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Datasheet for the decision of 28 May 2026

Case Number: T 1233/24 - 3.2.04

Application Number: 19173961.4

Publication Number: 3566628

IPC: A47L9/24

Language of the proceedings: EN

Title of invention:
VACUUM CLEANING DEVICE WITH FOLDABLE WAND TO PROVIDE STORAGE CONFIGURATION

Patent Proprietor:
SharkNinja Operating LLC

Opponent:
e-Patent S.A.

Headword:

Relevant legal provisions:
EPC Art. 100(c), 123(2)

Keyword:
Amendments - extension beyond the content of the application as filed (yes) - disclosure in drawings

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It can be changed at any time and without notice

Decisions cited:

Catchword:

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Case Number: T 1233/24 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 28 May 2026

Appellant: (Opponent)	e-Patent S.A. Rue Saint-Maurice 12 Case postale 2001 Neuchâtel 1 (CH)
Representative:	Michael James Burns Patentsmith SA Rue de la Gare 87 3232 Ins (CH)
Respondent: (Patent Proprietor)	SharkNinja Operating LLC 89 A Street, Suite 100 Needham, MA 02494 (US)
Representative:	Barker Brettell LLP 100 Hagley Road Edgbaston Birmingham B16 8QQ (GB)
Decision under appeal:	**Decision of the Opposition Division of the European Patent Office posted/electronically transmitted on 7 August 2024 rejecting the opposition filed against European patent No. 3566628 pursuant to Articl e 101(2) EPC.**

Composition of the Board:

Chairman	M. Hannam
Members:	P. Cipriano
	S. Ruhwinkel

Summary of Facts and Submissions

I. An appeal was filed by the appellant (opponent) against the decision of the opposition division to reject the opposition against European patent No. 3 566 628. With its statement setting out the grounds of appeal, the appellant requested that the decision under appeal be set aside and the patent be revoked.

II. In its reply to the appeal, the respondent (patent proprietor) requested that the appeal be dismissed and the patent be maintained as granted, or, in the alternative, that the patent be maintained in amended form on the basis of one of auxiliary requests 1-21 filed with the grounds of appeal.

III. The Board issued a summons to oral proceedings and a subsequent communication containing its provisional opinion, in which it indicated *inter alia* that the ground for opposition under Article 100(c) EPC prejudiced the maintenance of the patent and that none of the auxiliary requests overcame all the objections discussed.

IV. In a letter dated 7 May 2026 the respondent replaced all its previous auxiliary requests with new auxiliary requests 1 to 4.

V. Oral proceedings were held before the Board on 28 May 2026, during which the respondent withdrew auxiliary requests 1, 3 and 4.

At the close of the oral proceedings the requests of the parties were the following:
- the appellant maintained their initial request,

- the respondent requested that the appeal be dismissed, i.e. that the patent be maintained as granted, or, in the alternative, that the patent be maintained according to auxiliary request 2, filed with letter dated 7 May 2026.

VI. Claim 1 of the main request (claim 1 as granted) reads as follows:

"A wand (110) for a vacuum cleaning device (100) comprising:

a first end configured to be coupled to a vacuum unit and a second end configured to be coupled to a surface cleaning head, said wand (110) defining an air passage extending from said first end to said second end, said wand (110) comprising:

a first (640) and a second (650) rigid wand segment having a first and a second longitudinal axis, respectively, and defining a first and a second portion of said air passage, respectively;
a bendable wand joint (670) comprising a hinge (655) and a first (641) and a second (651) hinge member configured to pivotally connect said first (640) and said second (650) rigid wand segments together; and
a flexible tube (620) between said first (640) and said second (650) rigid segments defining a flexible air portion of said air passage and configured to flex when said first (641) and said second (651) hinge members pivot about a first pivot axis;
a locking mechanism (675) to hold said first (640) and said second (650) rigid segments together to lock said bendable wand joint (670) in an extended position, said locking mechanism (675) comprising:

a locking cavity (1412) formed in said first hinge member (641);
a release button (679) and a locking arm (677) pivotally coupled to said second hinge member (651), said locking arm (677) including a locking pawl or hook configured to latch with said locking cavity (1412), wherein said release button (679) is configured to be urged inwardly against a biasing device to pivot said locking arm (677) and release said locking pawl or hook from said locking cavity (1412);
a locking arm guard extending from the second hinge member (651) generally along the second longitudinal axis and around a distal end of the locking arm (677); and
a locking arm sidewall extending generally away from the first longitudinal axis and at least partially around the locking cavity (1412), wherein the locking arm sidewall is configured to receive at least a portion of the locking arm guard when in the extended position."

VII. Claim 1 of auxiliary request 2 reads as follows:
"A wand (110) for a vacuum cleaning device (100) comprising:

a first end configured to be coupled to a vacuum unit and a second end configured to be coupled to a surface cleaning head, said wand (110) defining an air passage extending from said first end to said second end, said wand (110) comprising:

a first (650) and a second (640) rigid wand segment having a first and a second longitudinal axis,

respectively, and defining a first and a second portion of said air passage, respectively;
a bendable wand joint (670) comprising a hinge (655) and a first (651) and a second (641) hinge member configured to pivotally connect said first (650) and said second (640) rigid wand segments together;
a flexible tube (620) between said first (650) and said second (640) rigid segments defining a flexible air portion of said air passage and configured to flex when said first (651) and said second (641) hinge members pivot about a first pivot axis; and
a locking mechanism (675) to hold said first (650) and said second (640) rigid segments together to lock said bendable wand joint (670) in an extended position, said locking mechanism (675) comprising:

a locking cavity, in the form of an aperture, formed in said first hinge member (651);
a release button (679) and a locking arm (677), integrated with each other as a single piece, pivotally coupled to said second hinge member (641), said locking arm (677) including a locking pawl or hook configured to latch with said locking cavity, wherein said release button (679) is configured to be urged inwardly against a biasing device to pivot said locking arm (677) and release said locking pawl or hook from said locking cavity;
a locking arm guard extending from the second hinge member (641) in a direction parallel with the second longitudinal axis and around the end plane and the sides of a distal end of the locking arm (677); and

a locking arm sidewall arranged on the first hinge member (651) and comprising a pair of opposed side segments and a base segment extending generally away from the first longitudinal axis, in a plane perpendicular to the first longitudinal axis, and partially around the locking cavity, wherein the base segment connects the opposed side segments to form a U-shape and the locking arm sidewall is configured to receive a portion of the locking arm guard within the U-shape when the bendable wand joint (670) is in the extended position."

VIII. The parties' arguments relevant to the decision are discussed in detail in the Reasons for the Decision.

Reasons for the Decision

1. Main request - Article 100(c) EPC

1.1 The subject-matter of claim 1 of the main request contains subject-matter which extends beyond the content of the (divisional) application as filed.

1.2 Claim 1 of the main request defines *inter alia* the following features, which were added during the examination proceedings:
- a locking arm guard extending from the second hinge member (651) generally along the second longitudinal axis and around a distal end of the locking arm (677); and
- a locking arm sidewall extending generally away from the first longitudinal axis and at least partially around the locking cavity (1412), wherein the locking

arm sidewall is configured to receive at least a portion of the locking arm guard when in the extended position.

1.3 These features are not textually present in the description of the divisional application as originally filed.

1.4 The respondent argued that Figures 6A to 6D provided a basis for the added feature "locking arm guard" as defined in claim 1 (see item 1.2 above). According to the respondent, the skilled person would derive from Figure 6B of the divisional application as originally filed that the locking arm guard extended around a distal end of the locking arm. The skilled person would also derive that the specific design could be slightly different but that this was irrelevant, since the guarding function was guaranteed as long as the guard went around the distal end of the locking arm.

1.4.1 The Board does not agree. Even assuming that the skilled person would derive from Figures 6A to 6D a locking arm guard and a guarding function, Figures 6A to 6D disclose only a much more specific locking arm guard than the one defined in claim 1. For example, the locking arm guard disclosed in Figures 6B to 6D has what the appellant in point 5.2.1 of its grounds of appeal referred to as "wings" on the sides opposite to the distal end of the locking arm, which the skilled person would consider as guarding a finger from getting clamped/squashed between the release button 678 and the hinge member 641. Contrary to the argument of the respondent, the "wings" do therefore have a guarding function such that the skilled person would not derive that the "wings" were not necessary and only a prototype. Assuming that a guarding function is

derivable from Figures 6A to 6D, the "wings" of the locking arm guard are structurally and functionally linked to the features of the guard defined in claim 1, since they are an integral part of the guard and provide a guarding function.

1.4.2 The appellant further argued that the skilled person would not consider the "wings" to be a necessary feature, because the wings are not represented with accuracy - Figure 6D showed a much smaller "wing" than the one of Figures 6B and 6C.

This argument is not persuasive. The Figures are schematic perspective views of the wand from different angles which show a curved contour of the "wing". The skilled person, seeing the drawings, would understand that there could have been difficulties in reproducing the exact contour of the "wing" from these different perspectives but they would nevertheless derive directly and unambiguously from all of the Figures (including Figure 6D) a "wing" in the locking arm guard.

1.4.3 Regarding the guarding function, the feature "around a distal end of the locking arm" encompasses embodiments in which the alleged guard goes completely around the distal end of the locking arm 677, that is to say on its end, sides and also top, whereas in the figures 6B to 6D, this structure only goes around the end plane and the sides of the locking arm 677. Whilst the skilled person may know that other specific designs would also provide the same function, as the respondent argued, the schematic Figures 6B to 6D only directly and unambiguously disclose a much more specific locking arm guard than the one defined in claim 1. The

remaining content of the divisional application also does not teach otherwise.

1.4.4 Even assuming that a guarding function is derivable from Figures 6A to 6D, Figures 6A to 6D disclose a much more specific locking arm guard than the one defined in claim 1, which therefore constitutes an unallowable intermediate generalization of the locking arm guard disclosed in the divisional application as filed.

