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**Datasheet for the decision
of 19 May 2010**

Case Number: T 1091/09 - 3.2.04

Application Number: 02077013.7

Publication Number: 1262135

IPC: A47L 9/10

Language of the proceedings: EN

Title of invention:
Vacuum cleaning apparatus

Applicant:
Valentini, Guido

Headword:
-

Relevant legal provisions:
EPC Art. 123(2)
RPBA Art. 13(1)(3)

Relevant legal provisions (EPC 1973):
EPC Art. 56

Keyword:
"Main request - inventive step (no)"
"Auxiliary request - filed during oral proceedings - not
admitted"

Decisions cited:
T 0087/05

Catchword:
-



Case Number: T 1091/09 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 19 May 2010

Applicant
(Appellant:) Valentini, Guido
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Representative: Mittler, Enrico
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 22 December 2008
refusing European patent application
No. 02077013.7 pursuant to Article 97(2) EPC.

Composition of the Board:

Chairman: C. Scheibling
Members: A. de Vries
T. Bokor

Summary of Facts and Submissions

I. This appeal is against the decision of the Examining Division dated 22 December 2008 to refuse the European patent application. The Appellant's notice of appeal was received on 19 February 2009 and the appeal fee was paid on 18 February 2009. The statement setting out the grounds of appeal was received on 17 April 2009.

II. The following documents played a role in the present proceedings:

D1: US-A-4 356 591

D2: US-A-2 918 693.

III. Oral proceedings took place on 19 May 2009 before the Board of Appeal.

The Appellant (applicant) requested that the decision under appeal be set aside and that a patent be granted on the basis of the set of claims filed with letter dated 2 April 2010 (main request) or on the basis of the auxiliary request submitted during the oral proceedings before the Board.

He mainly argued as follows:

The claimed vacuum cleaner appliance and filter bag assembly differs from the one disclosed in D2 in that the vacuum cleaning unit is located in the top part of the box-like body and the space for the housing of an extractable filter bag is located in the bottom part of the box-like body and in that it comprises a filter bag provided with a tightness valve. None of the cited

documents discloses or suggests these distinguishing features in combination.

The auxiliary request was filed during the oral proceedings before the Board because only then it became clear that the main request might fail.

The features added into claim 1 of the auxiliary request are disclosed in the description as filed and in the Figures and further distinguish the claimed subject-matter from the prior art.

IV. Claim 1 of the main request reads as follows:

"1. Vacuum cleaner appliance and filter bag assembly, comprising a box-like body (1) made up of a top part (2) and a bottom part (3), said top part (2) including a vacuum cleaning unit (16) provided with filter (20) and said bottom part (3) comprising a space (25) for housing an extractable filter bag (15) and an opening (11) provided in a side wall of the bottom part (3) and connected with a dusty air duct (12) for the intake of dusty air into said space (25), characterised in that said side wall comprises a hinged door (8) in which said opening (11) is provided, said filter bag (15) being in separable communication with said opening (11) and being provided with a tightness valve (24) to prevent any dust spill towards the outside of the filter bag (15) at its communication with said opening (11)."

Claim 1 of the auxiliary request reads as follows:

"1. Vacuum cleaner appliance and filter bag assembly, comprising a box-like body (1) made up of a top part (2) and a bottom part (3), said top part (2) including

a vacuum cleaning unit (16) provided with filter (20) and said bottom part (3) comprising a space (25) for housing an extractable filter bag (15) and an opening (11) provided in a side wall of the bottom part (3) and connected with a dusty air duct (12) for the intake of dusty air into said space (25), characterised in that said side wall comprises a hinged door (8) which is rotatable around a horizontal axis located at the lower end of the door in the lower zone of said bottom part (3) in which said opening (11) is provided, said filter bag (15) being in separable communication with said opening (11) and being provided with a tightness valve (24) to prevent any dust spill towards the outside of the filter bag (15) at its communication with said opening (11)."

Reasons for the Decision

1. The appeal is admissible.
2. *Main request:*
 - 2.1 Although the Board has some concern about the allowability of this request with respect to clarity and added subject-matter, for reasons of procedural economy it considers it more appropriate to first examine the issue of inventive step.
 - 2.2 Inventive step:
 - 2.2.1 The Appellant considered D1 as the most promising starting point for the present invention. However, since amended claim 1 now relates to the combination of

a vacuum cleaner appliance and a filter bag assembly, the Board holds that D2 is a better starting point as it discloses more features that are in common with the claimed invention.

2.2.2 D2 (column 1, lines 15 to 18; column 2, line 71 to column 3, line 15; Figures) discloses a vacuum cleaner appliance and filter bag assembly, comprising a box-like body made up of a first part (16) including a vacuum cleaning unit (24) provided with filter (22) and a second part (14) comprising a space for the housing of an extractable filter bag (18) and an opening (19) provided in a side wall of the second part and connected with a dusty air duct (20) for the intake of dusty air into said space (14), wherein said side wall comprises a hinged door (17) in which said opening (19) is provided, said filter bag (18) being in separable communication with said opening (19) and being provided with a tightness valve (column 2, lines 71 and 72) to prevent any dust spill towards the outside of the filter bag (18) at its communication with said opening (19).

The Appellant argued that the "dilatable inlet opening" of the filter bag of D2 is not a tightness valve in the meaning of the present patent application. He contended that the term "tightness valve" is not only an element through which the filter bag is tightly connected to the inlet opening but also an element which seals the filter bag when this latter is removed from the inlet opening.

However, the term "tightness valve" has no commonly acknowledged definition in the technical field of

filter bags. In the patent application this term is only used once in the following passage (page 3, lines 14 to 17) "The filter container 15 is provided with a tightness valve 24, as shown in figure 3, in order to prevent any dust spill on the outside of the same filter container 15, in correspondence of its opening 11 for the intake of dusty air 13". From this passage it is not derivable that the "tightness valve" is also intended to seal the filter bag when it is disconnected from the vacuum cleaner.

Accordingly, the dilatable inlet opening of the filter bag of D2, which is "gripping the inner extension of the suction inlet 19 in sealing relationship" (column 3, lines 1 and 2) fulfils all requirements of a "tightness valve" according to the present patent application.

2.2.3 Thus, the assembly according to claim 1 differs from that of D2 in that the first part including the vacuum cleaning unit is the top part of the box-like body and the second part comprising the space for the housing of an extractable filter bag is the bottom part of it.

2.2.4 There is no indication in the application as filed that this specific disposition provides any advantage. The problem the invention seeks to solve with respect to D2 as closest prior art can thus be seen in providing an alternative arrangement of the vacuum cleaning unit and the filter bag housing within the box-like body of the vacuum cleaner appliance.

2.2.5 In D2 it is stated (column 1, lines 58 to 60) that the cleaner which is normally operated positioned on its wheels, may also be used placed on end, so that it

cannot roll. This is a clear indication that the cleaner can be used in various positions.

2.2.6 Therefore, arranging a cleaner according to D2 such that the vacuum cleaning unit is located in the top part of the box-like body and the space for the housing of an extractable filter bag is located in the bottom part of it, is merely a matter of design convenience, against which there was clearly no prejudice and with which no unexpected result is obtained, all the more because such a disposition is already known from D1.

2.3 Accordingly, the subject-matter of claim 1 of the main request lacks inventive step and the main request must fail.

3. *Auxiliary request - admissibility:*

3.1 This request was filed during the oral proceedings.

Consequently, it constitutes an amendment to the Appellant's case in the meaning of Article 13(1) of the Rules of procedure of the Boards of Appeal (RPBA). This Article stipulates that "Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion..." and further that this 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".

One of the criteria frequently adopted by the Boards when exercising their discretion in admitting amendments filed in the course of oral proceedings is

whether or not good reasons exist for filing amendments at this stage of the procedure (which may be the case when amendments are occasioned by developments during the proceeding) and whether or not the new requests are clearly allowable under the EPC (see the Case Law of the Boards of Appeal, 5th edition, 2006, Chapter VII.D.14.2.1 and 14.2.3)

This means that it must be immediately apparent to the Board, with little or no investigative effort on its part, that the amendments successfully address the issues raised without giving rise to new ones (see T0087/05, point 2).

Furthermore, according to Article 13(3) RPBA

"Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings".

3.2 In the present case the issue of inventive step with respect to D1 and D2 has been raised during the examination proceedings as well as during the appeal proceedings.

Thus, the Appellant should have envisaged that its main request may possibly fail for lack of inventive step. Accordingly, the filing of a new request can hardly have been occasioned by the inventive step discussion during the appeal proceedings.

3.3 Claim 1 of the new auxiliary request adds the following features: [a hinged door] "which is rotatable around a horizontal axis located at the lower end of the door in the lower zone of said bottom part (3)".

In the Appellant's view these amendments are supported by the passage, page 3, lines 5 and 6 of the application as filed and Figures 2 and 3.

As a matter of fact, this passage reads "... the door 8 has an axis of rotation 9 located in the lower zone of said bottom part 3". However, there is no indication in the application as filed that this specific feature (located in the lower zone) is of any importance for the invention. Thus taking this feature in isolation from all other features mentioned in the description, gives it special importance, which is not derivable from the original application and therefore constitutes new information for the skilled person contrary to Article 123(2) EPC.

Furthermore, the fact that in the drawings the axis of the door is located at its lower end is not an unambiguous disclosure of the position of the door in absence of any reference in the description that this detail is meant to correspond to a technical feature of the apparatus according to the invention, rather than being merely an expression of the draughtsman's artistic freedom.

Additionally, the position of the door was neither mentioned in the original claims, nor presented as being an important feature of the invention, so that it is uncertain whether this feature has been searched at all. This fact could justify remitting the case to the department of first instance for performing an additional search. However, if the amendments require remittal of the case, they shall not be admitted according to Article 13(3) RPBA.

3.4 For all these reasons the auxiliary request is not admitted into the proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed

The Registrar:

The Chairman:

G. Magouliotis

C. Scheibling