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**Datasheet for the decision
of 13 September 2007**

Case Number: T 1434/05 - 3.2.04

Application Number: 99830284.8

Publication Number: 1051943

IPC: A47J 45/06

Language of the proceedings: EN

Title of invention:

Handle for a cooking vessel

Patentee:

La Termoplastico F.B.M. S.R.L.

Opponent:

Esmaltaciones San Ignacio, S.A.
ALLUFLON S.P.A.

Headword:

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Relevant legal provisions:

EPC Art. 52(1), 54, 56

Keyword:

"Novelty - main request (yes)"
"Inventive step - all requests (no)"

Decisions cited:

-

Catchword:

-



Case Number: T 1434/05 - 3.2.04

DECISION
of the Technical Board of Appeal 3.2.04
of 13 September 2007

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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
11 October 2005 concerning maintenance of
European patent No. 1051943 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: A. de Vries
C. Heath

Summary of Facts and Submissions

I. The Appellant I (Opponent I) lodged an appeal, received 14 November 2005, against the interlocutory decision of the Opposition Division posted 11 October 2005 on the amended form in which the Patent No. EP-B-1051943 can be maintained, and simultaneously paid the appeal fee. The statement setting out the grounds was received 21 February 2006.

The Appellant II (Proprietor) likewise lodged an appeal received 9 December 2005 against the interlocutory decision of the Opposition division, simultaneously paying the appeal fee. The statement setting out the grounds was received 13 February 2006.

II. Opposition was filed against the patent as a whole and based on Article 100(a) together with Articles 52(1) and 54 EPC for lack of novelty, and together with Article 52(1) and 56 EPC for lack of inventive step.

The Opposition Division held that the grounds for opposition mentioned in Article 100 EPC did not prejudice the maintenance of the granted patent having regard to the following documents in particular:

D2: Spanish Utility Model 141.897

D8: EP-A-0808600

III. The Appellant I (Opponent I) requested that the decision under appeal be set aside and the patent be revoked in its entirety.

The Appellant II (Proprietor) requested that the decision under appeal be set aside and the patent be maintained as granted, or, in the alternative, that the patent be maintained in amended form on the basis of the claims in accordance with one of first to third auxiliary requests filed with the letter of 13 February 2006, or, on the basis of the claims in accordance with a fourth auxiliary request as filed with the letter of 3 August 2007.

The other party to the proceedings (Opponent II) has not made any submissions or filed any requests.

IV. Oral proceedings were held on 13 September 2007 in the absence of the duly summoned Appellant I (Opponent I) and the other party to the proceedings (Opponent II).

V. The wording of claim 1 of the requests is as follows :

Main Request

1. "A handle (1) for a cooking vessel, the handle comprising a body (2) made of a first material and having a first and a second boundary surface (3, 4) opposite and substantially facing each other, and an end portion (5) having connecting means for connection to a cooking vessel; characterized by also comprising at least one through inner cavity (6) between said opposite first and second boundary surfaces (3, 4) of said body (2); at least one corresponding insert (10) made of a second material and fitted through said at least one through inner cavity (6) with respective opposite ends (11, 12) located at said opposite first and second boundary surfaces (3,4) of the body (2); and

click-on fastening means (18, 19) for fastening said at least one insert (10) inside said at least one through inner cavity (6)."

First Auxiliary Request

Claim 1 is as in the main request but for the following amendments (the relevant changes are indicated in bold by the board):

- throughout the claim "a first and a second boundary surface" is replaced by "a **bottom** and a **top** boundary surface"
- the feature of the boundary surface (third and fourth lines) "...a first and second boundary surface (3,4) opposite and substantially facing each other **for grip by the user**".

Second Auxiliary Request

Claim 1 is as in the main request but for rewording of the feature pertaining to the opposite ends of the insert, which now reads: "...respective opposite ends (11, 12) located at said opposite first and second boundary surfaces (3,4) of the body (2) **for grip by the user ...**" (emphasis added).

