.5 The Board disagrees.  
According to established case law, a successful objection of insufficient disclosure presupposes that there are serious doubts, substantiated by verifiable facts. The burden lies with the opponent, who must establish, on the balance of probabilities, that a skilled person reading the patent, using common general knowledge, would be unable to carry out the invention (see the Case Law of the Boards of Appeal (CLB), 10th edition, 2022, II.C.9).
- 3.6 The Board considers that opponent 2 has not discharged its burden of proof.  
As found by the opposition division (see the appealed decision, page 7, point 1.2, first paragraph), paragraph [0027] of the patent in suit, indicating that a seamless arrangement is preferred and then providing preferred values of the maximum width of the gap, together with paragraph [0067] and [0069] of the patent, provides sufficient information to the person skilled in the art to put the claimed invention into practice.

3.7 It is not apparent why the person skilled in the art would not be in the position of realizing the claimed invention, in particular by seamlessly adjoining the lateral protecting element and the stationary blade or by reducing the maximum width of the gap to an appropriate dimension, so that the effect claimed can be achieved as argued by the patent proprietor (see for example page 7, point 3.5 to 3.7, of the letter dated 8 June 2022).

Therefore the opponent 2's argument that both claims 1 and 4 cover a plurality of non-working embodiments and that the skilled person is not capable to identify working embodiments is not convincing. That other features which might be relevant for defining the slot are not further specified in claim 4 does not imply that the invention is insufficiently disclosed as argued by opponent 2, since it has not been shown why the common general knowledge would not support the person skilled in the art in this regard.

3.8 The Board is thus not convinced by the argument of opponent 2 that the opposition division erred in considering the claimed invention to be sufficiently disclosed for it to be carried out by the person skilled in the art.

4. Novelty of the subject-matter of claim 1 of the patent as granted (Article 100 a) and Article 54 EPC)

4.1 The opponents contested the finding of the opposition division that the subject-matter of claim 1 is distinguished from the disclosure of document D9 by feature 8, namely:

"wherein the lateral protecting element (56) and the lateral end (30) cooperate so as to prevent hairs from being trapped there between."

4.2 The patent proprietor contested that not only feature 8 but also features 2 and 7 (see point XIII above) are not disclosed in document D9.

4.3 Opponent 1 argued that taking into account paragraph [0027] of the opposed patent it is clear that feature 8 refers to the hairs to be cut and not to the hairs already cut by the cutting appliance.

Considering the passage at column 6, lines 11 to 15 of D9, reading:

"It will be seen that the wide edge 104 has a wider outside tooth at each end thereof. These outside teeth 112 allow more protection against cutting and nicking of the skin by the edge 106",

the person skilled in the art, so opponent 1, could see from figure 2 that a hair could not come from underneath and be pinched between the mobile blade and the edge of the casing, since the space below the opening is protected by the lateral teeth 112, so that the lateral protecting element 76 and the lateral end 112 correspond to feature 8 of claim 1.

4.4 Opponent 2, making reference to the drawings of D9, argued that the lateral end face of the outermost tooth of fixed blade 86 is pressed against the lateral protecting element 42 so that there is no gap between the two and a hair cannot be trapped. Furthermore, even if this were not the case, the region of the housing of the blade set in which the hair would enter would be



such to allow it to move freely and then get out again, so as not to be trapped.

- 4.5 The Board is not convinced by the arguments of the opponents. Firstly, the Board agrees with the patent proprietor that the claim cannot be read as encompassing a gap between the lateral protecting element and the lateral end which is so large that hairs can always freely get through and get out, i.e. cannot be trapped at all. The claim indeed requires the lateral protecting element and the lateral end to cooperate so as to prevent hairs from being trapped there between, i.e. that the relative position of the lateral protecting element and the lateral end is such as to prevent hairs from being held there between. Such a "cooperation" is absent if the lateral protecting element and the lateral end are at such a (large) relative distance allowing free passage of any hairs. Secondly, the arguments of the opponents are based on deductions developed on the basis of the drawings of document D9, which however are not meant to illustrate the cooperation between the elements of the blade set and the hairs in view of the possibility of the hairs of getting trapped between the lateral protecting element and the lateral end of the stationary blade. Since the drawings of D9 are indeed schematic and no specific teaching is provided in document D9 in relation to trapping of hairs, the Board cannot find a direct and unambiguous disclosure of the disputed feature of claim 1 in this document. Also, in D9 nothing is said about trapping hairs and as argued by the patent proprietor in its reply to the Board's communication, there could be constructional arrangements which would prevent the hairs from exiting any gap present between the upper and lower elements 42 and 44 once entered. The arguments of the opponents can only

be seen as being speculative and can at most be considered as describing a possible realization of the blade set of D9 but not as a direct and unambiguous disclosure of the same.

4.6 The Board is thus not convinced that the opposition division erred in considering the subject-matter of claim 1 as being novel in view of document D9 due to feature 8.

4.7 As novelty is already provided by feature 8 there is no need to address the other features which the patent proprietor considered also as not being disclosed in D9, in particular feature 7, on which regard the Board concurred with the patent proprietor at the oral proceedings.

5. Inventive step of the subject matter of claim 1 of the patent as granted in view of D3 in combination with D9 or with D5 and D8/D11 (Article 100 a) and 56 EPC)

5.1 The opponents argued that document D3 discloses the features of claim 1 apart from feature 2 (the blade set being configured to pivot or swivel) and feature 9 (the materials used for the blades and for the protecting element) which are however to be derived in an obvious way from D9 or from D5 in combination with D8/D11.

5.2 The opponents argued that document D3 referring to figures 7 and 8 indicates that (see page 2, right-hand column, lines 36-45):

"In the embodiment of Figs. 7 and 8 the guard plate 42 is similar to guard plate 35, except that instead of the upturned end flanges, its end flanges are upturned as at 43 and inturned as at 44 to present a pair of

marginal surfaces, the face of each of which has a convexity, **to come substantially flush with the face of the shearing assembly S** and the inner edges 45 of which come **substantially into abutting engagement with the end edges** of the interposed shearing assembly"

so that it discloses feature 8. By using the expression "substantially flush with" and "substantially into abutting engagement with", it is to be derived there is no gap between the edges of the stationary blade 14 and the guard plate 42 in which an hair can be trapped.

- 5.3 The Board disagrees and concurs with the patent proprietor that due to manufacturing tolerances and possible dimensional differences between the elements of the shearing apparatus, it cannot be excluded that despite the expression "substantially flush" and "substantially into abutting engagement" hair can get trapped, in particular since the issue of hairs getting trapped is not addressed at all in document D3.
- 5.4 The Board is therefore not convinced by the arguments of the opponents that document D3 directly and unambiguously discloses feature 8 and thus that the combination of the teaching of this document with that of D9 or of D5 and D8/D11 would lead to the claimed subject-matter.
6. Inventive step of the subject matter of claim 1 of the patent as granted starting from D10 as the closest prior art (Article 100 a) and 56 EPC)
- 6.1 Opponent 2 argued that D10 describes in combination the features of claim 1 with the exception of feature 2 (the blade set being configured to pivot or swivel), which can be derived in an obvious way by documents

D12, D9 or D11, and of the feature that "the blades are at least partially made from steel" which is trivial and which can also be derived from documents D3, D7, D12, D14, D15 and D17.

- 6.2 Opponent 2 contested the finding of the opposition division (see the appealed decision, point 4.7 bridging pages 16 and 17) that in D10 hairs could get trapped since groove 40 formed in the stationary blade 24 as shown in figures 4 and 6 would allow hairs to enter and become trapped between an end face of the stationary blade 24 and blade holder (lateral protecting element) 28.
- 6.3 Opponent 2 (see statement setting out the grounds of appeal, page 13, points 6.3.1 to 6.3.5) argued that due to the presence of convex portions of the lateral protecting element 28 mentioned at paragraph [0021] of D10T hairs cannot get trapped between the end face of stationary blade 24 and lateral protecting element 28 of D10.
- 6.4 The Board is not convinced by the argument of opponent 2 and rather concurs with the patent proprietor that a direct and unambiguous disclosure that such convex portion is capable of totally blocking the insertion cavity of element 28, and thus avoid hairs getting trapped, cannot be derived from D10. In fact D10 does not address the issue of hairs getting trapped within the blade set and in particular between the end face of stationary blade 24 and lateral protecting element 28.
- 6.5 The Board is thus not convinced by the arguments of opponent 2 that document D10 directly and unambiguously discloses feature 8 and consequently is also not convinced that the combination of the teaching of this

document with that of D12 or D9 or D11 as well as with documents D3, D7, D12, D14, D15 and D17 would lead to the claimed subject-matter.

7. Inventive step of the subject matter of claim 1 of the patent as granted in view of D9 in combination with the common general knowledge (Article 56 EPC)
- 7.1 Opponent 1 argued that starting from D9 and considering as distinguishing features of the subject-matter of the claim features 7 and 8, it would be obvious to provide a lateral protecting element as according to feature 7. Furthermore it would also be obvious to provide the lateral protecting element and the lateral end in such a way that they cooperate to prevent hairs from being trapped there between with the aim of solving the problem of preventing hairs to be trapped between the lateral protecting element and the lateral end.
- 7.2 The Board is not convinced by the argument of opponent 1, since at least in view of distinguishing feature 8 the problem formulated already contains the solution and thus it can only be seen as an *ex post facto* assessment of inventive step (see CLB, *supra*, I.D. 4.2.1).
- 7.3 Since the assessment of inventive step of opponent 2 in view of feature 8 is not convincing, the assessment in view of feature 7 does not need to be addressed.
8. The Board is thus not convinced by the arguments of the opponents that the opposition division erred in finding that the subject-matter of claim 1 of the patent as granted is non obvious.

**Order**

**For these reasons it is decided that:**

The appeals and the intervention are dismissed.

The Registrar:

The Chairman:



A. Voyé

G. Pricolo

Decision electronically authenticated