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**Datasheet for the decision
of 8 February 2012**

Case Number: T 1289/09 - 3.2.07

Application Number: 05773388.3

Publication Number: 1896227

IPC: B26B 21/52

Language of the proceedings: EN

Title of invention:

Ergonomic razor handle provided with an improved grip

Applicant:

BIC Viorex S.A.

Headword:

-

Relevant legal provisions:

EPC Art. 56

Relevant legal provisions (EPC 1973):

-

Keyword:

"Inventive step (no - obvious modification of the prior art)"

Decisions cited:

T 0967/97

Catchword:

-



Case Number: T 1289/09 - 3.2.07

D E C I S I O N
of the Technical Board of Appeal 3.2.07
of 8 February 2012

Appellant: BIC Violex S.A.
(Applicant) Agiou Athanasiou
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 25 February 2009
refusing European patent application
No. 05773388.3 pursuant to Article 97(2) EPC.

Composition of the Board:

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

Summary of Facts and Submissions

- I. The applicant lodged an appeal against the decision of the Examining Division to refuse the European patent application No. 05 773 388.3.
- II. In this decision the following documents are cited:
- D2 = EP-A-1 182 015
D3 = DE-U-29 511 444
- III. The Examining Division held that the subject-matter of claim 1 of the single request filed with fax dated 28 January 2009 lacked inventive step in view of an obvious combination of the teachings of D2 and D3.
- IV. With its grounds of appeal dated 5 June 2009 the appellant requested to set aside the decision and that the case be sent back to the Examining Division to examine the patentability of the invention, alternatively it requested, if the Board were to consider the patentability, the grant a patent on the basis of either the main request, or on the basis of one of the auxiliary requests 1-5, all as filed with the grounds of appeal. In case that the Board should intend to confirm the decision to refuse, oral proceedings were requested.
- V. With a communication dated 18 October 2011 and annexed to the summons for oral proceedings the Board presented its preliminary opinion with respect to the claims of all the requests 1-5.

It appeared to the Board that claims 1 of the auxiliary requests 1-5 did not comply with Article 123(2) EPC and that claims 1 of the auxiliary requests 2-5 additionally contravened Article 84 EPC.

With respect to inventive step the Board amongst others stated that it appeared that the subject-matter of claim 1 of the main request lacked inventive step over D2 and the common general knowledge of the person skilled in the art.

- VI. With letter dated 27 December 2011 the appellant filed an amended main request together with auxiliary requests 1-12 in combination with arguments concerning patentability and the objections raised under Articles 84 and 123(2) EPC in the Board's communication annexed to the summons.
- VII. Oral proceedings were held on 8 February 2012. To start, inventive step of the subject-matter of the most restricted product claim 1 of auxiliary request 5 was discussed, particularly with respect to D2 but also in the light of the intended manner of gripping the handle according to D3. Thereafter inventive step of the subject-matter of process claim 1 of auxiliary request 12 was discussed with respect to D2 and D3. As a consequence of this discussion the appellant submitted the further auxiliary request 13 of which admissibility was first discussed followed by the issue of inventive step of the subject-matter of its process claim 1 with respect to D2 and D3.

The appellant requested that the decision under appeal be set aside and that a patent be granted on the basis

of the main request or, in the alternative, one of the auxiliary requests 1 to 12 filed with letter dated 27 December 2011 and the auxiliary request 13 filed during the oral proceedings.

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

VIII. Product claim 1 of the main request reads as follows:

"1. A handle provided with an improved grip structure for a wet or safety razor, said handle having a front part for supporting blades and a back part opposite to the front part, said handle comprising a rigid plastic part and a compressible part, characterized in that said handle comprises bowed ribs (6,7) defining arcs, said arcs being provided on a surface of the upper side of the handle in the vicinity of the razor head (3) that is the whole of the bowed ribs (6,7) is provided within less than 5.5 cm from the blade or from the rear blade, and wherein the centres of the bowed ribs (6,7) are aligned along the length of the handle (2) and provided backwards."

IX. Claim 1 of auxiliary request 1 differs from that of the main request in that in the characterizing portion it is further defined "said handle comprises **protruding** bowed ribs (6,7) defining arcs ...".

X. Claim 1 of auxiliary request 2 differs from that of the main request in that it comprises the feature "**wherein the opening of the arcs is provided towards the back of the handle,**" between the terms "... from the rear blade," and "and wherein the centres of the bowed ribs ...".

- XI. Claim 1 of auxiliary request 3 differs from that of auxiliary request 1 in that it comprises the additional feature **"wherein the opening of the arcs is provided towards the back of the handle,"** between the terms "... from the rear blade," and "and wherein the centres of the bowed ribs ...".
- XII. Claim 1 of auxiliary request 4 differs from that of auxiliary request 2 in that the feature **"and wherein the height of a given rib (6,7) progressively decreases from a greater height at ~~about~~ the middle of the handle seen from above, to a smaller height as the rib extends outwards"** has been added as the last feature.
- XIII. Claim 1 of auxiliary request 5 differs from that of auxiliary request 3 in that the further feature **"and wherein the height of a given rib (6,7) progressively decreases from a greater height at ~~about~~ the middle of the handle seen from above, to a smaller height as the rib extends outwards"** has been added at the end.
- XIV. Auxiliary requests 6 to 11 were stated to correspond to the product claims of the main request and of the auxiliary requests 1 to 5, respectively (see letter dated 27 December 2011, supplemental observations, page 20, table), but actually claim 1 of auxiliary request 8, which should correspond to that of auxiliary request 2, is identical with that of auxiliary request 3 (i.e. claim 1 of auxiliary request 8 is identical with that of auxiliary request 9).

XV. Process claim 1 of auxiliary request 12 reads
(differences compared to product claim 1 of the main
request are in bold; emphasis added by the Board):

**"1. A shaving process comprising the steps consisting
in**

- providing a wet or safety razor having an handle
provided with an improved grip structure for a wet or
safety razor, said handle having a front part for
supporting blades and a back part opposite to the front
part, said handle comprising a rigid plastic part and a
compressible part, characterized in that said handle
comprises bowed ribs (6,7) defining arcs, said arcs
being provided on a surface of the upper side of the
handle in the vicinity of the razor head (3) that is
the whole of the bowed ribs (6,7) is provided within
less than 5.5 cm from the blade or from the rear blade,
and wherein the centres of the bowed ribs (6,7) are
aligned along the length of the handle (2) and provided
backwards,

**- taking the handle in a hand and placing the index
finger onto the bowed ribs (6,7),**

- and shaving."

XVI. Process claim 1 of auxiliary request 13 reads
(differences compared to claim 1 of auxiliary request
12 are in bold; emphasis added by the Board):

"1. A shaving process comprising the steps consisting
in

- providing a wet or safety razor having an handle
provided with an improved grip structure for a wet or
safety razor, said handle having a front part for
supporting blades and a back part opposite to the front

part, said handle comprising a rigid plastic part and a compressible part, characterized in that said handle comprises **protruding** bowed ribs (6,7) defining arcs, said arcs being provided on a surface of the upper side of the handle in the vicinity of the razor head (3) that is the whole of the bowed ribs (6,7) is provided within less than 5.5 cm from the blade or from the rear blade, **wherein the opening of the arcs is provided towards the back of the handle** and wherein the centres of the bowed ribs (6,7) are aligned along the length of the handle (2) and provided backwards, **and wherein the height of a given rib (6,7) progressively decreases from a greater height at about the middle of the handle seen from above, to a smaller height as the rib extends outwards,**

- taking the handle in a hand and placing the index finger onto the bowed ribs (6,7),
- and shaving."

