

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 9 February 2012**

Case Number: T 0017/10 - 3.2.07

Application Number: 01830716.5

Publication Number: 1247586

IPC: B05B 12/08, B05B 7/02

Language of the proceedings: EN

Title of invention:
Manual spray gun

Patentee:
Anest Iwata Europe Srl

Opponent:
SATA GmbH & Co. KG

Headword:
-

Relevant legal provisions:
EPC Art. 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Inventive step (yes), no hint for redesign of the structure according to the closest prior art"

Decisions cited:
-

Catchword:
-



Case Number: T 0017/10 - 3.2.07

DECISION
of the Technical Board of Appeal 3.2.07
of 9 February 2012

Appellant: SATA GmbH & Co. KG
(Opponent) Domertalstrasse 20
D-70806 Kornwestheim (DE)

Representative: Rapp, Bertram
Charrier Rapp & Liebau
Patentanwälte
Fuggerstrasse 20
D-86150 Augsburg (DE)

Respondent: Anest Iwata Europe Srl
(Patent Proprietor) Corso Vigevano 46
I-10155 Torino (IT)

Representative: Buzzi, Franco
Buzzi, Notaro & Antonielli d'Oulx
Via Maria Vittoria 18
I-10123 Torino (IT)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 4 December 2009
rejecting the opposition filed against European
patent No. 1247586 pursuant to Article 101(2)
EPC.

Composition of the Board:

Chairman: H. Meinders
Members: H.-P. Felgenhauer
I. Beckedorf

Summary of Facts and Submissions

I. The appellant (opponent) has filed an appeal against the decision of the opposition division rejecting the opposition against European patent No. 01 247 586. It requested the impugned decision to be set aside and the patent to be revoked.

The respondent (patentee) requested that the appeal be dismissed.

II. Claim 1 as granted reads (with a division of features added by the Board) as follows:

Manual spraying gun (1) comprising

(a) a body (2) with a spraying nozzle (3) connected to a supply member (4) of a substance to be sprayed with associated regulator (8), and

(b) a supply fitting (5) of compressed air

(c) leading to a grip (6) with associated regulator (10) and related pressure indicator,

characterised in that

(d) the grip (6) consists of an element which is distinct from the body (2) and

(e) connected thereto in a quickly releasable fashion,

(f) said grip (6) incorporating a pressure gauge (4') therewithin.

III. The following documents, considered in the decision under appeal, are referred to:

- D1 US-A-3 482 781
- D2 DE-A-39 04 437
- D3 DE-U-88 14 651
- D5 US-A-5 191 797
- D9 DE-A-69 21 848
- O2 SATA brochure "Spritzspachtel-Pistole KL/P" with imprint b-57075-0788
- O3 SATA drawing 00-55 "SATA KL/KS" dated 17.06.1993
- O4 SATA pricelist 88/II, 1. Auflage 6/1988
- O5 SATA brochure, "Die 90er von SATA" with imprint 78683/0394
- O6 Copy of one page of an undated publication in Greek referring to "IWATA"
- O7 Copy of one page of an undated publication referring to "IWATA ITALIA"

IV. Impugned decision

According to the impugned decision the manual spraying gun according to claim 1 involves an inventive step considering the available prior art documents as well as the documents concerning an alleged public prior use.

Based on the effects of the distinguishing features (features (c) - (e) - cf. the reasons, no. 3) the spray gun according to claim 1 has been considered as solving the problem to provide a manual spraying gun which permits the use of an analogue pressure gauge without increasing the size of the handle and which can easily be washed under use.

The spraying gun disclosed in D1 has been considered as not concerning the problem underlying the patent in suit. It has further not been considered as comprising elements (head part 12 and body part 14) leading to a body and a grip which are connected in a quickly releasable fashion as defined by features (d) and (e). In this respect it has been stated "body 12 and element 14 are not at all quickly releasable from each other: separation therebetween requires in fact not only unscrewing of the hollow nut 16, the access to which by a proper tool can only be provided through passage 60 following withdrawal of the throttle valve 62 assembly, but also separating the needle valve 36 either from body 12 or from element 14" (cf. reasons, no. 3).

V. The arguments of the appellant can be summarized as follows:

- (a) Claim 1 is unclear. Concerning feature (a) the meaning of the expression "associated regulator" is unclear since it leaves completely open whether or not the regulator is attached to the body or only functionally related to it. For corresponding reasons feature (c) is unclear due to its reference to an "associated regulator" and "related pressure indicator". Feature (e) is unclear since the expression "quickly and releasable fashion" leaves it open how fast or within which time frame the grip is to be released from the body. This holds true even more considering that according to the description one or more anchoring screws may be provided to secure the grip onto the body.
- (b) Taking into account that due to these unclarities claim 1 needs to be given a broad interpretation it becomes evident that the manual spraying gun as disclosed by document D1 has all the features of the spraying gun according to claim 1.
- (c) In the event that features (c), (d) and (e) are considered as distinguishing the spraying gun according to claim 1 over the one disclosed by D1, two independent problems need to be taken into account. The first problem is based essentially on distinguishing features (d) and (e) and can be seen as devising a spraying gun being such that the parts which get into contact with the substances to be sprayed can easily be cleaned.

The second problem based essentially on distinguishing feature (c) can be seen as devising a spraying gun having a regulator and related pressure indicator without the size of the grip being increased.

- (d) The solution of the first problem as defined by claim 1 is obvious considering that according to the closest prior art document D1, the two parts constituting the spraying gun, namely the head part 12 and the body part 14, lead to the situation that the grip consists of an element distinct from the head part, considering further that these two parts are connected via a hollow nut 16 and thus in a quickly releasable fashion.
- (e) Further, the first problem as well as a solution to this problem corresponding to the one defined by claim 1, is disclosed in D2. Since it is evident that the solution as disclosed by D2 can be implemented in the spraying gun of D1 without inventive skill being required the solution of the first problem as defined by claim 1 does not involve an inventive step. This applies for corresponding reasons considering document D3 in addition to D1.
- (f) The solution to the second problem, namely to provide the grip with an associated pressure regulator, needs likewise to be seen as obvious considering the large number of documents disclosing a spraying gun with a grip having an associated pressure regulator, namely documents D5, 02, 03, 04 as well as D9.

- (g) Consequently the spraying gun according to claim 1 does not involve an inventive step since the solutions to the first and the second problem as defined by claim 1 are obvious.

VI. The arguments of the respondent can be summarized as follows:

- (a) Claim 1 is not unclear. Feature (c) defines that, as indicated in the description [0017], the grip has a manual pressure regulator, which is associated to a gauge. Correspondingly feature (a) defines that a body of the spraying gun has a spraying nozzle connected to a supply member of the substance to be sprayed with an associated regulator. These features define the subject-matter exactly as stated therein.
- (b) Feature (e) is likewise not unclear since the expression "quickly releasable fashion" can be understood as defining a manner of connection, which, as it is the case for the embodiments given in this respect in the description (dovetail connection, clip-on connection and bayonet coupling, respectively), are quickly releasable irrespective of the fact that for the dovetail connection one or more anchoring screws may be additionally provided.
- (c) The manual spraying gun as disclosed by document D1 does not disclose a spraying gun as defined by claim 1. On the contrary the spraying gun according to claim 1 is distinguished from the one

according to D1, which is of a completely different overall structure due to its two main elements (head part 12, body part 14) and the manner in which these elements are connected, by features (c), (d) and (e).

- (d) Based on the effects of these distinguishing features it is evident that starting from the spraying gun of D1 only one problem needs to be considered, namely the one referred to in the description according to which a spraying gun is to be devised which can easily be washed after use.
- (e) Starting from the spraying gun of D1 it is immediately apparent that, due to a redesign of the spraying gun of D1 which would be required this document, considered by itself or with general technical knowledge, cannot be considered as leading in an obvious manner to the spraying gun defined by claim 1. Further, neither additional consideration of the approach taken according to D2 or the one according to D3 would have led in an obvious manner to the spraying gun according to claim 1. When considering D2 and D3 in combination with D1, care must be taken to avoid an inadmissible *ex post facto* analysis.
- (f) The above results apply likewise in case documents D5, 02 - 07 and D9 are taken into consideration concerning the provision of a regulator as referred to by feature (c). Considering these documents it needs to be taken into account that they are of no relevance with respect to the

(first and only) problem to be solved and the solution as defined by claim 1.

(g) Consequently the spraying gun according to claim 1 involves an inventive step in view of the available prior art.

VII. In an annex to summons to oral proceedings the Board i.a. referred to aspects to be considered in the examination of inventive step.

VIII. Oral proceedings before the Board were held on 9 February 2012.

Reasons for the Decision

1. Procedural issues

The appellant stated that - with respect to these appeal proceedings - it no longer maintained its offer of evidence concerning the prior uses according to documents 06 and 07 and that Mr. Schmon's presence would only be as technical support of its professional representatives in these oral proceedings. It further stated that its submissions regarding an infringement of its right to be heard at the oral proceedings before the Opposition Division would not be presented in the form of a request.

Thus, the Board in its decision does not deal with either of these issues.

2. Subject-matter of claim 1

2.1 Irrespective of the unclarities referred to by the appellant (cf. point V (a) above) it is common ground that claim 1 is directed to a manual spraying gun comprising two distinct parts, namely a body (features (a) and (b)) and a grip (referred to in features (c) and (d)).

It is further common ground that, corresponding in part with features (d) and (e), the two distinct parts are connected to each other in a releasable fashion.

2.2 With respect to features (c) - (e) the parties are of different opinion concerning the nature or extent of the grip (features (c) and (d)) and concerning the nature of the connection between the grip and the body (feature (e)).

2.2.1 Concerning the nature or extent of the grip the appellant is of the opinion that the expression "grip" in features (c) and (d) needs to be understood based on the function associated with this element, namely anything from which the body can be removed, e.g. for cleaning. Thus the part referred to as grip cannot be understood as being limited to a portion of the spraying gun which physically represents a grip. Instead this expression needs to be understood broadly, i.e. concerning all parts of the spraying gun other than the portion exposed to the substances to be sprayed, which is referred to in the description of the patent in suit (paragraph [0016]).

According to the appellant this understanding is further supported by feature (d) defining that the grip consists of an element which is distinct from the body.

The Board does not find this interpretation of the subject-matter of claim 1 convincing. It is true that, as indicated by the appellant, the portion of the spraying gun which is distinct from the body is the one which does not need to be cleaned as it is the case for the body due to its exposure to the substances to be sprayed. This aspect, referred to by the appellant as a functional one, can however, as pointed out by the respondent, not be seen as defining, with respect to the structure of the spraying gun, the dividing line between the body which is subject to cleaning and the remainder of the spraying gun for which this is not the case. This functional aspect cannot, in other words, be understood as (at least not directly) defining the extent of the portion of the spraying gun which is distinct from the body and thus indirectly also defining the extent of the portion of the spraying gun referred to as the body.

Concerning the understanding of the structure of the portion of the spraying gun referred to as "grip" (features (c) and (d)) the Board does not see any convincing reason for an interpretation going beyond the meaning of the term "grip", considering the common understanding of this expression as well as the description of the patent in suit referred to by the appellant. According to the common understanding the term "grip" defines in the present case, in connection with the fact that a **manual** spraying gun is claimed, the portion by which this spraying gun will be held

during its use. The understanding of this expression based on the description does not differ therefrom. This can e.g. be derived from the wording used in the statement of the object of the invention (paragraph [0009]) where a "handle" is referred to and the wording used in the statement of the solution according to the invention (paragraph [0011]), where a "grip" is referred to. This understanding is in line with the drawings of the patent in suit (cf. figures 1, 2), each showing a manual spraying gun having a grip 6 which is limited to a portion by which it is to be held, in which a pressure gauge is incorporated as defined by feature (f). Also when considering that the patent in suit serves as its own dictionary, as referred to by the appellant, no other result concerning the meaning of the term "grip" is obtained.

2.2.2 In the following the term "grip" in features (c) and (d) is thus understood as referring to a portion of the spraying gun as defined by claim 1, which is distinct from the body and which has a structure serving the function given by the meaning of this term, namely to provide a portion by which it can be gripped or held. It is the grip according to this understanding to which a supply fitting of compressed air leads (feature (b)) and which has an associated regulator and related pressure indicator (features (c) and (f)).

2.2.3 Concerning the nature of the connection between the body and the grip (feature (e)) the appellant argues that the expression "quickly releasable fashion" is a relative one which, due to the lack of any limitation in the claim and in view of the embodiments given for such a quickly releasable connection in the patent in

suit, must be understood in a broad sense. The embodiments referred to in this respect are the connection between the body and the grip via a dovetail structure (paragraph [0018], figures 1 - 3; for which it is stated that fastening occurs with the assistance of one or more anchoring screws), a clip-on joint (paragraph [0025]) and a bayonet coupling with clip positioning devices (paragraphs [0026] to [0029], figures 4 - 9).

According to the appellant, in particular at least with respect to the dovetail structure, which requires unscrewing of one or more anchoring screws, the term "quickly releasable fashion" has to be given a broad meaning. Consequently the connection disclosed for the manual spraying gun of D1 (cf. point 3 below), according to which a head part 12 and a body part 14 are detachably secured together via a hollow nut 16, may also be qualified as "quickly releasable".

- 2.2.4 The Board cannot concur with this understanding of feature (e). Although the appellant may be correct in pointing out that the expression "quickly releasable fashion" is a relative one not further defined in claim 1 and that the time required to release the connection may differ for the different embodiments of the patent in suit, the Board finds, with the respondent, that it is at least distinguished from the connection disclosed in D1 (cf. point 3.3 below) since in D1 the elements forming the connection have no easy access and further elements linking the parts to be disconnected need to be disassembled.

3. *Disclosure of D1*

3.1 It is common ground that D1 discloses a manual spraying gun comprising two main parts, one referred to as head part 12 and the other one as body part 14. The head part provides, essentially in line with feature (a), a socket 18 for threadedly receiving a nozzle 20 (column 2, lines 2 - 10). Furthermore it is undisputed that corresponding to feature (b) a supply fitting 50 of compressed air is provided (column 2, lines 32 - 35).

3.2 A grip portion 52 is provided as an integral part of the body part 14 (cf. column 2, lines 32 - 35; figure).

3.3 The head part 12 and the body part 14 are detachably secured together by means of a hollow nut 16 (column 2, lines 5 - 7; figure). Both parts are further linked via a needle valve 36 and a throttle valve 62, since both valves comprise elements formed in the head part and elements formed in the body part (cf. the figure and column 2, lines 11 - 20; 53 - 60 concerning needle valve 36 and lines 40 - 53 concerning throttle valve 62).

4. *Features distinguishing the manual spraying gun according to claim 1 over the one of D1*

4.1 Based on the understanding of features (c) - (e) given above (cf. points 2.2.2 and 2.2.4) these features are the ones distinguishing the spraying gun according to claim 1 over the one disclosed by D1 (cf. point 3 above).

4.2 Concerning feature (d) it is evident that due to the body part 14 comprising the grip portion 52 as an integral element the grip portion cannot be considered as consisting of an element "distinct from the body" (feature (d)). According to D1 it is the body part 14 with the grip portion 52 which is distinct from the head part 12 (the latter corresponding to the body as claimed in feature (a)) and which is connected thereto.

4.3 The connection between the head part 12 and the body part 14 of D1 cannot, contrary to feature (e), be qualified as being quickly releasable.

One apparent reason is that the connection in the spraying gun of D1 is via the hollow nut 16 (cf. point 3.3 above) which, in order to be accessible, requires removal of a threaded plug (shown in the figure without reference numeral) which closes a passage 60 communicating with the hollow nut 16 (col. 2, lines 41 - 43; figure). Unscrewing of the hollow nut 16 requires moreover, due to its structure, a screwdriver of a particular width.

A further apparent reason is that detachment of the head part 12 and the body part 14 requires additionally the disassembly of the two valves 36 and 40 also linking these elements (cf. point 3.3 above).

4.4 Already due to the grip as defined by feature (d) being distinguished from the one according to D1 it is evident that feature (c) needs, in connection with the first mentioned feature, likewise to be considered as a distinguishing feature.

5. *Inventive step*

5.1 *Effect(s) of the distinguishing features and problem(s) to be solved in view of the spraying gun of D1*

5.1.1 The distinguishing features (c) - (e) have the effect that of the two elements of the manual spraying gun referred to in claim 1, only the body is exposed to substances to be sprayed whereas the grip is not. This division of the spraying gun into two parts leads, due to the quickly releasable connection between the body and the grip, to the effect that, as stated in the patent in suit, the spraying gun (or more precisely: its part exposed to the substances to be sprayed) can be easily washed after use (paragraph [0009]).

5.1.2 Based on this effect a - first - problem solved by the spraying gun of claim 1, starting from the one disclosed by D1, can be seen in facilitating washing of the spraying gun after use.

The problem referred to instead by the appellant, namely to facilitate washing due to the connection of the two parts of the spraying gun being one which allows the two parts to be quickly separated, is not suited to be taken into account in the examination of inventive step, since, due to its reference to a quickly releasable connection, it comprises already elements of the solution (feature (e)).

Thus the first problem as referred to above, which is in line with the one stated in the patent in suit (cf. paragraph [0009]), and solely based on the effect of

the distinguishing features, will be taken into account in the examination of inventive step.

Although the opinion expressed by the appellant that the problem stated in a patent might not necessarily remain the same, in particular in case other prior art needs to be considered as closest prior art in the examination of inventive step, might apply in some cases, it does not apply in the present case as the effects to be considered remain unchanged in view of D1 as closest prior art.

According to the respondent the first problem referred to above is the only problem to be considered in the examination of inventive step.

5.1.3 According to the appellant a second problem, separate from the first one and based on the effect of the part of feature (c), according to which the grip has an associated regulator (the related pressure indicator according to the remainder of this feature is already known from D1, column 2, lines 66 - 68; figure: gauge 80), needs to be taken into account.

5.1.4 As can be derived from the following (see e.g. point 5.2.2) the spraying gun according to claim 1 involves an inventive step starting from D1 as closest prior art and considering the first problem and the (first) solution associated with it as defined in particular by features (d) and (e).

It has neither been argued nor can it be considered evident for other reasons that the result of an examination of inventive step based on the second

problem and its solution affects the result obtained with respect to the first problem and its solution.

For this reason even a finding that the solution to the second problem would be obvious based on the consideration of one of the documents D5 and O2 - 07, each disclosing a grip with an associated regulator, in combination with D1, cannot affect the above mentioned result.

Examination of inventive step based on the argumentation concerning the second problem and its solution consequently thus needs no further attention.

5.2 *Obviousness of the solution to the first problem*

5.2.1 It is recalled that starting from the spraying gun disclosed by D1 the remaining (first) problem to be considered can be seen in facilitating washing of the spraying gun after use (cf. above point 5.1.2).

This problem is solved by the spraying gun defined by claim 1 essentially in that according to features (d) and (e) the grip consists of an element which is distinct from the body and is connected thereto in a quickly releasable fashion.

This solution differs from the spraying gun of D1 in two aspects, namely the division of the spraying gun into a grip and a body as defined by feature (d) and the connection of these two elements in a quickly releasable fashion as defined by feature (e).

5.2.2 According to a first line of arguments of the appellant it is evident that in order to solve the problem concerned only the structure of the spraying gun of D1 needs to be taken into account. Considering that this spraying gun consists of two parts, of which only the head part is exposed to substances to be sprayed, it is evident that in order to facilitate washing, the manner in which the two parts are connected needs to be modified such that the elements are quickly releasable. Such a modification cannot lead to subject-matter involving inventive step since apart from D1 only general technical knowledge needs to be taken into account.

The Board is not convinced by this argumentation which, according to the respondent, can only be seen as the result of an *ex post facto* analysis.

5.2.3 Due to the particular connection between the head part and the body part of the spraying gun as shown in the sole figure of D1 (cf. point 3.3. above) the Board cannot see how a modification leading to a connection of these parts in a quickly releasable fashion could be obvious. To arrive at such a connection a mere modification of the structure of the spraying gun according to D1 would not suffice. Instead a redesign of the entire structure would be required such that the valves linking the head part and the body part in the spraying gun of D1 would solely be provided in the head part. For such a fundamental redesign D1 does not give any hint.

5.2.4 Since D1 does not give any such hint leading in an obvious manner to the subject-matter of claim 1,

additional consideration of not further specified general technical knowledge cannot lead to the spraying gun of claim 1 either, contrary to an allegation of the appellant. The application of general knowledge may at most lead to a modification of the structure of the spraying gun of D1, but not to a redesign of the structure of the spraying gun as referred to above. In other words: the application of general technical knowledge in the present case cannot be considered as leading to a largely different structure of the spraying gun of D1, thereby abandoning the structure of the spraying gun disclosed in this document to a large extent.

5.2.5 The reasoning of point 5.2.4 above applies correspondingly to the second and third line of arguments according to which the solution to the first problem is obvious considering in addition to D1 the approach according to D2 or D3.

5.2.6 D2 concerns a spraying gun with a barrel 2, a grip 18 and a tube 26 as separable parts. The substance to be sprayed is fed through this tube (column 3, lines 16 - 51). This means that, contrary to the spraying guns of claim 1 and D1, no supply fitting for compressed air and no regulator and pressure indicator for the compressed air is provided (cf. features (b), (c) and (f)).

The functional and structural differences between the spraying gun of D1 and the one of D2 make it unlikely that D2 would have been considered in connection with the spraying gun according to D1, considering in particular that the latter structure apart from the

grip portion 52 is largely influenced by the provision of the needle valve 36, the throttle valve 62 and the air valve 42 (cf. D1, column 2, lines 21 - 47; figure) and thus by elements which, as can be derived from the above, do not form part of the spraying gun of D2.

But even if D2 would have been considered, irrespective of the functional and structural differences between the spraying gun of D1 and the one of D2, no suggestion can be derived therefrom with respect to a redesign of the spraying gun of D1 such that it is divided into two parts as defined by feature (d), which are moreover connected as defined by feature (e) as correctly pointed out in the impugned decision (reasons, no. 3).

Under these circumstances it needs no further examination whether the connection of the barrel and the grip according to D2 via mating portions of the barrel and the grip, as well as a bracket 30 (cf. figure 1) would be feasible at all in a spraying gun of the kind disclosed in D1 and whether it then would be a quickly releasable one in the sense of feature (e).

Concerning the argument of the appellant with respect to the reasoning of the impugned decision, that the person skilled in the art is not held to consider every detail of the structure of the spraying gun of D2 but only the teaching derivable from this document it needs to be carefully distinguished between the teaching derivable from D2 and possibly something taken from it in the knowledge of the teaching of the patent in suit.

Considering the teaching derivable from D2 itself (in the terms as defined by claim 1) consists in the

provision of a spraying gun having a barrel and a grip and a feeding tube for substances to be sprayed which runs through the barrel and the grip alike, wherein these parts are distinct from each other and are separable. It is not to be seen how this teaching fits to the structure of the spraying gun of D1 and how application of it may lead to the spraying gun defined by claim 1.

Isolated consideration of only parts of this teaching, which are clearly not separable from the remainder of it - referred to as general information derivable from D2 by the appellant - can, as pointed out by the respondent, only be seen as an inadmissible *ex post facto* analysis.

5.2.7 For corresponding reasons consideration of D3 as further prior art in connection with D1 as closest prior art cannot be considered as leading in an obvious manner to the spraying gun of claim 1. Starting from D1 in an attempt to solve the problem consideration of D3 would also imply a redesign of the spraying gun of D1 to a large extent in order to arrive at the spraying gun as defined by claim 1. D3 discloses a spraying device for plant protection substances which, as indicated with respect to the spraying gun of D2, does not have the regulators required for the spraying gun of D1 and according to claim 1, cf. features (a) and (c), since compressed air and substances to be sprayed are not fed separately into the spraying device of D3. This document thus discloses a device functionally different from the spraying gun of D1 and of claim 1.

The structure of the spraying device of D3, for which an intermediate housing 10 is essential (cf. claim 1; figures 1- 4), also does not bear any significant elements in conformity with the spraying gun of D1 or claim 1.

Thus it is unlikely that the spraying device of D3 would have been considered in an attempt to solve the problem of facilitating washing of the spraying gun after use, starting from the spraying gun of D1.

But even doing so and considering D3 as further prior art in addition to D1, due to the structural and functional differences between the spraying gun of D1 and the spraying device of D3 combined consideration of these documents could not have led in an obvious manner to the spraying gun as defined by claim 1.

This holds true irrespective of the intermediate housing of the spraying device according to D3 comprising elements like a pressure regulator 11 (cf. figure 4) as referred to by the appellant. In the context of the disclosure of D3 such structural details bear, due to the fundamental functional and structural differences between the spraying device of D3 and the spraying gun of D1 referred to above, no relevance concerning a redesign of the structure of the spraying gun of D1. This applies likewise to structural details, like the pressure regulator. Concerning the latter it is immediately apparent (e.g. from a comparison of the structure of the spraying gun as shown in the figure of D1 and the intermediate housing shown in figure 4 of D3) that it neither fits in the spraying gun of D1 nor

gives rise to a redesign of the structure of this spraying gun.

Furthermore it needs to be considered that, as pointed out by the respondent, also in respect of D3 structural details considered out of the context of the disclosure they belong to, may, what presently appears to be the case, be the result of considerations based on an *ex post facto* analysis.

5.2.8 Thus, for the reasons given above, the spraying gun as defined by claim 1 involves an inventive step (Article 56 EPC).

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Nachtigall

H. Meinders