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**Datasheet for the decision
of 15 September 2011**

Case Number: T 0491/09 - 3.2.07

Application Number: 98949474.5

Publication Number: 1115537

IPC: B26B 21/08

Language of the proceedings: EN

Title of invention:

Adapter unit for a shaving razor

Patent Proprietor:

BIC Viorex S.A.

Opponent:

The Gillette Company

Headword:

-

Relevant legal provisions:

EPC Art. 100(c), 123(2)(3)

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

Relevant legal provisions (EPC 1973):

-

Keyword:

"Exercise of the opposition division's discretion: correct"

"Admissibility of the respondent's submissions filed with
letter dated 30 October 2009: yes"

"Admissibility of auxiliary requests 1 to 4: yes"

"Added subject-matter in the main request and in auxiliary
request 1: yes"

"Amendments in auxiliary requests 2 to 4: not allowable"

Decisions cited:

G 0001/99, T 1459/05, T 0656/07



Case Number: T 0491/09 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 15 September 2011

Appellant: The Gillette Company
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
23 December 2008 concerning maintenance of
European patent No. 1115537 in amended form.

Composition of the Board:

Chairman: H. Meinders
Members: K. Poalas
E. Dufrasne

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the interlocutory decision of the Opposition Division concerning maintenance of the European patent No. 1 115 537 in amended form.
- II. Opposition had been filed against the patent as a whole based among other grounds on Article 100(c) (extended subject-matter).

The Opposition Division found that the patent with claim 1 according to the third auxiliary request filed during the oral proceedings meets the requirements of the EPC.

- III. Oral proceedings took place before the Board on 15 September 2011.
- (a) The appellant requested that the decision under appeal be set aside and that the European patent No. 1 115 537 be revoked.
- (b) The respondent (patent proprietor) requested that the appeal be dismissed (main request) or, in the alternative, that the decision under appeal be set aside and the patent be maintained on the basis of claim 1 of one of the auxiliary requests 1 to 4 filed during the oral proceedings.

Auxiliary request 5 filed with letter of 12 August 2011 was withdrawn during the oral proceedings.

IV. The independent claims 1 of the respondent's requests read as follows (amendments in respect of independent claim 1 of the patent as granted are marked in bold, amendments to the independent claim 1 as to be upheld by the opposition division are underlined or struck through):

Main request (filed as 3rd auxiliary request during the oral proceedings before the opposition division and to be upheld by the opposition division)

"A razor cartridge for use with a razor handle (50; **150**) having a handle engagement member (56a, 56b; **156a**, **156b**) extending from one end thereof, said razor cartridge comprising:
a razor blade carrier (30) having a carrier engagement member thereon; and
an adapter unit (10; **110**) having a first side (14b; **114b**) and a second side (14a; **114a**), wherein:
said first side (14b; **114b**) of said adapter unit (10; **110**) has a first adapter engagement member shaped for snapping into non-detachable engagement with said carrier engagement member to attach said adapter unit (10; **110**) to said razor blade carrier (30), **at least one of the first adapter engagement member and the carrier engagement member being resiliently yieldable such that said snapping may occur**; and, said second side (14a; 114a) of said adapter unit (10) has a second adapter engagement member shaped for **pivotably** mating with the handle engagement member (56a, 56b; **156a**, **156b**), **at least one of the second adapter engagement member and the handle engagement member being resiliently yieldable, such that the second adapter engagement member and the handle engagement member**

(56a, 56b, 156a, 156b) are snapped into pivotable engagement with each other; whereby the handle engagement member (56a, 56b; **156a, 156b**) is capable of being coupled to said razor blade carrier (30) via said adapter unit (10)".

Auxiliary request 1

"A razor cartridge for use with a razor handle (50; **150**) having a handle engagement member (56a, 56b; **156a, 156b**) extending from one end thereof, said razor cartridge comprising:
a razor blade carrier (30) having a carrier engagement member thereon; and
an adapter unit (10; **110**) having a first side (14b; **114b**) and a second side (14a; **114a**), wherein:
said first side (14b; **114b**) of said adapter unit (10; **110**) has a first adapter engagement member ~~shaped for snapping~~ snapped into non-detachable engagement with said carrier engagement member to attach said adapter unit (10; **110**) to said razor blade carrier (30), **at least one of the first adapter engagement member and the carrier engagement member being resiliently yieldable such that said snapping may occur;** and, said second side (14a; 114a) of said adapter unit (10) has a second adapter engagement member shaped for **pivotably** mating with the handle engagement member (56a, 56b; **156a, 156b**), **at least one of the second adapter engagement member and the handle engagement member being resiliently yieldable, such that the second adapter engagement member and the handle engagement member (56a, 56b, 156a, 156b) are snapped into pivotable engagement with each other;** whereby the handle engagement member (56a, 56b; **156a, 156b**) is

capable of being coupled to said razor blade carrier (30) via said adapter unit (10)".

Auxiliary request 2

"A razor cartridge for use with a razor handle (50; **150**) having a handle engagement member (56a, 56b; **156a, 156b**) extending from one end thereof, said razor cartridge comprising:
a razor blade carrier (30) having a carrier engagement member thereon; and
an adapter unit (10; **110**) having a first side (14b; **114b**) and a second side (14a; **114a**), wherein:
said first side (14b; **114b**) of said adapter unit (10; **110**) has a first adapter engagement member ~~shaped for snapping~~ snapped into non-detachable engagement with said carrier engagement member to attach said adapter unit (10; **110**) to said razor blade carrier (30), **at least one of the first adapter engagement member and the carrier engagement member being resiliently yieldable such that said snapping may occur**; and, said second side (14a; 114a) of said adapter unit (10) has a second adapter engagement member ~~shaped for~~ **pivotably mating** mateable with the handle engagement member (56a, 56b; **156a, 156b**), **at least one of the second adapter engagement member and the handle engagement member being resiliently yieldable, such that the second adapter engagement member and the handle engagement member (56a, 56b, 156a, 156b) are snapped into pivotable engagement with each other**; whereby the handle engagement member (56a, 56b; **156a, 156b**) is capable of being coupled to said razor blade carrier (30) via said adapter unit (10)".

Auxiliary request 3

"A razor cartridge for use with a razor handle (50; **150**) having a handle engagement member (56a, 56b; **156a**, **156b**) extending from one end thereof, said razor cartridge comprising:
a razor blade carrier (30) having a carrier engagement member thereon; and
an adapter unit (10; **110**) having a first side (14b; **114b**) and a second side (14a; **114a**), wherein:
said first side (14b; **114b**) of said adapter unit (10; **110**) has a first adapter engagement member lockingly mated with the carrier engagement member, shaped for snapping into non-detachable engagement with said carrier engagement member to attach said adapter unit (10; 110) to said razor blade carrier (30), with at least one of the first adapter engagement member and the carrier engagement member being resiliently yieldable such that ~~said snapping may occur~~ the adapter engagement member and the first carrier engagement member is snapped into non-detachable engagement with each other; and, said second side (14a; 114a) of said adapter unit (10) has a second adapter engagement member shaped for **pivotably** mating with the handle engagement member (56a, 56b; **156a**, **156b**), **at least one of the second adapter engagement member and the handle engagement member being resiliently yieldable, such that the second adapter engagement member and the handle engagement member (56a, 56b, 156a, 156b) are snapped into pivotable engagement with each other**; whereby the handle engagement member (56a, 56b; **156a**, **156b**) is capable of being coupled to said razor blade carrier (30) via said adapter unit (10)".

