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**Datasheet for the decision
of 12 September 2013**

Case Number: T 1128/11 - 3.2.03
Application Number: 03078382.3
Publication Number: 1469132
IPC: E03D 9/00, E03D 9/03,
C11D 3/50, C11D 17/00,
C11D 17/04
Language of the proceedings: EN

Title of invention:

A lavatory bowl rim-block providing a combination of ongoing perfume delivery with a perfume boost upon flushing

Patent Proprietor:

THE PROCTER & GAMBLE COMPANY

Opponents:

Henkel AG & Co. KGaA
Reckitt Benckiser PLC

Headword:

-

Relevant legal provisions:

EPC Art. 54(1), 56

Keyword:

-

Decisions cited:

-

Catchword:

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Case Number: T 1128/11 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 12 September 2013

Appellant: THE PROCTER & GAMBLE COMPANY
(Patent Proprietor) One Procter & Gamble Plaza
Cincinnati, OH 45202 (US)

Representative: Samuels, Lucy Alice
Gill Jennings & Every LLP
The Broadgate Tower
20 Primrose Street
London EC2A 2ES (GB)

Appellant: Henkel AG & Co. KGaA
(Opponent 1) Henkelstrasse 67
D-40589 Düsseldorf (DE)

Representative: Prothmann, Thomas
Henkel AG & Co. KGaA
VTP Patente
D-40191 Düsseldorf (DE)

Party as of right: Reckitt Benckiser PLC
(Opponent 2) 103-105 Bath Road
Slough
Berkshire SL1 3UH (GB)

Representative: Bowers, Craig Malcolm
Reckitt Benckiser
Corporate Services Limited
Legal Department - Patents Group
Dansom Lane
Hull HU8 7DS (GB)

Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted
7 March 2011 concerning maintenance of European
patent No. 1469132 in amended form.

Composition of the Board:

Chairman: U. Krause
Members: Y. Jest
K. Garnett

Summary of Facts and Submissions

I. By its decision dated 7 March 2011 the Opposition Division maintained European patent No. 1 469 132 in amended form on the basis of an amended claim 1 of a fifth auxiliary request. The Opposition Division found that the grounds of opposition, namely lack of novelty and inventive step, did not prejudice the maintenance of the patent in this amended form.

In its interlocutory decision, the Opposition Division also considered that the subject-matter of claim 1 of the first auxiliary request on file lacked inventive step because it was obviously derivable starting from D4 and applying the teaching of any one of documents D1, D2 and D7 (paragraph 12 (12.1 to 12.7) of the decision).

II. Appeals were lodged against this decision by the proprietor of the patent and by Opponent I. The parties to the appeal proceedings and the corresponding relevant dates are:

(a) Appellant I - Proprietor:

Appeal filed on 9 May 2011, appeal fee paid on the same day and the statement of the grounds of appeal received on 14 July 2011;

(b) Appellant II - Opponent I:

Appeal and statement of the grounds of appeal filed on 28 April 2011, appeal fee paid on the same day;

(c) Party - Opponent II:

Opponent II is party to proceedings but did not file any request or submission.

III. During the oral proceedings on 12 September 2013, the following requests were made:

Appellant I (Proprietor) requested that the decision under appeal be set aside and the patent be maintained on the basis of the main request filed with letter dated 6 August 2013.

Appellant II (Opponent I) requested that the decision under appeal be set aside and the patent be revoked.

Opponent II filed no request/submission and remained absent from the oral proceedings, as announced in letter dated 28 August 2013.

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

IV. The wording of claim 1 of the main request filed with the letter of 6 August 2013 is the following (*text in bold letter added to granted claim 1*):

"A lavatory bowl rim-block comprising:

- a) at least one container holding a liquid, perfume-containing composition
a') comprising from 0.01% to 40% by weight of the total composition of perfume;
- b) a dispensing means for dispensing said composition from under the rim of a lavatory

bowl into the flush water of said lavatory bowl; and

c) a fragrance delivery component, wherein said fragrance delivery component does not dispense a fragrance using said dispensing means and delivers said fragrance into the ambiance over a prolonged period of time."

Remark:

Claim 1 of the main request is identical to claim 1 of the first auxiliary request on file during the opposition proceedings, the subject-matter of which was found to lack inventive step by the Opposition Division.

V. The relevant prior art is as follows:

D1: US-A- 1 091 265

D2: US-A- 4 555 819

D4: DE-B- 101 130 36

D6: WO-A- 2004/081303 (& EP-A- 1 606 463),
state of the art according to Articles 54(3) and 153(2)(5) EPC

D7: DE-T- 697 09 759

D10: WO-A- 03/042462,
published on 22 May 2003, thus after the priority date of 15 April 2003 claimed for the patent under dispute

Opponent I further referred to the alleged prior use of a lavatory bowl rim-block named "Harpic 2-in-1" based on documents D21 to D24 and exhibits 1 to 4 already present in the opposition proceedings.

VI. The arguments presented by Appellant I (Proprietor) can be summarized as follows:

The newly raised objection of insufficiency of disclosure under Article 83/100(b) EPC was not to be admitted to the appeal proceedings.

The subject-matter of claim 1 of the main request was new over D6 because the claimed range of 0.01% to 40% by weight of perfume in the liquid was not explicitly disclosed in D6. The range of 0% to 85% indicated at page 12 of D6 referred to the amount of essential oils by weight of a fragrance agent. Nor was it implicitly derivable from D6 that the range of fragrance agent in the cleaning liquid was then necessarily lower than or equal to 40% as claimed.

The claimed rim-block also involved an inventive step.

The alleged prior use "Harpic 2-in-1" was not sufficiently proven and therefore did not constitute state of the art according to Article 54(2) EPC. Furthermore, the subject-matter of the contested prior use "Harpic 2-in-1" was not more relevant than the closest prior art disclosed by D1.

The invention differed from D1 in that the composition delivered by the flush water was provided in liquid form and contained perfume in a concentration of 0.01% to 40% by weight of the total liquid composition. The skilled person would not have found in D4 any hint that the solid compound delivering agents through the dissolving action of the flush water could be replaced by a liquid composition comprising perfume.

Starting from D4 the skilled person found no incentive in D1, D2 or D7 for adding a separate dispensing means

delivering a constant flow of perfume to the ambient air. D4 disclosed a rim-block with two active substance fluids including perfume and stored in separate chambers both flushed by water. There was no need to add a third compound having agents for counteracting the smell of disinfectant agents or the like as provided in D1. D2, being silent on any perfume agent, was not relevant. Finally D7 referred to a solid rim-block having a support or housing structure made of a material comprising perfume agents delivered by the flush water together with cleaning agents encapsulated in the housing.

VII. Appellant II submitted essentially the following arguments:

The objection of lack of disclosure (Articles 100(b)/83 EPC) was raised only against an initially filed auxiliary request V; it did not concern the main request at issue in the appeal proceedings.

The rim-block of claim 1 was known from D6, which constituted state of the art under Article 54(3) EPC and was novelty destroying because of at least partly common ranges of perfume concentration. According to the first paragraph of page 12, the liquid composition of D6 contained a fragrance agent comprising 0% to 85% (preferably 10% to 70%) by weight of essential oils. The liquid composition consequently contained between a few percent and an upper value close to 40% by weight of perfume.

The subject-matter of claim 1 lacked inventive step since it was obviously derivable from the combination

of D1 with D4 and also of D4 with any one of D1, D2 and D7. The bottom wall of the container receiving the antiseptic balls in D1 was suitable for storing compositions in liquid or gel form as taught by D4, such that the substitution of solid treatment compounds with a liquid perfume-containing composition was obviously derivable for the skilled person. Moreover, as found in the decision of the Opposition Division, the skilled person was incited by any one of D1, D2 and D7 to add a separate dispensing means to the rim-block of D4 for continuously delivering fragrance to the ambient air over a prolonged period of time.

Reasons for the Decision

1. The appeals are admissible.
2. New opposition ground - Articles 100(b)/83 EPC

Appellant II (Opponent I) raised an objection under Article 83 EPC for the first time in the appeal proceedings. This objection was limited to a fifth auxiliary request and did not concern the main request on file. This issue is therefore redundant.

It may be added for the sake of completeness that the proprietor refused its consent to the introduction of a new opposition ground of insufficiency of description into the proceedings.

3. Alleged prior use - D10

- 3.1 The Board shares the view of Appellant I that the rim-block according to the alleged prior use "Harpic 2-in-1" is not more relevant than the cited prior art. It appears in particular that "Harpic 2-in-1" does not disclose more features of claim 1 than document D1. The allegedly offered product of the prior use lacks the claimed perfume-containing liquid composition having 0.01% to 40% by weight of the total composition of perfume. Its teaching is thus merely technically equivalent to that disclosed in D1. These findings were not disputed by Appellant II.

