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**Datasheet for the decision
of 3 April 2013**

Case Number: T 2594/11 - 3.3.06

Application Number: 02767704.6

Publication Number: 1444319

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C11D 1/86

Language of the proceedings: EN

Title of invention:
Improvements relating to toilet bowl cleaning articles

Patent Proprietor:
Reckitt Benckiser Inc.

Opponent:
Henkel AG & Co. KGaA

Headword:
Toilet bowl article containing a gelled perfume/RECKITT

Relevant legal provisions (EPC 1973):
EPC Art. 83, 56

Keyword:
"Sufficiency of disclosure - main request (yes)"
"Inventive step - main request (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 2594/11 - 3.3.06

D E C I S I O N
of the Technical Board of Appeal 3.3.06
of 3 April 2013

Appellant:
(Opponent)

Henkel AG & Co. KGaA
Henkelstrasse 67
D-40589 Düsseldorf (DE)

Representative:

Henkel AG & Co. KGaA
Intellectual Property (FJI)
D-40191 Düsseldorf (DE)

Respondent:
(Patent Proprietor)

Reckitt Benckiser Inc.
Morris Corporate Center IV
399 Interpace Parkway
Parsippany, New Jersey 07054 (US)

Representative:

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

Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted 28 October 2011
rejecting the opposition filed against European
patent No. 1444319 pursuant to Article 102(2)
EPC.**

Composition of the Board:

Chairman: P.-P. Bracke
Members: E. Bendl
U. Tronser

Summary of Facts and Submissions

I. The appeal lies from the decision of the Opposition Division to reject the opposition against the European patent no. 1 444 319.

II. The Opponent/Appellant filed the notice of appeal against this decision together with the grounds on 16 December 2011 and paid the appeal fee on the same day. In the reasoning inter alia documents

D2 = US-A-4 555 819

D4 = EP-A-0 761 240

were cited.

III. The parties' requests are summarized under item VII. below.

IV. Claim 1 of the Respondent's/Proprietor's main request reads as follows:

"1. A toilet bowl article (1, 111) of manufacture which comprises:

a) a cleaning, disinfecting, water treatment, or anti-lime scale agent composition (137) and mixtures thereof;

b) a gelled perfume (13, 115); and

c) a housing (9, 121) comprising (i) a first chamber having a cover (15, 125) for containing said composition, the first chamber having a cover having at least one inlet opening (17, 19, 127) and at least one outlet opening (21, 129), said at least one inlet opening is placed in the first chamber; (ii) a second

(11, 117) chamber containing said perfume; and (iii) a hanger (3, 123) for removably hanging the housing from the rim of a toilet, such that when the article is suspended in the toilet bowl at least one inlet opening (5) of the first covered chamber is in the path of flushing water and the second chamber is not in the path of flushing water, and wherein the second chamber does not enclose the perfume and is open towards the toilet bowl."

Claims 2 to 6 are dependent on the preceding claims.

V. The main arguments presented by the **Appellant** were as follows:

Sufficiency of disclosure

- The term "gelled perfume" used in Claim 1 covers both, fluid and solid gels. As fluid gels do not work in the context of the patent-in-suit, not all embodiments of the invention are sufficiently disclosed.

Inventive step

- D2 is the closest state of the art. The only difference between this anticipation and Claim 1 of the patent-in-suit is the use of a gelled perfume. This feature is derivable from D4. Therefore, the claimed subject-matter is not based on an inventive step.

The main arguments presented by the **Respondent** were as follows:

Sufficiency of disclosure

- The person skilled in the art derives from the description and the examples of the patent-in-suit that "solid" gels are used for the gelled perfume. Therefore, the invention is sufficiently disclosed.

Inventive step

- The difference between the patent-in-suit and D2 is not only the gelled perfume, but also the positioning and opening of the second (gelled perfume containing) chamber. These characteristics are not derivable from D2 or its combination with D4. Therefore, the claimed subject-matter meets the requirement of inventive step.

IV. The Appellant requested that the decision under appeal be set aside and that the European patent no. 1 444 319 be revoked.

The Respondent requested that the appeal be dismissed or the patent be maintained on the basis of one of the auxiliary requests I to IV, submitted with the letter dated 25 April 2012.

