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**Datasheet for the decision  
of 30 September 2015**

**Case Number:** T 1952/10 - 3.5.02

**Application Number:** 08100393.1

**Publication Number:** 1909367

**IPC:** H02G3/20, F21S8/00

**Language of the proceedings:** EN

**Title of invention:**

Deck-box for a swimming pool

**Applicant:**

Burnham, Douglas Peter  
Fielding, Allan

**Relevant legal provisions:**

EPC Art. 54, 56  
RPBA Art. 13(3)

**Keyword:**

Novelty - main and first auxiliary request (no)  
Inventive step - main and first auxiliary request (no)  
Late-filed auxiliary requests -  
amendments after arrangement of oral proceedings -  
admitted (no)



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Case Number: T 1952/10 - 3.5.02

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.02**  
**of 30 September 2015**

**Appellant:** Burnham, Douglas Peter  
(Applicant 1) Woodlands,  
Scotchman Lane, Morley  
Leeds, West Yorkshire LS27 0BX (GB)

**Appellant:** Fielding, Allan  
(Applicant 2) 45 Knightsbridge Court  
Parsonage Lane  
Brighouse HD6 1FB (GB)

**Representative:** Appleyard Lees  
15 Clare Road  
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**Decision under appeal:** **Decision of the Examining Division of the  
European Patent Office posted on 3 May 2010  
refusing European patent application No.  
08100393.1 pursuant to Article 97(2) EPC.**

**Composition of the Board:**

**Chairman** M. Ruggiu  
**Members:** G. Flynn  
R. Cramer

## Summary of Facts and Submissions

- I. The applicants' appeal contests the examining division's decision to refuse European patent application number 08 100 393.1, which was published as EP 1 909 367 A2. This is a divisional application of a European application based on the international application published as WO 2006/013341 A1.

The following prior art document references were used during the first instance procedure and in the contested decision (see summary of facts and submissions, point 12):

- D1: US 2004/114355 A1
- D2: US 5 550 727 A
- D3: FR 2 781 869 A

- II. In the reasons for the decision the examining division found that since all the features of independent claim 1 filed with the letter dated 15 March 2010 were known from document D2, its subject-matter was not new, Article 54 EPC (see reasons for the decision, points 2 to 4).

Furthermore, the examining division found that documents D1 and D3 disclosed all of the features of the preamble of claim 1 and that the characterising feature that "the electricity is obtainable via an inductive connection" did not involve an inventive step (Article 56 EPC) as the skilled person would realise that whenever wired connections were referred to they might, where appropriate, be replaced by wire free connections such as inductive connection.

- III. The Board summoned the appellants to oral proceedings. In an annex to the summons the Board made preliminary observations on the appeal.
- IV. With a letter dated 27 August 2015 the appellants replied to the summons and filed claims of a main request and three auxiliary requests.
- V. Oral proceedings were held on 30 September 2015. The appellants requested that the decision under appeal be set aside and that a patent be granted on the basis of claims 1 to 5 of the main request filed with letter of 27 August 2015 or, in the alternative, on the basis of the claims of one of auxiliary requests 1 to 3 filed with the same letter, or in another alternative that the case be remitted to the department of first instance for further prosecution.
- VI. Independent claim 1 of the main request is identical to claim 1 as considered in the contested decision. It reads as follows:

*"1. A lid for an electrical junction box (14'), within which or with which a light source (20) is accommodated or associated, wherein the light source (20) is an electrical light source and is adapted to obtain electricity already present at the box (12') to which it is to be attached, characterised in that the electricity is obtainable via an inductive connection."*

Independent claim 1 of auxiliary request 1 differs from that of the main request by the addition at the end of the feature:

- *"and wherein the lid (14') is transparent or translucent"*.

Independent claim 1 of auxiliary request 2 differs from that of the main request by the addition at the end of the feature:

- *" , wherein the light source (20) automatically disconnects from the electricity connection on separation of the lid (14') from the electrical junction box (12')"*.

Independent claim 1 of auxiliary request 3 differs from that of the main request by the addition at the end of both of the above features.

VII. The appellants argue that the refusal of the application represents a procedural violation in that the decision of the examining division was premature because they were not given sufficient opportunity to address new objections which were raised in the communication dated 31 March 2010, received on 1 April 2010. In particular, the appellants argue that the issue of novelty of newly filed claim 1 over document D2 had not previously been raised, and neither had any objection to the inventive step of claim 1.

The appellants also argue that the claims of the main and auxiliary requests are novel and involve an inventive step over the prior art.

## **Reasons for the Decision**

1. Alleged procedural violation (right to be heard)
  - 1.1 In the first instance proceedings, the examining division set out in the annex to the summons to oral proceedings (communication dated 19 January 2010), that in claim 1 filed with the letter dated 21 May 2009, the feature according to which the light source was attached to the box via an inductive connection added fresh subject-matter (see point 2) and that all of the other features of claim 1 were known from each of the documents D1, D2 and D3 (see point 3).
  - 1.2 One month before the date scheduled for oral proceedings (see letter dated 15 March 2010) the applicants filed amended claims, with claim 1 comprising the sole characterising feature that "the electricity is obtainable via an inductive connection".
  - 1.3 In a communication dated 31 March 2010, which according to the appellants was received on 1 April 2010, i.e. more than 2 weeks before the oral proceedings, the examining division set out the grounds which would later come to be used in the contested decision. The only points that the examining division raised for the first time in that communication concerned the feature that "the electricity is obtainable via an inductive connection". In particular, the examining division set out that this feature:
    - was disclosed in document D2 by the passage of column 4, lines 2 to 5, according to which electricity may be provided by "electrical

transformers", in other words via inductive connection; and

- "does not involve an inventive step since the skilled person will realise that whenever wired connections are referred to they may where appropriate, be replaced by wire free connections such as induction connection".

1.4 These two points were raised in response to amendments filed by the applicants only one month before the proceedings and were based entirely on documents that were already on the file. The Board considers that they are of such limited complexity that it should have presented no difficulty to react to them in the two weeks remaining before the scheduled oral proceedings, or indeed at the oral proceedings. The Board concludes that the opportunity to address the objections was sufficient and that in basing the refusal on these objections the examining division did not commit a procedural violation. Hence, the appellants' arguments on this point cannot provide a reason for remitting the case to the department of first instance for further prosecution.

2. Main Request, Articles 54 and 56 EPC

2.1 It is undisputed that document D2 discloses all of the features of the preamble of claim 1.

2.2 According to the characterising feature of claim 1, "the electricity [*i.e. the electricity which is already present in the junction box and which the light source is adapted to obtain*] is obtainable via an inductive connection".

2.3 In the contested decision the examining division considered that this feature was known from document D2, arguing:

*as disclosed in the passage of column 4, lines 2 - 5 of document D2, the obtained electricity may be provided by "electrical transformers". In other words, via inductive connection.*

To be precise, the cited passage of document D2 actually states:

*"According to preference, the illuminators 3 can be operated on low voltage, either provided by batteries or electrical transformers".*

2.4 The appellants argued in the grounds for appeal that the examiner interpreted this phrase very broadly to anticipate the feature that the electricity is obtainable "via an inductive connection".

Furthermore, the appellants argued in the grounds for appeal that it is clear from the specification as filed that the term "obtainable via an inductive connection" refers to a plug and socket type arrangement which transfers electricity inductively between the lid and the box to which it is attached. In the oral proceedings, the appellants explained that the inductive connection envisaged by the appellants was of the type now commonly found in rechargeable battery-operated toothbrushes, where the toothbrush unit is placed on a base for charging and an inductive coupling is formed between a coil provided in the base and a coil provided in the toothbrush unit.

2.5 In the application as filed (see EP 1 909 367 A2), a plug and socket connection is mentioned in paragraphs [0028] and [0053], where it is stated:



*The plug/socket fixing may be applied to an entire lid assembly, by e.g. providing a lid with pins and a base assembly with receiving sockets.*

From this passage it seems clear to the Board that the plug and socket arrangement contemplated here is the traditional type with conductive pins and sockets which make electrical connections by mechanical contact. Such a connection seems to leave no room for being considered as an "inductive connection".

In the Board's view, the statement in paragraph [0055] that "power may also be provided by an inductive connection" can only refer to the alternative "wire-free" type of connection that is mentioned earlier in the paragraph.

Hence, the Board can find no support in the application for the appellant's contention that the term "obtainable via inductive connection" refers to a plug and socket type arrangement.

2.6 As to the question whether the examining division has interpreted the reference in D2 to electrical transformers too broadly, the Board notes that induction in the field of electricity usually refers to electromagnetic induction, which is the production of an electromotive force across a conductor when it is exposed to a varying magnetic field. That is precisely what happens in an electrical transformer, where the primary and secondary windings of the transformer are isolated from one another galvanically and power is transferred between the primary and secondary windings by electromagnetic induction. The Board can find no clear indication that an "inductive connection" in the sense used in the application should be understood as

meaning anything other than a transformer connection. Hence, the Board sees no reason to consider the examining division's interpretation of these terms inappropriate.

For these reasons the Board concurs with the examining division that operating the illuminators on low voltage provided by electrical transformers, as disclosed in column 4, lines 2 to 5 of document D2, may be considered as falling within the scope of the claimed feature according to which the light source is adapted to obtain electricity via an inductive connection. Thus, the Board concludes that claim 1 of the main request lacks novelty over document D2, Article 54 EPC.

2.7 The Board notes that as regards the question of inventive step from document D3, again the only novel feature in main request claim 1 is the "inductive connection".

The appellant argues that as the light is operable to obtain electricity via an inductive connection to the junction box it allows the illuminated lid to be completely encased, without any connecting wiring, thereby offering a completely waterproof component that can be retrofitted by electrically unskilled persons. The Board can find no suggestion in the application as filed that it is the use of an inductive connection that provides this benefit, given that an inductive connection is understood as including a standard transformer.

Furthermore, the Board considers that it would be well known to the skilled person that LEDs cannot generally be supplied with mains voltage and that seeking to provide a low voltage supply to the LEDs that form the

light sources of D3, it would be obvious to use a transformer.

Hence, claim 1 of the main request does not involve an inventive step in view of document D3, Article 56 EPC.

3. Auxiliary Request 1, Articles 54 and 56 EPC

3.1 Independent claim 1 of auxiliary request 1 differs from that of the main request by the addition at the end of the feature:

- *"and wherein the lid (14') is transparent or translucent"*.

3.2 In document D3, the lid 3 comprises a transparent plaque 40 (see page 4, lines 17 to 19 and all figures). Thus, claim 1 of auxiliary request 1 is considered not to involve an inventive step in the light of document D3, for the same reasons as set out above for the main request.

4. Auxiliary Requests 2 and 3

4.1 According to Article 13(3) of the Rules of Procedure of the Boards of Appeal (RPBA), *"Amendments [to a party's case] 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"*.

4.2 In auxiliary requests 2 and 3, which were filed after oral proceedings were arranged, independent claim 1 has been amended by introducing the feature that *"the light source (20) automatically disconnects from the*

*electricity connection on separation of the lid (14') from the electrical junction box (12')"*.

4.3 This feature was not present in the claims as originally filed (see EP 1 909 367 A2) and there is nothing to suggest that the European search would have covered this feature. Consequently, the Board could not consider this amendment in substance for novelty and inventive step without postponing/adjourning the oral proceedings to allow for a further search to be carried out. According to Article 13(3) RPBA an amendment to a party's case shall not be admitted if that is the case. Hence, the Board decided not to admit the amendments according to auxiliary requests 2 and 3.

5. Conclusion

In the absence of any allowable request the Board had to dismiss the appeal.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



U. Bultmann

M. Ruggiu

Decision electronically authenticated