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**Datasheet for the decision  
of 28 October 2010**

**Case Number:** T 0080/08 - 3.2.07

**Application Number:** 03000264.6

**Publication Number:** 1306318

**IPC:** B65D 83/10

**Language of the proceedings:** EN

**Title of invention:**

Method of making a cartridge dispenser

**Patent Proprietor:**

The Gillette Company

**Opponent:**

Eveready Battery Company, Inc.

**Headword:**

-

**Relevant legal provisions:**

EPC Art. 54, 56, 76(1), 83, 123(2)

RPBA Art. 12(2), 13(1)

**Keyword:**

"Allowability of amendments (yes)"

"Sufficiency of disclosure (yes)"

"Novelty (yes)"

"Inventive step (yes)"

"Change in opponent's case (not admitted)"

**Decisions cited:**

-

**Catchword:**

-



Case Number: T 0080/08 - 3.2.07

**DECISION**  
of the Technical Board of Appeal 3.2.07  
of 28 October 2010

**Appellant:** Everyready Battery Company, Inc.  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
30 October 2007 concerning maintenance of  
European patent No. 1306318 in amended form.

**Composition of the Board:**

**Chairman:** H. Meinders  
**Members:** H. Hahn  
E. Dufrasne

## Summary of Facts and Submissions

I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division to maintain the European patent EP-B-1 306 318 in amended form on the basis of claims 1-13 of the auxiliary request I.

II. The following documents are cited in the present decision:

Of the opposition proceedings:

D1 = US-A-3 835 532

D4 = GB-A-1 160 542

D5 = US-A-3 854 201

D8 = US-A-3 797 657

D9 = US-Des. 247 349

Filed in the appeal proceedings:

D12 = L. Graham "What is a mold?", The Tech Mold, Inc., Tempe, Arizona, USA, 1993-1995, page 5-6

III. The opposition had been filed against the patent in its entirety under Article 100(a) EPC, for lack of novelty and inventive step, under Article 100(b) EPC, for that the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by the person skilled in the art; and under Article 100(c) EPC for that the patent extends beyond the content of the application as originally filed.

The Opposition Division found that the subject-matter of claim 1 of the main request (patent as granted) met the requirements of Article 76(1) EPC and of Article 83 EPC but lacked novelty over D8. The Opposition Division

further considered that the subject-matter of claim 1 of auxiliary request I met the requirements of Articles 76(1) and 123(2) and (3) EPC as well as complied with Articles 100(b) and 83 EPC. Furthermore, the subject-matter of claim 1 of auxiliary request I was considered to be novel over the cited prior art and to involve an inventive step, particularly with respect to a combination of the teachings of any of D1, D4 or D8 with D5, or in view of D9 alone.

IV. Claims 1 and 12 to be maintained read as follows (claim 1 has been split into sub-features a) to e) as proposed by the appellant):

"1. A method of making a dispenser (10) having sections (20) for razor blade cartridges (12) characterized by the steps of

- a) providing a bottom plastic part (28) including a base (34) and a top plastic part (30),
- b) said bottom part including bottom divider portions (36) and said top part including top divider portions (42),
- c) said top and bottom parts defining said sections (20) for receiving respective razor blade cartridges, and
- d) permanently connecting said bottom plastic part (28) to said top plastic part (30), whereby respective top divider portions (42) extend from respective bottom divider portions (36),
- e) wherein said top part divider portions (42) include angled dividers (44) that extend from respective bottom divider portions (36) at acute angles ( $\alpha$ ) with said base (34)."

"12. A method according to any one of claims 1 to 11, characterized in that the top divider portions (42) include portions (46) that are not connected to a side wall (26) of the top plastic part (30) in order to permit flexure of said non-connected portions (46)."

- V. With a communication dated 4 May 2010 and annexed to the summons to oral proceedings the Board presented its preliminary opinion with respect to the claims 1-13 as accepted by the Opposition Division.

Claim 1 appeared to comply with Articles 100(c), 123(2) and 76(1) EPC.

Claim 12 appeared to comply with Articles 83 and 100(b) EPC.

The subject-matter of claim 1 appeared to be novel over D8 even when considering draft angles according to D12.

With respect to the issue of inventive step the Board remarked that it cannot see how a combination of the teachings of D1 and D8 - even when considering the draft angle according to D12 - would render obvious the method of making a dispenser in accordance with claim 1 as maintained.

- VI. With letter dated 8 October 2010 submitted with fax on the same day the appellant submitted further arguments taking account of some of the Board's comments in the annex to the summons.

- VII. Oral proceedings before the Board were held on 28 October 2010. To start, the formal allowability of

the amendments made to claim 1 as accepted by the Opposition Division was discussed. As regards the issue of Article 83 EPC with respect to dependent claim 12 the appellant did not submit any further arguments. Subsequently, novelty of the subject-matter of claim 1 as maintained was discussed. The appellant firstly raised a new objection based on D5 and then relied on D8, while the respondent requested not to allow the new objection based on D5. Finally inventive step in respect of the subject-matter of claim 1 as accepted by the Opposition Division was discussed.

- (a) The appellant requested that the decision under appeal be set aside and that the patent be revoked.
- (b) The respondent requested that the appeal be dismissed.

At the end of the oral proceedings the Board announced its decision.

VIII. The appellant argued essentially as follows:

Claim 1 as accepted by the Opposition Division includes the features of claim 1 of the patent as granted and the second feature of claim 9 of the patent as granted but the first feature of said claim 9, i.e. that "the bottom divider portions (36) extend from said base (34), are substantially perpendicular to said base, and define blade unit regions (94) in which blade units (14) of said cartridges (12) are receivable," has not been included in the amendment.

On page 1, last paragraph, of the application as originally filed it is mentioned that the cartridge dividers include blade unit dividers that extend from the base, are substantially perpendicular to the base, and define blade unit regions in which the blade units are received (see page 1, lines 28 to 30). This design of the cartridge dividers is limited to blade unit dividers specified by the combination of the following features:

- blade unit dividers that extend from the base,
- wherein these blade unit dividers are substantially perpendicular to the base, and
- define blade unit regions in which the blade units are received.

The sentence in question cannot be understood in a different way because the three features are listed in combination and not merely as individual alternatives which can be realized with or without the respective other features of the blade unit dividers, which follow from line 30 onwards. Therefore, as soon as bottom divider portions are mentioned in claim 1 (see feature d) of claim 1), the original disclosure of the application as filed requires a further limitation in that these bottom divider portions extend from the base, are substantially perpendicular to the base and define blade unit regions in which the blade units are received, compare in this context also claim 2 as granted. Since the latter features are missing in claim 1 as accepted by the Opposition Division, the subject-matter of claim 1 extends beyond the content of the European application as filed.

It is correct that claim 1 as originally filed does not specify bottom divider portions and even does not

specify a bottom part. However, claim 1 as accepted by the Opposition Division does so. Therefore, the respondent's reference to claim 1 as granted is incorrect and misleading and cannot overcome the problem with claim 1 as accepted by the Opposition Division, in that its subject-matter extends beyond the content of the application as filed.

For the same reasons, the subject-matter of claim 1 as maintained also violates Article 76(1) EPC because its subject-matter extends beyond the content of the earlier application (published as WO-A-98/36879) which is the parent application of the present contested European patent.

The subject-matter of claim 12 as accepted by the Opposition Division is not disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Without specifying how the top divider portions are mounted, the person skilled in the art does not know how to provide the flexible portions of the top divider portions, which shall not be connected to a side wall of the top plastic part. Therefore, the question is to which portions of the divider portions the flexible portions shall then be connected. This is not clear from claim 12.

Claim 1 can be interpreted broadly, such that the bottom divider portions must not necessarily be separate parts extending from the base part but may only be portions within the extent of the base part. Thus the angled dividers may extend from said portions of said base part. The patent does not require or even



support that the axis of the divider must be used to determine the angle relative to the base and it does not define at which side of the angled divider the acute angle must be located.

D5 is novelty destroying for claim 1 since it discloses a dispenser including a base having extensions in the form of the wedge-shaped rest members 292 which form an acute angle with the base (see column 7, lines 17 to 27; and figures 9 and 10). It is admitted that D5 has not been mentioned in the grounds of appeal but it is *prima facie* highly relevant for the subject-matter of claim 1 so that it should nevertheless be considered.

D8 is novelty destroying, taking account of said broad interpretation of claim 1. Figures 1 and 2 of D8 show 3 pairs of recesses 18 in the bottom part (base) 12 and figure 6 reveals that the cartridges are positioned in said recesses 18. The recesses 18 of each pair are separated from each other by narrow bridges in the bottom part, which can be considered bottom divider portions as claimed. Figure 5 shows the dividing wall (without its numeral (68)) which forms a wall angled with respect to said base 12 since it has been made releasable from its mould by applying draft angles. This dividing wall 68 is directly above these bottom divider portions (the narrow bridges) and thus extends from this bottom divider portion. The draft angle is a minimum of  $0.5^\circ$  (see D12) and may be applied to only one side of the moulded part, but may differ slightly from each other when applied on both sides due to tolerances. In both cases the axis in the height direction of the dividing wall 68 will not be exactly perpendicular to the base and thus comply with the

acute angle of claim 1. In any case, claim 1 does not exclude embodiments with such manufacturing tolerances. According to the appellant's understanding this is directly and unambiguously derivable from D8.