Reasons for the Decision

Main request

1. Sufficiency of disclosure
 - 1.1 The Appellant has not disputed that the example described in the patent-in-suit can be reworked by a person skilled in the art. This means that the housing and the embodiments referring to a "solid" gel can be reproduced. Only embodiments relating to "liquid" gels, allegedly encompassed by the wording of Claim 1 of the patent-in-suit, were not considered to be sufficiently disclosed.
 - 1.2 Item b) of Claim 1 of the main request refers to "gelled perfume" without defining the kind of gel more precisely. Given this lack of detailed information the skilled person would consult the description in order to look for a more precise definition of the term.
 - 1.3 In paragraphs [0006] and [0007] of the patent-in-suit a distinction is made between the liquid, the gelled and the solid form of a product. The gel being distinct from a liquid or a solid must have a consistency between these two extremes. The examples on file define the degree of gelling more precisely: Figs. 1,5,7 and the corresponding paragraphs [0049] and [0053] clarify that the gel must be "solid" to the extent that it **retains its shape** (see reference numbers 13 and 115) and **does not drip** out of the second chamber, which may be open. The patent-in-suit does not contain any teaching that the gelled perfume may be "fluid".

1.4 As it is derivable from the description and the figures that the term "gelled perfume" means in the context of the patent-in-suit "solid" gels with the properties as defined above and since the Appellant has agreed that the skilled person knows how to produce such "solid" gels, the invention is considered to be sufficiently disclosed.

2. Novelty

The novelty of the claimed subject-matter has not been disputed by the Appellant. The Board shares this view.

3. Inventive step

3.1 The patent-in-suit aims at providing a toilet bowl article having a cleaning, disinfecting, water treatment or anti-scale effect and at the same time allowing a constant fragrance to be detected in the toilet room.

The Appellant cited D2 as the closest prior art document. The Board too considers this document to be a suitable starting point for the problem and solution approach.

D2 describes a toilet bowl article, containing cleansing and/or colorant products, which allows constant dosing and contains volatile products for the treatment of the ambient air.

3.2 As the patent-in-suit and D2 refer to the same problems and since in the patent-in-suit no surprising or unexpected effect has been shown, the problem of the

present invention vis-à-vis this prior art disclosure is the provision of an **alternative** toilet bowl article.

- 3.3 The toilet bowl article according to Claim 1 of the patent-in-suit has been proposed as the solution to this problem.
- 3.4 With regard to the "solid" gelled perfumes no objection was raised by the Appellant that the problem has not been solved over the entire scope claimed. The Board shares this view.
- 3.5 The remaining question is, whether the claimed subject-matter is obvious for a skilled person when starting from the closest state of the art.

The device of D2 is constructed in such a way, that the flushing operations will cause a reservoir (R) to be filled with flushing water. Further flushing action "causes a second reservoir (1) to be filled with a pre-determined corresponding volume of water, the excess emptying itself directly into the WC-bowl **by overflowing** [...]" (col.4, lines 25-35; emphasis added).

According to col.5, lines 3-8 the position of the device within the WC-bowl is undefined: "It should be noted, that the device according to the invention allows the delivery, after each flushing action, of a predetermined quantity of active substance **irrespective of** the mechanical force of the flushing water and/or **the position of the device on the wall of the WC-bowl**" (emphasis added).

Furthermore, D2 describes in the last full paragraph of column 5 the separate chamber (E), corresponding to the gelled perfume containing second chamber of the patent-in-suit, as containing a substrate (insoluble) impregnated with volatile material.

In contrast to the teaching of D2, Claim 1 of the patent-in-suit requires that "at least one inlet opening of the **first** covered **chamber** is **in the path** of flushing water and the **second chamber** is **not in the path** of flushing water" (emphasis added). The requirement that the perfume containing chamber should be away from the path of the flushing water is not derivable from D2, as the device may be positioned anywhere on the wall of the toilet bowl and the water is described to simply overflow said device.

Additionally, there is no hint in D2 to replace the **insoluble** substrate containing a volatile compound by a **gelled** perfume. Thus, D2 alone does not lead to the claimed invention in an obvious way.

The Appellant suggested to combine the teaching of D2 with the disclosure of D4.

D4 relates to gel type **air fresheners**. A mixture of water and organic solvent is used for preparing a cross-linked gelatine gel which does not shrink and has increased thermo stability.

Even if the skilled person considered combining D2 with D4, though this latter document relates to a different technical field and has a different aim, there would neither be a teaching in D4 about the positioning of

the gel containing chamber **away from** to the path of **the flushing water of a toilet**, nor about the replacement of the insoluble substrate impregnated with volatile material with a gelled cross-linked gelatine, containing the perfume in a water-soluble solvent.

3.6 Thus, neither D2 alone nor its combination with D4 renders the subject-matter of Claim 1 of the patent-in-suit or its dependent claims obvious.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

D. Magliano

P.-P. Bracke