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**Datasheet for the decision  
of 3 February 2026**

**Case Number:** T 1038/24 - 3.2.01

**Application Number:** 17744883.4

**Publication Number:** 3407756

**IPC:** A45D34/04, A45D34/00, A45D44/00

**Language of the proceedings:** EN

**Title of invention:**  
SYSTEM AND APPARATUS FOR SELECTING AND DISPENSING COSMETIC  
MATERIAL

**Patent Proprietor:**  
L'OREAL

**Opponent:**  
Henkel AG & Co. KGaA

**Headword:**

**Relevant legal provisions:**  
EPC Art. 54, 56

**Keyword:**  
Novelty - main request (yes)  
Inventive step - main request (yes)

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**

**Boards of Appeal**

**Chambres de recours**

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Case Number: T 1038/24 - 3.2.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.01**  
**of 3 February 2026**

**Appellant:** L'OREAL  
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**Representative:** Viering, Jentschura & Partner mbB  
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**Decision under appeal:** **Interlocutory decision of the Opposition  
Division of the European Patent Office posted on  
6 June 2024 concerning maintenance of the  
European Patent No. 3407756 in amended form.**

**Composition of the Board:**

**Chairman** G. Pricolo  
**Members:** A. Wagner  
A. Jimenez

## **Summary of Facts and Submissions**

I. The appeal of the patent proprietor is directed against the decision of the opposition division to maintain the European Patent No. 3407756 in amended form on the basis of the auxiliary request 2.

II. In its decision, the Opposition Division held among others that the subject-matter of claim 1 of the main request (patent as granted) was not novel over US 2010/0185322 A1 (D7).

III. Oral proceedings by videoconference were held before the Board on 3 February 2026.

The appellant (patent proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted (main request), or in the alternative that the patent be maintained in amended form according to one of the auxiliary requests 1 to 3 filed with the statement of ground of appeal.

The respondent (opponent) requested that the appeal be dismissed.

IV. Claim 1 of the main request as outlined in the appealed decision reads as follows:

**A)** An apparatus (100) for dispensing cosmetic material, comprising:

**B)** a dispensing assembly (120) configured to receive at least one cartridge (114) that contains a cosmetic material and to dispense a specified amount of the cosmetic material from the cartridge (114) into a receiving area;

- C)** a memory (780) configured to receive and store dispensing information which includes the specified amount of the cosmetic material to be dispensed for each cartridge (114) disposed in the dispensing assembly (120) to achieve a specified single use of a cosmetic application; and
- D)** circuitry configured to obtain the dispensing information from the memory (780) and to control the dispensing assembly (120) to dispense the cosmetic material from each cartridge (114) disposed in the dispensing assembly (120) into the receiving area according to the one or more specified amounts included in the dispensing information,
- E)** wherein the receiving area is configured to be part of a detachable portion of the apparatus and the detachable portion is configured to be an enclosed container that holds the dispensed cosmetic material,
- F1)** the apparatus further comprising a manifold (130), having a plurality of manifold through holes (132),
- F2)** the manifold (130) connected to and disposed on a nozzle (160) of the cartridge (114),
- F3)** the receiving area being connected to and disposed above the manifold (130),
- G)** wherein the circuitry controls the dispensing assembly to dispense a quantity of cosmetic material from the nozzle (160) of the cartridge (114) through one manifold through hole (132) of the manifold (130), and into the receiving area.

V. The appellant's (patent proprietor's) arguments may be summarized as follows:

*Novelty over D7*

The opposition division was wrong in assuming that D7 disclosed an enclosed container as claimed by the

feature combination B, E, F3. In particular, the alleged detachable portion in D7 was not configured to be an enclosed container.

*Inventive step over D7 with common general knowledge*

The missing feature combination was not obvious from the constructive design of the apparatus of D7. The alleged detachable portion was a cover which was open at the bottom to shroud components of the apparatus.

- VI. The respondent's (opponent's) arguments relevant to the present decision may be summarised as follows:

*Novelty over D7*

The opposition division was right in finding that the subject-matter of claim 1 was not new over D7. The reasoning given in the impugned decision, points 15.1 and 15.2.1, was to be confirmed.

*Inventive step over D7 with common general knowledge*

Should feature E with regard to the detachable portion being an enclosed container not be considered as disclosed in D7, then the necessary modifications were just obvious changes of the design of the apparatus of D7 without any technical effect.