Auxiliary request 4

"A razor cartridge for use with a razor handle (50; **150**) having a handle engagement member (56a, 56b; **156a**, **156b**) extending from one end thereof, said razor cartridge comprising:
a razor blade carrier (30) having a carrier engagement member thereon; and
an adapter unit (10; **110**) having a first side (14b; **114b**) and a second side (14a; **114a**), wherein:
said first side (14b; **114b**) of said adapter unit (10; **110**) has a first adapter engagement member lockingly mated with the carrier engagement member, shaped for snapping into non-detachable engagement with said carrier engagement member to attach said adapter unit (10; 110) to said razor blade carrier (30), with at least one of the first adapter engagement member and the carrier engagement member being resiliently yieldable such that ~~said snapping may occur~~ the adapter engagement member and the first carrier engagement member is snapped into non-detachable engagement with each other; and, said second side (14a; 114a) of said adapter unit (10) has a second adapter engagement member ~~shaped for~~ **pivotably** ~~mating~~ mateable with the handle engagement member (56a, 56b; **156a**, **156b**), **at least one of the second adapter engagement member and the handle engagement member being resiliently yieldable, such that the second adapter engagement member and the handle engagement member (56a, 56b, 156a, 156b) are can be snapped into pivotable engagement with each other**; whereby the handle engagement member (56a, 56b; **156a**, **156b**) is capable of being coupled to said razor blade carrier (30) via said adapter unit (10)".

V. The appellant argued essentially as follows:

Exercise of the opposition division's discretion to admit into the proceedings the 3rd auxiliary request filed during the oral proceedings before the opposition division (main request in the appeal proceedings)

The 3rd auxiliary request filed during these oral proceedings was filed late, and not by the ultimate date set under Rule 116 EPC in the summons to attend oral proceedings. Moreover, the amendments were effected purely in order to overcome grounds of opposition which had already been raised in the proceedings prior to that date. There was no excuse for the late filing of the amended requests, except that the requests previously filed had, during the oral proceedings, by then been found to be unallowable, on grounds and for reasons raised earlier during the opposition proceedings. Its filing amounted to an abuse of proceedings.

T 1459/05 (of 21 February 2008, not published in OJ EPO) and T 656/07 (of 6 May 2009, not published in OJ EPO) make clear that, when considering the admissibility of any requests involving amendments made during opposition proceedings, the maintained patent must meet all of the requirements of the EPC, and not only overcome the extant grounds of opposition. For the reasons set out in the grounds of appeal, the amended claims of the 3rd auxiliary request are unclear. In arriving at the contested decision, the opposition division did not consider whether the amended claims of the 3rd auxiliary request *prima facie* met the

requirements of the EPC with respect to clarity, and therefore failed to apply the correct principles in exercising its discretion.

Admission of the respondent's submissions filed with letter dated 30 October 2009 into the appeal proceedings

The respondent's submissions enclosed with its letter dated 30 October 2009 being a response to the grounds of appeal have, without explanation, been filed late, i.e. after the four month time limit set by the Board of Appeal's communication of 8 May 2009. Any argument, request and evidence filed thereafter constitutes an amendment to respondent's case and is for belatedness not to be admitted.

Claim 1 of the main request - Added subject-matter, Article 100(c) EPC

There is no disclosure anywhere in the application as originally filed of the engagement between the carrier engagement member and the first adapter engagement member being rendered non-detachable as a result of the shape of the first adapter engagement member, claimed in claim 1 of the patent as granted and as such present in claim 1 as to be maintained. Whilst specific co-operating shapes of the first adapter engagement member and the carrier engagement member are disclosed, there is no disclosure in the originally filed application that these shapes, specifically the shape of the first adapter engagement member, would deliver the claimed non-detachability.

Admissibility of the auxiliary requests 1 to 4

Auxiliary requests 1 to 4 filed for the first time during the oral proceedings have been filed late and they are not clearly allowable.

The amendments present in said requests could have been made according to one of the two higher ranking possibilities mentioned in G 1/99 (OJ EPO 2001, 381). This is not the case here, as they rely on the third. It is a late change in the party's case and should also not be admitted under that point of view. For the above-mentioned reasons said requests should not be admitted into the proceedings.

Claim 1 of auxiliary request 1 - Added subject-matter, Article 123(2) EPC

There is also no disclosure anywhere in the application as originally filed of the engagement between the second adapter engagement member and the handle engagement member being in the form of pivotable mating as a result of the shape of the second adapter engagement member. Whilst specific co-operating shapes of the second adapter engagement member and the handle engagement member are disclosed, there is no disclosure in the originally filed application that these shapes, specifically the shape of the second adapter engagement member alone, would deliver the claimed pivotable mating.