It is therefore redundant to further investigate whether the public availability of "Harpic 2-in-1" was sufficiently proven by the opponents and to decide whether the products of the alleged prior use constituted state of the art according to Article 54(2) EPC.

- 3.2 Document D10, which has been cited in illustration of the general knowledge of the skilled person, was published on 22 May 2003, thus after the priority of 15 April 2003 claimed by the patent. Accordingly D10 does not constitute state of the art pursuant to Article 54(2) EPC and cannot be considered in assessing whether or not the claimed subject-matter involves an inventive step.

4. Main request - Amendments

Claim 1 of the main request is based on the combination of claim 1 as granted and of feature a') of dependent claim 19 as granted:

a'): comprising from 0.01% to 40% by weight of the total composition of perfume.

The set of claims as granted and the description of the patent specification have merely been adapted to the amended definition of the invention as set out in claim 1 of the main request.

The amendments meet the requirements of the EPC, in particular Article 123 EPC, which has not been disputed by Appellant II.

5. Novelty

The ground of lack of novelty was substantiated by Appellant II on the sole basis of D6, which constitutes state of the art pursuant to Article 54(3) EPC.

The passage in the description of D6 on page 12, lines 1 to 12, refers to a percentage by weight of essential oils in the fragrance agent, namely 0 to 85%. The fragrance agent itself is one component among others of the liquid perfume-containing composition which is delivered by flushing water, see claim 1 of D6. It can be agreed with Appellant II that the percentage by weight of essential oils, which corresponds to the perfume as defined in feature a) of claim 1, will be comprised between 0 and an upper limit obviously lower than 85. However the skilled person can find no basis

in D6 for an upper value of 40% for the presence by weight of the essential oils in the liquid composition as a whole. The skilled person has no reason to investigate this issue further in detail since the disclosure of D6 does not at any stage refer to the percentage by weight of perfume as an essential or important characteristic of the rim-block.

The Board therefore arrives at the conclusion that feature a') of claim 1 is neither explicitly nor implicitly comprised in the disclosure of D6, so claim 1 fulfils the requirements of Articles 100(a) and 54(1) EPC.

6. Inventive step

6.1 Starting from D1

6.1.1 The lavatory bowl rim-block of D1 (see title, page 1, lines 69 to 86 and figures) comprises a container (first chamber 27) holding a plurality of solid balls 22 made of an antiseptic material containing also disinfectant and deodorising ingredients. A second chamber 28 contains a suitably moulded block of fragrance evaporating material.

When the chamber 27 containing the antiseptic balls 22 is flushed, the flush water comes into contact with the solid balls 22 and dispenses said acting composition into the lavatory bowl from under its rim.

The rim-block of D1 further comprises a second chamber 28 made by a suitably moulded block of fragrance evaporating material. The fragrance material is not dispensed by the flush water but delivered by other means, namely by continuous evaporation over a

prolonged period of time as compared to the flushing periods, see page 1, lines 86 to 99.

6.1.2 The subject-matter of claim 1 thus differs from D1 in three features, namely:

- F1: the composition delivered by the flush water is stored in a liquid form;
- F2: the composition delivered by the flush water contains perfume (note: the deodorising agents contained in the solid antiseptic balls 22 in D1 are not be restricted to perfumes but encompass other chemicals which can neutralise unpleasant smells/odours);
- F3: the composition delivered by the flush water comprises from 0.01% to 40% by weight of the total composition of perfume.

The above differences provide several technical benefits. Solid rim-blocks tend to exhibit a constantly diminishing amount of product dispensed into the flush during their lifetime, whereas liquid compositions provide a far more constant amount. Thanks to the presence of perfume from 0.01% to 40% by weight in the liquid composition the ambient air is freshened after each flushing action.

6.1.3 Technical problem

Based on the differences, the technical problem to be solved is how to provide a perfume boost upon flushing of a lavatory bowl, whilst maintaining ongoing fragrance delivery.

6.1.4 Solution - not obvious

As a preliminary remark, the Board notes that D1 does not contain any teaching that would have led the skilled person to replace the solid, dissolvable balls therein with a liquid, perfume-containing composition.

Furthermore, the remaining cited prior art documents fail to provide any incentive for the skilled person to modify the teaching therein to arrive at the present invention.

In particular, D4 would not have prompted the skilled person to substitute the solid balls 22 of D1 with a liquid composition of similar agents.

D4 discloses liquid perfume-containing compositions in a rim-block, more precisely the use of a rim-block with two active substance fluids, see claim 1, paragraph [0002] (liquid compositions:

"Wirkstofffluide") and page 7, paragraph headed "a.) Duftphase" disclosing liquid compositions comprising 10% of perfume.

The aim of D4 is to be able to store two non-compatible active substances such as a perfume and a bleach phase separately, but to administer them simultaneously to the toilet bowl during flushing. There is nothing in D4 to suggest any particular advantage in using a liquid cleaning composition. There is no pointer in D4 to suggest that the skilled person should change a solid composition to a liquid composition. In fact, there is only a suggestion of a means by which to simultaneously deliver two compositions stored separately to a toilet bowl.

But even if the skilled person could have found a motivation to look to D4 and theoretically envisage

substituting the antiseptic balls of D1 with a liquid composition, it would have transpired that the design of D1 was not compatible with such an altered acting agent in view of the following considerations:

In D1, the balls 22 are supported by a perforated tray or trough 23 constituting the bottom wall of the container. The perforations which are necessary for allowing the flush water to dispense an amount of dissolved material of the balls down into the bowl would create a continuous flow of liquid composition from the container directly into the lavatory bowl. The substitution of a solid composition by a liquid composition in D1 would therefore require additional substantive amendments to the device, especially in respect of the design of the container and the flow path for the flush water. It is thus highly questionable whether and on what basis the skilled person would implement such additional modifications. But even if the skilled person were to have finalised all the constructional measures required to enable the substitution of a solid material with a liquid composition, he would still have to add perfume to the substituted liquid composition in an amount by weight comprised in the claimed range of 0.01% to 40%. The Board considers that the skilled person would not have been prompted by the cited prior art (mainly D4) to amend the rim-block of D1 without previous knowledge of the invention and that the arguments of Appellant II rather appear to be based on an *ex post facto* analysis of the claimed invention.

6.2 Starting from D4

According to the grounds in the impugned decision, D4 could be an alternative starting point for the closest prior art.

It is apparent from the foregoing discussion that the rim-block as defined in claim 1 differs from D4 in the last feature c) of claim 1, which requires a separate fragrance delivery component:

- c) a fragrance delivery component, wherein said fragrance delivery component does not dispense a fragrance using said dispensing means and delivers said fragrance into the ambiance over a prolonged period of time.

The advantage of using a separate fragrance delivery component is that there is a liquid rim-block that provides ongoing fragrance delivery to the bathroom atmosphere in addition to the periodic dispensing of perfume during flushing (see paragraph [0008] of the patent).

Since D4 already discloses a composition with two separate items to be delivered to the flush water, the skilled person would not be minded to add the perfumed blocks of D1 to the liquid rim-block of D4. There is no pointer in D1 to suggest that there is a need to have both a continuous fragrance and a perfume boost on flushing of the toilet. Claim 1 is therefore not obviously derivable from D4 in combination with D1.

D2 lies in the field of rim-blocks and discloses a separate chamber designed to receive an insoluble substrate impregnated with volatile materials or a solid active composition for treatment of the ambient air. Under the expression "treatment of the ambient air" the skilled person would usually understand a deodorising treatment. It is worth noting that there is no pointer in D2 to suggest that there is a need to treat the ambient air with a dispensed fragrance or to have both a continuous fragrance and a perfume boost on flushing the toilet. Claim 1 is therefore inventive over D4 in combination with D2.

D7 discloses the use of a fragrance plastic material for manufacturing the support/housing of the rim-block (see third and fourth paragraphs of page 5). There is no pointer in D7 to suggest that there is a need to have both a continuous fragrance and a perfume boost on flushing the toilet. The skilled person would further not be motivated to modify the rim-block of D4, since D4 already has a fragrance composition in it. If he had nevertheless done so, a fragrance agent would have been incorporated into the housing material, which means consequently that the fragrance would then be dispensed at least partially by the flush water, thus by the same dispensing means as for the cleaning agent captured in the block. This is contrary to the requirements of claim 1.

Therefore the subject-matter of claim 1 was also not obviously derivable from D4 in combination with D7.

6.3 Claim 1 of the main request is therefore inventive over the cited prior art.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The case is remitted to the Opposition Division with the order to maintain the patent on the basis of:
 - (a) claims 1 to 20 according to the main request filed with the letter dated 6 August 2013;
 - (b) the amended description pages numbered 2 to 11 as filed during the oral proceedings.

The Registrar:

The Chairman:

C. Spira

U. Krause