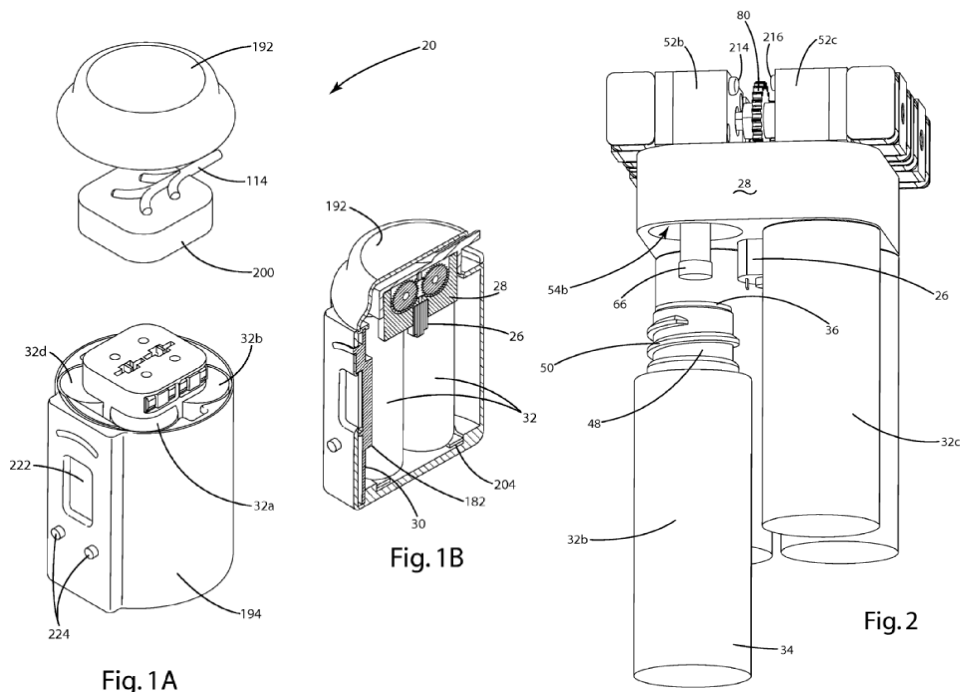
Should the feature "detachable" not be seen as directly and unambiguously disclosed, the way the dispenser of D7 was described and illustrated (e.g., in figure 1A and figure 13, paragraph [0064], last sentence) would at least suggest in an obvious manner to the skilled person the required detachability.

## Reasons for the Decision

### 1. Novelty over D7 - main request

1.1 The subject-matter of claim 1 as granted is new over D7.

1.2 D7 discloses a dispenser 20 with at least one cartridge 32, a circuitry 30 (figure 1B) and a memory 213 (paragraph [0048]). The assembly further comprises a manifold 28 that allows communication between the cartridges 32 and the pump housings 52, and a header 114 to which the mixed material is pumped. The header is joined to an intermediate cover 200 (paragraph 0046]). The assembly has a cap 192 secured to the base 194 by a flexible barbed connector 198 (figure 13).