XVII. The appellant argued, insofar as relevant for the present decision, essentially as follows:

With respect to claim 1 of auxiliary request 5:

The use of the product (razor) for precision shaving is an essential feature of the handle. It aims to avoid the lateral slipping of the index finger particularly in a wet and soapy environment (see application as originally filed corresponding to the published WO-A-2007/000185, page 1, lines 19 to 29; page 6, lines 4 and 5 and lines 10 to 15).

Document D2 does not clearly disclose all its features and the gripping means thereof do not allow obtaining

the effect of the claimed invention. The feature "the whole of the bowed ribs ... is provided within less than 5.5 cm from the blade or from the rear blade" is not disclosed in D2 and also cannot be derived from the drawings of D2. Also the ends of the ribs should be within said distance. If the index finger is not placed within said area of the handle one loses the effect required for precision shaving. It is admitted that the gripping pads shown in the figures 1 and 2 of D2 are bowed and that they form arcs. The figures 3-6 of D2, however, do not show anything specific with respect to the height of these pads, so it is not derivable that they are ribs. In particular the claimed height decrease of the bowed ribs cannot be derived from these figures of D2.

The problem as such (the slipping index finger) is known to the person skilled in the art.

The distance between the bowed ribs is not important but there have to be at least two of them. The person skilled in the art need not place these ribs at the front end of the handle in order to provide a razor for precision shaving since there exist many different solutions. If there are further ribs outside said distance of 5.5 cm then they have no influence on the claimed effect and the advantage obtained. It is admitted that the criticality of the feature "within less than 5.5 cm" has not been demonstrated. It is agreed that, taking account of the enlargement of the razor depicted in the figures 1-7 of D2, the first gripping pad 44 thereof will be "within less than 5.5 cm from the blade or from the rear blade".

With respect to claim 1 of auxiliary request 12:

The claimed shaving process according to claim 1 of auxiliary request 12 is inventive since D2 is silent with respect to the process of using the razor. As defined in claim 1 the index finger has to be placed on the claimed bowed ribs (i.e. close to the blades) to allow precision shaving. The handle used in this process imposes naturally this specific use of the razor on the user.

With respect to claim 1 of auxiliary request 13:

The additional auxiliary request 13 with a more restricted process claim 1 should be admitted since it has been merely restricted to the handle of auxiliary request 5 which more precisely defines the handle. Furthermore, the claimed process according to auxiliary request 13 is not rendered obvious by the prior art.

Only one document can represent the closest prior art, which in the present case would be D3. D2 discloses only a specific product but not any process of using the same. D3 discloses a razor with a handle having totally different features than that of D2 and thus its teaching cannot be combined therewith. Placing the index finger on a location close to the blades represents a very specific manner of shaving, which is not evident from the razor of D2.

Reasons for the Decision

1. *Allowability of amendments and novelty (Articles 54, 84 and 123(2) EPC)*

Since the Board comes to the conclusion that the subject-matter of the most restricted product claim 1 of auxiliary request 5 lacks inventive step (see point 2 below), this conclusion equally applies to the broader product claims 1 of the main request and of the auxiliary requests 1-4 and 6-11 (see point 3 below). Since the subject-matter of the most restricted process claim 1 of the admitted further auxiliary request 13 lacks inventive step (see point 4 below), this conclusion equally applies to the broader process claim 1 of auxiliary request 12 (see point 5 below). Therefore there is no need to verify whether or not the claims of these requests or the amendments made therein comply with Articles 54, 84 and 123(2) EPC.

2. *Inventive step (Article 56 EPC)*

The discussion of inventive step is more efficient if the Board first turns to the most limited claim 1 of auxiliary request 5.

With respect to the main request and the auxiliary requests 1-11 it is remarked that the subject-matter of claim 1 of these requests relates to a product *per se* which is **not** restricted to any preferred manner of using the razor for shaving, such as by placing the index finger onto a certain portion of the outer upper surface of the handle comprising bowed ribs.

Claim 1 of the auxiliary request 5

- 2.1 The Board comes to the conclusion that claim 1 of the most restricted auxiliary request 5 lacks inventive step over the teaching of D2 and the common general knowledge of the person skilled in the art for the reasons that follow.
- 2.2 D2 discloses a shaving razor handle 12 having an elongated hand gripping structure 30, and a cartridge support structure, said gripping structure includes a frame 34 with openings 39, 41, 43 wherein a plurality of gripping pads 44, 46, 48 are accommodated, each of said gripping pads has an elastomeric plastic outer gripping layer 45 and a non-elastomeric plastic support layer 47 (see abstract; paragraphs [0011], [0035] and [0036]; claim 1; figures 2 and 3). The gripping structure 30 of the embodiment shown in figures 3-7 includes a metal frame 34 as primary structural member of which a straight portion has three crescent-shaped recesses 38, 40, 42 for crescent-shaped gripping pads 44, 46, 48 (see paragraphs [0035] and [0036] and figures 3, 4A-4B, and 5-7). The two-layer construction of the front gripping pad 44 and the rear gripping pad 48 (middle gripping pad 46 is similar to pad 48) comprises said elastomeric gripping layers 45. Since the gripping support layer 47 is made from a non-elastomeric plastic the handle 12 comprises also a rigid plastic part.
- 2.2.1 Although D2 is silent with respect to the effect to be obtained by said elastomeric gripping pads it is clear to the person skilled in the art that they serve to improve the gripping properties for at least one of the

at least three fingers normally used during shaving with such a razor, i.e. the index finger, the middle finger and the thumb. The Board considers that this teaching of improving the gripping properties is implicit to the person skilled in the art when reading the term "gripping pad". For example, the thumb and the index finger can be positioned on both sides of said first gripping pad 44 while the middle finger can be positioned on the side of gripping pad 46, or the index finger can be positioned on said first gripping pad 44 while the middle finger and the thumb can rest on the side portions of the further two gripping pads 46 or 48.

- 2.2.2 As agreed by the appellant at the oral proceedings these three gripping pads 44, 46 and 48 - as shown in the perspective view according to figure 2 which shows the same shaving razor 10 comprising the handle 12 and a replaceable cartridge 14 as depicted in the perspective view of figure 1 - represent bowed elements defining arcs which are provided on a surface of the upper side of the handle 12, the opening of these arcs is provided towards the back of the handle and the centres of these bowed ribs are aligned along the length of the handle 12 and are provided backwards.
- 2.2.3 D2 does not disclose any dimensions of said razor and/or said handle. Although normally no dimensions can be taken from drawings (see the Case Law of the Boards of Appeal of the European Patent Office, 6th edition 2010, chapters I.C.2.6 and III.A.5) in the present case it is clear that the illustration of the razor 10 given in the relevant figures 1-3 and 5-7 of D2 - taking account of the proportions of the shaving cartridge 14 and the handle 12 depicted in these figures and bearing

in mind the size of such commercially available razors - represents an enlarged embodiment of a razor. According to the illustrations of e.g. figures 5 to 7 the first recess 38 - wherein the gripping pad 44, which is nearest to the blades, is to be mounted - will be within said limit of 5.5 cm. The appellant concurred with this view.

2.2.4 As shown in figure 8 (which is a partial vertical sectional view of the handle taken at line 8-8 of figure 6 showing the connection of the locking tabs of the gripping pads of figures 4A and 4B to the frame of figure 5) the elastomeric gripping layer 45 protrudes from the surface of the upper surface of gripping structure 30.

Consequently, the handle according to D2 comprises three gripping pads which are protruding from the gripping structure and following the appellant's definition, are thus bowed ribs defining arcs.

2.2.5 Furthermore, said protruding gripping pads 44, 46 and 48 as shown in figures 3 (which is an exploded view of the components of the figure 2 handle), 4A and 4B (which are vertical sectional views of the upper gripping pads of the figure 2 handle) are formed by a crescent-shaped part having from the bottom to the top three stepped levels, each of progressively decreasing height. The thickness of one gripping pad 44, 46 or 48 when measured at the third uppermost level - which is with respect to its width the smallest one of the three levels - is greater than at both ends (see figure 3). This is also confirmed by the side view of the slots 38, 40, 42 decreasing in height in figure 6. As an *obiter*

remark the Board notes that "height" could also be seen in the axial direction of the handle towards the shaving cartridge.

However, also in that case the height of one gripping pad according to D2 progressively decreases from a greater height at the middle of the handle seen from above to a smaller height as the gripping pad extends outwards, as shown in figure 3. Since said gripping pad represents a protruding bowed rib defining an arc therefore the requirement of the last feature of claim 1 of auxiliary request 5 is also fulfilled. The appellant's arguments to the contrary therefore cannot be accepted.

2.2.6 For the above mentioned reasons D2 is judged a feasible prior art disclosure to base the inventive step discussion on, as it clearly concerns the manner in which a shaving razor handle is held better by means of gripping ribs.

2.3 The subject-matter of product claim 1 of the auxiliary request 5 is therefore distinguished from the handle of D2 only by the feature "the whole of the bowed ribs is provided within less than 5.5 cm from the blade or rear blade".

2.3.1 The appellant argued that this feature of the handle provides better results during precision shaving and the provision of at least two bowed ribs within this distance avoids the lateral slipping of the index finger, particularly in a soapy and wet environment (see WO-A-2007/0000185, page 1, lines 21 to 29; page 6, lines 1 to 5 and 10 to 13). The present application

further discloses that said handle ensures an optimal ergonomic grip by the user in such circumstances (see WO-A-2007/0000185, page 6, lines 14 and 15).

- 2.3.2 The appellant, when asked by the Board at the oral proceedings, agreed that the same effect of improving the precision shaving would be obtained in case that the handle would comprise further bowed ribs just outside said distance of "less than 5.5 cm from the blade or rear blade".

From this it can be concluded that the effect lies in the provision of placing the ribs merely where they are needed, or in other words, the reduction of the amount of elastomeric material needed for making the bowed ribs compared to an embodiment having said bowed ribs over a longer length or over the entire length of the handle (compare the Board's communication annexed to the summons, point 6.4, second paragraph).

- 2.3.3 The appellant further agreed that the present application as originally filed is totally silent with respect to the criticality of this feature (compare the published WO-A-2007/0000185, which corresponds to the application as originally filed, page 3, lines 21 to 24). Thus it is not known whether it makes any difference if this distance would be e.g. 5.6 cm from the blade or the rear blade.

- 2.3.4 The technical problem to be solved is therefore considered to be the provision of a handle for precision shaving requiring only a reduced amount of elastomeric material and placing the material where it is needed.

2.4 The solution to this problem is obvious for the following reasons:

2.4.1 First of all, it belongs to the common general knowledge that placing the gripping area as close as possible to the blades of such a wet or safety razor simplifies and enhances the controllability of the razor. Thereby the razor can be exactly guided during the precision shaving since the lever between the blades and the gripping positions of the fingers - commonly three fingers (namely the index finger, the thumb and the middle finger) are used which when placed on the handle form a triangle - is shortened as convincingly argued by the appellant.

Such a teaching is e.g. evidenced by D3. According to the teaching of D3 - the disclosed handle comprises a rigid plastic part including the grip part 3, transition part 2 and front part 1; said transition part 2 comprises recesses, preferably arrow-like, which preferably extend to the side segments of said transition part 2 and which are filled with a soft material, preferably rubber (see page 6, line 31 to page 8, line 4; claims 1, 2, 6, 10-13; figures 1 and 3) - the user takes said handle from above in his hand with the index finger being placed on the tip of the arrow while the thumb and the middle finger of the user are each placed on the respective side walls of the transition part 2 (see page 8, lines 6 to 13). Thereby it is possible to precisely guide the razor and at the same time to apply in a simple manner the desired pressure onto it so as to achieve a thorough shaving (see page 8, lines 15 to 20).

By applying this common general knowledge the person skilled in the art, when starting from the handle of the closest prior art D2, would shift the three gripping pads from their original position (as e.g. shown in the figures 2, 5 and 6) closer towards the location of the razor blades in order to provide a razor suitable for precision shaving. The gripping structure 30 of D2 clearly allows for such a modification with a displacement of the three gripping pads since there is enough space on the connecting end 36 of frame 34 between the release button 32 and the first recess 38 in said frame 34 (see the figures 2, 3 and 5-7). Thereby the person skilled in the art would arrive at a modified handle having at least two gripping pads 44 and 46 - and thus two bowed ribs defining arcs "within less than 5.5 cm from the blade or from the rear blade".

This modified embodiment according to D2 would - taking account of the respondent's statement (see point 2.3.2 above) - produce the same effect for the user as the handle claimed in claim 1 of auxiliary request 5 although it has another, third gripping pad outside said distance of 5.5 cm.

- 2.4.2 Secondly, to provide the elastomeric gripping pads according to the handle of D2 only in the area where they are absolutely necessary in order to reduce the costs of the product and of the process for producing the same is likewise considered to be the result of the above discussed application of common general knowledge of the person skilled in the art.

The Board therefore considers that the person skilled in the art would further amend the said modified embodiment of D2 and would omit the third elastomeric gripping pad 48 which is not considered to be essential for gripping the handle with three fingers for the precision shaving.

- 2.4.3 The appellant's further arguments to the contrary cannot hold since they are based on the use of the razor by positioning specific fingers at specific locations while product claim 1 is neither restricted to such a use nor does it contain the corresponding limiting features.

The arguments concerning the - different - height decrease of the bowed ribs as applied to the ribs of the handle of the razor according to the figures 1-3 of the original application (WO-A-2007/000185) which differ from those according to the embodiment of D2 according to the figures 1-7 are not relevant as long as claim 1 does not comprise additional features distinguishing it from the discussed specific embodiment of D2.

- 2.4.4 Consequently, the subject-matter of claim 1 of auxiliary request 5 lacks inventive step. Auxiliary request 5 is therefore not allowable.

Claims 1 of the main request and auxiliary requests 1-4 and 6-11

3. Since claim 1 of auxiliary request 5 is narrower in scope than claim 1 of the main request and of auxiliary requests 1-4 and 6-11 (compare points VIII to XIV above)

the above conclusion with respect to claim 1 of auxiliary request 5 applies *a fortiori* to claims 1 of the main request and the auxiliary requests 1-4 and 6-11.

The Board therefore concludes that their subject-matter does not comply with the requirements of Article 56 either. The main request and the auxiliary requests 1-4 and 6-11 are thus also not allowable.

Claim 1 of auxiliary request 13

4. Auxiliary request 13 was filed by the appellant at the oral proceedings before the Board as a result of the discussion of inventive step of the subject-matter of the broader process claim 1 of auxiliary request 12. In the present case there is no need to deal with the aspects of its admissibility due to its late filing since claim 1 thereof does not comply with Article 56 EPC for the reasons that follow.

4.1 The subject-matter of process claim 1 of this auxiliary request 13 differs from that of the broader process claim 1 of auxiliary request 12 in that the handle used in the process has been restricted to that according to product claim 1 of auxiliary request 5 (see points XV and XVI above).

The claimed shaving process of claim 1 of auxiliary request 13 comprises the steps consisting
- in providing a wet or safety razor having an handle with an improved grip structure having the above discussed protruding bowed ribs (the subject-matter of the handle *per se*, which according to claim 1 of the

auxiliary request 5, is considered to lack inventive step, see points 2.3.4 to 2.4.4 above),

- taking the handle in a hand and placing the index finger onto the bowed ribs,
- and shaving.

4.2 Claim 1 of D3 defines the use of the claimed wet razor for shaving with the index finger, the middle finger and the thumb. D3 more specifically discloses that the user takes the handle of said razor from above in his hand with the index finger are placed on the tip of the elastomeric material of the arrow while the thumb and the middle finger of the user are placed on the side walls of the transition part of the handle (see page 8, lines 6 to 13). This grip allows to exactly guide the razor and to achieve a thorough shaving (see page 8, lines 15 to 20). D3 further states that the shape of the razor handle imposes such a gripping behaviour which simplifies its use during shaving (see page 8, lines 22 to 25).

4.3 The subject-matter of process claim 1 of auxiliary request 13 therefore differs from the shaving method of D3 in that the used wet razor comprises a different handle. The appellant also chose D3 as closest prior art, at the oral proceedings.

An effect of this difference has not been demonstrated by the appellant.

4.4 The problem to be solved is therefore merely considered to be the provision of an alternative handle for the shaving razor used in the shaving process.

4.5 The solution to this problem is considered to be obvious for the following reasons.

4.5.1 It is clear that the razor of D2 is there to be used for shaving, i.e. its intended use. This fact has **not** been contested by the appellant.

Furthermore, as concluded in points 2.3.4 to 2.4.2 above, the person skilled in the art would modify the handle of the razor according to D2 in order to improve its suitability for precision shaving and he would thereby arrive at the razor with the handle of claim 1 of auxiliary request 5, i.e. the wet or safety razor with the specific handle which is suitable to be used according to the process claim 1 of auxiliary request 13.

4.5.2 As argued by the appellant at the oral proceedings the handle used according to the process claim 1 imposes naturally the specific holding of the wet or safety razor.

This conclusion thus equally applies to the modified handle of the razor according to D2 since it falls under the definition given for the handle in process claim 1 of auxiliary request 13. Consequently, when using the razor having the modified handle according to D2 for the intended purpose of precision shaving, the user would naturally place the index finger on the middle part of the upwardly shifted two gripping pads while the middle finger and the thumb would rest on the side portions of that gripping structure 30 to hold the razor. Thereby the user would arrive at the subject-

matter of claim 1 of auxiliary request 13 without inventive skills.

4.5.3 In this context it is additionally remarked that there exist basically only two possibilities for gripping such a razor handle (see point 2.2.1 above). To select one possibility out of two is in any case not considered to involve inventive step, particularly since the effect obtained with the second way of gripping the handle is considered to be the same.

4.5.4 The appellant's arguments to the contrary cannot hold.

The argument that for an invention there exists only one closest prior art document and that another prior art document cannot be used for attacking inventive step of the process claim 1, cannot be accepted in particular in view of the established case law, see e.g. T 967/97 (not published in OJ EPO; see Case Law of the Boards of Appeal of the European Patent Office, 6th edition, 2010, chapters I.D.2, and I.D.3.1 to I.D.3.5). As shown above, the cited documents D2 and D3 represent feasible starting points for attacking inventive step of the subject-matter of the product claim and the process claim respectively.

The fact that the handle of D3 comprises totally different features than the modified one according to D2 is not considered to be relevant since both impose naturally the specific grip with the index finger being closest to the blades.

4.5.5 For the above reasons the subject-matter of claim 1 of the auxiliary request 13 lacks inventive step. The auxiliary request 13 is therefore not allowable.

Claim 1 of auxiliary request 12

5. Since process claim 1 of auxiliary request 13 is narrower in scope than process claim 1 of auxiliary request 12 (compare points XV and XVI above) the above conclusion with respect to claim 1 of auxiliary request 13 applies *a fortiori* to claim 1 of auxiliary request 12.

The Board therefore concludes that its subject-matter does not comply with the requirements of Article 56 either. Auxiliary request 12 is thus also not allowable.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders