

Internal distribution code:

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

**Datasheet for the decision
of 10 July 2008**

Case Number: T 0187/06 - 3.2.04

Application Number: 98902108.4

Publication Number: 1021120

IPC: A47L 9/06

Language of the proceedings: EN

Title of invention:

Vacuum Cleaner

Patentee:

Dyson Technology Limited

Opponent:

Hoover Limited

Headword:

-

Relevant legal provisions:

EPC R. 115

Relevant legal provisions (EPC 1973):

EPC Art. 100a, 56

Keyword:

"Inventive step (no, all requests) - interpretation of claims"

Decisions cited:

-

Catchword:

-



Case Number: T 0187/06 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 10 July 2008

Appellant: Hoover Limited
(Opponent) Pentrebach / Melhyr Tydfil
Mid Glamorgan CF48 4TU (GB)

Representative: Lindsey, Michael
Geldards LLP
Dumfries House
Dumfries Place
Cardiff CF10 3ZF (GB)

Respondent: Dyson Technology Limited
(Patent Proprietor) Tetbury Hill
Malmesbury
Wiltshire SN16 0RP (GB)

Representative: Smith, Gillian Ruth
Dyson Limited
Intellectual Property Department
Tetbury Hill
Malmesbury
Wiltshire SN16 0RP (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
25 November 2005 concerning maintenance of
European patent No. 1021120 in amended form.

Composition of the Board:

Chairman: M. Ceyte
Members: M. Poock
C. Heath

Summary of Facts and Submissions

- I. This appeal lies from the interlocutory decision of the Opposition Division of 25 November 2005 on the amended form in which European patent No. 1 021 120 can be maintained.

The Opposition Division held that the ground for opposition of Article 100a EPC 1973 did not prejudice the maintenance of the patent as amended because the subject-matter of claim 1 in the form of the main request was novel and involved an inventive step with regard to the prior art disclosed in the documents cited in the opposition proceedings, of which the following are cited in this appeal decision:

D1: GB-A-364 362 and

D4: US-A-1 347 166.

- II. The Opponent lodged the notice of appeal on 3 February 2006. The appeal fee was received on 2 February 2006 and the statement of grounds of appeal on 4 April 2006.
- III. Oral proceedings before the Board were held on 10 July 2008. As notified beforehand, the duly summoned Appellant did not attend the oral proceedings. In accordance with Rule 115(2) EPC, the proceedings were continued without him.

The main topic of discussion was whether the subject-matter of claim 1 involved an inventive step, in particular over the vacuum cleaner of document D1 in view of document D4.

IV. The Appellant (Opponent) requested that the decision under appeal be set aside and that the patent be revoked.

The Respondent (Patent Proprietor) requested that the appeal be dismissed (main request), or that the patent be maintained based on the auxiliary request filed with letter of 10 June 2008.

V. Claim 1 of the main request is identical to the one underlying the decision of the Opposition Division and reads as follows:

"A vacuum cleaner having a body (4) housing dust separation apparatus (6) and a cleaner head (8) connected to the body (4), the cleaner head (8) comprising an outer casing (22) having an upper surface (22a), a downwardly open dirty air inlet (12) and a brush bar (16) rotatably supported in the cleaner head (8) adjacent the dirty air inlet (12), a dirty air passage (20) being provided in the vacuum cleaner (2) for carrying dirt-laden air from the dirty air inlet (12) to the dust separating apparatus (6) past the brush bar (16), the upper surface (22a) of the outer casing (22) of the cleaner head (8) having a movable or removable portion (26) to allow access to the dirty air passage (20), the movable or removable portion (26) being located rearwardly of the brush bar (16) so as to allow physical access to an area of the dirty air passage (20) downstream of the brush bar (16), and the movable or removable portion (26) being transparent, at least in part, so as to allow a user of the vacuum cleaner (2) visually to inspect the area of the dirty air passage (20) downstream of the brush bar (16),

wherein the area of the dirty air passage (20) to which physical and visual access is provided is immediately downstream of the brush bar (16)".

In claim 1 of the auxiliary request, the following feature was added in comparison with the main request:

"and sufficiently close thereto to enable a user's fingers to contact the brush bar (16)".

VI. The Appellant argued that the subject-matter of claim 1 of all requests does not involve an inventive step in view of document D4 alone or in combination with document D1.

VII. The Respondent argued that it was not obvious to combine documents D1 and D4. The combination of these documents could only be based on the knowledge of the invention, thus on hindsight.

Firstly, the subject-matter of claim 1 was distinguished from the vacuum cleaner disclosed in document D1 not only by the feature that the movable or removable portion being transparent but also by the feature that this portion was located rearwardly of the brush bar. Since the terms "upper", "downwardly", and "outer" are used in the claim, the term "rearwardly" has a clear geometric meaning such that the corresponding feature of claim 1 was not known from document D1.

Secondly, an unrecognized problem existed of reducing the number of times in which the moveable or removable portion must be removed to inspect the area of the

dirty air passage immediately downstream of the brush bar.