*Claim 1 of auxiliary requests 2 to 4 - Amendments,
Article 123(3) EPC*

The deletion of the feature of claim 1 as granted that the first adapter engagement member is "**shaped for snapping**" and its mere replacement by "snapped", both followed by the remaining expression: "into non-detachable engagement" with the carrier engagement member in claim 1 of the auxiliary requests 2 to 4 violates the requirements of Article 123(3) EPC.

VI. The respondent argued inter alia essentially as follows:

Exercise of the opposition division's discretion to admit into the proceedings the 3rd auxiliary request filed during the oral proceedings before the opposition division (main request in the appeal proceedings)

The respondent filed by fax on 8 October 2008, i.e. before the date set under Rule 116 EPC in the summons to oral proceedings and thus in due time, one main and three auxiliary requests. The opposition division found that said requests contravened the requirements of Article 123(2) EPC and allowed the patent proprietor to file two new auxiliary requests. After having found that also said requests contravened the requirements of Article 123(2) EPC the opposition division allowed the respondent to file as final request the 3rd auxiliary request. The appellant was given 35 minutes time to study said request. Said request was based on the 3rd auxiliary request referred to above and the added features were features well-known to the appellant since he had raised several objections on these features during the written and oral proceedings. It

was thus not taken by surprise by the said final request and had enough time to prepare himself to argue against it.

The respondent only tried during the oral proceedings to file a set of claims which meets the requirements of the EPC in view of the several developments during said proceedings.

This 3rd auxiliary request was then correctly admitted into the proceedings and led to the decision concerning maintenance of the patent in amended form.

The objections presently brought up by the appellant about clarity have not been raised during the opposition (oral) proceedings and have therefore to be ignored. Besides, the opposition division by accepting maintenance of the patent on the basis of said request saw obviously no clarity problems.

Admission of the respondent's submissions filed with letter dated 30 October 2009 into the appeal proceedings

The respondent's submissions enclosed in the letter dated 30 October 2009 follow the same line of arguments presented before the opposition division. They have been filed at an early stage of the appeal proceedings and there has been sufficient time for the Board as well as the appellant to study the submissions.

*Claim 1 of the main request - Added subject-matter,
Article 100(c) EPC*

In claim 4 as originally filed snapping between the first adapter engagement member and the carrier engagement member is mentioned without any reference to the shape of said elements.

The originally filed description clearly discloses specific shapes able to be snap-fitted with each other, see page 8, lines 12-22 of the PCT-publication.

It is obvious to the person skilled in the art that it is not only the shape of the first adapter engagement member which allows snap-fitting because this is not how snap-fitting works. The person skilled in the art knows that by snap-fitting of two parts the shape of both parts and their yieldability are of importance.

Admissibility of the auxiliary requests 1 to 4

Auxiliary requests 1 to 4 differ from the auxiliary requests 1 to 4 filed with fax on 12 August 2011 only in that the clerical error concerning the missing of the word "pivotably" in claim 1 of said requests has been corrected. The requests filed with fax on 12 August 2011 were filed in due time and in reaction to the Board's preliminary opinion expressed in its communication annexed to the summons to oral proceedings.

Furthermore, it is not possible to produce acceptable amendments on the basis of the first two possibilities mentioned in G 1/99 (*supra*).

For the above-mentioned reasons auxiliary requests 1 to 4 with amendments according to the third possibility of G 1/99 (*supra*) should be admitted into the proceedings.

*Claim 1 of auxiliary request 1 - Added subject-matter,
Article 123(2) EPC*

In claim 4 as originally filed pivotable engagement between the second adapter engagement member and the handle engagement member is mentioned without any reference to the shape of said elements. Furthermore, it is obvious to the person skilled in the art that it is not only the shape of the second adapter engagement member which allows pivotable mating because this is not how pivotable mating works. The person skilled in the art knows that by pivotable mating of two parts the shape of both parts is of importance.

*Auxiliary requests 2 to 4 - Claim 1 - Amendments,
Article 123(3) EPC*

The expression "shaped for snapping into non-detachable engagement" has no technical meaning and can therefore be deleted or replaced by "snapped into non-detachable engagement" without violating the requirements of Article 123(3) EPC.

Through the combination of the expressions added to claim 1 according to auxiliary requests 3 and 4 that "the first adapter engagement member [is] lockingly mated with the carrier engagement member" and that "the adapter engagement member and the first carrier engagement member is snapped into a non-detachable

engagement with each other" the feature in claim 1 as granted that the first adapter engagement member is shaped for snapping into non-detachable engagement with the carrier engagement member is simply re-worded, without a change in meaning, for which there is basis. Alternatively, this substituted expression is redundant, as argued before.

Reasons for the decision

1. *Exercise of the opposition division's discretion to admit into the proceedings the 3rd auxiliary request filed during the oral proceedings before the opposition division (main request in the appeal proceedings)*
- 1.1 The Board notes that if the way in which a department of first instance has exercised its discretion on admitting requests filed during oral proceedings is challenged in appeal, it is not the function of a Board to review all the facts and circumstances of the case as if it were in the place of the department of first instance, and to decide whether or not it would have exercised such discretion in the same way as or different from the department of first instance. A Board of Appeal should only overrule the way in which a department of first instance has exercised its discretion if the Board concludes it has done so according to the wrong principles, or without taking into account the right principles, or in an unreasonable way (see Case Law of the Boards of Appeal of the European Patent Office, 6th edition 2010, VII.E-6.6).

1.2 The question therefore arises whether the opposition division exercised its discretion properly according to the above stated criteria.

1.3 In chapter E-III, 8.6 of the Guidelines for Examination in the EPO is stated that in exercising its discretion according to Rule 116(1) and (2) EPC "the Division will in the first place have to consider ... the allowability of the late-filed amendments, on a *prima facie* basis. If these ... amendments are clearly not allowable, they will not be admitted. Before admitting these submissions, the Division will next consider procedural expediency, the possibility of abuse of the procedure (e.g. one of the parties is obviously protracting the proceedings) and the question whether the parties can reasonably be expected to familiarise themselves in the time available with ... the proposed amendments".

1.4 *Prima facie* allowability

It transpires from points 3 and 4 of the minutes of the oral proceedings that the opposition division regarded the then final 3rd auxiliary request as *prima facie* overcoming the opposition grounds based on Articles 100(b) and 100(c) EPC (in combination with Article 123(2) EPC) and thus as *prima facie* allowable in these respects. The appellant argues, however, that the opposition division did not examine the *prima facie* clarity of the claims, which it should have.

1.4.1 The Board observes in the first place that the minutes of the oral proceedings before the opposition division are silent on any issue of clarity raised by the

appellant as a hindrance to admitting the request in question. Also at the oral proceedings before the Board the appellant could not recollect having made such an objection in this particular respect.

To the contrary, the minutes, page 3 state that "the opponent raised no other objections than those already discussed", which clearly could lead the opposition division to assume that no further formal issues remained, nor that any new formal objections were raised.

Admitting this request in such circumstances can already for that reason alone not be criticised.

- 1.4.2 The appellant argued that the opposition division should *ex officio* have examined the **entire** claim for clarity, following the principles of T 1459/05 (*supra*) and T 656/07 (*supra*).

The Board wishes to point out that the opposition division could hardly take account of T 656/07 (*supra*) which was issued in 2009, i.e. after the oral proceedings in opposition held on 10 November 2008. Remains only one decision T 1459/05 (*supra*), which was decided on 21 February 2008.

Apart from the fact that opposition divisions can hardly be held to have immediate knowledge of any single decision when it issues, the Board cannot find fault with an opposition division which does not follow a decision which itself explains why its case is so particular that it warrants departing from otherwise consistent case law. It should be kept in mind that the

allowability is examined merely on a *prima facie* basis and all the more so only in connection with a discussion on admissibility of a request.

1.5 Procedural expediency, abuse

In the first place, due to the direct treatment of the 3rd auxiliary request by the opposition division, instead of returning to written proceedings, a protracting of the proceedings was avoided and the respondent did not benefit from any further delay of the final decision on the part of the opposition division. Secondly, it is clearly the purpose of oral proceedings before the department of first instance that all concerned are aware of the outstanding issues and which positions are taken on them, including those of the opposition division. Not allowing simple further amendments to resolve such issues would clearly run counter to this purpose.

In fact, the Guidelines (*supra*), chapter E-III, 8.7, makes this clear by referring to the fact that it should be ensured (by the opposition division) that the parties file requests which are to the point and that claims are formulated appropriately. If the opposition division finds that some patentable subject-matter results from a limitation/amendment, it may even inform the proprietor of the fact and allow him an opportunity to submit amended claims thereon.

In view of the above, the Board can only conclude that the respondent needed quite some prompting to finally come up with this request addressing the point under discussion, but not that this amounts to an abuse of

proceedings by, nor to/an unwarranted advantage for the respondent.

1.6 Opponent reasonably expected to familiarise itself

As argued by the respondent, the 3rd auxiliary request filed during the oral proceedings was not going in a different direction, but was prepared on the basis of the 3rd auxiliary request filed before the deadline of one month before the oral proceedings. Its claim 1 follows the course of the discussions during the oral proceedings, in that it differs from claim 1 of the earlier 3rd auxiliary request by the expressions "blades, a base opposite to the blades", "said adapter unit being adapted to be snap fitted ... toward the base" and "fixedly" having been deleted. These had been criticized by the appellant in its letter dated 30 April 2008, section 2.3, which was repeated at the oral proceedings (see point 3 of the minutes). Further, the expressions "at least one of the second adapter engagement member and the handle engagement member being resiliently yieldable" and "such that said snapping may occur" have been added in reply to objections raised in this respect in the oral proceedings. The three latter amendments exactly address the issues the appellant was well aware of before the oral proceedings since it raised objections on them at the oral proceedings.

The oral proceedings were therefore proceeding towards resolution of the outstanding issues.

1.7 From the minutes of the oral proceedings it transpires that a number of interruptions have taken place, which the Board considers as sufficient for the appellant.

This is confirmed in the first three paragraphs of page 3 of the minutes where it is further stated:

"The chairman interrupted the oral proceedings at 15:05 to allow the patentee to prepare a new and final request.

After reopening of the proceedings by the chairman, the patentee submitted a third auxiliary request (Annex AIII) and explained the amendments done.

The opponent raised no other objections than those already discussed".

The Board can therefore only conclude that the appellant had sufficient opportunity to familiarize itself with the amended subject-matter.

1.8 In summary, the Board sees no indication that the opposition division exercised its discretion to admit the 3rd auxiliary request into the proceedings according to the wrong principles, or without taking into account the right principles or in an unreasonable way.

This request is therefore in the proceedings.

2. *Admission of the respondent's submissions filed with letter dated 30 October 2009 into the appeal proceedings*

The Board notes that the respondent's submissions filed with letter dated 30 October 2009 have been filed outside the four month time limit foreseen in Article 12(1)(b) RPBA and they have therefore to be considered as a late-filed amendment to the respondent's case falling within the provisions of Article 13(1) RPBA.

According to Article 13(1) RPBA, second sentence, the Board's discretion shall be exercised in view of inter alia the complexity of the new subject-matter submitted, the current state of the proceedings and the need for procedural economy. As in the present case the respondent's submissions mainly repeat the arguments presented before the opposition division, they do not increase the complexity of the case. Further, they have been filed only one month late, i.e. at a very early stage of the appeal proceedings and there has been sufficient time for the Board as well as the appellant to study the submissions without any protraction of the appeal proceedings. Therefore, the Board exercises its discretionary power according to Article 13(1) RPBA in favour of the respondent and admits these submissions into the proceedings.

3. *Claim 1 of the main request - Amendments in examination Article 100(c) EPC*

According to the originally filed application of the patent in suit the provision of a **non-detachable**

engagement between the first adapter engagement member and the carrier engagement member is a result of ("such that") the **resilient yieldability** of at least one of these members, see page 2, lines 4 to 7 and claim 4 of the original application (reference is made to the PCT-publication WO-A-0016951).

Claim 1 according to the main request involves the feature, said feature being present also in claim 1 of the patent as granted, that the "first adapter engagement member [is] **shaped for** snapping into **non-detachable** engagement with said carrier engagement member". Thus, it may be **only the shape** of the first adapter engagement member which provides the **non-detachability** of the connection between the first adapter engagement member and the carrier engagement member.

There is, however, no disclosure in the originally filed application that a **non-detachable** engagement between the first adapter engagement member and the carrier engagement member is provided only due to the fact that the first adapter engagement member has an **appropriate shape** for such an engagement.

The passage on page 8, lines 12 to 22 of the original application to which the respondent has referred does not support such a generalised feature. Said passage refers for the locking of the adapter unit into the razor blade carrier (i.e. the engagement between the first adapter engagement member and the carrier engagement member) only to the specific combination of claws 36, elongated projections 22, slots 38a, 38b and

tabs 24a, 24b as configured in the specific razor cartridge depicted in figures 3 to 6.

The Board follows the respondent insofar it argues that it is well known to the person skilled in the art that by the provision of a **snap-fitted** engagement between two parts the shape of both parts and also their yieldability will play a decisive role. The Board notes, however, that the question at stake is not whether the requirements of claim 1 concerning the provision of a **snap-fitted** engagement were derivable from the originally filed application but whether the provision of a **non-detachable** engagement which is only due to the fact that the first adapter engagement member has an **appropriate shape** for such an engagement finds basis in the originally filed application. The Board considers this not to be the case.

In view of that, the ground of opposition according to Article 100(c) EPC holds against claim 1 of the main request.

4. *Admissibility of the auxiliary requests 1 to 4*

In its communication annexed to the summons to oral proceedings the Board stated *inter alia* that according to its preliminary opinion the original ground of Article 100(c) EPC holds against claim 1 of the respondent's main request.

The respondent's reaction to the above-mentioned communication was the filing with fax on 12 August 2011, i.e. before the ultimate date set in said communication, of four auxiliary requests and a fair

copy of its main request, i.e. of the claims as intended for maintenance by the opposition division. The claims 1 of said auxiliary requests involved amendments to claim 1 of the main request. At the oral proceedings the appellant and the Board objected to the absence in claim 1 of at least the main request of the word "pivotably", said word being present in claim 1 as intended for maintenance by the opposition division. In order to correct said clerical error the respondent filed at the beginning of the oral proceedings fair copies of all its requests reintroducing the missing word "pivotably".

The Board regards therefore the auxiliary requests 1 to 4 filed during the proceedings as being just the corrected versions of the auxiliary requests 1 to 4 filed with fax on 12 August 2011, which latter can be considered as the respondent's reaction to the Board's negative opinion expressed in said communication as far as it concerns the fulfilment of the requirements of Article 100(c) EPC by claim 1 of the main request.

In view of the outcome of the examination as to the fulfilment of the requirements of Articles 123(2) and (3) EPC (see points 5 and 6 below), the Board sees no need to further elaborate on the other issues with admissibility raised by the appellant.

5. *Claim 1 of auxiliary request 1 - Added subject-matter, Article 123(2) EPC*

Claim 1 according to auxiliary request 1 involves the feature, said feature being also present in claim 1 of the main request, that the "second adapter engagement

member [is] **shaped for pivotably mating** with the handle engagement member". Thus, it may be **only the shape** of the second adapter engagement member which provides the **pivotable mating** of the connection between the second adapter engagement member and the handle engagement member.

There is, however, no disclosure in the originally filed application that a **pivotable mating** between the second adapter engagement member and the handle engagement member is provided only due to the fact that the second adapter engagement member has an **appropriate shape** for such an engagement.

Originally filed claims 9 and 11 referring for the pivotable engagement between the handle engagement member and the second adapter engagement member only to the specific combination of a rounded end/ball-like projection and a socket for receiving said projection do not support such a generalised feature.

The Board notes that the question at stake is whether the provision of a **pivotable mating** only due to the fact that the second adapter engagement member has an **appropriate shape** for such a **pivotable mating** finds basis in the originally filed application. The Board considers that this is not the case.