Third Auxiliary Request

Claim 1 is as in the main request but adds at the end of the claim the following features: "; said insert (10) comprises a visible portion (13) inserted inside said second boundary surface (4), and at least one fastening portion (14) fitted through said cavity (6) and extending beyond said first boundary surface (3) to

define a projection (22) for grip of the handle by the user."

Fourth Auxiliary Request

Claim 1 is as in the main request but adds the following features at the end of the claim:

"said click-on fastening means comprising at least one retaining tooth (18) carried at a first end (11) of said at least one insert (10) located at said first boundary surface (3) of said body (2); and a corresponding seat (19) formed in said body (2), close to said first boundary surface (3) of the body; said at least one insert (10) comprising a visible portion (13), and at least one fastening portion (14) fitted through said at least one cavity (6) and having at least one corresponding retaining tooth (18); said at least one fastening portion (14) extending from said visible portion (13) and through said cavity (6) so that said at least one retaining tooth (18) projects outwards of said cavity and define a projection (22) for grip by the user."

VI. The Appellant I (Opponent I) argued as follows :

In as far as the use of different materials cannot be inferred from D2 this sole distinction is indisputably obvious. Even if the interpretation as regards "boundary surfaces" of the Appellant II were to be followed such further distinctions did not contribute to the stated problem of cheap and easy assembly.

With regard to the *first and second auxiliary requests* in D2 the lower surface from which the prongs emerge as

well as the ends of the prongs themselves which form part of the insert are grippable by a user. Even if these features were allowable in their present form they fail to further distinguish the claimed invention from the D2 handle.

In the *third auxiliary request* the added features, in as far as these might imply an additional function of easy gripping, are rendered obvious by the projections of D8 with the same double function.

Tooth and seat as in claim 1 of the fourth auxiliary request follow from the clipping prongs of D2. These extend from the upper visible portion of the insert, through and beyond the cavity to define projections on the lower surface of the handle. These features therefore also do not further distinguish the claimed handle from that of D2.

VII. The Appellant II (Proprietor) argued as follows :

The skilled person in the field of handles of cooking vessels reads "boundary surface" as limiting the extent of the handle body. In D2 the through holes for the prongs extend only to the groove in the underside of the handle which is contained within the handle's boundary surface.

This further difference results in the main effect of providing for a wide range of designs and materials of the insert in the bottom surface. Both sides of the handle may thus be given a decorative surface, and the technical problem resides in providing the technical means for this design aim.

D8 solves this problem in an alternative manner by co-moulding in which the handle is enveloped by the second material pressed through the openings in the handle. If the skilled person were nevertheless to combine the teachings of D2 (insert) and D8 (arrangement on both sides) the obvious way would be to provide separate inserts for bottom and top of the handle.

The auxiliary requests are intended to more clearly distinguish the claimed handle from D2. Thus in D2 the surface of the groove at which the insert's prongs emerge from the cavity is not a surface for grip by the user as required in the 1st auxiliary request, nor can the emerging end of the prong itself be for grip by the user at that location within the groove as is necessary in the 2nd auxiliary request. In the 3rd auxiliary request the gripping function resides explicitly in the fastening portion extending beyond the boundary surface.

Finally, with regard to the fourth auxiliary request the feature of the tooth serves different functions, namely fastening and gripping. The skilled person intent on maintaining the fastening means of D2 while adopting the D8 configuration will again do so with two inserts with separately located fastening and gripping functionalities.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is therefore admissible.

2. *Background of the Invention*

The invention concerns a composite handle for a cooking vessel which has a different material insert snap-fitted (as follows from "clip-on fastening means") into an inner cavity through the handle body. Opposite ends or sides of the fitted insert are located at opposite first and second boundary surfaces of the body. Apart from cheap and easy assembly such a composite handle is said to allow for a wide variety of design possibilities for the bottom as well as the top surface.

3. Main Request

3.1 Novelty

3.1.1 It is common ground that the most pertinent prior art is disclosed in document D2. It is equally undisputed that D2 discloses, see in particular figure 5 showing a cross-section of the handle, and the 3rd to 5th paragraphs of its English translation (identified as D4 in the proceedings) the following features of claim 1 (all requests):

- a composite handle for a cooking vessel comprising
- a body (finely cross-hatched in figure 5) which clearly has first and second opposite, facing surfaces, as well as connecting means for connecting to the vessel (the "forward lower part" with through circular hole in the 5th paragraph)
- the body has a through inner cavity (formed of the "lancet shaped hollow" and "two stepped through holes" mentioned in the 3rd and 4th paragraphs respectively)

- an insert ("flattened part" in the 3rd and 4th paragraph, shown in coarse cross-hatching in figure 5, from which emerge two "clipping prongs", see 4th paragraph), which is fitted through the through inner cavity (as described in the 4th paragraph)
- fastening means fastening the insert inside the cavity (by means of the two clipping prongs, see 4th paragraph).

3.1.2 In construing the claim, the Board notes that the term "boundary surface" can be given a different interpretation than that accorded it by Appellant II. According to the Oxford English Dictionary, 2nd Edition 1989, "boundary" denotes "that which serves to indicate the bounds or limits of anything *whether material or immaterial*; also the limit itself" (italics added by the Board). "Boundary surface" is thus a surface which forms the bounds or limits of something *material or immaterial*. It can thus denote the bounds of an *immaterial* object such as the design envelope of the handle which extends across the groove as argued by Appellant II.

However, it may also mean the real, tangible surface of the body itself as *material* object. Various intermediate interpretations are possible, each of which is equally legitimate as "boundary surface". In its construction of claim 1 the Board identifies the first of the two opposite, facing boundary surfaces as the surface running along the top of the groove on the underside of the D2 handle body, and the latter's top surface respectively. The through inner cavity in claim 1 as then formed by the upper hollow and the two

stepped through holes then extends between the handle body's two boundary surfaces as also required by claim 1 of the main request. Consequently, the respective opposite ends of the insert - the lower ends of the prongs and the top of the flattened part respectively - are located at the first and second boundary surfaces of the body as further required by claim 1 of the main request.

- 3.1.3 The sole remaining difference is that of the body and insert being of *first* and *second* materials respectively. Reading first and second as relating to *different* materials, the Board is unable to derive this feature directly and unambiguously from D2. D2, see the final paragraph (English translation), specifies that "the design ... might be carried out ... using any suitable materials". This passage is unspecific as to how these materials are used, and may mean that the whole design, body and insert, is formed of one of a variety of a suitable materials. Body and insert may for example be of the same material but have undergone different surface treatments or have a different colour.

Consequently, the handle of claim 1 (main request) is novel over the prior art of D2.

3.2 Inventive Step

- 3.2.1 D2 incontestably represents the closest prior art. The sole difference of different materials for insert and body provides flexibility in design and properties of the handle as it allows different properties to be combined in the handle where these may not be available in a single material. The claimed solution to this

problem is however well-known in the field of cooking vessel handles as is acknowledged in the description, page 2, lines 3 to 17. As an example this passage cites D8, where, see abstract and figure 2, a composite handle comprises a part made of thermo-setting resin and co-moulded through cavities in a main body made of thermoplastic material, thus combining the advantageous properties of heat isolation and improved grip in a single handle.

- 3.2.2 The skilled person intent on designing a handle with improved design flexibility and prompted by the final paragraph of D2, which already suggests the use of any suitable materials, will as a matter of obviousness apply the known measure of using different materials as for example described in D8 and realize insert and body from different materials with different suitable properties. He thus arrives at the handle of claim 1 without any inventive activity.

4. *First and Second Auxiliary Requests*

- 4.1 In the first auxiliary request claim 1 now specifies that the first and second boundary surfaces are "bottom and top" boundary surfaces respectively and are "for grip by the user", i.e. are the bottom and top gripping surfaces of the body handle. In claim 1 of the second auxiliary request the ends of the insert are specified as "for grip by the user". Though the latter amendment is rather less transparent than the first, and neither have a literal basis in the filed application, both are understood as meaning that the through cavity and insert fitted therethrough extend from top to bottom gripping surfaces of the main body. Thus interpreted

this feature represents a further difference with respect to D2, where the upper inside of the groove, to which the prongs and stepped through hole extend, is not a gripping surface. It corresponds to realizing the body handle without a groove as in D2, i.e. with a non-concave bottom surface.

4.2 The Board holds that to the person skilled in the field of cooking vessel handles it will be evident that the two-part design of D2 with snap-fit insert is generally applicable to handles irrespective of main body shape or cross-section. In particular it is so applicable, as a matter of course, to handles with a body having no lengthwise groove along its underside, such as that known from D8, which is moreover composite and is made of different materials. When applied to such a handle, the stepped through holes must necessarily exit at the non-concave underside so as to receive the corresponding clipping part of the respective prong in their associated stepped opening. As such a further modification is technically unrelated to that of realizing the insert and body in different materials, the two may be considered independently. The handle of claim 1 of the first and second auxiliary requests is then the mere aggregation of these two obvious modifications and thus also obvious.

4.3 The Board notes that the insert and its manner of fastening remain basically unchanged, so that, in comparison to D2, assembly can be neither easier nor cheaper. In as far as extending the through hole and prong to the lower gripping surface *of itself* might allow of a wider range of designs and materials (to be realized by appropriately shaping or designing the

prong ends) this is at best an inevitable bonus effect relying on features not included in the claim. The Board considers neither of these effects as in any way indicative of inventive step.

5. *Third and Fourth Auxiliary Requests*

5.1 Claim 1 of both requests adds (in different degrees of detail) further features which are in part already known from D1: in figure 1 part of the ogival insert is visible in the handle's top surface; its clipping prongs, which extend through stepped through holes, see 4th paragraph of the text (English translation) and figure 5, form the claimed "fastening portions", and comprise, as is understood by the skilled person, a conventional snap-fit with "tooth" on the prong engaging a "seat" in the body (in the wording of claim 1).

5.2 D2, however, does not disclose that the fastening portion extends beyond the first boundary surface (3rd auxiliary request), more specifically (as in the 4th auxiliary request), that its tooth projects outwards of the cavity to define a projection for grip (of the handle) by the user. Figure 5 of D2 shows the prong ends flush with the lower surface.

Here, the indication "to define a projection for grip ..." may be understood as implying structural further limitations, e.g. those indicated in the paragraph bridging pages 6 and 7 of the filed description. As the Board however does not consider these limitations to be immediately evident to the skilled person from such a formulation, they are

disregarded by the Board. Alternatively, it may be read as a mere statement of purpose or function which may be ascribed to any projection, and is thus without limiting effect.

- 5.3 Extending the tooth of the fastening portion beyond the surface where it is otherwise sunk has the effect of making the tooth more accessible for the purpose of facilitating disassembly. This is however a commonly known measure in the design of snap-fitting plastic parts, a technical field of which the skilled person designing cooking vessel handles of plastics materials has intimate knowledge. That the projecting tooth might then also serve to aid gripping is incidental to that main function, i.e. is to be regarded as an inevitable bonus effect, which, following established practice, cannot be regarded as contributing towards inventive step.

As this further differing feature is unrelated to that of different materials, the Board considers them separately. The claimed handle is then the mere aggregation of these individually obvious modifications, and as such is also obvious.

6. In conclusion the Board finds that the subject-matter of claim 1 according to any of the main and first to fourth auxiliary requests does not meet the requirement of Article 52(1) together with Article 56 EPC. The ground mentioned under Article 100(a) EPC therefore prejudices the maintenance of the patent according to any of these requests.

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