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**Datasheet for the decision  
of 15 January 2013**

**Case Number:** T 0180/11 - 3.2.03

**Application Number:** 03076285.0

**Publication Number:** 1336693

**IPC:** E03D 9/03

**Language of the proceedings:** EN

**Title of invention:**

Liquid dispenser

**Patent Proprietor:**

S.C.JOHNSON & SON, INC.

**Opponent:**

Jeyes Group Limited

**Headword:**

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**Relevant legal provisions:**

EPC Art. 123(2), 84

**Keyword:**

"Amendments - added subject-matter (no)"

"Claims - clarity (yes)"

**Decisions cited:**

-

**Catchword:**

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Case Number: T 0180/11 - 3.2.03

**DECISION**  
of the Technical Board of Appeal 3.2.03  
of 15 January 2013

**Appellant I:** S.C.JOHNSON & SON, INC.  
(Patent Proprietor) 1525 Howe Street  
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**Representative:** Howard, Paul Nicholas  
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**Appellant II:** Jeyes Group Limited  
(Opponent) Brunel Way  
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**Representative:** Gwilt, Julia Louise  
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**Decision under appeal:** Interlocutory decision of the Opposition  
Division of the European Patent Office posted  
5 November 2010 concerning maintenance of  
European patent No. 1336693 in amended form.

**Composition of the Board:**

**Chairman:** U. Krause  
**Members:** G. Ashley  
E. Kossonakou

## **Summary of Facts and Submissions**

- I. European patent EP-B1-1 336 693 relates to a dispenser for releasing liquids, such as cleaning and refreshing liquids, from the rim of a lavatory bowl. Grant of the patent was opposed on the grounds that the claimed subject-matter was neither novel nor inventive (Article 100(a) EPC) and that the invention was not sufficiently disclosed (Article 100(b) EPC).
- II. The Opposition Division concluded that claimed priority was not valid for the main request and that the patent could be maintained on the basis of the set of claims filed during the oral proceedings as an auxiliary request. The decision was posted on 5 November 2010.
- III. The above decision was appealed by both the patent proprietor (Appellant I) and the opponent (Appellant II). Both parties filed their notices of appeal on 14 January 2011, paying the appeal fee on the same day. Statements containing the grounds of appeal of both parties were filed on 15 March 2011.
- IV. In accordance with the Rules of Procedure of the Boards of Appeal, the Board issued a preliminary opinion of the case, together with a summons to attend oral proceedings.
- V. In response (letter dated 12 December 2012) Appellant I filed a new auxiliary request 2; the requests submitted with the statement of the grounds of appeal were maintained and, where necessary, renumbered.

VI. Oral proceedings were held on 15 January 2013, during which Appellant I stated that the claims of auxiliary request 2, as amended during the oral proceedings, were to be considered as forming the basis of the main request.

VII. Requests

(a) Appellant I

Appellant I requested that the decision under appeal be set aside and the patent be maintained in accordance with the main request as filed during the oral proceedings or one of auxiliary requests 3 to 5.

The main request is based on auxiliary request 2, filed with the letter of 12 December 2012. Auxiliary requests 3 and 4 were filed originally with the statement setting out the grounds of appeal as auxiliary requests 2 and 3; auxiliary request 5 was filed with the submissions dated 29 July 2011 as auxiliary request 4; all three auxiliary requests were re-submitted with the letter of 12 December 2012.

The former main request and first auxiliary request were withdrawn.

(b) Appellant II

Appellant II requested that the decision under appeal be set aside and the patent be revoked.

VIII. Claims

Claim 1 of the main request is based on granted claim 1, with the following underlined amendments:

"1. A dispensing unit (1) for dispensing a liquid from the rim (16) of a lavatory bowl, the unit comprising a housing (2) for a liquid reservoir (6), the housing (2) containing a wicking device in the form of a plate (22; 24; 24'; 27) for conveying liquid from the reservoir (6), the unit (1) further comprising a conduit (8) for conveying liquid from the reservoir (6) to said wicking device and means (3) for suspending the housing (2) from a said rim (16) of a lavatory bowl;

characterised in that

said plate (22; 24; 24'; 27) is a nonporous plate with channels (23; 25; 25'; 28) formed therein for conveying liquid from the reservoir (6), wherein said wicking device comprises a first portion for receiving liquid from the reservoir (6) and a second portion arranged to be positioned in use in a dispensing position, and wherein the dispensing unit (1) is structured such that the position of said wicking device can be adjusted by sliding the first portion thereof against the outlet portion of the conduit (8)."

Dependent claims 2 to 8 concern preferred embodiments of the dispensing unit of claim 1.

IX. Submissions of the Parties

(a) Priority

The contested patent claims priority from GB9812892 "Prio1", dated 15 June 1998, and GB9905828 "Prio2", dated 12 March 1999. The Opposition Division concluded that the priorities claimed from both Prio1 and Prio2 are not valid. The disclosures of Prio1 and Prio2 are very similar, such that the arguments apply to both documents.

The issue concerned the feature "a non-porous plate with channels formed therein for conveying liquid from the reservoir" of claim 1 of the granted patent.

Appellant II, agreeing with the conclusions reached by the Opposition Division, submitted that in assessing a priority claim, the test is a strict novelty test. Claim 1 provides a clear definition without the need to consult the description, hence the term "channels" in claim 1 is broader than the disclosure of "capillary channels" in Prio1. In addition, the invention set out in the priority documents addresses improvement in dispensing the liquid from the device by venting the liquid reservoir and by being able adjusting the position of the device to conform to the lavatory bowl. Since the channels alone do not solve this problem, claim 1 does not contain all the features that are essential for the invention as described in the priority documents.

Appellant I argued that claim 1 defines a plate for conveying liquid and is thus a wicking device, implying

that the liquid is drawn by capillary action. The venting and/or adjustment means are disclosed independently of the wicking device and are not essential for the invention. In particular, venting can be achieved through the liquid reservoir, indicating that it is not essential for the wicking device itself to be equipped with a venting means.

(b) Article 123(2) EPC

Appellant II submitted that the features added to granted claim 1 relate to specific embodiments and are presented in the application as having particular functions. In particular, on page 2, lines 1 to 5, the wicking device is said to be adjusted between different positions so as to function in different environments, or so as to function with lavatory bowls with different shapes and different flushing systems (page 2, lines 10 to 13). Since claim 1 does not specify the purpose of adjusting the wicking device, it includes adjustments for purposes beyond those mentioned in the application. Such a generalisation is not supported by the application as originally filed.

Appellant I referred to the application as originally filed (WO-A-99/66139) page 3, lines 12 to 13 and 30 to 31, and page 5, lines 4 to 6, as providing a basis for the amendments. The amendments relate to structural limitations of the dispensing unit, hence the inclusion of further functional definitions in the claim would serve no purpose.

(c) Article 84 EPC

Appellant II submitted that the feature in claim 1 of a "nonporous plate with elongate channels formed therein for conveying liquid from the reservoir" lacks clarity, since it is not apparent if the channels can have any form or whether they must be of a size and shape that they have a capillary function.

Appellant I argued that the claim requires the plate to have a wicking function, hence it is clear that the channels act as capillaries.

(d) Novelty and Inventive Step

Appellant II did not raise any objections concerning novelty and inventive step of the claimed subject-matter.

**Reasons for the Decision**

1. The appeal is admissible.

*Main Request*

2. Priority
  - 2.1 The first reason given by the Opposition Division for deciding that the claimed priority was not valid concerned the feature in claim 1 of a "nonporous plate with elongate channels formed therein for conveying liquid from the reservoir". It was argued that Priol only discloses capillary channels formed as elongate



apertures or elongate channels within the plate. Since claim 1 does not define the channels as being "capillary channels", the claim covers channels not having the dimensions required for a capillary effect, and hence is broader than the disclosure of Priol.

Present claim 1, however, makes it clear that the nonporous plate is a wicking device and, as argued by Appellant I, the term "wicking" implies conveying a liquid by capillary action. It is therefore clear to the skilled reader that the elongate channels of claim 1 must be capillary channels, as described in the priority documents.

- 2.2 The second argument of the Opposition Division and Appellant II was that the invention of Priol is not just the provision of a plate having capillary channels, but of one that is adjustable to conform to the lavatory bowl and/or is equipped with a venting aperture.

The view of the Board is that the invention of Priol addresses the problem of achieving both a flow of liquid from the bottle to the wicking device and a return flow of air from outside the dispenser to the bottle. The starting point from which the invention of Priol was made is said to be a device that is complex and inflexible (Priol, page 1, lines 13 to 21). Throughout Priol the solution to the problem is disclosed as providing the dispensing unit with either an adjustment means or a venting aperture, the latter being achieved either through the wicking device or by providing the reservoir bottle with a venting aperture. There is no disclosure of a wicking device without

either an adjustment means, a venting aperture or a reservoir bottle with a venting means. Priol thus teaches that an adjustment means and/or a venting aperture is essential for the invention.

Since present claim 1 defines a dispensing unit that is provided with an adjustable wicking device, it relates to the invention disclosed in Priol and can validly claim this priority.

3. Article 123(2) EPC

3.1 Granted claim 1 was amended to define the dispensing unit to be so structured that the position of the wicking device can be adjusted by sliding the first portion thereof against the outlet portion of the conduit. Appellant II submits that this feature is only disclosed in the application for specific purposes; failure to define these purposes amounts to a generalisation contrary to Article 123(2) EPC.

3.2 As argued by Appellant I, page 4, lines 4 to 6 of the application as originally filed describes the dispensing unit as having an adjustable wicking device as is now defined in claim 1. It is said on page 2, lines 1 to 13 of the application that an adjustable wicking device enables the dispensing unit to function in different environments and with lavatory bowls having different shapes and flushing systems. This, however, does not detract from the explicit disclosure in the application of a dispensing unit having a wicking device as claimed. Consequently, there is no necessity to define in claim 1 the purposes of the

adjustable wicking device, and the amendments meet the requirements of Article 123(2) EPC.

4. Article 84 EPC

The issue of clarity is closely related to the discussion of priority (above) in that it concerns interpretation of the expression "nonporous plate with elongate channels formed therein for conveying liquid from the reservoir". As set out above, the claim defines the plate as being a "wicking device", which clearly indicates that the channels function as capillary channels, hence the requirements of Article 84 EPC have been met.

5. Other Issues

Novelty and inventive step has not been contested. The claims of the main request are therefore found to be allowable.

There is therefore no need to consider the claims of the auxiliary requests.

**Order**

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

1. The decision under appeal is set aside.
  
2. The case is remitted to the department of first instance with the order to maintain the patent on the basis of the following documents:

Claims: 1 to 8, as submitted during the oral proceedings;

Description: Pages 2 to 5, as submitted during the oral proceedings;

Figures: 1 to 14(b), as granted and resubmitted during the oral proceedings.

The Registrar:

The Chairman:

D. Hampe

U. Krause