1.5 The respondent further argued that the feature "locking arm sidewall" as defined in claim 1 (see item 1.2 above) was directly and unambiguously derivable from Figures 6B to 6D of the divisional application as originally filed, since the skilled person would recognize the receiving function from the Figures and that this function was the important part of the disclosure. According to the respondent, the skilled person would recognize that the receiving function provided a snug fit between the locking arm guard and the sidewall that would not allow any torsion between the wand segments when using the vacuum device. Further according to the respondent, the skilled person would recognize that the specific structural arrangement of the sidewall was not important.

The Board does not agree. Even assuming that the term "sidewall" is simply a label and that the skilled person would derive a locking arm sidewall from Figures 6B to 6D, the expression "the locking arm sidewall is configured to receive at least a portion of the locking arm guard when in the extended position" in claim 1 is a functional feature for which Figures 6B to 6D provide no basis.
Whilst the term "receive" encompasses sidewall constructions that extend generally away from the first

longitudinal axis and at least partially around the locking cavity (as also defined in claim 1), it does not imply a snug fit. The term could equally define a more general spatial relationship such as, for example, a flat tray on which water glasses are placed (i.e. received) as indeed suggested by the appellant. The term 'receive' implies no specific nature of interaction or 'snugness of fit' between the receiving and the received entity.
Contrary to the arguments of the respondent, even assuming that the skilled person would recognize a need for a snug fit from Figures 6B to 6D, the skilled person would not directly and unambiguously derive from these Figures that the locking arm sidewall is configured to receive at least a portion of the locking arm guard, since the term "receiving" does not imply a snug fit or the alleged effect of limiting torsional movement between the locking arm guard and the locking arm sidewall.

1.6 Even assuming that the term "sidewall" is just a label and that the skilled person derives a snug fit from Figures 6B to 6D, these Figures disclose a much more specific locking arm sidewall than the one defined in claim 1, which therefore constitutes an unallowable intermediate generalization of the locking arm sidewall disclosed in the divisional application as filed.

1.7 The respondent did not argue that any other part of the application could provide a basis for these features of claim 1. In its reply to the grounds, sections 1.2.3 to 1.2.10, the respondent had argued that Figures 13-18 also provided a basis but, in the second paragraph of page 10 of its letter dated 7 May 2026, the respondent stated that sufficient basis for claim 1 could be found in Figures 6A to 6D alone and that the additional

features shown in Figures 13 to 18 were not required. This was also its line of argumentation submitted during the oral proceedings before the Board. Even if Figures 13 to 18 were nonetheless considered as a potential basis for the subject-matter of claim 1, at least figures 13 to 17 all depict the "wing" of the locking arm guard such that the omission of this feature from claim 1 still results in the claimed subject-matter extending beyond the content of the application as filed.

1.8 At least for these reasons, the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent as granted. The main request is not allowable.

2. Auxiliary request 2 - Article 123(2) EPC

2.1 Claim 1 of auxiliary request 2 differs from claim 1 of the main requests *inter alia* in that the features "locking arm guard" and "locking arm sidewall" have been amended (the additions have been underlined and the deletions struck out):

- a locking arm guard extending from the second hinge member (641) ~~generally along~~ in a direction parallel with the second longitudinal axis and around the end plane and the sides of a distal end of the locking arm (677); and
- a locking arm sidewall arranged on the first hinge member (651) and comprising a pair of opposed side segments and a base segment extending generally away from the first longitudinal axis, in a plane perpendicular to the first longitudinal axis, and partially around the locking cavity, wherein the base segment connects the opposed side segments to form a U-shape and the locking arm sidewall is configured to

receive a portion of the locking arm guard within the U-shape when the bendable wand joint (670) is in the extended position.

2.2 The respondent argued that the amendments to the feature "locking arm guard" overcame the objection regarding the expression "around a distal end of the locking arm" discussed above in paragraph 1.4.3 as well as all the other objections regarding this feature.

The Board does not agree. Whilst some of the embodiments in which the alleged guard goes completely around the distal end of the locking arm discussed above might be excluded, these amendments to the locking arm guard do not overcome the issue relating to the "wings" of the guard discussed above in paragraph 1.4.1, which feature is still missing in claim 1 of auxiliary request 2.

2.3 The respondent further argued that the amendments to the feature "locking arm sidewall" now defined the sidewall in structural features that implied a snug fit between the sidewall and the guard.

This argument does not persuade the Board. The claim now defines that the sidewall comprises two side segments and a base segment that form a U-shape and that the guard is received within the U-shape. The shape is defined more specifically but the amount of play in the fit between the guard and the U-shaped sidewall is not further specified relative to claim 1 of the main request. This amendment does not overcome the objection discussed above in paragraph 1.5.

2.4 The respondent did not argue that any other amendment to claim 1 overcame the objections discussed above

regarding the "wings" and the expression "receiving" and the Board also does not see a reason to find otherwise.

2.5 The amendments to claim 1 of auxiliary request 2 do not overcome all the objections discussed above for the main request such that claim 1 does not fulfil the requirement of Article 123(2) EPC. Auxiliary request 2 is not allowable, irrespective of the issue of its admittance.

3. In the absence of any request which meets the requirements of the EPC, the patent must be revoked.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The Registrar: The Chairman:

A. Chavinier M. Hannam

Decision electronically authenticated