Thirdly, the purpose of the transparent inspection window 12 in document D4 was not disclosed at all, i.e. why it should be transparent. It was only disclosed that it should be replaced with a plate 20 for the attachment of an extension hose.

Reasons for the Decision

1. The appeal is admissible.
2. *Inventive step - claim 1 (main and auxiliary request)*
 - 2.1 The closest prior art is known from document D1.
 - 2.1.1 It discloses a vacuum cleaner with a cleaner head (Figure 1: left hand parts; Figures 2 and 7). The cleaner head comprises an outer casing having an upper surface, a downwardly open dirty air inlet and a brush bar (beating member: i, k, n1, n2) rotatably supported in the cleaner head adjacent the dirty air inlet. A dirty air passage is provided in the vacuum cleaner (see Figure 1) for carrying dirt-laden air from the dirty air inlet to the dust separating apparatus past the brush bar. The upper surface of the outer casing of the cleaner head has a movable or removable portion q to allow physical and visual access to the dirty air passage, in particular to the area immediately downstream of the brush bar. As can be seen in Figure 1, this area of the dirty air passage is sufficiently close to be contacted by the fingers of a user.

2.1.2 Moreover, it discloses that the movable or removable portion q is located rearwardly of the brush bar (i, k, n1, n2) for the following reasons:

(a) As a general rule, when the subject-matter of a claim is defined in general terms, the term has to be construed broadly. This means that it is appropriate to establish whether the disclosure of any prior art falls within the broadest meaning of such terms. Only in the exceptional circumstance that a term is clearly and unequivocally defined in the description to have a specific meaning, the term can be construed narrowly. However, this is not the case here.

(b) In the present case, the term "located rearwardly" has to be construed broadly, because the description does not define this term at all, in particular that this term should clearly exclude that the portion is located downstream of the brush bar. Since the general meaning of the term "located rearwardly" encompasses that the movable or removable portion q is located downstream of the brush bar, it is concluded that the respective feature of claim 1 is known from document D1.

2.2 Derivation of the technical problem

2.2.1 The subject-matter of claim 1 is, thus, distinguished from this closest prior art only by the feature that the movable or removable portion q is transparent.

- 2.2.2 This enables a user to visually control the inside of the cleaner head, and in particular the area immediately downstream of the brush bar without the necessity to remove the cover q. Only when necessary, e.g. the dirty air passage is blocked or the brush bar or the belt drive do not work correctly, the cover q has to be removed.
- 2.2.3 Thus, the technical problem to be solved is, as stated in the patent specification [0004], to provide a vacuum cleaner which is more easily operated and maintained by the user.
- 2.2.4 The Board does not share the Appellant's view on the existence and wording of an unrecognised problem. The definition proposed is too narrow because it is limited to the area immediately downstream of the brush bar. As set out above, with the distinguishing feature of a transparent movable or removable portion in the known vacuum cleaner, a user can visually control the whole inside of the cleaner head and not only the area immediately downstream of the brush bar. Hence, this wording of the problem is not based in fact on all effects achieved with the distinguishing feature.
- 2.3 Obviousness of the solution
- 2.3.1 Document D4 relates to a vacuum cleaner with a cleaner head (Figure 1: right hand parts). The cleaner head comprises an outer casing having an upper surface 4, a downwardly open dirty air inlet (between 40 and 41) and a brush bar 45. A dirty air passage 8, 9 is provided for carrying dirt-laden air from the dirty air inlet to a dust separating apparatus past the brush bar 45.

The upper surface 4 of the outer casing of the cleaner head is provided with a transparent inspection window 12 (see Figure 1 and page 1, lines 97 and 98) which can be removed (page 2, lines 1 to 7) to allow physical and visual access to the dirty air passage 8, 9.

The transparent window is disclosed as an alternative to an inspection cover (see page 1, line 20). It is not explicitly described what should be inspected with the transparent window 12. However, for a skilled person, it is clear, e.g. from figures 1 and 5, that this window allows a user to visually inspect the dirty air passages 9 and 8 so that the inspection window only has to be removed when necessary to get physical access to the inside of the cleaner head.

Thus, this document teaches an inspection window 12 for easier maintenance and operation of the vacuum cleaner by a user.

- 2.3.2 Since the technical problem stated above is thus addressed in document D4 (see 2.2.3), it is obvious for the skilled person to apply its teaching to the vacuum cleaner of document D1. As a result, the movable or removable portion q of document D1 is made transparent and the skilled person arrives at a vacuum cleaner as covered by claim 1 of the main or auxiliary request.

In such vacuum cleaner, the dirty air passage and in particular the area located immediately downstream of the brush bar can be visually inspected and a user can contact the brush bar with his fingers through the

opening closed by the movable or removable transparent portion q.

- 2.4 Therefore, the Board concluded that the subject-matter of claim 1 according to the main request or the auxiliary request does not involve the inventive step required by Articles 52(1) and 56 EPC. Consequently, the main and auxiliary requests were not allowable.

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