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**Datasheet for the decision  
of 24 April 2015**

**Case Number:** T 2058/11 - 3.2.04

**Application Number:** 04706910.9

**Publication Number:** 1594386

**IPC:** A47L5/24, A47L9/16

**Language of the proceedings:** EN

**Title of invention:**  
HAND HELD VACUUM CLEANER

**Patent Proprietor:**  
AKTIEBOLAGET ELECTROLUX

**Opponents:**  
Dyson Technology Limited  
BSH Hausgeräte GmbH

**Headword:**

**Relevant legal provisions:**

EPC Art. 54, 123(2)  
RPBA Art. 13(1), 13(3)

**Keyword:**

Novelty - main request (no)  
Amendments - intermediate generalisation  
Late-filed request - adjournment of oral proceedings would  
have been required (yes) - admitted (no)

**Decisions cited:**

**Catchword:**



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Case Number: T 2058/11 - 3.2.04

**D E C I S I O N**  
**of Technical Board of Appeal 3.2.04**  
**of 24 April 2015**

**Appellant:**  
(Patent Proprietor)

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**Representative:**

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(Opponent 2)

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**Decision under appeal:**

**Decision of the Opposition Division of the  
European Patent Office posted on 20 July 2011  
revoking European patent No. 1594386 pursuant to  
Article 101(3) (b) EPC.**

**Composition of the Board:**

**Chairman** A. de Vries  
**Members:** J. Wright  
T. Bokor

## Summary of Facts and Submissions

- I. The Appellant (Proprietor) lodged an appeal, received on 19 September 2011, against the decision of the Opposition Division posted on 20 July 2011 revoking European patent No. 1594386 pursuant to Article 101(3) (b) EPC. The appeal fee was paid simultaneously. The statement setting out the grounds of appeal was received on 21 November 2011.

Two oppositions were filed against the patent as a whole and based *inter alia* on Article 100(a) together with Article 54(2) EPC, for lack of novelty vis-à-vis US20020189048 A1 (herein D4). The opposition division held, *inter alia*, that this ground prejudiced the maintenance of the patent as granted.

- II. Oral proceedings were duly held before the Board on 24 April 2015.
- III. The Appellant requests that the decision under appeal be set aside and the oppositions rejected and the patent be upheld as granted as main request, alternatively, that the decision under appeal be set aside and the patent be maintained in an amended form according to the claims of a first auxiliary request, filed with the grounds of appeal dated 21 November 2011, or according to second and third auxiliary requests, both filed with letter of 16 April 2015.

Both Respondents (Opponents I and II) request that the appeal be dismissed.

- IV. The wording of claim 1 of the requests is as follows

*Main request*

"Hand held vacuum cleaner having a housing (20) comprising a motor-fan unit (22), a dust container (31) and an air passage (27) opening into the dust container through which dust laden air is directed into the dust container, the vacuum cleaner also comprising at least one filter (39) arranged after the dust container as seen in the flow direction, the dust container (31) being provided with a first emptying opening (46) normally being covered by a lid (47) and having such a size that the opening, allows the dust collected in the dust container to fall out through the opening when the lid is opened characterized in that the dust container constitutes a part of or communicates with a cyclone separator arranged between the air passage (27) and the filter (39)".

*First auxiliary request*

Claim 1 is the same as claim 1 of the main request except for the feature "the dust container (31) being provided with a first emptying opening (46) normally being covered by a lid (47) and..." being amended to read (*italics* added by the Board to indicate added text):

"the dust container (31) being provided with a first emptying opening (46) normally being covered by a lid (47) *turnably secured to the dust container* and..."

*Second auxiliary request*

Claim 1 reads as the main request but with the feature "the dust container (31) being provided with a first emptying opening (46), normally being covered by a lid (47) and..." amended to read (again with added text in *italics*):

"the dust container (31) being provided with a first emptying opening (46) *extending over the entire bottom*

*part of the dust container, normally being covered by a lid (47) and..."*

*Third auxiliary request*

Claim 1 according to the third auxiliary request reads as the second auxiliary request but adds to the relevant feature further text so that it now reads (italics again indicate added text) :

"the dust container (31) being provided with a first emptying opening (46) extending over the entire bottom part of the dust container, normally being covered by a lid (47) *supported by a yoke (48) turnably secured at each side of the dust container, the yoke being acted on by two springs (49) normally pressing the lid against a sealing (5) surrounding the opening (46), and..."*

V. The Appellant's arguments can be summarised as follows:

Main request

The subject matter of claim 1 is new over D4 because D4 does not disclose the opening of the container as "*having such a size that the opening, allows the dust collected in the dust container to fall through the opening when the lid is opened*"

The feature must be interpreted, not merely as defining that the opening is large enough to allow dust to pass through it, but also that the container, opening and lid are functionally interrelated so that opening the lid causes dust to fall out of the container. The functional relationship is described in paragraph [0015] of the description, and the claim should be read in the light of this. There manually opening the lid causes dust to fall out of the opening, where the

skilled person knows he must point the cleaner downwards when doing this.

This functional interrelation is not disclosed in D4 which is emptied in a different way. In D4, opening the lid does not cause dust to fall out of the container because its opening points upwards. To empty the container the lid must first be opened, the filter and container removed and the container emptied separately. The cleaner of D4 is not designed to be emptied by opening the lid with the cleaner inverted. If this were to be attempted, not only dust but also the filter and container would fall out of the cleaner housing.

First auxiliary request

Defining the lid as being "*turnably secured to the dust container*" has its basis in the specification paragraph [0012]. The feature defines the functional relationship between container, lid and opening defined in claim 1 as granted more precisely. That the lid is turnably secured can be claimed isolated from other features in paragraph [0012] since the essential function of the lid when emptying the container is that the lid turns when it is opened. Opening the lid is explained in paragraph [0015] isolated from other features such as the yoke.

Second and third auxiliary requests

The requests were filed to speed up the proceedings, they could not have been filed before because the attorney involved has changed. Because the features added to the second and third auxiliary request merely define in more detail the opening described in paragraph [0012], a central feature in all versions of claim 1, they will have been thoroughly searched and examined both by the examiners and the opponents.

Therefore no further search is necessary. Furthermore the features can be immediately understood, therefore they do not constitute amendments that would require adjournment of the proceedings.

VI. The Respondents' arguments can be summarised as follows:

Main request

The feature "*having such a size that the opening, allows the dust collected in the dust container to fall through the opening when the lid is opened*" is not a functional feature, but merely defines the size of the opening relative to the size of dust. In the patent merely opening the lid of the container does not cause dust to fall out; this requires the cleaner to be orientated downwards, and even then dust may need to be shaken out. In D4 the opening of the lid of the container exposes an annular opening, as seen in figure 3, that is big enough to allow dust to drop out, so D4 discloses the above feature as well as the remaining features of claim 1.

First auxiliary request

Claim 1 as amended by adding the feature that the lid is turnably secured to the dust container has no basis in the application as filed. In the specification paragraph [0012] it is the yoke, not the lid, that is turnably secured to the dust container. This in turn is only defined as being secured at each side of the dust container, and acted on by two springs which press it against a sealing. None of the latter features have been added to claim 1 so the amendment results in an unallowable intermediate generalisation.

Second and third auxiliary requests



The requests were filed shortly before the oral proceedings. The amendments introduce subject matter from the description which has not been searched. Therefore the Respondents could not be expected to deal with them without adjournment of the proceedings. Consequently the requests should not be admitted in accordance with Article 13(3) RPBA.

### **Reasons for the Decision**

1. The appeal is admissible.
2. Main request: novelty vis-à-vis D4
  - 2.1 It is common ground that document D4 (see abstract and figure 1) discloses a hand held vacuum cleaner having a housing 1 (figure 1 showing handle 26A), a motor-fan unit 2,3, a dust container 11, an air passage 40 directing dust-laden air into the dust container via an opening 35 therein and a filter 12 arranged after the dust container in the flow direction. Likewise it is not disputed that the dust container of D4 has an emptying opening (top of container 11 best seen in figure 3) normally closed by a lid (lid 26, figures 1 and 2 and paragraph [0024]) and that the container constitutes a part of a cyclone separator arranged between the air passage and the filter (see paragraph [0023]).
  - 2.2 Novelty of claim 1 therefore hinges on the question as to whether D4 also discloses the opening of the container as having *such a size that the opening, allows the dust collected in the dust container to fall through the opening when the lid is opened*, as the

decision finds (see reasons page 4, first two paragraphs).

2.2.1 The Appellant has argued that the feature should be interpreted, not merely as defining the size of the opening to be big enough to allow dust to fall through it, but additionally as defining a functional interaction between the container, its opening and the lid which causes dust to fall out of the container when the lid is opened.

2.2.2 The Board disagrees. As explained in the patent specification, paragraph [0012] and shown in figures 3 and 4, the relevant opening 46 through which the dust falls (figure 4) is normally covered by the lid 47 (figures 3 and 4). A first way of emptying the container is explained in paragraph [0015], column 4, lines 55 to column 5, line 1. Here, manually opening the lid against the action of the springs 49 is explained as doing nothing more than uncovering the emptying opening. The passage goes on to explain that dust is allowed to fall freely out of the opening.

As is immediately apparent by comparing figures 3 (lid 47 closed) and 6 (lid 47 open), whether or not dust can fall out of the opening depends on the orientation of the container. Although opening the container is necessary for dust to fall out, the act of opening does not cause dust to fall out, rather the opening needs to be orientated downwards for this to happen. Even then, the user may need to help this process along by shaking the device (sentence bridging columns 4 and 5).

2.2.3 Claim 1 claims the device itself, not how it is used (emptied). Whether the skilled person might orientate the cleaner defined in claim 1 downwards when emptying

it is therefore irrelevant for interpreting the claim. Furthermore the claim itself is entirely silent as to any particular orientation of the vacuum cleaner, nor has this been argued. Therefore the Board does not interpret the claim as implying any particular features of the vacuum cleaner by which the act of opening the container causes dust to fall out of it. In other words, the only physical limitation for the opening defined in the claim relates to the size of the opening, whereas the functional feature *when the lid is opened* merely defines that dust is *allowed* to fall out when the lid is opened, not that opening the lid *causes* dust to fall out.

2.2.4 Turning now to D4 and with the above interpretation of the claim in mind, the opening of the container of D4, covers almost the entire top of the container 11 (figure 3), and is therefore large enough to allow dust to fall out of it. Furthermore, as shown in figures 1 and 2, it is normally covered by the lid 26. It goes without saying that dust can only be emptied from the container if the lid 26 has first been opened, as is confirmed by paragraph [0024], first 6 lines. Thus D4 also discloses the feature that the opening of the container has *such a size that the opening, allows the dust collected in the dust container to fall through the opening when the lid is opened.*

Whether or not the user of the vacuum cleaner of D4 would normally remove the container from the machine before emptying it or would have to retain the container by hand when opening the lid with the machine inverted is therefore irrelevant for the question of novelty.

- 2.3 In conclusion, the Board finds the subject matter of claim 1 to be not novel over D4, Articles 52(1) and 54 EPC, and thus confirms the finding of the decision under appeal in this respect. Consequently the main request must fail.
3. First auxiliary request
- 3.1 Claim 1 adds to granted claim 1 the feature that the lid is *turnably secured to the dust container* (added text emphasised in *italics* by the board).
- 3.2 The Respondents argued that claim 1 thus amended adds subject matter extending beyond the application as filed, and is therefore not allowable under Article 123(2) EPC. The Board concurs with this view.
- 3.2.1 In this regard, the Appellant has argued that the above feature (lid turnably secured to the dust container) is derived from paragraph [0012] of the specification which is identical to the paragraph in the published PCT application, at page 4, lines 19-22.
- 3.2.2 According to established jurisprudence of the Boards of Appeal, if a claim is to be restricted to a preferred embodiment, it is normally not admissible under Article 123(2) EPC to extract isolated features from a set of features which have originally been disclosed in combination in that embodiment. Such an amendment would only be justified in the absence of any clearly recognisable functional or structural relationship among said features, see the Case Law of the Boards of Appeal, 7th edition, 2013 (CLBA), II.E.1.2, and the decisions cited therein.

3.3 Applying this approach, the Board notes that the added feature is only described in the description in the cited paragraph. Here the lid is said to be "*supported by a yoke 48 turnably secured at each side of the dust container...*". Thus, it is the yoke which is specified as being turnably secured to the dust container, not the lid. The lid is merely secured to, and turnable relative to the dust contained *because it is attached to the yoke 48 which, as seen in figures 3 and 6, is pivotally secured at each side of the dust container.* Furthermore, the yoke is acted on by springs 49 which normally press the lid against a sealing surrounding the opening, preventing dust from spilling from the container during normal use, as is confirmed by paragraph [0015] (the lid must be opened manually against the action of the springs). Therefore the turnably secured lid is only disclosed in a tight *functional and structural* relationship with the yoke 48, springs 49 and sealing 50, none of which have been claimed. Lifting the feature of the lid being *turnably secured to the dust container* in isolation from these features and incorporating it into claim 1 therefore represents a new teaching which cannot be inferred from its original context. It therefore constitutes an unallowable intermediate generalisation.

3.4 For the above reasons, the Board concludes that amending claim 1 to include the feature of the lid being *turnably secured to the dust container*, isolated from the features of a yoke, springs and sealing adds subject matter extending beyond the application as filed, Article 123(2) EPC. Thus the Appellant's first auxiliary request must fail.

4. Auxiliary requests 2 and 3

4.1 Auxiliary requests 2 and 3 were filed on 16 April 2015 just 8 days prior to the oral proceedings, well after filing of the grounds of appeal. The request thus amounts to an amendment to the Appellant's case in the sense of Article 13 of the Rules of Procedure of the Boards of Appeal (RPBA). Under paragraph (1) of that article the Board exercises discretion in admitting such amendments in view of inter alia complexity of the subject-matter, the state of the proceedings and the need for procedural economy. Furthermore, under Article 13(3) RPBA any amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the parties cannot reasonably be expected to deal with without an adjournment.

4.2 An approach frequently adopted by the Boards when exercising their discretion in admitting an amendment filed shortly before or during oral proceedings can be summarised as follows:

Unless good reasons exist for filing the amendment so far into the proceedings - for example if it is occasioned by developments in the proceedings - it will be admitted only if it does not extend the scope or framework of discussion as determined by the decision under appeal and the statement of the grounds of appeal, and is moreover *clearly allowable*, see CLBA, IV.E.4.2.1 and the case law cited therein. In accordance with established jurisprudence, amended claims are clearly allowable if the Board can quickly ascertain that they overcome all outstanding issues without raising new ones, see CLBA, IV.E.4.2.2 and the cases cited therein, for example T 183/09, reasons 4.

4.2.1 In the present case, no good reasons have been submitted that might justify the late filing of these auxiliary requests, nor are any apparent to the Board.

All the Respondents' arguments in reply to the appeal were timely filed in replies received on 5 April 2012. The Board's communication of 3 February 2015 merely summarised the issues raised in the light of these arguments, without introducing any new substantive issues.

The second and third auxiliary requests, filed three years after receiving these replies and without explanation as to why they overcame objections already on file, can hardly be seen as a response to developments in the proceedings, let alone as a way of speeding up proceedings.

Lastly, according to established jurisprudence, a change of representative as such does not justify tardiness in filing requests, see CLBA IV.C.1.4.6 e).

4.2.2 Furthermore neither request is *clearly allowable* in the sense set out above. Irrespective of whether or not the requests overcome all *outstanding* issues, they do raise *new* issues. The added "*extending...bottom part of the container*" feature was never previously claimed and is only mentioned once in the description of the embodiment (specification, paragraph [0012]), without explanation as to why it should be significant. It is therefore not a prominent feature that might have warranted particular attention in search or examination proceedings, or by the examiners and parties in opposition proceedings. Therefore the Board considers it unlikely that the feature is already searched or

implicitly examined as the Appellant has suggested. It would therefore not be possible to admit these requests without adjournment of the proceedings to allow the Respondents time to perform additional searches and formulate new arguments.

4.2.3 In this regard the Board adds that neither request was accompanied by any written argument as to how the amendments address all issues and a patent be granted thereon as requested. In that such substantiation assists the Board and other parties in understanding a party's case they serve the overall purpose of transparency and fairness. These principles which find expression in Article 108 EPC in conjunction with Rule 99(2) EPC and in the requirement of Article 12(2) RPBA that a statement of grounds or a reply thereto contain a party's complete case apply equally in all later stages of an appeal. Filing requests without substantiation violates these fundamental procedural requirements.

4.3 For all the above reasons the Board decided not to admit the amendments based on auxiliary requests 2 and 3, pursuant to Articles 13(1) and 13(3) RPBA.



**Order**

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

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated