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Datasheet for the decision of 30 October 2012

Case Number: T 2222/08 - 3.2.02

Application Number: 02793329.0

Publication Number: 1446063

IPC: A61B 18/20

Language of the proceedings: EN

Title of invention:
Pulsed-light electric medical appliance for skin treatment

Patent Proprietor:
General Project s.r.l.

Opponents:
01) Muster e Dikson Service S.p.A.
02) ESPANSIONE MARKETING S.P.A.

Headword:
-

Relevant legal provisions:
EPC Art. 56, 114(2)
EPC R. 115(2)
RPBA Art. 15(3)

Keyword:
"Inventive step: yes"

Decisions cited:
-

Catchword:
-

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Beschwerdekammern | Boards of Appeal | Chambres de recours

Case Number: T 2222/08 - 3.2.02

D E C I S I O N
of the Technical Board of Appeal 3.2.02
of 30 October 2012

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Decision under appeal: **Interlocutory decision of the Opposition Division of the European Patent Office posted 2 October 2008 concerning maintenance of European patent No. 1446063 in amended form.**

Composition of the Board:

Chairman: E. Dufrasne
Members: C. Körber
M. Stern

Summary of Facts and Submissions

I. On 2 October 2008 the Opposition Division posted its interlocutory decision concerning maintenance of European patent 1 446 063 in amended form against objections under Articles 123(2), 83, 84, 54 and 56 EPC.

II. An appeal was lodged against this decision by opponent O1, by notice received on 28 November 2008, with the appeal fee being paid on the same day. The statement setting out the grounds of appeal was received on 30 January 2009.

III. By communication of 18 May 2012, the Board summoned to oral proceedings and forwarded its provisional opinion to the parties.

IV. With letters of 21 September 2012 and 2 October 2012, respectively, opponents O1 (appellant) and O2 (party as of right) announced that they would not be attending the oral proceedings.

V. Oral proceedings were held on 30 October 2012 in the absence of the appellant and the party as of right, in accordance with Rule 115(2) EPC and Article 15(3) RPBA.

The final requests of the parties were as follows:

The appellant had requested in writing that the decision under appeal be set aside and that the patent be revoked.

The respondent (patent proprietor) requested that the decision under appeal be set aside and that the patent

be maintained on the basis of claim 1 filed during the oral proceedings in appeal and claims 2 to 9 of the patent as granted.

The party as of right did not present any requests in the appeal proceedings.

VI. The following documents are of importance for the present decision:

E1: "Manuel d'utilisation" SpaTouch™ Photoepilation System of Radiancy, Version 06, May 2000
E6a: US-B1-6 187 001
E13: GB-A-545 311
E19: US-A-4 945 279
X12: US-B1-6 215 254.

VII. Claim 1 of the main and sole request reads:

"A pulsed-light electric medical appliance for skin treatment, comprising a handset (5) housing a lamp (13) for generating, onto an area of a patient's skin, high-energy pulsed light in an ultraviolet to intermediate infrared wavelength range, and an electric start circuit (14) for starting said lamp (13);
the appliance comprising, inside the handset (5), a box body (11) housing said lamp (13); and whereby the handset (5) contains means (38, 41) for supporting and enabling withdrawal of said box body (11) from the head portion (8) of said handset (5) in one piece;
the box body (11) being capable of being pulled out of and pressed into said handset (5) in one piece;
said appliance being **characterised in that** the box body (11) further houses the electric start circuit (14)

relative to said lamp (13), and an optical filter (15)."

VIII. The appellant's arguments are summarised as follows:

Claim 1 as upheld by the Opposition Division was obvious from E13 in view of X12. It was correct that the only feature missing from E13 was the presence of a starting circuit in the removable box body (vessel 5 in E13). From the patent in suit it could be derived that the objective was to design the device of E13 such that the lamp could replaced in a simple and safe manner without requiring particular technical skills or tools. The skilled person would therefore have been led to X12. Its late filing had been caused by the incorrect interpretation of document E19 in the impugned decision, which was said to be limited to the field of advertising. X12 could not be construed in a similarly narrow manner. The ease and safety of handling the lamp and the issue of replacement of the lamp was addressed in columns 19 and 20 of X12, and in Figures 16 and 17 a gas discharge lamp having a simple screw socket 33 was disclosed. The starting circuit 31h was integral with the lamp 3la and actually received in a unitary part 31. The lamp further included a base part 34 which housed further electric circuitry. As explained in column 20, this design made it possible to replace only the faulty part of the lamp, i.e. either part 31 or part 34, and to keep the other. The connection between part 31 and the base part 34 was a push-fit or bayonet type of connection, which required no technical skills or tools. In all the lamps shown in Figures 11 to 17, the electronics associated with the lamps, including

the starting circuit, were housed in the lamp or in the base part of the lamp.

With reference to Figure 15 it was further disclosed in X12 to connect different embodiments of the lamp part to the very same base part. If the main objective was to allow for the use of the device with different lamps, as argued by the respondent, then this would be another incentive for the skilled person to consider the lamps disclosed in X12 and then arrive at the claimed invention without using any inventive skills. Since E13 did not show the presence of a reflector the device was likely to have a poor luminous efficiency. Accordingly, another reason for the skilled person to consult X12 could have been the desire to provide a reflector for the lamp. As explained in columns 19 and 20 of X12 and shown in Figures 11 to 17, the lamp of X12 included not only an integral reflector but at the same time the starting circuit for the lamp.

Claim 1 was also obvious when starting from E1. The distinguishing features of claim 1 over El were the presence of an optical filter and the starting circuit in the box body. Providing an optical filter in the box body was obvious in order to prevent the emission of harmful wavelengths from the device. This issue was addressed by the developers of the device of E1 in their document E6a, where filters 56, 66 were shown in close proximity of the lamp in Figures 7 to 9. Other documents in this field, e.g. X10 and Xl1, confirmed this knowledge. It would not involve an inventive step to mount the starting circuit for the gas discharge lamp in the removable "unité lumineuse" or "box body" of the device of El. It was clear that the lamp of E1

was a flash lamp, and that the pulses of the lamp were generated by circuitry including a capacitor as indicated in table 3.4. This led the skilled person to E6a, which taught that a plurality of flash lamps were used, preferably connected in series (column 13, lines 48 to 50), thus providing an incentive to look for existing flash lamp arrangements in order to incorporate them in the device of E6a, and as a consequence also in the device of E1. The skilled person would thus have arrived at document E19, contrary to what was stated in the impugned decision. E19 was not limited to lamps for advertising purposes, and nothing prevented the skilled person from consulting E19. In fact the preferred embodiment disclosed in E6a with multiple xenon lamps arranged in series was a clear and direct incentive for the skilled person to consider E19. In this document he was clearly advised to integrate the starting (or ignition) circuitry in the lamp unit itself (abstract; column 1, lines 43 to 46; Figures 4 and 5; claim 1).

Furthermore, documents X2 to X9 showed that in the field of gas discharge lamps it was a common design feature to include the starting circuit in the lamp itself. The skilled person in the case at issue was at least also knowledgeable in the field of flashing gas discharge lamps, and X2 to X9 represented a portion of said knowledge. Given the knowledge in particular conveyed by X7 relating to the problem of arcing, it was obvious to use in the device of E1 a lamp with an integrated starting circuit so as to avoid this problem. Moreover, X2 to X9 showed that the starting circuit was not considered to be too expensive to be discarded along with the lamp, contrary to what was

stated in the impugned decision. It was also not correct that the entire box body was to be thrown away when the lamp and/or starting circuit ceased to function. Claim 1 did not say anything about the box body being "a disposable unit with integral lamp and starting circuit and filter". The claim also covered embodiments wherein the lamp could be simply removed from the box body and replaced by a new lamp. So the starting circuit was not thrown away at all in case of failure of the lamp. It was further incorrect to argue that proper insulation would prevent arcing. This went against the teaching of X7 that the insulation of closely spaced connectors was likely to deteriorate in case of high-voltage connectors. The skilled person in the field of gas discharge lamps, starting from document E1, would therefore consider using a lamp an with integrated starting circuit in order to avoid the problem of arcing when the starting circuit was arranged outside of the "unité lumineuse" of E1.

Starting from E1 the skilled person could have, via document E6a, also arrived at document X12, and included in the device of E1 a lamp unit as in X12, having an integral optical filter and a starting circuit arranged within the lamp itself or in the lamp unit base part.

IX. The respondent's arguments are summarised as follows:

Document E1 was to be considered as closest prior art. The objective problem to be solved by the distinguishing features of claim 1 was the adaptation of the treatment to different skin types by selecting a particular box body containing the desired lamp and the

corresponding filter and start circuit. Specific lamps required specific filters and dedicated start circuits, and putting these three items in a removable box allowed the user to quickly adapt the handset to the required use. Neither the problem underlying the invention nor the solution according to claim 1 was disclosed in any of the prior-art documents. The appellant's arguments were irrelevant since they mainly dealt with different problems and failed to address the objective technical problem. Moreover, the skilled person in the present case was not "a person who is at least knowledgeable in the field of flashing gas discharge lamps", but an expert in the field of skin treatments. Such a skilled person, trying to solve a particular problem in the skin treatment field, had no reason to consider documents in the field of flashing discharge lamps in general, a combination of E1 with E19 (through E6a) thus being highly unlikely. Moreover, the "power assembly" (16) of E6a could not be equated with a start circuit, and the passage in the second paragraph of column 14 could not be read as disclosing or suggesting a box body capable of being pulled out of and pressed into the handset in one piece as claimed.

E13 was a very old document and could therefore not be considered to represent the closest prior art. It was questionable whether E13 disclosed a pulsed-light appliance. The "windows" (7, 8) disclosed in E13 were merely transparent protective panes, and the exact location of the starting circuit could not be derived therefrom. As shown in the drawing, the box 5 was too big to be removed, and the passage in lines 95 to 101 of page 2 did not provide a clear teaching to the contrary. Therefore, the only document which could be

considered as the closest prior art was E1. X12 would not have been considered by the skilled person since it did not relate to skin treatment and failed to address the objective technical problem underlying the invention. Moreover, it was also silent with respect to an optical filter.

X. The party as of right did not present any arguments in the appeal proceedings.

Reasons for the Decision

1. The appeal is admissible.

2. Admissibility of late-filed evidence

The Board has no doubts that the Opposition Division properly exercised its discretion when deciding on the admissibility of the late-filed documents E13, E13a-c, E14-E19 and X1-X11, and admitting only E13, E16 and E19 into the proceedings. Accordingly, there is no reason to overrule this decision.

Document X12 was filed with the statement of grounds of appeal in response to the impugned decision, viz. the interpretation of E19 as being limited to the field of advertising. Accordingly, there is no reason to disregard X12 under Article 114(2) EPC, and the document is therefore admitted into the proceedings.

3. Inventive step

3.1 Document E1 as starting point

3.1.1 E1 as closest prior art discloses a pulsed-light medical appliance for skin treatment comprising the features of the preamble of claim 1. The distinguishing features over E1 are, undisputedly, that the box body further houses the electrical start circuit relative to the lamp and an optical filter, as defined in the characterising portion of the claim.

3.1.2 The technical advantage achieved by these distinguishing features is that the box body, comprising, in addition to the lamp, the electrical start circuit relative to the lamp and an optical filter, can be adapted to the particular skin type of the person to be treated, with the three components in the box body being matched to each other (specific lamps require dedicated start circuits and specific filters) and pre-selected corresponding to the intended treatment (as derivable from paragraph [0008] of the patent in suit). A user who is not necessarily familiar with the technical details and demands of the various components, for instance in a beauty parlour, can thus simply insert a box body with a pre-arranged set of the three above-mentioned components specifically adapted to each other and the person's particular skin type, thus avoiding possible injury, for example burns.

3.1.3 The objective technical problem underlying the invention is to provide an appliance which is easier, more efficient and safer to use. Neither E1 itself nor any one of the other cited prior-art documents in the

proceedings gives a hint towards this problem and the technical advantages achieved by the invention. These circumstances can already be seen as an indication of inventiveness.

