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**Datasheet for the decision
of 12 January 2026**

Case Number: T 0949/24 - 3.2.04

Application Number: 17185264.3

Publication Number: 3263001

IPC: A47K5/12, G08B21/24

Language of the proceedings: EN

Title of invention:
POINT-OF-CARE HYGIENE COMPLIANCE MODULE

Patent Proprietor:
Gojo Industries, Inc.

Opponent:
ECOLAB USA INC.

Headword:

Relevant legal provisions:
EPC Art. 123(2)
EPC R. 103(1)(a), 103(4)(c), 111(2)

Keyword:

Amendments - auxiliary request 5 - added subject-matter (yes)
Substantial procedural violation - appealed decision
sufficiently reasoned (yes) - reimbursement of appeal fee (no)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0949/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 12 January 2026

Appellant: ECOLAB USA INC.
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St. Paul, MN 55102 (US)

Representative: HGF
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Respondent: Gojo Industries, Inc.
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Representative: Forresters IP LLP
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Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
17 May 2024 concerning maintenance of the
European Patent No. 3263001 in amended form.**

Composition of the Board:

Chairman A. Pieracci
Members: P. Cipriano
K. Kerber-Zubrzycka

Summary of Facts and Submissions

- I. An appeal was filed by the opponent against the decision of the opposition division that found the then pending auxiliary request 5 to meet the requirements of the EPC.
- II. With its grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be revoked and, in addition, a refund of the appeal fee.
- III. The Board issued a summons to oral proceedings and a subsequent communication indicating *inter alia* that the Board was minded to refuse the request for reimbursement of the appeal fee, should the appellant maintain this request, and that claim 1 of auxiliary request 5 did not fulfil the requirement of Article 123(2) EPC.
- IV. With letter dated 15 December 2025, the appellant confirmed their request for a 25% refund of the appeal fee under Rule 103(4)(c) EPC and that their request for oral proceedings was only for the case that the Board would not revoke the patent in its entirety.
- V. With letter dated 15 December 2025, the respondent stated that it would not attend the oral proceedings.
- VI. On the 16 December 2025 the Board duly cancelled the oral proceedings.
- VII. Claim 1 according to auxiliary request 5 has the following wording (with the feature breakdown as on pages 10 and 11 of the grounds of appeal):

- "a) A hygiene compliance module (20; 450; 700) for a dispensing container (10) that dispenses material through a dispensing nozzle (60) when actuated, the hygiene compliance module (20; 450; 700) comprising:
- b) a housing (100; 452; 710) that is adapted to be attached to the dispensing container (10), the housing (100; 452; 710) comprising an outer section (110) and an inner section (120) that are joined together to form a mounting cavity (130) therebetween,
- c) wherein the housing (100; 452; 710) defines a switch aperture (188) within which a switch (284) is disposed,
- d) the switch aperture (188) is disposed in the inner section (120) of the housing (100; 452; 710) proximate to a top edge (160) of the housing (100; 452; 710), in use, the switch (284) carried by the housing (100; 452; 710);
- e) an actuation arm (210) pivotably carried by said housing (100; 452; 710), said actuation arm (210) adapted to operatively contact the dispensing nozzle (60), wherein when said actuation arm (210) is actuated the actuation arm (210) actuates the dispensing nozzle (60) to dispense the material through the dispensing nozzle (60),
- f) the switch (284) in operative contact with the actuation arm (210), such that the switch (284) is actuated when the actuation arm (210) is actuated;
- g) a contact arm (280) attached to the actuation arm (210), wherein the contact arm (280) extends from an

inner surface (230) of the actuator arm (210) at a point that is proximate a bottom edge (250) of the actuator arm (210), in use, and is moved into the switch aperture (188) by the actuation arm (210), and the contact arm (280) is configured to selectively contact the switch (284) that is carried within a the mounting cavity (130);

h) a controller (400) coupled to said switch (284);
and

i) a memory unit (410) coupled to said controller (400), said memory unit (410) configured to store a count value that is updated by the controller (400) when said switch (284) is actuated,

j) wherein when the actuation arm (210) is actuated, the actuation arm (210) actuates the dispensing nozzle (60) of the dispensing container (10) to dispense material therefrom and moves the contact arm (280) into the switch aperture (188) to actuate the switch (284) to update the count value."

VIII. The relevant appellant's arguments may be summarised as follows:

Auxiliary request 5 as maintained by the opposition division- Article 123(2) EPC

Claim 1 of auxiliary request 5 did not fulfil the requirement of Article 123(2) EPC.

Page 7, lines 27-30 of the application as filed failed to provide basis for the feature "a switch aperture within which a switch is disposed" (hereinafter called feature c)). In the claims as originally filed, the

switch was recited only as being carried by the housing. That the switch is further disposed within the switch aperture was not disclosed or suggested anywhere in the application as filed.

Request for reimbursement of the appeal fee under Rule 103(1) (a) EPC

The reasoning in the original decision was incomplete and a failure to provide adequate reasoning in a decision in accordance with Rule 111(2) EPC was a substantial procedural violation.

IX. The respondent has not filed any substantive submissions in the appeal proceedings.

Reasons for the Decision

1. Auxiliary request 5 as maintained by the opposition division - Article 123(2) EPC

1.1 The wording of feature c) (see above and the feature list on page 5 and item 5.1 of the decision)

namely

"wherein the housing (100; 452; 710) defines a switch aperture (188) within which a switch (284) is disposed",

is not present in the application as originally filed. The Board considers its literal meaning to be technically sensible and considers that this meaning cannot be excluded or reinterpreted taking into

consideration the description and the other features of the claim defining the location of the switch arriving thus to a meaning different from what a person skilled in the art would derive from the feature itself.

- 1.2 Contrary to the reasoning of the opposition division in item 7.3.1.2 on page 8 of the decision, the technically sensible reading of the claim in combination with the teaching of the figures does not result (at least directly and unambiguously) in a switch location inside the cavity and positioned with regard to the switch aperture in a way to allow the contact arm to contact the switch when it moves into the switch aperture. This is not what is defined in the claim and is not the only technically sensible way of reading it.

Feature c) thus does not appear to have a basis in the application as filed and thus to fulfil the requirement of Article 123(2) EPC.

- 1.3 The above was communicated to the parties in the Board's preliminary opinion. In the absence of any counter arguments by the respondent, the Board, after having reconsidered all the factual and legal aspects of the case, has no reason to deviate from its preliminary opinion, which is herewith confirmed.

- 1.4 Claim 1 of auxiliary request 5 does not fulfil the requirement of Article 123(2) EPC. Consequently, auxiliary request 5 is not allowable. Therefore, the patent has to be revoked.

2. Request for reimbursement of the appeal fee under Rule 103(1) (a) EPC
- 2.1 The appellant requested a refund of the appeal fee on the basis that the reasoning in the original decision was incomplete and that a failure to provide adequate reasoning in a decision in accordance with Rule 111(2) EPC is considered a substantial procedural violation.
- 2.2 The appellant requested twice the opposition division to correct its decision by addition of an allegedly missing reasoning, which the opposition division did as a correction under Rule 140 EPC, which was finally not contested by the opponent.

The Board is of the opinion that even if there were omissions from the original decision, the decision was adequately reasoned and reflected the opposition division's real intention and therefore does not amount to a violation of Rule 111(2) EPC.

Further, no violation of the appellant's right to be heard under Article 113 EPC is apparent from the content of the oral proceedings as reflected in paragraphs 3.5 and 3.10 of the minutes.

The Board is, however, of the view that the two retrospective corrections of the decision inserting entire new paragraphs regarding added subject-matter in auxiliary request 5 into the decision, could not be based on Rule 140 EPC because the corrections cannot be qualified as obvious mistakes under Rule 140 EPC. The Board sees in this a substantial procedural violation.

In order to justify a reimbursement of the appeal fee under Rule 103(1) (a) EPC, according to established case law of the Boards of appeal there has to be a causal link between the substantial procedural violation and the necessity to file an appeal (see Case Law of the Boards of Appeal, 11th edition July 2025, V.A.11.7.1).

In the present case, in order to achieve a revocation of the patent, the appellant would have had to file the appeal anyway - even without the two corrections in the decision. The Board therefore does not see a causal link between the substantial procedural violation and the filing of the appeal.

The Board is further of the opinion, that there are no other considerations rendering a reimbursement of the appeal fee equitable because the appellant (opponent) itself has requested the corrections.

2.3 The above was communicated to the parties in the Board's preliminary opinion. In the absence of any further arguments from the appellant in response to that opinion, the Board, having reconsidered all the legal and factual aspects of the case, sees no reason to depart from its preliminary view, which is hereby confirmed.

2.4 The appellant's request for reimbursement of the appeal fee under Rule 103(1) (a) EPC is therefore refused.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.
3. The request for reimbursement of the appeal fee is refused.

The Registrar:

The Chairman:



G. Magouliotis

A. Pieracci

Decision electronically authenticated