

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 11 December 2006**

Case Number: T 0227/04 - 3.2.04

Application Number: 94931132.8

Publication Number: 0729310

IPC: A45D 19/00

Language of the proceedings: EN

Title of invention:

Hair clip

Patentee:

Proto, Pasquale

Opponent:

Firma FRI-TECH Palumno & Schneider GbR

Headword:

-

Relevant legal provisions:

EPC Art. 52(1), 56

EPC R. 71(2)

Keyword:

"Reformulation of the problem"

"Inventive step (no)"

Decisions cited:

T 0957/00

Catchword:

-



Case Number: T 0227/04 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 11 December 2006

Appellant: Firma FRI-TECH Palumno & Schneider GbR
(Opponent) Zum Esten 3
D-78224 Singen/Bohlingen (DE)

Representative: Weiss, Peter
Dr. Weiss, Brecht, Arat
Zeppelinstraße 4
D-78234 Engen (DE)

Respondent: Proto, Pasquale
(Patent Proprietor) Via Appia 155
Velletri
I-00049 Roma (IT)

Representative: -

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 10 December 2003
rejecting the opposition filed against European
patent No. 0729310 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: A. De Vries
M. B. Tardo-Dino

Summary of Facts and Submissions

- I. The Appellant (Opponent) lodged an appeal against the Opposition Division's decision of 10 December 2003 to reject the opposition.

Opposition was filed against the patent as a whole and based on Article 100(a) in combination with Articles 52(1) and 54 EPC for lack of novelty, Article 100(a) in combination with Articles 52(1) and 56 EPC for lack of inventive step, having regard to the following documents among others:

D1: US-A-3 692 032

D2: US-A-3 800 811

D3: US-A-5 156 172

E1: US-A-3 543 771

E2: US-A-3 861 405

E3: US-A-2 041 641

E5: US-A-5 058 609

- II. In a first decision of 19 July 2000 the Opposition Division held that the subject-matter of claim 1 as granted lacks novelty having regard to D1.

In the subsequent appeal T 957/00 lodged by the Proprietor, the present Board in a different composition held that claim 1 defined novel subject-matter having regard to the cited prior art. It decided to set the decision aside and to remit the case to the first instance for further prosecution.

In its further decision of 10 December 2003 the Opposition division rejected the opposition, holding

that the subject-matter of claims 1 and 6 was both new and involved an inventive step.

Oral proceedings were duly held before this Board on 11 December 2006. Though duly summoned the Respondent (Proprietor) declined to attend and was not represented at the oral proceedings. According to the provisions of Rule 71(2) EPC the oral proceedings were continued without him.

III. The Appellant (Opponent) requests that the decision under appeal be set aside and the patent be revoked in its entirety. The Respondent (Proprietor) has neither filed requests nor responded to the appeal.

IV. The wording of the independent claims 1 and 6 as granted is as follows:

Claim 1 A clip for use when colouring discrete hair strands which comprises two elongate gripper members (1,2) joined by a hinge (3) and including at their free ends (5) means for selectively connecting one gripper member to the other, the clip being characterised in that each gripper member (1,2) carries a separate strip of flexible impervious material (9).

Claim 6 A method of colouring discrete strands of hair, the method comprising the steps of retaining strands of hair to be coloured between separable elongate gripper members of a clip connected together by a hinge, laying these hair strands on a length of impermeable material connected to one of the gripper members, applying a colouring medium to the retained hair strands and covering the coated strands with a

second length of impermeable material connected to the other gripper member, the method being characterised in that the length of impermeable material connected to one gripper member is separate from that connected to the other gripper member.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.
2. *Inventive Step*
 - 2.1 As is well established practice the Board applies the problem-solution approach in assessing inventive step. To this end it must first establish the closest prior art, which it holds to be disclosed in D1 as the embodiment described in reference to figures 2 and 5. This embodiment (referred to as "embodiment A" hereinafter) concerns a clip serving the same purpose and effect as that of claim 1, namely for colouring discrete hair strands, and which moreover includes isolating means to prevent leakage of colorant to the hair. As detailed in T 957/00, reasons 2.1.1, this Board, in a different composition, held that all features of the preamble of independent claim 1 as granted are known from embodiment A of D1. The clip of claim 1 differs from this known clip in that each gripper member carries a separate strip of flexible impervious material. Embodiment A of D1 includes only a single such strip carried by one of the grippers.

2.2 Formulation of the technical problem to be solved normally starts from that described in the contested patent, (see Case Law of the Boards of Appeal of the EPO, 4th edition, 2001, - "Case Law" hereinafter - section I.D.4.3). In the present case, the originally identified problem is indicated on page 2, 2nd paragraph, as "provid[ing] a clip for ... high lighting or low lighting which avoids possible leakage of tint or bleach to the hair roots", read in the context of the preceding lines as referring to the known use of foil wraps for colouring discrete hair strands, where the wraps "tend not to stay in place so causing unwanted discolouring to occur". The Board infers herefrom that colorant leaks from the open ends of the loosely positioned wrap, in particular in the direction of the hair root. This problem is primarily solved by the features of the hinged gripper member and connection means, which according to page 6, lines 14 to 16, "firmly grip the hair strands thereby preventing egress of colorant between the gripper members 1,2".

2.2.1 Embodiment A of D1 is seen to address in essence the same problem, see e.g. the sentence bridging columns 3 and 4: "... the hair being gripped so that liquid cannot pass beyond the jaws". In the form of the gripper members (50, 52) joined by a hinge (16) and including selective connection means (18) at their free ends, D1 also provides the same solution. The problem originally formulated in the contested patent, as well as its solution are thus already known from the prior art.

2.2.2 Page 6, lines 19 to 25, of the originally filed description refers to the further effect of the clips

allowing "colouring of all selected hair strands to be carried out continuously in one operation" while "the overall processing time for the applied colorant is reduced". From this the Board concludes that the associated problem may be formulated as how to provide a strand colouring clip avoiding leakage to the hair roots, which is easy to manipulate. This is echoed by the advantages identified by the proprietor during the initial appeal and subsequent opposition procedures: see the proprietor's submissions of 30.05.00, p.2., 3rd paragraph, and 22.08.03 section 17, referring to an "easy to use hair colouring clip which requires only one hand for purposes of manipulation".

2.2.3 The solution of the above problem of ease of handling or use resides in the use of the end-clasped clip and the specific arrangement of sheets on the clip. These features allow a strand of hair to be easily clasped within the clip, followed by application of colorant to the strand as it lies exposed, after which the strand is enfolded by folding the upper sheet downwardly over the strand of hair.

2.2.4 The clip according to embodiment A of D1 operates in a similar manner: a single strip 30 attached to the lower jaw 14 is folded *upwardly*, see figure 5, over the exposed strand of hair to enfold it. In column 3, lines 8 to 11, D1 in fact refers to the "far less cumbersome" nature of its appliances vis-à-vis prior art devices. It would thus appear that the problem of ease of use or handling is also addressed and already solved in D1, albeit in an *alternative* manner by *upward* folding of a single strip over the hair, rather than *downward* folding of a second strip over a first.

Following established practice as outlined for example in Case Law, I.D.4.6, it appears that the problem to be objectively solved, after reformulation, is as follows: *how to provide an alternative hair colouring clip for preventing leakage of colorant that is easy to handle or use.*

2.3 The Board holds that the claimed solution is obvious for the following reasons:

2.3.1 Ease of handling or use results from the simple folding action of the sheets. With the upper sheet folded away the hair strand lies on the lower sheet and is easily accessible for chemical treatment, after which simple folding over of the upper sheet enfolds and isolates the hair strand. It is immediately clear to the skilled person from general considerations that such folding can be achieved by only three possible folding arrangements in a clip which in use is located upward of the sheet(s): *upward* folding (toward the clip) of a single lengthwise folded strip, *lateral* folding of a width-wise folded sheet, and, finally, *downward* folding (away from the clip) which requires two separate strips attached to respective ones of the jaws of the clip. These folding variants are in fact commonly known in the present field of hair dressing devices. Thus, D1 alone shows all three variants: figures 2 to 5 (embodiment A) shows upward folding in a hair colouring clip; while figure 7 shows lateral folding, and figure 8 shows downward folding in a hair straightening clip. Further D2 shows a colouring clip with upward folding, while E1 shows a lateral folding curling clip, and E3 shows both laterally folding and downward folding curlers.

2.3.2 Aware of their equivalency the skilled person will as a solution to the problem of providing an alternative replace one folding arrangement by another such known alternative folding arrangement as a matter of obviousness. For example, on the basis of D1 alone, which offers all three alternatives, and aware of their equivalency as regards ease of handling, he would transpose the downward folding, separate strip arrangement of the straightening clip of figure 8 to the hair colouring clip of embodiment A and thus arrive at the subject-matter of claim 1 without the exercise of an inventive step.

2.3.3 The Board draws a similar conclusion, if it departs from D2 as starting point. D2, as set out in reasons 2.2 of earlier decision T 957/00 by the present Board of different composition, describes a hair colouring clip similar to that of D1, i.e. with a single upwardly folding strip attached to one of the gripper members. Its simple handling method is described in column 5, line 31, to, column 6, line 7. In solving the above problem of providing an alternative, the skilled person will in this case also, as a matter of obviousness, replace its single upwardly folding strip, by an alternative folding arrangement that he recognizes as having the same ease of use, such as that of figure 8 of D1, or, of that of E3, figure 1.

2.4 Method claim 6 relates to the method of using a clip with hinged elongate grippers each with a separate length of impermeable material attached to it. Its steps follow directly from the clip's structure and its intended use for colouring of individual strands. The

above analysis of problem and solution applies equally to the method of this claim, which, the Board concludes, lacks inventive step for the reasons given above for claim 1.

- 2.5 In conclusion, the Board finds that the subject-matter of independent claims 1 and 6 does not involve an inventive step, and therefore does not meet the requirements of Article 52(1) in combination with Article 56 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

G. Magouliotis

M. Ceyte