3.1.4 The fact that document E6a discloses an electric medical appliance for skin treatment, comprising a flash lamp (14 or 54), a power assembly (16), likely to comprise the "relative electric start circuit" as claimed (i.e. a start circuit dedicated to the lamp in question), and a filter (56 or 66) does not render the invention obvious. Even taking into account the suggestion in the second paragraph of column 14 of E6a that the power assembly 16 and the housing 12 (comprising the lamp and the filter) may be "attached to a device housing", the skilled person obtains no hint towards arranging the three components in a box body capable of being pulled out of and pressed into the handset, as claimed, in order to solve the above-mentioned technical problem. It may be agreed that the provision of an optical filter would be obvious for the skilled person in order to prevent the emission of harmful wavelengths from the device, as argued by the appellant, but the solution according to claim 1 requires more than that, namely that both the optical filter and the electric start circuit relative to the lamp are arranged in the (exchangeable) box body.

3.1.5 It may also be agreed, as argued by the appellant, that the skilled person is someone who develops optical skin treatment devices and that he would also be knowledgeable in the field of lamp technology in general and thus in principle would consider documents such as E19 or X12. Both documents disclose replaceable

units comprising a lamp and a dedicated start circuit (reference numerals 1 and 4 of E19 and reference numerals 31a and 31h of X12). However, the appellant's argument that "Nothing prevents the skilled person from consulting E19" or that "the skilled person could, via document E6a, also arrive at document X12" is not sufficient to put inventiveness into question. According to the established case law ("Case Law of the Boards of Appeal of the EPO", 6th ed. 2010, I.D.5), the decisive issue is whether the skilled person **would** have taken this teaching into consideration in the hope of solving the objective technical problem. Since both documents E19 and X12 fail to address this problem, the appellant's objections on this matter are based on hindsight.

3.2 Document E13 as starting point

The appellant has further contested inventive step starting from document E13 in view of X12.

E13 dates from 1941, and it may already appear questionable whether such an old document can be regarded as a realistic starting point for the evaluation of inventive step ("Case Law of the Boards of Appeal of the EPO", 6th ed. 2010, I.D.3.7). However, even when starting from E13 as closest prior art, the subject-matter of claim 1 is not obvious for the following reasons.

The appellant stated that it agreed with the finding of the Opposition Division that the only feature missing from E13 compared to claim 1 was the presence of a starting circuit in the removable box body (vessel 5 in

E13). The Opposition Division equated the quartz envelope 2, stated to be UV-permeable in lines 24 to 25 of page 2 of E13, with an optical filter. From page 1, lines 78 to 86, it becomes clear however that this "envelope" is actually an integral part of the lamp itself. Moreover, since quartz is essentially transmissible within the entire illumination range claimed (UV to mid-IR), it does not perform any filtering in this range of wavelengths. In the Board's view, the quartz envelope cannot therefore be regarded as an optical filter. The appellant has not identified in E13 any further disclosure of an optical filter housed in the box body 5.

Accordingly, the distinguishing features of claim 1 over E13 are (at least) the same as those mentioned above with respect to E1, i.e. that the box body further houses the electrical start circuit relative to the lamp and an optical filter.

Since E13 also fails to address the objective technical problem stated above (point 3.1.3), the subject-matter of claim 1 is not obvious from E13 in view of X12 for the same reasons as indicated above with respect to E1 in combination with X12.

3.3 Accordingly, the subject-matter of claim 1 is based on an inventive step within the meaning of Article 56 EPC.

4. The Board is further satisfied that, taking into consideration the amendments made according to the main request of the respondent (patent proprietor), the patent and the invention to which it relates meet the requirements of the EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of:

   - claim 1 filed during the oral proceedings in appeal and claims 2 to 9 of the patent as granted;

   - description: pages 2 and 2a filed during oral proceedings before the Opposition Division on 2 July 2008 and pages 3 and 4 of the patent as granted; and

   - figures 1 to 5 of the patent as granted.

The Registrar: The Chairman:

D. Hampe E. Dufrasne