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**Datasheet for the decision
of 1 April 2025**

Case Number: T 0459/23 - 3.2.03

Application Number: 16160458.2

Publication Number: 3070214

IPC: E03D11/13, A47K13/00, E03D11/08

Language of the proceedings: EN

Title of invention:
FLUSH TOILET

Patent Proprietor:
Toto Ltd.

Opponent:
Geberit International AG

Headword:

Relevant legal provisions:
EPC Art. 100(c), 123(2), 111(1)
RPBA 2020 Art. 11

Keyword:

Grounds for opposition - extension of subject-matter (yes)
Amendments - allowable (no) - extension beyond the content of
the application as filed (yes) - intermediate generalisation
Appeal decision - remittal to the department of first instance
(no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0459/23 - 3.2.03

D E C I S I O N
of Technical Board of Appeal 3.2.03
of 1 April 2025

Appellant:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 25 January 2023
rejecting the opposition filed against European
patent No. 3070214 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman

C. Herberhold

Members:

R. Baltanás y Jorge

J. Hoppe

Summary of Facts and Submissions

- I. European patent No. EP 3 070 214 B1 relates to a flush toilet.
- II. An opposition was filed against the patent based on Articles 100(b) EPC, 100(c) EPC, and 100(a) EPC in conjunction with Articles 54 EPC and 56 EPC.
- III. The present appeal of the opponent (appellant) is against the decision of the opposition division to reject the opposition.
- IV. In a communication pursuant to Article 15(1) RPBA, the Board indicated its preliminary opinion.

Oral proceedings were held on 1 April 2025.

- V. Requests

At the end of the oral proceedings the requests were as follows:

The opponent (appellant) requested that the decision under appeal be set aside and the European patent be revoked.

The patent proprietor (respondent) requested that the appeal be dismissed or as an auxiliary measure, that the case be remitted to the first instance to discuss the maintenance of the patent in amended form on the basis of the claims of auxiliary request 4, filed with the reply to the appeal, or as a further auxiliary measure that the patent be maintained in amended form

based on auxiliary request 4, filed with the reply to the appeal, or based on one of auxiliary requests 5 to 8, filed with its letter dated 14 February 2025.

VI. Claim 1 of the main request (i.e. granted claim 1), including the labelling of its features as adopted in the contested decision, reads as follows (amendments with respect to the originally filed claim 1 are marked in bold):

- a) *A flush toilet comprising:
a bowl portion **(8)** including a bowl-shaped waste receiving surface **(44)** and a rim portion **(54)** formed on a_top edge of the waste receiving surface **(44)**;*
- b) *a water discharge path **(10c)** for discharging waste, the water discharge path having an inlet that is connected at a bottom of the bowl portion **(8)**;*
- c) *a water spouting portion **(14)** for spouting flush water to the bowl portion **(8)** to generate a circulating current;*
- d) *a water conduit **(24)** for supplying flush water to the water spouting portion;*
- e) *and an exterior member **(6)** including an exterior part **(58)** disposed over the rim portion **(54)**;*
- f) *wherein the rim portion **(54)** comprises a rim outer wall portion **(56)** forming an outer perimeter of the rim portion **(54)**, and a rim inner wall portion **(52)** forming an inner perimeter of the rim portion **(54)**;*
- f1) *the rim outer wall portion **(56)** comprises*
- f2) *a rim outer wall upper sloped surface **(56a)** being positioned in an outside of an upper region of the rim outer wall portion **(56)** and being sloped*

downward toward ~~an outer~~ **the outside** of the bowl portion (8);

- g) and at least a part of the exterior part is disposed at the height of the rim outer wall upper sloped surface,
- h) **wherein the rim inner wall portion (52) comprises**
- h1) **a rim inner wall upper sloped surface (52a) being positioned in an inside of an upper region of the rim inner wall portion (52) and being sloped downward toward the inner of the bowl portion (8);**
- i) **characterized in that:**
the rim inner wall portion (52) further comprises a vertical wall (52b) forming a wall surface in the vertical direction up to the rim inner wall upper sloped surface (52a);
- j) **and in that in at least a part of an entire perimeter of the rim portion (54),**
- j1) **a horizontal distance (W1) between an [sic] top end (52d) of the rim inner wall upper sloped surface (52a) and a bottom end (52c) of the rim inner wall upper sloped surface (52a) is formed**
- j2) **to be longer than**
- j3) **a horizontal distance (W2) between a top end (56d) of the rim outer wall upper sloped surface and a bottom end (56c) of the rim outer wall upper sloped surface.**

Features h), h1), j), j1), j2) and j3) basically correspond to the originally filed claim 2.