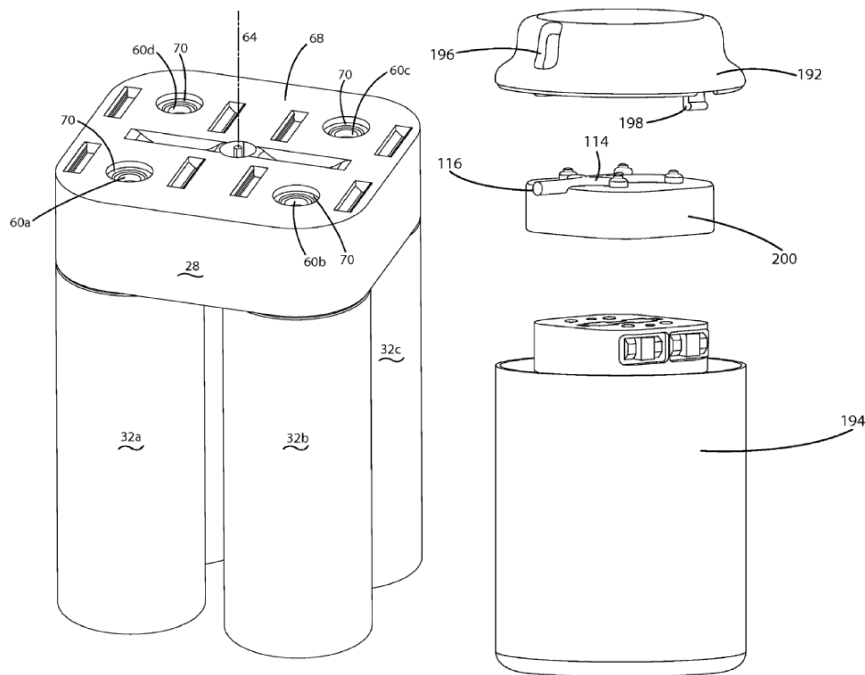


Fig. 3

Fig. 13

1.3 Disputed is the disclosure of feature E, defining that the receiving area is part of a detachable portion with the detachable portion being an enclosed container that holds the dispensed cosmetic material.

1.4 The respondent argued that the header 114 of D7 corresponded to "the receiving area" and fell under the definition of an "enclosed container". Furthermore, the header 114 was detachable by detaching means construed by the intermediate cover 200 as shown in figure 1A and figure 13. The claim wording did not exclude that additional structural elements were provided at the enclosed container to make it a detachable portion.

1.5 The Board does not agree.

1.5.1 In the respondent's argumentation, the header 114 and the intermediate cover 200 form an entity wherein the header 114 constituted the receiving area, the detachable portion and the enclosed container with the

cover 200 only being attaching/detaching means. Thus, the cover 200 is seen as part of the detachable portion being the receiving area 114.

However that is not what is claimed. The wording of feature E "*the receiving area is configured to be part of a detachable portion*" defines that the detachable portion is more than only the receiving area.

As a consequence, to read feature E on the apparatus of D7, the header 114 together with intermediate cover 200 must be seen as "detachable portion" and the header 114 constitutes the receiving area being part of this detachable portion. That corresponds to what D7 teaches in paragraph [0046] with figures 1a, 13: "*the header 114 is joined to an intermediate cover 200*".

- 1.5.2 Feature E further requires that the detachable portion is an enclosed container. However this is not the case in D7 because the cover 200 undisputedly forms a container that is open at the bottom to shroud "*the pump housings 52a-d, valve assemblies 112a-d and the manifold 28*" (paragraph [0046]).
- 1.5.3 Therefore feature E is not disclosed in D7.
- 1.6 With regard to the feature "detachable", the appellant argued that D7 was completely silent as whether the cap 192 was detachable after once being assembled to the base 194 as shown in figure 1B. A detachable cap 192 was obligatory to have access to the intermediate cover 200. As, after assembling, the cap was not detachable any more, as a consequence, the intermediate cover 200 was likewise not detachable.  
Even if paragraph [0064], last sentence, mentioned that the fluid reservoir might be replaced, it was not disclosed how this replacement of a cartridge 32 might

be done. A replacement from the top by detaching the cap 192 and the cover 200 was pure speculation.

- 1.6.1 However, the Board agrees with the respondent that a detachable cap 192 and a detachable intermediate cover 200 are implicit for the cartridges to be replaced as mentioned in D7. The skilled person understands, that, with the barbed connectors 198 at the cap 192 shown in figure 13 and the cover 200 being simply slipped over the pump/valve assembly as shown in figures 1A and 1B, the cover 200 with the header 114 is detachable to replace the cartridges 32 from the top.

**2. Inventive step over D7 with common general knowledge**

- 2.1 The subject-matter of claim 1 as granted is not rendered obvious by D7 combined with common general knowledge.
- 2.2 Claim 1 at least differs from D7 in that the detachable portion (header 114 with intermediate cover 200) is configured to be an enclosed container.
- 2.3 In the respondent's opinion, it was rather a simple design option to provide the covering function of cover 200 directly at the base such that the header 114 would be placed on a plate. Such a plate constituted attaching means of the enclosed container being the header 114.
- 2.4 The Board is not convinced.
  - 2.4.1 D7 teaches in paragraph [0046] that "*the header 114 is joined to an intermediate cover 200 for shrouding the pump housings 52a-d, valve assemblies 112a-d and the manifold 28*". The skilled person does not have any

motivation to modify the shape of this intermediate cover 200. The respondent's argumentation is based on hindsight.

2.5 The requirements of Article 56 EPC are thus met.

## Order

### For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is maintained as granted.

The Registrar:

The Chairman:



D. Grundner

G. Pricolo

Decision electronically authenticated