Accordingly, the above-mentioned amendment in claim 1 of auxiliary request 1 does not meet the requirements of Article 123(2) EPC. This feature being present in the same form in claim 1 of the main request, this objection applies likewise to that request.

6. *Claim 1 of auxiliary requests 2 to 4 - Amendments,
Article 123(3) EPC*

Claim 1 of the patent as granted requires that the first adapter engagement member is "**shaped for snapping into non-detachable engagement**" with the carrier engagement member.

In claim 1 of the auxiliary requests 2 to 4 the expression "**shaped for snapping into non-detachable engagement**" has been replaced by the expression "**snapped into non-detachable engagement**".

This means that the requirement present in claim 1 of the patent as granted that the first adapter engagement member has to have an **appropriate shape** in order to establish a **non-detachable engagement** between the first adapter engagement member and the carrier engagement member is no longer present in the claims 1 according to said auxiliary requests. Its absence is also not compensated for by the replacing "snapped into non-detachable engagement", as the "snapping" has to do with a number of factors, such as resilience, shape and structure, and not exclusively with shape.

Accordingly, the scope of protection of claim 1 as granted is extended to now encompass first adapter engagement members without this restriction concerning their shape. The above means that claim 1 of the auxiliary requests 2 to 4 contravenes the requirements of Article 123(3) EPC.

6.1 The respondent argued that the expression "shaped for snapping into non-detachable engagement" is technically

meaningless, therefore redundant and can be deleted without violating the requirements of Article 123(3) EPC.

The Board cannot follow the above-mentioned respondent's argument for the following reasons:

The shape of the first adapter engagement member is obviously a structural feature of the claimed adapter unit. Claim 1 of the patent as granted provides a specific requirement for the shape of the first adapter engagement member, namely that said member has to be shaped so that a non-detachable engagement between said member and the carrier engagement member can take place. The shape of the first adapter engagement member is thus defined and restricted via its function of providing a non-detachable engagement. The Board cannot therefore see how said feature can be considered as technically meaningless.

- 4.2 The respondent argued further at the oral proceedings that the above mentioned deletion was acceptable under the third possibility established in G 1/99 (*supra*).

The Board cannot agree with this, since the amendment concerns a part of claim 1 of the patent as granted, not an amendment carried out in the opposition proceedings.

The present situation therefore does not fulfil the requirement established by G 1/99 in point 14 of the reasons that it should concern an amendment introduced in the opposition proceedings (which on appeal needed to be re-amended).

4.3 The respondent argued further that through the combination of the expressions added in claim 1 according to the auxiliary requests 3 and 4 that "the first adapter engagement member [is] lockingly mated with the carrier engagement member" and that "the adapter engagement member and the first carrier engagement member is snapped into a non-detachable engagement with each other" the feature in claim 1 of the patent as granted that the "first adapter engagement member [is] shaped for snapping into non-detachable engagement with the carrier engagement member" is simply re-worded without a change in meaning. It finds basis in the application as originally filed. The substituted expression is anyway redundant.

The Board cannot follow the above either, for the following reasons:

The first expression defines that these members have connecting parts with shapes corresponding with each other so that they can be lockingly connected with each other. The Board notes that the expression "lockingly mated" leaves it open if such a connection is a **detachable** or a **non-detachable** one. However, claim 1 of the patent as granted required the shape to be such that it was non-detachable, thus more limited. As a consequence, there is extension of the scope of protection. The substituted expression being more limited shows that it also cannot be seen as redundant.

The second expression cannot alter this fact. It has been inserted into claim 1 just after the expression "at least one of the first adapter engagement member

and the carrier engagement member being resiliently yieldable such that" defining thereby that snapping into non-detachable engagement occurs due to the resilient yieldability of one of these two members. There is no reference in this expression to the interrelation between the shape of the first adapter engagement member and the non-detachable engagement between said first adapter engagement member and the carrier engagement member.

- 4.4 The Board concludes from the above that the amendments made in claim 1 according to the auxiliary requests 2 to 4 do not meet the requirements of Article 123(3) EPC.

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. Nachtigall

H. Meinders