VII. Claim 1 of auxiliary request 4 is based on claim 1 of auxiliary request 1 except that: the following feature e1) has been incorporated after feature e); feature i) has been replaced by the following feature i1) (amendments are marked in bold); and the following

features k), l) and m) have been incorporated at the end of the claim:

- e1)** *the exterior part being formed by side walls of a toilet lid (4), each side wall including a lid bottom end portion (60)*
- i1)** *characterized in that:*
*the rim inner wall portion (52) further comprises a vertical wall (52b) forming a wall surface **rising** in the vertical direction **from a top end of the waste receiving surface (44)** up to a **bottom end (52c)** of the rim inner wall upper sloped surface (52a)*
- k)** *wherein the lid bottom end portion (60) is positioned between the top end (56d) and the bottom end (56c) of the rim outer wall upper sloped surface (56a), being disposed at a height below a height of a top surface of the rim portion, and being disposed at a height above the height of the bottom end (56c) of the rim outer wall upper sloped surface*
- l)** *wherein an outlet of the spouting portion is formed in a front region of the bowl portion (8) such that the flush water swirls from the front end of the bowl portion (8) toward a rear of the bowl portion (8) to generate the circulating current*
- m)** *and wherein the spouting portion is formed to spout to the front of the bowl portion (8), the rim portion (54) has an upper portion that overhangs inwardly being disposed on the front side of an outlet of the spouting portion*

VIII. Claim 1 of auxiliary request 5 is based on claim 1 of the main request except that feature e1) has been incorporated after feature e) and the following feature k1) has been incorporated at the end of the claim:

k1) *and wherein, in the height direction, the lid bottom end portion (60) is positioned between the top end (56d) and the bottom end (56c) of the rim outer wall upper sloped surface (56a), being disposed at a height below a height of a top surface of the rim portion, and being disposed at a height above the height of the bottom end (56c) of the rim outer wall upper sloped surface*

IX. Claim 1 of auxiliary request 6 is based on claim 1 of auxiliary request 5 except that feature i) has been replaced by feature il).

X. Claim 1 of auxiliary request 7 is based on claim 1 of auxiliary request 6 except that feature l) has been incorporated at the end of the claim.

XI. Claim 1 of auxiliary request 8 is based on claim 1 of auxiliary request 7 except that feature m) has been incorporated at the end of the claim.

XII. The appellant's arguments relevant to the present decision can be summarised as follows:

(a) Main request - added subject-matter

The incorporation of feature i) ("*the rim inner wall portion further comprises a vertical wall forming a wall surface in the vertical direction up to the rim inner wall upper sloped surface*") resulted in an unallowable intermediate generalisation since this

feature had been originally disclosed only in combination with other features which had been omitted and with which it was inextricably linked.

Indeed, the vertical wall (52b) was not only part of the solution to the problem of easier cleanability of the toilet rim. It was, in fact, also part of the solution to the problem of avoiding water splashing out of the toilet, and was thus inextricably linked with the features aimed at achieving this purpose, namely being inextricably linked with the vertical wall being formed in an overhanging shape in part of the region from the rim spout port of the bowl portion to the fore of the toilet. This resulted from the device being defined in the originally filed claim 1 as a flush toilet, a type of device which implied that some means had to be provided to avoid such undesirable water splash. Contrary to the respondent's argument, the originally filed application did not disclose that the overhang shown on the rim on the right-hand side of Figure 6 - where no vertical wall as defined in claim 1 was present (see paragraph [0083]) - was optional. This overhang - omitted in the granted claim 1 - was part of the complete technical solution disclosed in the particular embodiment.

The particular embodiment of the originally filed application from which feature i) had been isolated consisted of a complete solution, from which features could not be cherry-picked at will, ignoring the technical information provided by the disclosure as a whole. This particular embodiment disclosed the provision of an overhang in the front part of the rim to avoid water splashing out of the toilet (see Figure 6). While Figure 9 did indeed disclose a strictly vertical ("plumb") wall, this was only for the

particular part of the rim portion shown and did not provide a basis for a vertical wall (in the strict sense of the word) throughout.

Furthermore paragraph [0064] of the originally filed application disclosed that the vertical wall (52b) formed "*a wall surface which rises in the vertical direction from the waste receiving surface 44 top end 44a*". This feature had also been omitted in the granted claim 1, although it was disclosed, in particular, in relation to the technical problem of easier cleanability of the toilet (see paragraph [0104]).

(b) Auxiliary request 4 - remittal

No special reasons for remittal within the meaning of Article 11 RPBA could be seen which would justify remittal of the case to the department of first instance.

(c) Auxiliary request 4 - added subject-matter

Features e1) ("*the exterior part being formed by side walls of a toilet lid, each side wall including a lid bottom end portion*") and k) ("*the lid bottom end portion is positioned between the top end and the bottom end of the rim outer wall upper sloped surface, being disposed at a height below a height of a top surface of the rim portion, and being disposed at a height above the height of the bottom end of the rim outer wall upper sloped surface*") were originally disclosed only in combination with the further features according to which "*the toilet lid bottom end portion 60, toilet lid outer surface 60c and the rim outer wall 56b are disposed in an essentially flush relationship, or the toilet lid bottom end portion 60 toilet lid*

outer surface 60c is disposed further outside the toilet than the rim outer wall 56b" (see column 14, lines 53 to 57).

The omission of these further features in claim 1 of auxiliary request 4 resulted in an unallowable intermediate generalisation.

(d) Auxiliary requests 5 to 7 - added subject-matter

The same objections as those raised against claim 1 of the main request applied to claim 1 of each of auxiliary requests 5, 6 and 7, since the same features of the particular embodiment originally disclosed had been omitted there.

(e) Auxiliary request 8 - added subject-matter

The same objections as those raised against claim 1 of auxiliary request 4 applied to claim 1 of auxiliary request 8 since the incorporated feature "in the height direction" (feature k1)) did not imply the presence of the omitted features.

XIII. The respondent's arguments relevant to the present decision can be summarised as follows:

(a) Main request - added subject-matter

The incorporation of feature i) ("*the rim inner wall portion further comprises a vertical wall forming a wall surface in the vertical direction up to the rim inner wall upper sloped surface*") into granted claim 1 had a basis in paragraphs [0062] to [0064] of the originally filed application. The omission of other features from the particular embodiment was allowable

since those features were independent as far as the technical effect provided by each of them was concerned. Thus, although there was an intermediate generalisation, it was an allowable one.

It was disclosed in paragraphs [0062] and [0063] that the rim inner wall portion had a vertical wall comprising different sections, one being a vertical wall (52b) rising essentially vertically and a second one having an overhanging shape. Paragraph [0064] related to the first portion, namely indicating that the vertical wall (52b) formed a wall surface which rose in the vertical direction from the waste-receiving surface (44) top end (44a). However, this was not limiting since it was not linked with the problem of providing easier cleanability of the toilet.

The features originally disclosed as essential to solving the technical problem of easier cleanability of the toilet rim were the vertical wall, defined in feature i) (see paragraphs [0102] to [0104] and Figure 9), and the definition of the rim inner / outer wall upper sloped surfaces (features j) to j3) (see paragraph [0116]). All these features were defined in granted claim 1, which therefore did not extend beyond the content of the original disclosure.

Even if Figure 6 did not show the cleanability aspect, it showed a portion of the vertical wall within the scope of claim 1 on both sides of the figure. The rim on the right-hand side of Figure 6 comprised a vertical wall extending vertically along the overhang up to the rim inner wall upper sloped surface (52a).

In any case, a possible inconsistency in the figures and in the use of reference numbers did not cast doubt

on the features which were disclosed in a direct and unambiguous manner in paragraphs [0062] to [0064], the incorporation of feature i) into granted claim 1 being based on an explicit disclosure in the originally filed description, as shown in paragraph [0104] and Figure 9 disclosing how the technical effect of easier cleanability was achieved by the features of granted claim 1.

(b) Auxiliary request 4 - remittal

Remittal of the case was appropriate at this stage of the proceedings since the respondent had not had the opportunity to discuss the matters arising in relation to auxiliary request 4 before the department of first instance.

(c) Auxiliary request 4 - added subject-matter

Paragraphs [0089] to [0091] of the originally filed application gave support to amended features e1) ("*the exterior part being formed by side walls of a toilet lid, each side wall including a lid bottom end portion*") and k) ("*wherein the lid bottom end portion is positioned between the top end and the bottom end of the rim outer wall upper sloped surface, being disposed at a height below a height of a top surface of the rim portion, and being disposed at a height above the height of the bottom end of the rim outer wall upper sloped surface*"). A generalisation through the addition of these features in isolation from other features of the particular embodiment was justified in view of this support.

(d) Auxiliary requests 5 to 7 - added subject-matter

The same arguments as those provided in support of the main request applied to claim 1 of auxiliary requests 5 to 7.

(e) Auxiliary request 8 - added subject-matter

The same arguments as those put forward in support of auxiliary request 4 applied to claim 1 of auxiliary request 8.

Reasons for the Decision

1. Main request - added subject-matter -
Article 100(c) EPC
- 1.1 Feature i) of claim 1 defines the rim inner wall portion as further comprising a vertical wall forming a wall surface in the vertical direction up to the rim inner wall upper sloped portion.
- 1.2 The application as originally filed discloses a "vertical wall" which, "in most of the region", rises essentially vertically, but may include, in part, an overhanging shape towards the inside of the bowl portion (paragraphs [0062] and [0063] of the application as filed, i.e. of its A1 publication; all references to the original application will be made with respect to this document). It also discloses a vertical wall which forms a generally plumb wall surface (paragraph [0104]), i.e. one which is vertical in the strict geometric sense of the term. In the appellant's view the term "vertical" was to be

understood in the strict sense ("plumb") as, otherwise, it would be deprived of any meaning. The respondent advocated for a more lenient interpretation (see paragraphs [0062] and [0063]), i.e. a vertical wall rising essentially vertically in "most of the region".

1.3 It is noted that the disclosure of the vertical wall in the strict geometric sense (i.e. it being a plumb wall) in paragraph [0104] is, in the context of easier cleanability, brought about by a particular design of the rim inner wall upper sloped surface, namely forming a relatively large radius of arc corresponding to the arc formed by a hand with bent fingers, which seems to form the basis for the formulation of feature j) of claim 1 (see Figures 8, 9). However, whereas feature j) of claim 1 defines a property being present only in "at least **a part** of an entire perimeter of the rim portion" (emphasis added), feature i) of claim 1 is not restricted accordingly. Moreover, paragraph [0104] only applies to the rim portion (46) as shown in Figure 9, i.e. without the overhanging shape, and does not therefore provide a basis for a "plumb" vertical wall in other portions around the rim.

1.4 In line with the appellant's view, it is thus agreed that, if the disclosure of the vertical wall in the strict geometric sense according to paragraph [0104] was considered as the basis for amended feature i), in this passage there is no basis to generalise this strict definition to cover parts of the rim inner wall portion which do not have the rim portion design (and its alleged easier cleanability effect), such subject-matter being, however, part of the subject-matter claimed in the current claim 1.

- 1.5 Also with respect to the broader interpretation of feature i) - advocated by the respondent - as a wall which can comprise parts deviating substantially from a purely vertical (i.e "plumb") orientation - like in the suggested interpretation of the rim on the right-hand side of Figure 6 -, an unallowable intermediate generalisation is present in claim 1 of the main request. The reasons are as follows.
- 1.6 Paragraph [0063] of the originally filed application - cited by the respondent as a basis for feature i) - discloses that the vertical wall (52b) *"is formed so that in most of the region it rises essentially vertically, but of the rim inner wall portion 52, in a part of the region from the rim spout port 14 of the bowl portion 8 forward, the top portion of the vertical wall 52b and the rim inner wall upper sloped surface 52a are formed in an overhanging shape toward the inside of the bowl portion 8."*
- 1.7 In spite of the unusual syntactic construction of this passage, the skilled person understands that the "vertical wall" (52b) is disclosed with an overhanging shape towards the inside of the bowl formed in the particular manner disclosed therein. The features related to the provision of this overhanging shape have been omitted in claim 1 of the main request. The partly overhanging shape of the "vertical wall" of the embodiment is a structural property of this "vertical wall" and is of functional importance with respect to the prevention of splashing at the rim spout port. The partly overhanging shape is thus not only structurally (see paragraph [0063] of the originally filed application) but also functionally inextricably linked with the "vertical wall" of feature i).

- 1.8 Contrary to the arguments of the respondent, paragraphs [0062] and [0063] of the original application do not disclose two alternatives. Instead, they disclose a combination of features forming part of the "vertical wall" of the particular embodiment described therein and corresponding to the embodiment shown in Figures 4, 5 and 6, the last two figures being cross-sections carried out as indicated in Figure 4 (see column 5, lines 3 to 8). The features disclosed in combination include (among other things) the vertical wall (52b) (see paragraphs [0062] and [0063]) and the overhanging shape, as explained in point 1.7 above.
- 1.9 Paragraphs [0102] and [0104] do not provide a basis for isolating the feature "vertical wall" from the rest of the disclosure, even if these passages do indeed focus on the technical effect related to ease of cleaning. This technical effect is only disclosed and described for Figure 9 (see paragraph [0062] and column 18, lines 4 to 9), which the skilled person understands as corresponding to the rim portion disclosed in Figure 5, given the parallelism in the construction of both rim portions (see, e.g., the connection of the vertical wall (52b) to the top end (44a) of the waste-receiving surface (44)). Consequently, the skilled person does not understand Figure 9 as a "stand alone" embodiment related to the technical effect of ease of cleaning but as a disclosure of the advantageous technical effect achieved at the portion of the rim of the particular embodiment corresponding to what is disclosed in Figures 5 and 9, this rim portion being a part of the whole construction of the particular embodiment, i.e. including the overhanging shape (see point 1.7 above). As discussed above, the claim does not, in any case, restrict feature i) to the parts with the particular rim design according to feature j).

- 1.10 In this context, any possible inconsistency in the figures and in the use of reference numbers is irrelevant to the discussion. What is decisive is the omission, in claim 1, of features of the particular embodiment which are structurally and functionally linked with feature i) as set out above, this link having taught the skilled person, when reading the originally filed application, that feature i) was only envisaged in combination with the parts having an overhanging shape.
- 1.11 In view of the above, claim 1 of the main request results in an unallowable intermediate generalisation and extends beyond the content of the application as filed (Article 100(c) EPC).
2. Auxiliary request 4
- 2.1 Remittal - Article 111 EPC and Article 11 RPBA
- 2.1.1 The respondent argued that remittal of the case was appropriate since it did not have the opportunity to discuss the matters arising in relation to auxiliary request 4 before the department of first instance.
- 2.1.2 However, this cannot be understood to constitute "special reasons" for remittal within the meaning of Article 11 RPBA, since a party does not have an absolute right to have its case discussed before two instances.
- 2.1.3 The objection pursuant to Article 123(2) EPC is straightforward and was not only raised by the appellant but was also addressed in the Board's communication. Therefore, the assessment of

Article 123(2) EPC did not come as a surprise for the respondent. In view of procedural economy and fairness of the proceedings, the Board does not therefore see any reason why the objection under Article 123(2) EPC with respect to the amendments made in claim 1 of auxiliary request 4 should not be assessed by the Board.

2.1.4 Therefore, the Board has decided, in exercise of its discretion under Article 111(1) EPC and Article 11 RPBA, not to remit the case to the department of first instance.

2.2 Added subject-matter - Article 123(2) EPC

2.2.1 The respondent did not put forward new arguments to be considered by the Board relating to this objection. The Board therefore confirms the preliminary view set out under points 12.2 and 15.1.1 in its communication under Article 15(1) RPBA as its final position in the matter.

2.2.2 The respondent argued that added features e1) (toilet lid with side walls including a lid bottom end portion) and k) (lid bottom end portion positioned between the top end and the bottom end of the rim outer wall upper sloped surface) had a basis in paragraphs [0089] and [0091] of the originally filed application, and that a generalisation through the addition of these features in isolation from other features of the particular embodiment was justified in view of this basis.

2.2.3 This is not persuasive since, although it is true that features e1) and k) contribute to improving the aesthetic appearance of the toilet when seen from the side (see column 15, lines 14 to 22), the originally filed application discloses only one particular way of

achieving this, namely by a particular construction wherein *"the toilet lid bottom end portion 60, toilet lid outer surface 60c and the rim outer wall 56b are disposed in an essentially **flush** relationship, **or** the toilet lid bottom end portion 60 toilet lid outer surface 60c is **disposed further outside** the toilet than the rim outer wall 56b"* (marking in bold added by the Board) (see column 14, lines 53 to 57).

- 2.2.4 These omitted features also have an impact on the aesthetic appearance of the toilet when seen from the side, and the skilled person thus understands the originally disclosed particular embodiment as an ensemble of inextricably linked features, i.e. without the possibility of isolating just some aspects of it.
- 2.2.5 Therefore, the omission of these features results in an unallowable intermediate generalisation and infringes Article 123(2) EPC.
3. Auxiliary requests 5, 6 and 7, added subject-matter - Article 100(c) EPC
- 3.1 None of the following:
- feature e1) (*"the exterior part being formed by side walls of a toilet lid, each side wall including a lid bottom end portion"*),
 - feature i1) (*"the rim inner wall portion further comprises a vertical wall forming a wall surface rising in the vertical direction from a top end of the waste receiving surface up to a bottom end of the rim inner wall upper sloped surface"*),

- feature k1) (*"in the height direction, the lid bottom end portion is positioned between the top end and the bottom end of the rim outer wall upper sloped surface, being disposed at a height below a height of a top surface of the rim portion, and being disposed at a height above the height of the bottom end of the rim outer wall upper sloped surface"*), and
- feature l) (*"an outlet of the spouting portion is formed in a front region of the bowl portion such that the flush water swirls from the front end of the bowl portion toward a rear of the bowl portion to generate the circulating current"*)

defines the overhanging portion omitted in claim 1 of the main request (see point 1.7)

- 3.2 Consequently, the amendments carried out in claim 1 of auxiliary requests 5, 6 and 7 cannot overcome the objection already explained in the context of the main request (Article 100(c) EPC) (see point 1. above).
4. Auxiliary request 8, added subject-matter - Article 123(2) EPC
- 4.1 The only amendment in claim 1 of auxiliary request 8 with respect to claim 1 of auxiliary request 4 is the specific indication in feature k1) that, **"in the height direction, the lid bottom end portion is positioned between the top end and the bottom end of the rim outer wall upper sloped surface"** (amendments marked in bold by the Board).
- 4.2 This cannot help to overcome the objection already explained above in the context of claim 1 of auxiliary

request 4, since amended feature k1) does not exclude the lid bottom end portion being positioned in the width direction between the top end and the bottom end of the rim outer wall upper sloped surface, a possibility which was not originally disclosed in the particular embodiment from which the features have been taken (see point 2.2.3 above).

4.3 Therefore, claim 1 of auxiliary request 8 results in an unallowable intermediate generalisation for the same reasons as claim 1 of auxiliary request 4, *mutatis mutandis* (Article 123(2) EPC).

5. Conclusion - Article 101 EPC

Since there is no request on file which meets the requirements of the EPC, the patent is to be revoked (Article 101(2) and (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:



C. Spira

C. Herberhold

Decision electronically authenticated