The rectangular form as mentioned in D8 (see D8, column 2, lines 38 to 41) concerns only a geometric form in two dimensions and does not necessarily imply a rectangular prism having right angles everywhere because it could be a rhombohedral prism. Claim 1 only excludes an angle of exactly 90°.

According to a second line of arguments the two-part cartridge dispenser of D8 comprising a bottom and a top plastic part as shown in figures 2 and 3 is also novelty destroying for the subject-matter of claim 1. The bottom part comprises a base from which individual lugs 24, 26 project, which define parts of sections for receiving razor blade cartridges. Accordingly, these lugs are bottom divider portions in the sense of claim 1. The top part comprises a dividing wall 68 which, when the bottom and top parts are permanently connected (see figures 1, 5 and 6), cooperates with the bottom part and its bottom divider portions 24, 26 so as to define the receiving sections for the cartridges. That dividing wall accordingly establishes top divider portions, namely three in that embodiment of D8, each top divider portion extending between opposite lugs of the bottom part. These top divider portions extend from the respective bottom divider portions as can be clearly seen from e.g. figure 1 of D8. In this connection it has to be noted that claim 1 does not specify the direction in which the top divider portions extend from the respective bottom divider portions.

In contrast to the contested decision it is felt that D8 also discloses that the top divider portions include angled dividers that extend from the respective bottom divider portions at acute angles with said base. In D8 it is described that the individual major elements of the known dispenser, namely the base or bottom part 12 and the body or top part 14, are separately moulded of suitable plastic (see column 2, lines 6 to 9). It is known to anyone skilled in the art that moulded plastic parts must have a slightly angled shape to allow for its removal from the mould. An example of such angled shaped elements of moulded plastic parts of a cartridge dispenser is e.g. shown in D1 (see figures 3, 4, 19, and 20). Accordingly, the fact that the angled shape of e.g. the dividing wall 68 of the top part of D8 is not exactly shown in the figures of D8 does not limit the disclosure of D8 to a top plastic part having a dividing wall which is not angled. Also it is to be noted that in figure 8 of D8 the dividing walls 200 extending between the lugs 26a are shown as having an angled shape. Accordingly, the disclosure of D8 also includes the dividing wall of the top part i.e. the top part divider portions being (slightly) angled. Therefore, D8 automatically discloses the feature that the top part divider portions include angled dividers that extend from respective bottom divider portions at acute angles with the base. Therefore, all the features of claim 1 are disclosed in this document so that D8 is novelty-precluding.

Even if it is assumed that D8 does not clearly describe a top part with top part divider portions angled with respect to the base, providing such top part divider

portions in the dispenser of D1 would not involve an inventive step. Angled plastic parts having draft angles are known in the injection moulding technology (see D12, page 5-6), wherein the draft angle in the design of plastic moulded parts is described. Furthermore, in particular in the technical field of cartridge dispensers made by moulding plastic parts, from D1 it is known to provide slightly angled dividing walls (see figures 3, 4, 19, and 20). Therefore, the person skilled in the art automatically will combine the teaching of D8 with the teachings of D1 and D12 according to which the moulded top plastic part of D8 has to be provided with draft angles, i.e. an angled shape with regard to the dividing wall 68. When doing so, the person skilled in the art will automatically end up with a dispenser design and a method for making a dispenser as specified in claim 1 which, accordingly, does not involve an inventive step.

The same conclusion is valid based on the guiding elements 204 shown in figure 7 of D8, designed for centering and guiding the razor cartridges within the receiving sections. The purpose and advantage of the sloping surface on the locator web guides shown in figure 7 of D8 are explained in column 4, lines 11 to 14 of D8. The person skilled in the art automatically could and would use those sloping surfaces on the lateral sides of the dividing wall of the top plastic part as shown in figure 3 of D8. When doing so, the top divider portions formed by the dividing wall of figure 3 would extend from respective bottom divider portions at acute angles with the base so that the provision of the dispenser according to figures 1 to 6 of D8 with the sloping surfaces as shown in figure 7

comprises all the features of claim 1 which, accordingly, does not involve an inventive step.

IX. The respondent argued essentially as follows:

The appellant's argumentation concerning Articles 76(1) and 123(2) EPC is disagreed with. In particular, according to established case law of the Boards of Appeal (see e.g. T 1067/97, T 1207/04, T 714/00 (all not published in OJ EPO) and "Case Law of the Boards of Appeal", 5<sup>th</sup> Edition, 2006, III.A.1.1), extracting isolated features from a combination of features that have been disclosed in combination in an embodiment is allowable as an amendment, if there is no clearly recognizable functional or structural relationship among these features, or if the feature used for the delimitation of the claim was not inextricably linked with further features of that combination.

In the present case, such a clearly recognizable functional or structural relationship among the two sets of features cannot be derived from the application documents as originally filed. The features introduced into claim 1 as accepted by the Opposition Division were also not inextricably linked with these other features.

On the contrary, there are several indications in the application documents directing the skilled reader away from assuming that the two different sets of features were in a functional or structural relationship. These indications are, for example, page 1, lines 24 and 25 of the application as originally filed stating "certain implementations of the invention may include one or

more of the following features", followed, in the same paragraph, by the features of the bottom divider portions extending substantially perpendicular to the base.

Accordingly, these subsequently listed features, in particular the features stated on page 1, lines 28 to 30, are merely disclosed as optional features. This is confirmed by the following:

- in the set of claims as originally filed, in particular independent claim 1 or independent claim 21, the feature that the bottom divider portions which extend from the base are substantially perpendicular to the base, is not mentioned;
- on page 8, lines 9 to 11 of the application as filed, it is disclosed that additional sections 20 for cartridges 12 could be provided by increasing the angle  $\alpha$  to a higher angle up to 90 degrees, but the thickness of the dispenser would be increased accordingly. In other words, varying angles for the sections 20 are described. The main focus of the invention is the provision of angled dividers in the top part in order to avoid undue thickness of the dispenser.

Accordingly, it is immediately apparent for a skilled reader that a functional or structural relationship among the features of bottom divider portions (which are substantially perpendicular to the base) and the angled dividers (which extend from the respective bottom divider portions at acute angles) is not given. It also follows immediately that the feature of the angle of the top divider portions is not inextricably linked with the feature of the bottom divider portions as such.

Furthermore, according to the Guidelines for Examination, C-VI 5.3.10, replacement or removal of a feature from a claim does not violate Article 123(2) EPC if a skilled person would directly and unambiguously recognize that

- i) the feature was not explained as essential in the disclosure;
- ii) the feature is not, as such, indispensable for the function of the invention in the light of the technical problem the invention serves to solve; and
- iii) the replacement or removal requires no re-modification over other features to compensate for the change.

In the present case, if one were to assume that claim 2 as originally filed were the original disclosure (which it is not), the feature of the perpendicular bottom divider portions was not explained as essential in the description of the application as originally filed. This feature is even stated as an option on page 1, lines 24 to 30. Secondly, the feature is also not indispensable for the function of the invention in the light of the technical problem it serves to solve. The technical problem is (see page 8, lines 3 to 14 of the originally filed documents) that an undue thickness of the final dispenser is to be avoided and it is solved by providing a certain angle for the angled dividers; the perpendicular bottom divider portions do not contribute to the solution of this technical problem. Thirdly, the replacement or removal of the feature of the perpendicular bottom divider portions does not require any modification of other features to compensate for the change, as can be also taken from

the section on page 8, lines 3 to 14 of the originally filed documents. In particular, in this section it is mentioned that the additional sections could be provided by increasing (i.e. changing) the angle  $\alpha$ . Furthermore, it is immediately apparent from the application documents that any type of bottom divider portions could be used. This becomes specifically apparent when considering the disclosure of claim 1 as originally filed.

Finally, in addition to the reasons given above, claim 5 of the parent application (WO-A-98 36879) explicitly states a cartridge dispenser including a base and a plurality of cartridge dividers, wherein the cartridge dividers include angled dividers that make acute angles with said base and define angled regions for receiving the cartridges. However, there is no requirement as to the angle of any bottom divider portions in this claim.

Claim 1 as accepted by the Opposition Division does, therefore, not extend beyond the content of the application as originally filed and does not violate Article 123(2) EPC. With respect to Article 76(1) EPC, the parent application WO-A-98 36879 does provide support for claim 1 as accepted by the Opposition Division. Particular reference is also made to claims 86 and 88 in combination with page 1, lines 24 to 32 and claim 5 of the parent application.

The subject-matter according to dependent claim 12 as accepted by the Opposition Division is disclosed sufficiently clear and complete for it to be carried out by a person skilled in the art. In the light of



page 7, lines 24 to 27 of the originally filed documents in combination with the figures, in particular figures 1, 3 and 4, the upper portions 46, which are not connected to the sidewalls 26 in order to permit flexure of the upper portions 46, are clearly disclosed and shown. The embodiment shown in the figures therefore can be carried out by the skilled person immediately.

The novelty objection based on D5 represents a new objection in appeal and is not in accordance with the practice of the Boards of Appeal. According to their rules of procedure the appellant has to present its complete case with its grounds of appeal, which did not include D5. Therefore this new attack should not be admitted. In any case, the wedge-shaped rest members 292 as shown in figures 9 and 10 of D5 do not represent dividers suitable for receiving respective cartridges since they do not divide any compartment as the parts 292 are in abutment with the side walls.

The interpretations of D8 are disagreed with. Claim 1 as accepted by the Opposition Division clearly requires top part divider portions which include angled dividers. Even if the surfaces of the dividing wall 68 in Figure 3 of D8 each had a draft angle, the dividing wall as such would still be regarded as being perpendicular to the base. Thus the dividing wall 68 of D8 does not provide for an angled top divider portion in the sense of claim 1. In particular, in order to determine the angle or the position of any wall, the overall extension of the wall would be seen as defining the plane relative to which the angle would be measured. As the drafting angles for the sides of the dividing wall

68 would be symmetrical, the overall extension of the dividing wall 68 would still be seen as perpendicular to the base. With respect to the draft angle, the appellant makes specific reference to figure 8 of D8, in particular to the walls 200. When considering figure 8, however, the skilled person would immediately regard the extension of the walls 200 to lie in a plane perpendicular to the base 16d of the dispenser package according to Figure 8. Accordingly, the subject-matter of claim 1 as accepted by the Opposition Division is clearly novel over D8.

The same holds true with respect to the new line of arguments based on D8. First of all, the person skilled in the art would understand - taking account of the disclosure in the patent in suit at column 6, line 50 to column 7, line 4 and figure 6 - what is meant by the definition of "an acute angle". Consequently, all the arguments based on a draft angle in the light of D8 are not satisfying and do not allow to derive in a clear and unambiguous manner that the top divider is angled with respect to the bottom part portion. The drawing made by the appellant and showing the base and dividing wall 68 having only one draft angle is surely not derivable from D8 which is silent with respect to any draft angle, let alone to the special situation of only one draft angle. With two identical draft angles the dividing wall, again, would be perpendicular to the base. Furthermore, if providing a draft angle belongs to the common general knowledge then the person skilled in the art would also apply it to the top divider portion of claim 1, i.e. there is more to it than just adding a draft angle to obtain an acute angle. Therefore feature e) of claim 1 is not disclosed by D8.

Furthermore, D8 mentions that the dispenser body has an "overall rectangular form matching that of the base 12, and includes end walls 60 and 62, side walls 64 and 66, and a dividing wall 68 parallel to and midway between walls 60 and 62" (see column 2, lines 38 to 41). The person skilled in the art will understand this to mean that the walls are rectangular and perpendicular to the base, too.

The appellant repeated its novelty arguments with respect to inventive step and has not applied the problem-solution approach. The problem to be solved is as stated by the Board in its communication. There is no teaching of an inclined wall in D8, even not an implicit one, to solve the posed problem of increasing the capacity while avoiding undue thickness of the dispenser. An angle of about  $35^\circ$  provides a good balance between providing a sufficient number of cartridges in the lengthwise dimension of the dispenser and avoiding undue thickness of it (see patent, paragraph [0029]). The angle range of claim 1 should be interpreted accordingly due to this teaching of the patent.

No motivation is given as to why the teaching of document D8 should be combined with that of D1 and D12. Even if the skilled person had taken D12 into consideration, it would only have derived from this document that, in order to assist the removal of a moulded part from a mould, a small draft angle should be provided for the walls 68 or 200. However, from the disclosure of D12 the skilled person would not derive the teaching that the wall itself should extend at an

acute angle with respect to the base. Moreover, the provision of a draft angle alone would not have solved the objective technical problem.

Referring to D1, the skilled person could have derived from figures 3, 4, 19 and 20 of D1 the provision of a slight draft angle in a divider wall. However, claim 1 requires angled dividers, i.e. to the whole divider and not to one single surface of this divider. Again, as has been discussed above, the application of such a draft angle would not solve the technical problem. Not one of the prior art documents cited discloses the provision of angled dividers extending from a bottom divider portion at an acute angle with the base in the sense of claim 1. Accordingly, a combination of D8, D1 and D12 would not have solved the technical problem and would also not have led the skilled person towards the technical solution as claimed in claim 1 as accepted by the Opposition Division. Therefore the method according to claim 1 involves an inventive step.

## **Reasons for the Decision**

1. *Allowability of amendments* (Articles 76(1) and 123(2) EPC)
- 1.1 Claim 1 as accepted by the Opposition Division was obtained by adding feature e) to the subject-matter of claim 1 of the patent as granted (see point IV above). As there exists no such requirement with respect to amendments carried out in opposition, the Board holds that feature e) need **not** have been taken from claim 9 of the patent as granted (or claim 2 for that matter)

but can originate from page 1, lines 24 and 25 and page 1, line 30 to page 2, line 2 of the divisional application as originally filed for the patent in suit. In any case, what follows also applies with respect to claim 9 as purported origin for the features.

Further, all description pages 1-13 and all figures 1-16 of the divisional application as originally filed for the patent in suit are identical with those of the parent application as originally filed which corresponds to the published WO-A-98 36879. The requirements of Article 76(1) and 123(2) EPC can thus be discussed together.

1.1.1 The appellant's contention is that the features taken up in claim 1 have been isolated from the context in which they were disclosed, i.e. have been separated from the feature of the bottom divider portions being substantially perpendicular to the base, which define blade unit regions in which blade units of said cartridges are receivable. This is the same contention as applies to claim 9 of the patent as granted and is to be seen as an objection of an inadmissible "intermediate generalisation" (see Case Law of the Boards of Appeal, 6<sup>th</sup> edition, 2010, chapter III.A.2). In the opinion of the Board on both accounts the omission of these features in the amendment does not contravene Articles 123(2) and 76(1) EPC:

1.1.2 The divisional application as originally filed unequivocally states at page 1, lines 24 and 25: **"Certain implementations** of the invention **may** include **one** or more of the following features" and the two following sentences starting at page 1, line 28 relate

to the cartridge dividers which (lines 28 to 30) include (bottom) blade dividers extending substantially perpendicular from the base, whereas the subsequent sentence at page 1, line 30 to page 2, line 2 states the cartridge dividers to also include (top) angled dividers that extend from the ends of respective (bottom) blade unit dividers at acute angles with the base and define angled regions through which the blade units are received. As the opening phrase makes these individual features a possible matter of choice, there is no hindrance to use for the amendment of claim 1 only the feature of the acute angle disposition of the top divider portions with respect to the base, without that substantially perpendicular arrangement.

- 1.1.3 It further is not apparent from the specification that the two features in question have a functional and/or structural relationship other than that the top divider portion should start where the bottom divider ends, which is clearly a structural part of present claim 1. Whether or not the (bottom) blade unit divider is "substantially perpendicular" to the base is not relevant for the function of the acute angled (top) divider and vice-versa, particularly since the angle of the (bottom) blade unit divider to the base has to do with the shape of the razor blade cartridges to be received, whereas the angle of the (top) angled divider can be chosen independently therefrom within wide limits (see page 8, lines 3 to 11 of the divisional application as originally filed). That the angled (top) dividers are not linked to any specific angle for the (bottom) dividers is also disclosed for the method for producing the dispenser as discussed on page 5, line 27 to page 6, line 1.

- 1.1.4 As the description already provides sufficient basis for the amendments, there is no need to address the figures 1-16, which in any case relate to "an" embodiment of the invention, are schematic and do not necessarily lead to the conclusion that the (bottom) blade unit dividers are perpendicular to the base. In any case, the description with respect to figure 6 (see page 8, lines 5 to 11 of the divisional application as originally filed) does not mention any disposition of the (bottom) blade unit dividers, even though it discusses the angle of the (top) divider portions.
- 1.1.5 The fact that claim 2 of the patent as granted - which has been deleted from the patent as accepted by the Opposition Division - relates to the specific embodiment requiring substantially perpendicular bottom divider portions in combination with the angled dividers at an acute angle with the base is irrelevant for the issue whether or not there exists a basis for the aforementioned amendment of claim 1.
- 1.1.6 Finally, it is also not apparent from the divisional application as originally filed that the angle of the (bottom) blade unit dividers is essential to the invention. The feature of the (bottom) blade unit divider can thus be taken up in claim 1 as granted without the feature of its angle with respect to the base and without its function.
- 1.1.7 As a consequence of the above, the appellant's arguments to the contrary cannot hold and claim 1 therefore complies with Articles 76(1) and 123(2) EPC.

2. *Sufficiency of disclosure (Article 83 EPC)- Claim 12*

2.1 The requirements of Articles 83 and 100(b) EPC relate to the whole disclosure of the application or the granted patent under consideration and not only to that of a single claim. Accordingly, the method according to dependent claim 12 (unamended) has to be seen in the light of the whole disclosure of the patent specification or application.

2.2 Claim 12 requires that the top divider portions include portions that are not connected to a sidewall of the top plastic part in order to permit flexure of said non-connected portions and already from the claim alone it is clear how to manufacture such a top divider portion. In particular, it is clear that only portions of the top divider portions are not connected to the sidewall such as to permit flexure of these non-connected portions while the remainder of the top divider portions, however, is connected to the sidewalls.

2.3 It is evident from the description of figures 1, 3, 4 and 6 that only the upper portions 46 of the top divider portions are not connected to the side walls 26 whereas the remaining portions (namely the lower portions 44) are connected to the side walls 26 (see column 2, lines 12 to 16; column 6, lines 34 to 38; column 6, lines 50 to 53 of the patent, which correspond to the same passages in the divisional application as originally filed). Consequently, it is immediately clear to the person skilled in the art how to manufacture such top divider portions comprising a combination of non-connected and connected portions in



order to permit flexure of the non-connected portions and how the corresponding mould for making such a top part has to be shaped, namely by providing portions which are connected to the sidewall and non-connected portions which are not connected to the sidewall.

2.4 Claim 12 therefore complies with Articles 83 and 100(b) EPC.

3. *Novelty (Article 54 EPC)*

3.1 The appellant raised a novelty objection based on document D5 for the first time at the oral proceedings before the Board and the respondent objected to this change in the appellant's case.

3.1.1 Article 12(2) RPBA requires the parties to present their complete case as early as possible, for the appellant this means in the grounds of appeal. The appellant, however, admitted at the oral proceedings that neither D5 nor its corresponding objection had been mentioned in the grounds of appeal.

3.1.2 The reasons for this new objection also cannot lie in an amendment made by the respondent in the appeal since there has not been any, nor can it be seen as a consequence of a direction of the Board (Article 12(2)(b) RPBA).

The appellant stated at the oral proceedings that the Board's remarks in the communication annexed to the summons concerning the allowability of the amendment made to claim 1 now allowed for its broad interpretation of the feature "bottom divider portion"

in claim 1 as accepted by the Opposition Division so that D5 would be novelty destroying. The Board notes in this context, however, that - if that were the case - the appropriate course of action should in that case have been to include the objection in the reply of the appellant to the Board's communication, which however does not contain any novelty objection based on D5.

- 3.1.3 This objection is thus to be considered as a new objection to the patent in suit with new facts and new arguments which together represent a substantial amendment of the appellant's case at a very late stage of the appeal proceedings.

The Board, in exercising its discretion according to Article 13(1) RPBA, taking account of the fact that this objection could have been raised much earlier in the proceedings, has decided to not admit this objection.

- 3.1.4 In any case, the Board sees no reason to deviate from the Opposition Division's conclusion in the impugned decision that D5 does **not** show angled top dividers extending from respective bottom divider portions at acute angles with the base (see point 3.4.2 of the reasons of their decision), because the wedge-shaped rest members 292 as shown in figures 9 and 10 of D5 do not represent dividers suitable for receiving respective cartridges since they do not divide any compartment.

- 3.2 Therefore the only document allegedly being novelty destroying for the subject-matter of claim 1 as argued by the appellant is D8. The appellant's arguments in

this respect, however, cannot hold for the following reasons.

3.2.1 First of all, the person skilled in the art has a clear understanding of what is meant by the definition in claim 1 of "angled dividers (44) that extend from respective bottom divider portions (36) at acute angles ( $\alpha$ ) with said base (34)" taking account of the disclosure of the patent in suit. Accordingly, this acute angle ( $\alpha$ ) is defined by "axis 56b extending through the lower portion 44 of angled divider portion 42 and the portion of latch 22 extending therefrom make a 35° angle  $\alpha$  with connection seam 32 and base 34 thereunder" (see column 6, lines 50 to 54 in combination with figure 6). According to the patent in suit "The angle  $\alpha$  should be no less than 30°; a value of about 35° provides a good balance between providing a sufficient number of cartridges in the lengthwise dimension of dispenser 10 (...) and avoiding undue thickness for dispenser 10. I.e., additional sections 20 for cartridges 12 could be provided by increasing the angle  $\alpha$  to a higher angle up to 90°, but the thickness of dispenser would be increased accordingly" (see column 6, line 54 to column 7, line 4).

3.2.2 From the above it is clear that the angle in question is that one which the axis of the lower portion of the angled top divider makes with the base. In this context it needs also to be considered that the body 14 according to D8 has an **"overall rectangular form** matching that of base 12, and includes end walls 60 and 62, side walls 64 and 66, and a dividing wall 68 parallel to and midway between walls 60 and 62" (see column 2, lines 38 to 41) which implies to the person

skilled in the art that all walls of this rectangular prism body are rectangular and further implies that all these walls are at right angles to each other.

Similarly the statement that the walls 60, 62 and 68 are parallel implies to the skilled person that these walls are perpendicular to the base 12.

3.2.3 Therefore, the singular wall (68) of D8 neither meets the requirement of claim 1 that the "top part divider portions include angled dividers that extend from respective bottom divider portions **at acute angles** with said base" since the axis of said dividing wall 68 is **perpendicular** to said base 12 nor that a plurality of angled dividers is present. The latter holds also for the appellant's interpretation that the recessed portions 18 of base 12 according to figures 1, 2 and 6 of D8 are divided by remaining bridges in the base forming the "bottom divider portions" of the dispenser in the meaning of claim 1.

3.2.4 The arguments concerning the application of a draft angle of  $0.5^\circ$  which **may** be applied to only one side of the dividing wall 68 or which **may** differ slightly from the draft angle when also applied on the other side of dividing wall 68 so that the resulting axis of the dividing wall 68 of D8 would form an acute angle slightly less than  $90^\circ$  (which is an acute angle) with the base 12 are considered to represent a mere speculation, even in the light of D12, since D8 is silent with respect to any draft angle. There has neither been submitted any evidence by the appellant for the contention that such a draft angle is applied to only one side of the dividing wall 68 nor that, in case that it is applied to both sides thereof, the two

draft angles are not identical. D12 is likewise silent in this respect as it does not specify whether one or two draft angles have to be present and whether they are identical or not (see D12, paragraph "2. draft", page 5-6).

According to the longstanding practice of the Boards of Appeal a novelty objection, however, cannot be based on the mere possibility that an execution of the teaching of a prior art document "**may** have fallen" within the scope of a claim. To the contrary, in order to raise a novelty objection there must be a clear and unambiguous disclosure in the prior art document in order to anticipate the subject-matter of a claim. Since there is no such clear and unambiguous disclosure in D8, even if explained with the help of D12, it cannot be assumed that the axis extending through the dividing wall 68 of D8 deviates from the right angle, i.e. dividing wall 68 is at an acute angle with base 12.

3.2.5 Further, it is also not possible to derive a certain - non-described - draft angle from the schematic drawings of D8, particularly when considering that figure 8 concerns a totally different integrally moulded embodiment of the dispenser, of which the walls are additionally stated to have a specific thickness (see column 3, lines 36 to 65).

3.2.6 Even if one would consider the lugs 24 and 26 according to figures 1-2, 5 and 6 of D8, which are integral to the base 12, as bottom divider portions in the sense of claim 1, the dividing wall 68 of the part 14, when considered to represent the top plastic part being connected to said base 12, does not meet the

requirement "whereby respective top divider portions extend from respective bottom divider portions" of claim 1 since said dividing wall 68 does **not** extend from said lugs 24 and 26 as can be clearly derived from figures 1 and 5 of D8. According to figures 1 and 5 there is a small gap between the dividing wall 68 and the lugs 24 and 26.

The same holds true with respect to the embodiment of figures 7 and 8 of D8 where it is stated that spaces between posts 24a and 26a and neighbouring walls 60a, 62a, 64a and 66a are foreseen in order to facilitate the moulding process (see column 4, lines 14 to 17).

3.3 Therefore the subject-matter of claim 1 is novel over D8.

4. *Inventive step (Article 56 EPC)*

Taking account of the arguments presented by the two parties the Board considers that it has not been shown that the Opposition Division's conclusion was wrong in concluding that the subject-matter of claim 1 meets the requirements of the EPC. The reasons are as follows:

4.1 D8 represents undisputedly the closest prior art for method claim 1, by disclosing a method for making a dispenser from two moulded plastics pieces for receiving and retaining razor blade cartridges.

4.2 The subject-matter of claim 1 as maintained is distinguished from the dispenser embodiment according to figures 1-6 of D8 by feature e): "wherein said top part divider portions (42) include angled dividers (44)

that extend from respective bottom divider portions (36) at acute angles ( $\alpha$ ) with said base (34)".

This feature allows providing a certain number of cartridges in the lengthwise dimension of the dispenser with reduced thickness thereof.

4.3 The objective technical problem starting from the disclosure of D8 is therefore considered, as presented by the respondent, to be the provision of a method of making a dispenser which provides an increased capacity while avoiding undue thickness thereof.

4.4 This problem is solved by the subject-matter of claim 1 (see in this context point 3.2.1 above).

4.5 Contrary to the appellant's arguments this solution is not rendered obvious by D8 as follows.

4.5.1 As already apparent from the discussion of novelty, D8 does not contain any teaching of an acute angled dividing wall, even not an implicit one, which would allow solving the posed problem of increasing capacity while avoiding undue thickness of the dispenser. Taking account of the described embodiments D8 teaches a single, perpendicular, dividing wall which additionally does not extend from respective bottom divider portions, let alone with a plurality of dividing walls (see points 3.2.2 and 3.2.6 above).

4.5.2 From the Board's view the same conclusion of point 3.2.5 above holds true in case that the person skilled in the art of moulding such plastic parts were to consider draft angles as disclosed in D12 or D1 since

it is evident that the teaching of the patent in suit - to provide angled dividers that extend from respective bottom dividers at acute angles ( $\alpha$ ) with the base part - involves more than just applying a draft angle to a (the) side(s) of a perpendicular wall. The appellant's arguments in this respect cannot hold, particularly as there exists no clear and unambiguous teaching to do so.

Furthermore, the application of such a draft angle would not solve the posed objective technical problem.

4.5.3 Therefore the subject-matter of claim 1 involves an inventive step (Article 56 EPC).

## **Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders