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**Datasheet for the decision  
of 21 February 2007**

**Case Number:** T 0490/04 - 3.2.07

**Application Number:** 95908697.6

**Publication Number:** 0740596

**IPC:** B26B 21/40

**Language of the proceedings:** EN

**Title of invention:**

Wear indicator for a disposable razor

**Patentee:**

Doroodian-Shoja, Siamak

**Opponent:**

The Gillette Company

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 123(2)

**Keyword:**

"Added subject-matter (main and alternative request - yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0490/04 - 3.2.07

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.07  
of 21 February 2007

**Appellant:** Doroodian-Shoja, Siamak  
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**Respondent:** The Gillette Company  
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**Decision under appeal:** Decision of the Opposition Division of the  
European Patent Office posted 13 February 2004  
revoking European patent No. 0740596 pursuant  
to Article 102(1) EPC.

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** H. Hahn  
C. Holtz

## Summary of Facts and Submissions

- I. The patent proprietor lodged an appeal against the decision of the Opposition Division to revoke European patent No. 0 740 596.
  
- II. An opposition had been filed against the patent as a whole under Article 100(a) EPC on the grounds of lack of novelty and inventive step, and under Article 100(b) EPC on the ground of insufficient disclosure.

The Opposition Division held that claim 1 of the main request as filed with letter dated 18 December 2002, and claim 1 of the first and second auxiliary request as filed with letter dated 29 December 2003, and claim 1 of the sixth auxiliary request as filed during the oral proceedings on 27 January 2004 before the first instance contravened Article 123(2) EPC. The same conclusion applied to auxiliary requests 3 to 5 and 7 which contained an identical claim 1 of the main, the first or second, or the sixth auxiliary request, respectively, in combination with an adapted description page 3. Claim 1 of the first and fourth auxiliary request was additionally considered to contravene Article 123(3) EPC. Furthermore, the main request, the first, second and sixth auxiliary request were considered to infringe Article 84 for being inconsistent with the embodiments of figures 2 and 7 as described in the description.

- III. With a communication dated 8 December 2006 and annexed to the summons to oral proceedings the Board presented its preliminary opinion based on claim 1 of the main request, being identical with claim 1 of the seventh

auxiliary request rejected with the decision under appeal, and on claim 1 of the alternative request as filed together with the grounds of appeal dated 22 June 2004.

The Board considered that claim 1 of the main request and also claim 1 of the alternative request appeared to contravene Article 123(2) EPC, relating to intermediate generalizations of embodiments originally only disclosed in a more specific form. Therefore both requests seemed to fail.

Furthermore, provided that a request were to be considered to meet the requirements of Articles 123(2) and (3) EPC, the issue of clarity might have to be discussed for those requests. Specifically, the objections made by the respondent to the "disclaimer" in the description should be discussed, as well as the term "correlated" of claim 1 of both requests, which seemed ambiguous and lacking clarity taking account of the patentee's statements and arguments as submitted with its letter of 18 December 2002 (see section 2.1). Therein the proprietor suggested that the term "correlated" has a very precise meaning, i.e. that a material suitable for the indicator strip must wear only by abrasion with the beard and must be independent of any other factor encountered in normal use of the razor. In sections 4.1, 4.2 and 5.2 of the said letter the proprietor believed that the wear of water-soluble material, such as polyethylene oxide or soap, might be influenced by other factors encountered during normal shaving (e.g. the amount and/or temperature of water used) so that the strips of the prior art did not meet the precise correlation requirement. However, the

opponent indicated that since the original patent description included polyethylene oxide, a water soluble material, as one of the two materials identified by potentially suitable material for its indicator strip (see column 4, lines 46 to 50; and column 5, lines 18 to 21) the proprietors arguments were in direct conflict with the description of the patent in suit. Furthermore, said definition of "correlated" also created ambiguity and lacks clarity vis-à-vis dependent claim 2, according to which the strip of material gradually wears away during shaving due to its being abraded away **by friction with the skin and/or hair**, since the said proprietor's interpretation of claim 1 is narrower than that of claim 2.

It was further stated that in the present case, in accordance with Article 111(1) EPC, the Board would consider it appropriate to remit the case to the department of first instance for further prosecution if a formally acceptable request (Article 84 and 123(2) and (3) EPC) would be available since the Opposition Division has not yet examined the grounds of opposition under Articles 100(a) and (b) EPC.

Finally, the parties were advised to take note of the amended Rules of Procedure of the Boards of Appeal, in force as of 1 May 2003 and particularly of Article 10b.

IV. No reaction to the communication of the Board was received from the appellant. With fax of 14 February 2007 it informed the Board that neither the appellant nor its representative would attend the oral proceedings.

V. Oral proceedings before the Board were held on 21 February 2007 in the absence of the appellant.

(a) The appellant (patent proprietor) had requested, in the written proceedings, that the decision under appeal be set aside and the patent be maintained on the basis of claim 1 of the main request (= the seventh auxiliary request rejected by the Opposition Division) or alternatively on the basis of claim 1 of the alternative request, both as submitted with the grounds of appeal dated 22 June 2004.

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

VI. Claim 1 according to the main request reads as follows:

"1. Disposable razor (10) or razor cartridge comprising at least one blade (16) mounted in a head or frame (14), said blade (16) having a shaving edge (18), and at least one strip (20) of material extending generally in parallel to the shaving edge (18), said strip (20) of material being located on the head or frame (14) in close proximity to the shaving edge (18) of said blade (16) so as to contact the skin of the user during shaving and said strip (20) of material gradually wearing away as the disposable razor or cartridge is used in shaving, characterized in that the amount of wear on said strip (20) of material during shaving is correlated with the amount of wear on the shaving edge (18),

said strip (20) of material comprising a first layer of material affixed to the frame or head (14), and a second layer of material affixed on said first layer, the second layer being gradually worn away during shaving to reveal at least part of the first layer, to result in a visually readily recognisable change of aspect of said strip, so that said strip (20) of material serves as a wear indicating means for visually indicating the amount of wear on the shaving edge (18) of said blade (16) progressively over time."

In the description the embodiments of figures 2 and 7 were declared "outside the scope of the claimed invention".

VII. Claim 1 according to the alternative request reads as follows (amendments compared to claim 1 of the main request are in bold and deletions are in brackets, emphasis added by the Board):

"1. Disposable razor (10) or razor cartridge comprising at least one blade (16) mounted in a head or frame (14), said blade (16) having a shaving edge (18), and at least one strip (20) of material extending generally in parallel to the shaving edge (18), said strip (20) of material being located on the head or frame (14) in close proximity to the shaving edge (18) of said blade (16) so as to contact the skin of the user during shaving and said strip (20) [*sic!* should read "said strip (20)"] of material gradually wearing away as the disposable razor or cartridge is used in shaving **and the amount of wear on said strip (20) of material**

during shaving being correlated with the amount of wear on the shaving edge (18)

characterized in that

said strip (20) of material comprises **two layers of material having contrasting colours and different longitudinal cross-sections and being provided by a first layer affixed to said head or frame and a second layer [of material] affixed on said first layer, the gradual wear of said strip of material results in a visually readily recognisable change of aspect of said strip (20) of material,**

so that said strip (20) of material serves as a wear indicating means for visually indicating the amount of wear on the shaving edge (18) of said blade (16) **[progressively over time]."**

VIII. The appellant argued in writing essentially as follows:

Claim 1 of the main request does not constitute an intermediate generalization taking account of the disclaimer included in the description with respect to figures 2 and 7, so that it is clear when interpreting claim 1 in the light of Article 69 EPC that only two-layered embodiments having contrasting colors and different longitudinal cross-sections are covered by claim 1. Hence the requirements of Article 123(2) EPC are met by claim 1 of the main request.

Claim 1 of the alternative request meets the requirements of Articles 123(2) and (3) EPC (see page 5, paragraph 3, lines 1 and 2; paragraph 4, sentence 1 and 2; paragraph 4 last line; page 6, paragraph 1; sub-claims 3 and 4 of the application as filed) and



excludes the embodiments of figures 2 and 7 since it is directed to a "multiple-points-in-time indicator".

IX. The respondent argued essentially as follows:

Claim 1 of the main request contravenes Article 123(2) EPC because a visual indication indicating progressively over time to the user the amount of wear of the blade is only disclosed in combination with the other features of the embodiments of figures 3 to 6, i.e. with a two layered strip, both layers having contrasting colors and different longitudinal cross-sections. Furthermore, the "visually readily recognisable change of aspect" is not necessarily the result of contrasting colors. Claim 1 of the main request also does not specify that more and more of the contrastingly colored lower layer is revealed as the two layers wear away.

The same conclusion is valid for claim 1 of the alternative request which likewise does not define that more and more of the contrastingly colored lower layer is revealed as the two layers wear away and which no longer defines that the **second layer is gradually worn during shaving to reveal at least part of the first layer** (emphasis added by the Board) to result in a visually recognizable change of aspect. Thus according claim 1 of the alternative request said visually readily recognizable change of aspect may be independent of the revelation of the first layer, which teaching cannot be found in the application as originally filed.

## Reasons for the Decision

### 1. Amendments (Articles 123(2) and (3)EPC)

#### Main request

1.1 Claim 1 of the main request is based on claim 1 as originally filed in combination with features disclosed at or being derivable from: page 3, line 7 ("**readily** recognizable"); page 5, lines 1 to 7 and lines 12 to 16; and page 9, lines 15 to 25 of the application as originally filed (corresponding to the published WO-A-95 20472) with the exception of the following features:

1.1.1 The definition of wearing away "**progressively over time**" of claim 1 is explicitly disclosed in that application only in the context of figures 3a to 3j (see page 4, lines 8 to 15) which relate to the specific two-layer embodiments having contrasting colors and having different longitudinal cross-sections. These embodiments are described as disclosing more and more of that contrastingly colored lower layer as a result of continued wear abrasion (see page 3, lines 24 to 28; page 5, lines 23 to 25 and line 31 to page 6, line 15). These features are, however, as such not present in claim 1 of the main request.

1.1.2 These embodiments have been generalized, without having any basis in the application as originally filed, to a disposable razor or razor cartridge comprising a strip (20) comprising a first and a second layer, said second layer being gradually worn away during shaving to reveal at least part of the first layer, to result in a

visually readily recognisable change of aspect of said strip, so that said strip of material serves as a wear indicating means for visually indicating the amount of wear on the shaving edge (18) of said blade (16) progressively over time.

With the present wording "comprising" it is now possible that the strip involves more than two layers.

- 1.1.3 Further, the definition "**to result in a readily recognisable change of aspect of said strip**" represents another generalisation of said "contrasting colors" and said "different longitudinal cross sections" for which there likewise exists no basis in the application as originally filed.

The passage at page 5, lines 23 to 30 concerning said two layer embodiments mentions that "as the uppermost layer is worn away, the color of the next layer becomes visible" and "as a further alternative, a word such as "DISPOSE", or other words or indicia (such as diagonal stripes or a row of stars), could be made to appear as the upper layer is worn away". Hence this passage could provide support for some generalisation of the "contrasting colors".

However, the present wording allows for a change in the texture or in the size and geometry of the indicator means to be included in the invention, where the general statement at page 9, lines 15 to 25 makes it clear that the embodiments relating to this feature are originally presented as an alternative to the two layer contrasting color indicating means. They therefore

cannot provide a basis for a generalisation to a "**change of aspect**".

1.1.4 The amendments to the description, with which it is intended to exclude the embodiments of figures 2 and 7 from the scope of invention as claimed, cannot alter the above facts, independent of whether such "disclaimers" in the description can function as a limitation of the claimed subject-matter.

1.1.5 The Board therefore concludes that claim 1 of the main request contravenes Article 123(2) EPC. The main request is therefore not allowable.

*Alternative request*

1.2 The above mentioned (points 1.1.2 and 1.1.3) definitions "said strip (20) of material **comprises** two layers of material having contrasting colors" and "results in a visually readily recognizable **change of aspect** of said strip (20)" of claim 1 of the main request are also present in claim 1 of the alternative request. They likewise have no basis in the application as originally filed (see above).

1.2.1 Furthermore, claim 1 of the alternative request additionally does not define that the second upper layer is worn away during the shaving and as such also constitutes an intermediate generalisation of the feature of this layer.

1.2.2 Hence also claim 1 of the alternative request contravenes Article 123(2) EPC. The alternative request is thus not allowable.

2. Since none of the appellant's requests is allowable the appeal cannot succeed.

**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders