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**Datasheet for the decision
of 21 February 2014**

Case Number: T 2494/10 - 3.2.07

Application Number: 06005226.3

Publication Number: 1674220

IPC: B26B21/52, B26B21/22

Language of the proceedings: EN

Title of invention:

Razor Handle

Patent Proprietor:

Knowledge & Merchandising, Inc. Limited

Opponent:

Eveready Battery Company, Inc.

Headword:

Relevant legal provisions:

EPC Art. 56

Keyword:

Inventive step - (yes)

Decisions cited:

Catchword:



**Beschwerdekammern
Boards of Appeal
Chambres de recours**

European Patent Office
D-80298 MUNICH
GERMANY
Tel. +49 (0) 89 2399-0
Fax +49 (0) 89 2399-4465

Case Number: T 2494/10 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 21 February 2014

Appellant: Eveready Battery Company, Inc.
(Opponent) 533 Maryville University Drive
St Louis, Missouri 63141 (US)

Representative: von Kreisler Selting Werner
Deichmannhaus am Dom
Bahnhofsvorplatz 1
50667 Köln (DE)

Respondent: Knowledge & Merchandising, Inc. Limited
(Patent Proprietor) 17-19 Chiltern Court,
Asheridge Road
Buckinghamshire, Chesham HP5 2PX (GB)

Representative: Muttock, Neil John
The King of Shaves Company Ltd
10 Penn Road
Beaconsfield, Bucks
HP9 2LH (GB)

Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 19 October 2010
rejecting the opposition filed against European
patent No. 1674220 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman: H. Meinders
Members: G. Patton
E. Kossonakou

Summary of Facts and Submissions

- I. The appellant (opponent) lodged an appeal against the decision of the Opposition Division to reject the opposition against the European patent No. 1 674 220.

The opposition was filed against the patent as a whole and was based on Article 100(a) EPC (lack of inventive step) and Article 100(b) EPC (insufficiency of disclosure).

The Opposition Division held that these grounds did not prejudice the maintenance of the patent as granted.

In appeal proceedings, only the ground of opposition based on Article 100(a) EPC (lack of inventive step) was pursued.

- II. The respondent (patent proprietor) replied to the appeal requesting its dismissal. At the time, it further requested apportionment of costs for the supplementary work resulting from late filed documents D19-D28.

The Board provided the parties with its preliminary non-binding opinion annexed to the summons for oral proceedings that the subject-matter of independent claim 1 could be regarded as being novel and that document D6 could be taken as the closest prior art for assessing inventive step. The preliminary opinion of the Board was also that documents D19-D27 could be admitted in the proceedings while D28 not and that no reason could be seen for apportioning costs.

- III. Oral proceedings took place on 21 February 2014 during which the fulfilment of the requirements of Article 56

EPC in the light of the teachings of D6 as the closest prior art combined with in particular those of D3, was discussed.

The respondent stated that it no longer objected to the admittance of documents D19-D27 and that it no longer pursued its request for apportionment of costs.

The present decision was announced at the end of the oral proceedings.

- IV. The appellant requests that the decision under appeal be set aside and that the patent be revoked.
- V. The respondent requests that the appeal be dismissed.
- VI. Claim 1 of the patent as granted reads as follows:

"A razor handle, for a razor including a razor head having at least one blade member with a cutting edge extending along a head axis transverse to a handle axis, the razor handle (1) having a front end portion (4), the distal end of which is connectable or connected to the razor head, characterised in that the front end portion is a forked front end portion (4) with a pair of fork arms (6), the distal ends of which are connectable or connected to the razor head (21) at positions adjacent the respective ends of the razor head, each fork arm having a groove (49) allowing pivoting of the distal end about a pivot axis parallel to the head axis, the grooves (49) being mutually aligned on the same side of the forked end portion (4) of the handle, each groove (49) being substantially filled with a resiliently deformable material (54) which is deformed when a pivoting force is applied to the distal ends by the razor head during shaving and

which restores the distal ends to a normal position when the force is removed."

Claims 2-10 refer back to the razor handle of claim 1.

VII. The documents of the opposition and appeal proceedings which are of relevance for the present decision are the following:

D3: US-A-5 560 106
D6: GB-A-2 030 909
D7: DE-C-39 23 495
D8: WO-A-98/37788
D19: US-A-2003/0044313
D20: WO-A-03/032774
D21: US-A-2002/0056197
D22: WO-A-92/15198
D23: US-A-4 542 828
D24*: KR-A-20-0403299
D25: WO-A-02/26555
D26*: EP-A-1 834 605, filed on 17 March 2006
D27: WO-A-92/17092
D28: WO-A-97/24949

* documents D24 and D26 do not belong to the prior art

VIII. The appellant argued essentially as follows:

The only distinguishing feature of claim 1 over the closest prior art D6 is that, with respect to the embodiments of figures 9 and 10, each groove (52a) is substantially filled with a resiliently deformable material which is deformed when a pivoting force is applied by the razor head during shaving to the distal ends of the forked frontal portion of the handle, to which the razor head is connected. This restores the

distal ends to a normal position when the force is removed.

Faced with the problem of providing an alternative solution to these means with the same effect as in the razor handle of D6, or alternatively, to improve the restoring effect in the razor handle of D6, the skilled person will find the solution in document D3 and he will apply it to each fork arm of the razor handle of D6, arriving at the claimed subject-matter in an obvious manner.

Similarly, each of the documents D7, D8 or D27 discloses the distinguishing feature. Even though these documents are in the neighbouring technical field of toothbrush handles, the skilled person will think of applying their teachings to the razor handle of D6, thus arriving at the claimed subject-matter in an obvious manner.

IX. The respondent argued essentially as follows:

The closest prior art D6 does not disclose the feature of claim 1 of a resiliently deformable material substantially filling each groove in the fork arms, as argued by the appellant, nor that the distal ends of the fork arms are connectable or connected to the razor head at positions adjacent the respective ends of the razor head.

The razor handle of D3 does not comprise forked arms and the resilient connection disclosed therein aims at the razor head to move in all directions, contrary to D6 where the razor head merely pivots. D3 leads away from such a pivoting razor head as in D6 so that the

combination of their teachings would not result in the claimed subject-matter.

Each of the documents D7, D8 and D27 relates to a toothbrush handle so that the skilled person would not think of combining their teaching with that of D6 which concerns a different technical field, i.e. razor handles.

Reasons for the Decision

1. *Admissibility of document D28*

1.1 Since document D28 was filed for the first time in the proceedings by the appellant with the statement of grounds of appeal, its admissibility in the proceedings is subject to the discretionary power of the Board in accordance with Article 12(4) RPBA.

1.2 Contrary to the appellant's allegations (bottom of page 7 of its statement of grounds of appeal), no reference to a razor can be found in D28. Its disclosure does not go in fact beyond that of D7 or D8 (see appellant's statement of grounds of appeal, page 8, second paragraph). Therefore, D28 does not provide any new facts and/or evidence that would lead to the conclusion that the impugned decision should be set aside.

Furthermore, the appellant has not provided any reason for filing D28 only at the appeal stage.

Consequently, D28 is not admitted in the proceedings (Article 12(4) RPBA).

The above reasons to not admit D28 were already given by the Board in its annex to the summons for oral

proceedings and were not contested by the appellant during the oral proceedings.

2. *Inventive step (Articles 100(a) and 56 EPC)*

2.1 The appellant has raised inventive step objections starting from D6 combined with the teaching of D3, D7, D8, D27 or D28.

As document D28 is not admitted in the proceedings (see point 1 above), it is not considered in the following.

2.2 D6 discloses a razor handle (10, 50), for a razor including a razor head (11, 51) having at least one blade member (implicit in a razor head 11, 51c) with a cutting edge extending along a head axis transverse to a handle axis, the razor handle (10, 50) having a front end portion (12, 52), the **distal end** of which being connectable or connected to the razor head (11, 51) by fixing the latter onto a track/base (12a, 32a, 51a).

In the razor handle (10, 50) of D6 the front end portion (12, 52) is a forked front end portion with, at least, a pair of fork arms (embodiment of figure 7: "torsion arms" 32f, hubs 32b; embodiment of figures 9-10: "forked forwardly-projecting arms" 52), the **distal ends** of which being connectable or connected **via** the track/base (32a, 51a) to the razor head (11, 51) at positions "adjacent", i.e. close to, the respective ends of the razor head (11, 51), each fork arm or hub (32b, 52) having a groove ("hinge" 32c, thin portion at 52a) allowing pivoting of the **distal end** about a pivot axis parallel to the head axis, the grooves (32c, thin portion at 52a) being mutually aligned on the same side of the forked end portion (12, 52) of the handle (10, 50), the distal ends being either self-restored

(embodiment of figure 7: "hinge" 32c) or restored by the action of a spring (embodiment of figures 9-10: "cantilever spring" 53) to a normal position when the pivoting force applied to the distal ends by the razor head during shaving is removed (page 1, line 48 to page 2, line 50; figures).

- 2.2.1 The distal end connectable/connected to the razor head in the preamble of claim 1 relates unambiguously to the front portion of the razor handle, i.e. no reference to the fork arms.

This interpretation can also apply to the pivoting feature of the distal end in the characterising portion of claim 1 that "each fork arm having a groove (49) allowing pivoting of the **distal end** about a pivot axis parallel to the head axis". Indeed, contrary to the impugned decision (point 5, feature a) on page 4; page 5, fourth to sixth paragraphs), said latter feature does not comprise "thereof (of each fork arm)" so that the "distal end" in said feature can also be seen as related to the front portion of the razor handle, i.e. not to each fork arm.

As discussed under above point 2.2, the disclosure of D6 unambiguously fulfils this interpretation of these features.

- 2.2.2 Although no definition is given in the contested patent, the word "distal" in distal ends of the fork arms is considered as a position removed with respect to the user grip in the direction of the razor head. This has not been contested by the parties.

The disclosure of D6 also fits with this definition even though the distal ends of the fork arms in the

- razor handle of D6 are not free, i.e. are permanently connected to the track/base (12a, 32a, 51a).
- 2.2.3 As put forward by the respondent, the passage of D6, page 1, lines 21-25, relates to the embodiment of figures 9-10 of a handle integral with the track/base in comparison to the other embodiments of D6 with a separate track/base between the handle and the razor head. There is no explicit disclosure in D6, contrary to the appellant's view, that the disclosed razor handle comprises two or more materials. There is therefore no teaching in D6 towards a two-piece moulding for the razor handle (see also impugned decision, page 5, first paragraph).
- 2.2.4 As discussed during the oral proceedings, the Board cannot share the respondent's view that the distal ends of the fork arms being connectable or connected to the razor head at positions adjacent the respective ends of the razor head would be a distinguishing feature over D6. Indeed, as put forward by the appellant, claim 1 does not specify that the distal ends and the razor head should be in **direct** connection. Connecting parts, like in D6 via the track/base (12a, 32a, 51a), are not excluded from claim 1 (see point 2.2 above).
- 2.3 In view of the above, the Board concurs with the appellant that the only distinguishing feature of the razor handle of claim 1 over D6 is that (see statement of grounds of appeal, page 5, first complete paragraph; feature b) in the impugned decision, page 4):
- i) each groove is **substantially filled with a resiliently deformable material** which is deformed when a pivoting force is applied to the distal ends by the razor head during shaving and which restores

the distal ends to a normal position when the force is removed

- 2.4 The distinguishing feature i) has the technical effect to restore the razor head to its normal position when the force making the razor head pivot is removed (contested patent, [0021]).
- 2.5 Consequently, as put forward by the appellant during the oral proceedings, the problem to be solved can be seen as to provide an alternative solution to the means with the same effect in the razor handle of D6, or alternatively, to improve the restoring effect for the shaving unit in the razor handle of D6 (page 1, lines 55-64; page 2, lines 30-35; see also impugned decision, page 4, sixth paragraph).
- 2.6 Combination with the teaching of D3
- 2.6.1 The Board concurs with the appellant that D3 concerns a razor handle like D6 and, hence, the skilled person, faced with the above objective technical problem, would definitely consider it and envisage the application of its teaching in the razor handle of D6.
- 2.6.2 D3 discloses a razor handle (110) for a razor including a razor head having at least one blade member with a cutting edge extending along a head axis transverse to a handle axis, the razor handle (110) having a front end portion. The distal end of the razor handle of D3 is connectable or connected to the razor head. The razor handle comprises **a groove** (shaft 38, 74, 118, 148) allowing pivoting of the distal end about at least a pivot axis parallel to the head axis, which is **substantially filled with a resiliently deformable material** (resilient body 32, 70, 114, 144) which is

deformed when a pivoting force is applied to the distal ends by the razor head during shaving and which restores the distal end to a normal position when the force is removed (column 1, line 6 to column 2, line 3; column 5, lines 36-45; column 7, lines 46-63; figures 4, 6, 10 and 14).

The Board shares the appellant's view that the grooves in claim 1 need not be located at the extreme distal end of the handle so that the disclosure of D3 in principle would fulfil this claimed requirement (bottom of page 5 of appellant's statement of grounds of appeal).

It seems therefore that D3 discloses feature i).

- 2.6.3 However, as discussed during the oral proceedings, the actual teaching of D3 leads away from razor handles with which razor heads merely pivot about an axis parallel to the head axis. Indeed, D3 concerns a non-forked handle to whose distal end the razor head has a fixed, not a pivoting connection. The solution disclosed in D3 aims at having the razor head resiliently move **in all directions** (column 1, lines 20-62) with respect to the handle. Therefore, the skilled person applying the teaching of D3 to the razor handle of D6 would not consider to include the connection disclosed in D3 in each fork arm end since, by doing so, it would negatively affect the required pivotability of the razor head about an axis comprising the connecting points, i.e. parallel to the head axis, necessary to easily follow the shaving movements and remain in contact with the skin. It would also **go against the goal of D3 to have the razor head movable in any direction** (see also impugned decision, page 6, first three paragraphs).

In fact, when applying the teaching of D3 to the razor handle of D6, the skilled person would implement the disclosed connection in the main handle (10, 50) of D6, namely at the base of the fork, i.e. at the location where the handle, like in D3, is slimmest, in order to have the razor head in D6 move in all directions as taught in D3.

Consequently, when combining the teachings of D3 and D6, the skilled person will not arrive at the claimed subject-matter.

- 2.6.4 The Board shares the appellant's view that it is not excluded from claim 1 that the razor head may also pivot about other axes, like in D3 (top of page 6 of appellant's statement of grounds of appeal). However, the appellant did not provide any convincing reasons to explain why the skilled person would not apply the **complete** teaching of D3 to the razor handle of D6 by implementing the disclosed solution at the base of the fork, so as to have the razor head move in all directions. The razor handle of D3 is not forked so that the skilled person would indeed apply its teaching to the base of the forked portion of the razor handle of D6 in order to achieve the full effects of the razor head moving in all directions.

The appellant's argument that the skilled person would instead implement the solution of D3 twice, i.e. in each fork arm, in order to maintain the teaching of D6 of the razor head to pivot and improve the restoring ability of the razor head to its normal position when the force making the razor head pivot is removed, is therefore contrary to the clear and explicit teaching of D3.

2.6.5 The alternative reasoning of the appellant that the grooves (32c) or thin portion at (52a) of the razor handle of D6 would be filled with resilient material to improve the restoring ability of the shaving unit to its "static" position (see D6, page 1, lines 55-64 and page 2, lines 30-35) cannot be followed either. This measure would have a serious impact on the flexibility of the pivoting axis for the razor head, making it slower in following the contour to be shaved.

2.7 Combination with the teaching of D7, D8 or D27

2.7.1 The exercise of discretion by the Opposition Division against admission in the proceedings of D27 (or of documents D19-D26) is no longer an issue to be reviewed and decided by the Board since the respondent no longer objected to their admission (see point III above).

2.7.2 Document D7 discloses a toothbrush handle ("Griffstiel" 1) having a groove ("Ausnehmungen" 4; Steg "5") allowing pivoting of the distal end of the toothbrush handle about at least a pivot axis orthogonal to the handle axis (which would be parallel to the shaving head axis if the handle would be a shaving razor handle), the groove (4, 5) being substantially filled with a resiliently deformable material ("Kunststoffkörper" 6, 6a, 6b) which is deformed when a pivoting force is applied to the distal end and which restores the distal end to a normal position when the force is removed. The groove (4, 5) in the toothbrush handle of D7 is thinner than both thickness and width of the handle rendering the toothbrush head flexible (column 3, lines 19-64; figures 1-6).

Document D8 discloses a toothbrush handle (2) having a groove (16) allowing pivoting of the distal end of the

toothbrush handle about at least a pivot axis orthogonal to the handle axis (which would be parallel to the shaving head axis if the handle would be a shaving razor handle), the groove (16) being substantially filled with a resiliently deformable material (elastomeric material 19) which is deformed when a pivoting force is applied to the distal end and which restores the distal end to a normal position when the force is removed. The groove (16) in the toothbrush handle of D8 is thinner than both thickness and width of the handle rendering the toothbrush head flexible (page 11, line 13 to page 12, line 25; figures 1-5).

Document D27 discloses a teaching similar to that of D8 (D27, page 1, lines 3-4; page 10, lines 5-10; figures 7a-7c).

Therefore, as put forward by the appellant, each of the documents D7, D8 and D27 discloses a toothbrush handle with a solution **similar to the one of D3** in order "to provide **a flexible connection** between a hand held hygiene device's handle and its head" (see appellant's statement of grounds of appeal, paragraph bridging pages 8 and 9; respondent's reply, page 5, first paragraph).

The appellant has not argued that the disclosure of any of the documents D7, D8 or D27 would go beyond (or be any different from) that of D3.

- 2.7.3 The appellant argues that the skilled person would combine the teaching of D7, D8 or D27 dealing with toothbrush handles with that of D6 concerning razor handles since toothbrush handles and razor handles relate to neighbouring technical fields sharing common problems of hand-held articles for the hygiene of the

user's face, as illustrated for instance by documents D19-D23 and D25 (see for instance D19 paragraph [0002] and figures 1-2; D20, page 1, lines 2-3; D21, paragraph [0022] and figure 6; D22, page 1, lines 6-13; D23, column 1, lines 4-6 and figure 1; D25, page 1, lines 5-8, page 4, lines 13-18; as mentioned under point VII above D24 and D26 are not prior art documents).

The question whether the skilled person would look in the field of toothbrushes for a solution to the problem need not be answered since, even if the skilled person would consider these teachings, he would still have in each of D7, D8 or D27 a solution identical to that of D3, for a non-forked handle with a flexible (toothbrush) head. Consequently, the above reasoning for the application of the teaching of D3 in the shaving razor handle of D6 would apply *mutatis mutandis*. Even if the skilled person would apply any of the teachings of D7, D8 or D27, he would not arrive at the claimed subject-matter.

2.8 In light of the above, the subject-matter of 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

Decision electronically authenticated