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# D E C I S I O N
# of 4 July 2006

**Case Number:** T 0381/04 - 3.2.04

**Application Number:** 95900869.9

**Publication Number:** 0729314

**IPC:** A47L 11/30

**Language of the proceedings:** EN

**Title of invention:**
Brush Pressure System

**Patentee:**
BRISCOE, WILLIAM ANTHONY

**Opponent:**
Alto Danmark A/S

**Headword:**
Brush pressure system/BRISCOE

**Relevant legal provisions:**
EPC Art. 123(2)

**Keyword:**
"Undisclosed generalisation"

**Decisions cited:**
-

**Catchword:**
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

**Case Number:** T 0381/04 - 3.2.04

# D E C I S I O N
**of the Technical Board of Appeal 3.2.04**
**of 4 July 2006**

**Appellant:** (Patent Proprietor)
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**Decision under appeal:**
**Interlocutory decision of the Opposition Division of the European Patent Office posted 14 January 2004 concerning maintenance of the European Patent No. 0729314 in amended form.**

**Composition of the Board:**

**Chairman:** M. Ceyte
**Members:** P. Petti
H. Preglau

## Summary of Facts and Submissions

I. An opposition based upon Articles 100(a) and 100(c) EPC was filed against the European patent No. 729 314. In its interlocutory decision posted 14 January 2004 the opposition division found that the patent as amended in accordance with the auxiliary request filed during oral proceedings before the opposition division met the requirements of the European Patent Convention.

II. The patent proprietor (hereinafter appellant) lodged an appeal against this decision on 12 March 2004 and paid the appeal fee on 16 March 2004. A statement setting out the grounds of appeal was received on 21 May 2004.

With the statement of the grounds of appeal the appellant filed two sets of claims upon which a main request and an auxiliary request were based.

Amended claim 1 according to the main request reads as follows:

"1. A sweeping or cleaning apparatus comprising:
a frame;
a brush assembly (7, 8, 27) mounted on the frame;
means for moving the brush assembly (7, 8, 27) towards and away from a surface to be cleaned;
biasing means (1, 2, 3, 10) acting between the frame and the brush assembly (7, 8, 27) to apply to the brush assembly a selectable bias towards the surface, thereby transmitting a pressure force to the surface, and mounted to act as suspension means between the frame and the brush assembly (7, 8, 27);

the biasing means comprising at least one compression spring arranged to be compressed so as to permit a brush pressure force range of 0-450lbs, the at least one spring having a length so as to be arranged to act as a suspension means and thereby compensate for undulations in the surface to be cleaned throughout the whole of the said range of the brush pressure force;

and the apparatus further comprising;

means (4, 20) for monitoring and/or measuring the applied working pressure;

means (30) for displaying an indication of the measured working pressure;

means (24) for operator entry of a desired working pressure for the brush assembly and comparator means (31) for comparing the operator input pressure to the measured pressure and for generating a control signal in response to the difference between the desired pressure and the measured pressure and means for applying the control signal to the pressure applying means."

Amended claim 1 according to the auxiliary request reads as follows:

"1. A sweeping or cleaning apparatus comprising:

a frame;

a brush assembly (7, 8, 27) mounted on the frame;

means for moving the brush assembly (7, 8, 27) towards and away from a surface to be cleaned;

biasing means (1, 2, 3, 10) acting between the frame and the brush assembly (7, 8, 27) to apply to the brush assembly a selectable bias towards the surface, thereby transmitting a pressure force to the surface,

and mounted to act as suspension means between the frame and the brush assembly (7, 8, 27);

the biasing means comprising at least one compression spring arranged to be compressed so as to permit a brush pressure force range of 0-450lbs, the at least one spring having a length of at least 6inchs (14.4 cm) and arranged so as to act as a suspension means and thereby compensate for undulations in the surface being cleaned throughout the whole of the said range of the brush pressure force;

and the apparatus further comprising;

means (4, 20) for monitoring and/or measuring the applied working pressure;

means (30) for displaying an indication of the measured working pressure;

means (24) for operator entry of a desired working pressure for the brush assembly and comparator means (31) for comparing the operator input pressure to the measured pressure and for generating a control signal in response to the difference between the desired pressure and the measured pressure and means for applying the control signal to the pressure applying means."

III. On 26 June 2006, both the appellant and the opponent (hereinafter respondent), who had been duly summoned to oral proceedings, informed the board that they did not intend to attend oral proceedings.

Both parties did not appear at the oral proceedings which were held on 4 July 2006 and, pursuant to Rule 71(2) EPC, continued without them.

IV. The appellant requested that the decision under appeal be set aside and the patent be maintained on the basis of claim 1 of the main request or on the basis of claim 1 of the auxiliary request, both filed with the statement of grounds of appeal.

The respondent requested that the appeal be dismissed.

## Reasons for the Decision

1. The appeal is admissible.

2. *Admissibility of the amendments*

2.1 Claim 1 of the main request differs from claim 1 of the patent as granted essentially by addition of the feature

A) "the biasing means comprising at least one compression spring **arranged to be compressed so as to permit a brush pressure force range of 0-450 lbs**, the at least one compression spring having a length so as to be arranged to act as a suspension means and thereby to compensate for undulation in the surface to be cleaned throughout the whole of said range of the brush pressure force" (emphasis added).

Claim 1 of the auxiliary request differs from claim 1 of the patent as granted by addition of the feature

A') "the biasing means comprising at least one compression spring **arranged to be compressed so as to permit a brush pressure force range of**

**0-450 lbs**, the at least one compression spring having a length of at least 6 inches (14,4 cm) and arranged so as to act as a suspension means and thereby to compensate for undulation in the surface to be cleaned throughout the whole of said range of the brush pressure force" (emphasis added).

2.2 Claim 1 of the main request as well as that of the auxiliary request refer to a brush pressure force range of 0-450 lb.

The application as filed (WO-95/13737) refers to the pressure range of 0-450 lbs only in a passage bridging pages 8 (line 15) and 9 (line 9) which relates to the brush assembly shown in Figure 1.

Figure 1 represents the brush assembly as being provided with two spring tubes 1, each containing a spring 2, an actuator 10 driving an actuator rod 12 fixed to an actuator plate 14 which is clamped to the spring tubes 2.

According to the above-mentioned passage, "as the actuator drives the actuator rods 12 downwards, the spring tubes move downwards and the springs 2 are compressed causing a higher pressure to be exerted on the brush head assembly" (see WO-95/13737, page 8, lines 30 to 34).

Furthermore, this passage contains the following sentences which relate to the length of the spring and to the pressure range:

"Typically, the effective spring lengths, in an uncompressed state, are around 15 inches and this is particularly suitable for a 26/32 inch brush pressure system. **Such an arrangement** can provide a range of 0 to 450 lb pressure in a loaded pedestrian cleaning machine fitted with apparatus according to the invention, compared to the maximum 200 lb pressure available using known apparatus" (page 8, lines 34 to page 9, lines 3; emphasis added).

Thus, the application as filed only contains support for a pressure force range of 0-450 lbs when considered in combination with a specific spring length and configuration that is two springs each having a length of around 15 inches.

Therefore, the introduction of the range 0-450 lb into the independent claims of both requests without stating that such a range is obtained by the arrangement of two springs having a length of 15 inches has no support in the application as filed.

2.3 The arguments submitted by the appellant can be summarized as follows:

a) The application as filed, when considered as a whole, in no way teaches the skilled person that a range of 0-450 lb is achieved only by means of the particular spring configuration described in application as filed in relation to Figure 1, i.e. by means of two springs having a length of 15 inches. In particular, the skilled person reading the above-mentioned passage (from page 8, line 15 to page 9 , line 9) in conjunction with

the passage on page 5 (lines 5 to 20) of the application as filed is taught that the range of 0-450 lb can be achieved by way of springs of various lengths.

According to the passage on page 5 (lines 5 to 20) of the application as filed, "the required length of the spring will of course depend on many factors, including for example the type of machine (longer springs will be needed in a ride-on machine), the gauge of the spring (heavy duty springs need to be longer than light duty springs to provide the required suspension characteristics to compensate for uneven ground), the cleaning or sweeping power required and the relative positions of the actuator and the spring tubes". Therefore, the skilled reader would recognize that similar technical effects with regard to the suspension characteristics of different length springs can be achieved by varying such other characteristics such as those presented on page 5 of the application as originally filed.

b) Since claim 1 of the main request as well as that of the auxiliary request (in so far as these claims refer to the compensation for undulation in the surface to be cleaned) explicitly define the technical effect associated with the brush pressure force to be applied to the surface to be cleaned, the exact choice of spring length to provide such an advantageous effect becomes somewhat arbitrary. Furthermore, neither the patent specification nor the application as filed

teaches that the particular spring lengths and configuration described in the passage bridging pages 8 and 9 of the application as filed are essential to achieving the technical effect.

2.3.1 The board cannot accept these arguments for the following reasons:

a') In the passage on page 5, lines 5 to 20 of the application as filed compression springs of various length are mentioned ("the biasing means comprises at least one heavy duty compression spring at least 3ins (7.2c,) and preferably 6ins (14.4cm) long and advantageously 12 to 15ins (28.8 to 36 cm) long"). However, this passage does not refer to the brush pressure force range which can be obtained by the mentioned springs. The skilled reader could recognize that each of the mentioned springs can provide a particular pressure force range but would not directly and unambiguously recognize that each of the mentioned springs can provide a range of 0-450 lb.

The range of 0-450 lb is referred to by way of example in the passage bridging pages 8 and 9 of the application as filed and clearly relates to a particular spring length and configuration. This passage does not suggest that the range of 0-450 lb is a general aim to be achieved independently of the specific spring configuration or by means of the springs mentioned on page 5, lines 5 to 20.

b') Compensation "for undulations in the surface to be cleaned ..." as defined in claim 1 of both requests can certainly be achieved by springs of various lengths (not only by the springs of 15 inches referred to in the passage from page 8, line 15 to page 9, line 9). However, the compensation can also be achieved by means of springs permitting a pressure force range different from that of 0-450 lb.

In other words, even if the particular spring length and configuration described in the passage bridging pages 8 and 9 is not essential to compensate for undulations, the particular range of 0-450 lb is not disclosed as being the only range ensuring compensation for undulations.

2.4 Therefore, the amended claim 1 of the main request as well as that of the auxiliary request contain subject-matter extending beyond the content of the application as filed (Article 123(2) EPC).

## Order

**For these reasons it is decided that:**

The appeal is dismissed

The Registrar: The Chairman:

G. Magouliotis M. Ceyte