

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 12 May 2017**

Case Number: T 1401/12 - 3.2.04

Application Number: 01918149.4

Publication Number: 1276410

IPC: A47L9/02

Language of the proceedings: EN

Title of invention:
VACUUM CLEANER NOZZLE

Patent Proprietor:
ARÇELIK A.S.

Opponent:
Wessel-Werk GmbH

Headword:

Relevant legal provisions:
EPC Art. 54, 56, 100(a), 100(b), 100(c), 123(2)
EPC R. 80
RPBA Art. 12(1)(b), 13(1), 13(3)

Keyword:

Admission of main- and aux. requests 1-4 (yes)

Added subject-matter - main- and aux. requests 1-3 (yes)

Added subject-matter - aux. request 4 (no)

Sufficiency of disclosure - aux. request 4 (yes)

Novelty and Inventive step of claim 1 of aux. request 4 (yes)

Decisions cited:

G 0003/14

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 1401/12 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 12 May 2017

Appellant: ARÇELIK A.S.
(Patent Proprietor) Patent Bolumu
E5 Ankara Asfalti Uzeri
Tuzla
34950 Istanbul (TR)

Representative: Louis Pöhlau Lohrentz
Patentanwälte
Postfach 30 55
90014 Nürnberg (DE)

Appellant: Wessel-Werk GmbH
(Opponent) Im Bruch 2
51580 Reichshof (Wildbergerhütte) (DE)

Representative: Lorenz, Bernd Ingo Thaddeus
Andrejewski - Honke
Patent- und Rechtsanwälte GbR
An der Reichsbank 8
45127 Essen (DE)

Decision under appeal: **Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 May 2012 concerning maintenance of the
European Patent No. 1276410 in amended form.**

Composition of the Board:

Chairman A. de Vries
Members: E. Frank
T. Bokor

Summary of Facts and Submissions

I. The appeals lie from the interlocutory decision of the opposition division, dated 24 April 2012 and posted on 14 May 2012, to maintain the European patent No. 1 276 410 in amended form pursuant to Article 101(3)(a) EPC. The appellant proprietor filed a notice of appeal on 15 June 2012, paying the appeal fee on the same day. The statement of grounds of appeal was submitted on 24 September 2012. The appellant opponent filed a notice of appeal on 12 July 2012, also paying the appeal fee on the same day. The statement of grounds of appeal was submitted on 21 September 2012.

II. The opposition was filed against the patent as a whole and based on Article 100(a) in conjunction with Articles 52(1), 54, and 56, Article 100(b), and Article 100 (c) in conjunction with Article 123(2) EPC.

The opposition division held that the patent as amended based on claim 1 of the first auxiliary request as filed during the oral proceedings met the requirements of the EPC. In its decision the division considered the following prior art, amongst others:

D2 = EP 0 898 923 A1

D8 = DE 2 414 826 A

III. A communication pursuant to Article 15(1) RPBA was issued after a summons to attend oral proceedings, which were duly held on 12 May 2017.

IV. The appellant proprietor requests that the decision under appeal be set aside and the patent be maintained in an amended form on the basis of claims 1 to 8 of the main request, or on the basis of any of the auxiliary

requests 1 to 4 filed with letter dated 6 April 2017, or further alternatively dismissal of opponent's appeal as auxiliary request 5, or further alternatively that the patent be maintained in an amended form on the basis of any of the auxiliary requests 6-19 filed with letter dated 6 April 2017.

The appellant opponent requests that the decision under appeal be set aside, and the patent be revoked.

V. The claims read as follows:

CLMS

01918149

EP 1 276 410

MAIN REQUEST

1. A vacuum cleaner brush (1) comprising a suction inlet port from which the debris is sucked in, together with air and characterized with a guide (2) placed inside the brush (1), that directs the debris towards the suction inlet port of the vacuum cleaner, the said guide (2) comprising symmetrical lateral edges (6), which are bent in a convex or in a concave form or which are straight inclined, the said guide (2) further comprising an upper portion with a suction inlet port window (5) being an opening with a width matching to that of the suction inlet port, the said guide (2) being placed along the brush (1) so that its opening lies at the brush base (7) and its suction inlet port window (5) located at the top, overlaps with the suction inlet port.

2. A vacuum cleaner brush as claimed in Claim 1, characterized with an elliptical profile (3) being adapted to direct the flow coming from the front and back of the brush separately towards the suction inlet port.

3. A vacuum cleaner brush as claimed in Claim 2, characterized with the elliptical profile (3) being placed along the guide (2) in such a manner that it is located in the middle of the guide (2).

4. A vacuum cleaner brush as claimed in claims 2 or 3, wherein the length of the elliptical profile (3) is shorter than that of the guide (2).

5. A vacuum cleaner brush as claimed in claims 2 to 4, characterized with recesses (12) that are provided on both sides of the guide (2), in which the profile (3) is mounted so that no gap is left between the profile (3) and the guide (2).

6. A vacuum cleaner brush as claimed in claims 1 to 5, characterized with the elliptical profile (3) which is provided with a catch (10) at the point of the profile which matches with the suction inlet port window (5), in order to facilitate the guiding of the debris laden air towards the suction inlet port and to regulate the air flow at the suction inlet port of the brush (1); the surface of which, facing the suction inlet port is straight, whereas the other surface is inclined.

CLMS

01918149

EP 1 276 410

7. A vacuum clean brush as claimed in Claim 1, characterized with a profile (3) that is circular.

8. A vacuum clean brush as claimed in Claim 1, characterized with a profile (3) that is an equilateral rectangle.

CLMS

01918149

EP 1 276 410

AUXILIARY REQUEST 1

1. A vacuum cleaner brush (1) comprising a suction inlet port from which the debris is sucked in, together with air and characterized with a guide (2) placed inside the brush (1), that directs the debris towards the suction inlet port of the vacuum cleaner, the said guide (2) comprising symmetrical lateral edges (6), which are bent in a convex or in a concave form or which are straight inclined, the said guide (2) further comprising an upper portion with a suction inlet port window (5) being an opening with a width matching to that of the suction inlet port, the said guide (2) being placed along the brush (1) so that its opening lies at the brush base (7) and its suction inlet port window (5) located at the top, overlaps with the suction inlet port.

2. A vacuum cleaner brush as claimed in Claim 1, characterized with an elliptical profile (3) to direct the flow coming from the front and back of the brush separately towards the suction inlet port, being placed along the guide (2) in such a manner that it is located in the middle of the guide (2).

3. A vacuum cleaner brush as claimed in Claim 2, wherein the length of the elliptical profile (3) is shorter than that of the guide (2).

4. A vacuum cleaner brush as claimed in claims 2 to 3, characterized with recesses (12) that are provided on both sides of the guide (2), in which the profile (3) is mounted so that no gap is left between the profile (3) and the guide (2).

5. A vacuum cleaner brush as claimed in claims 1 to 4, characterized with the elliptical profile (3) which is provided with a catch (10) at the point of the profile which matches with the suction inlet port window (5), in order to facilitate the guiding of the debris laden air towards the suction inlet port and to regulate the air flow at the suction inlet port of the brush (1); the surface of which, facing the suction inlet port is straight, whereas the other surface is inclined.

6. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is circular.

CLMS

01918149

EP 1 276 410

7. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is an equilateral rectangle.

CLMS

01918149

EP 1 276 410

AUXILIARY REQUEST 2

1. A vacuum cleaner brush (1) comprising a suction inlet port from which the debris is sucked in, together with air and characterized with a guide (2) placed inside the brush (1), that directs the debris towards the suction inlet port of the vacuum cleaner, the said guide (2) comprising symmetrical lateral edges (6), which are bent in a convex or in a concave form or which are straight inclined, the said guide (2) further comprising an upper portion with a suction inlet port window (5) being an opening with a width matching to that of the suction inlet port, the said guide (2) being placed along the brush (1) so that its opening lies at the brush base (7) and its suction inlet port window (5) located at the top, overlaps with the suction inlet port.

2. A vacuum cleaner brush as claimed in Claim 1, characterized with an elliptical profile (3) to direct the flow coming from the front and back of the brush separately towards the suction inlet port, being placed along the guide (2) in such a manner that it is located in the middle of the guide (2), and the length of which is shorter than that of the guide (2).

3. A vacuum cleaner brush as claimed in Claim 2, characterized with recesses (12) that are provided on both sides of the guide (2), in which the profile (3) is mounted so that no gap is left between the profile (3) and the guide (2).

4. A vacuum cleaner brush as claimed in claims 1 to 3, characterized with the elliptical profile (3) which is provided with a catch (10) at the point of the profile which matches with the suction inlet port window (5), in order to facilitate the guiding of the debris laden air towards the suction inlet port and to regulate the air flow at the suction inlet port of the brush (1); the surface of which, facing the suction inlet port is straight, whereas the other surface is inclined.

5. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is circular.

6. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is an equilateral rectangle.

CLMS

- 01918149

EP 1 276 410

AUXILIARY REQUEST 3

1. A vacuum cleaner brush (1) comprising a suction inlet port from which the debris is sucked in, together with air and characterized with a guide (2) placed inside the brush (1), that directs the debris towards the suction inlet port of the vacuum cleaner, the said guide (2) comprising symmetrical lateral edges (6), which are bent in a convex or in a concave form or which are straight inclined, the said guide (2) further comprising an upper portion with a suction inlet port window (5) being an opening with a width matching to that of the suction inlet port, the said guide (2) being placed along the brush (1) so that its opening lies at the brush base (7) and its suction inlet port window (5) located at the top, overlaps with the suction inlet port.

2. A vacuum cleaner brush as claimed in Claim 1, characterized with an elliptical profile (3) to direct the flow coming from the front and back of the brush separately towards the suction inlet port, being placed along the guide (2) in such a manner that it is located in the middle of the guide (2), and the length of which is shorter than that of the guide (2).

3. A vacuum cleaner brush as claimed in claims 1 to 3, characterized with the elliptical profile (3) which is provided with a catch (10) at the point of the profile which matches with the suction inlet port window (5), in order to facilitate the guiding of the debris laden air towards the suction inlet port and to regulate the air flow at the suction inlet port of the brush (1); the surface of which, facing the suction inlet port is straight, whereas the other surface is inclined.

4. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is circular.

5. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is an equilateral rectangle.

CLMS

01918149

EP 1 276 410

AUXILIARY REQUEST 4

1. A vacuum cleaner brush (1) comprising a suction inlet port from which the debris is sucked in, together with air and characterized with a guide (2) placed inside the brush (1), that directs the debris towards the suction inlet port of the vacuum cleaner, the said guide (2) comprising symmetrical lateral edges (6), which are bent in a convex or in a concave form or which are straight inclined, the said guide (2) further comprising an upper portion with a suction inlet port window (5) being an opening with a width matching to that of the suction inlet port, the said guide (2) being placed along the brush (1) so that its opening lies at the brush base (7) and its suction inlet port window (5) located at the top, overlaps with the suction inlet port.

2. A vacuum cleaner brush as claimed in Claim 1, characterized with an elliptical profile (3) that directs the flow coming from the front and back of the brush separately towards the suction inlet port (4)-, being placed along the guide (2) in such a manner that it is located in the middle of the guide (2), and the length of which is shorter than that of the guide (2); and recesses (12) that are provided on both sides of the guide (2), in which the profile (3) is mounted so that no gap is left between the profile (3) and the guide (2).

3. A vacuum cleaner brush as claimed in claims 1 to 2, characterized with the elliptical profile (3) which is provided with a catch (10) at the point of the profile which matches with the suction inlet port window (5), in order to facilitate the guiding of the debris laden air towards the suction inlet port and to regulate the air flow at the suction inlet port of the brush (1); the surface of which, facing the suction inlet port is straight, whereas the other surface is inclined.

4. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is circular.

5. A vacuum cleaner brush as claimed in Claim 1, characterized with a profile (3) that is an equilateral rectangle.

VI. The appellant opponent argued as follows:

The newly filed main- and auxiliary requests should not be admitted. In particular, the application as filed requires that the longitudinal length of the inner profile along the guide must be such that no gap is left between profile and guide. By omitting these features this originally disclosed relationship has been unallowably generalized in dependent claims of the main- and auxiliary requests 1-3, Article 123(2) EPC.

Dependent claims 2, 4 and 5 of auxiliary request 4 are too vague to be carried out by the skilled person, Article 100(b) EPC.

In its broadest meaning, the "lateral edges" of the guide of claim 1 merely form vertically extending side walls with bevelled edges, the latter serving as suction stream guides near the brush base. Even if the opposed side walls themselves are to be understood as bent or inclined, claim 1 does not require that this must be permanently so. And even if this is the case because the walls must be rigid, then any suction inlet port with rigid walls that are switchable to a bent or inclined state fall within the claim terms. Thus, the guide embodiments of figure 11(b) (bevelled edges), figure 4 (bendable edges), and figure 8 (pivotable edges) of D8 deprive claim 1 of the auxiliary request 4 of novelty. This holds also true with respect to D2 if claim 1 encompasses connecting web portions, cf. figure 1 of D2, where a matching window formed by spaces between web portions of the guide is inevitably shown. Therefore claim 1 of the auxiliary request 4 is not novel over any of D8 or D2.

No functional advantages are achieved by claim 1 over D8 so that no technically meaningful objective problem can be formulated. Thus, claim 1 of the auxiliary request 4 does not involve an inventive step.

VII. The appellant proprietor argued as follows:

The new dependent claims of the main- and auxiliary requests are only based on granted claims, overcome insufficiency of disclosure, and thus should be admitted. Moreover, the cross-sectional view of figure 2 of the application shows that the "length" of the profile must be understood as its vertical extension. Thus, no mutual relationship of the profile length and a gap between profile and guide can be derived from the application and, therefore, the newly filed dependent claims of the main- and auxiliary requests 1-3 do not contain added subject-matter.

Based on the disclosure at the date of filing (claims, description, drawings) dependent claims 2, 4 and 5 of auxiliary request 4 can be readily put into practice. Rather, the objections brought forward concern clarity issues and thus are beside the point.

Claim 1 has to be interpreted such that the "lateral edges" of the guide are themselves bent or inclined. They "are", i.e. always, bent or inclined, which also requires them to be rigid. Vertical walls with bevelled edges are not considered to fall within the meaning of "lateral edges" of claim 1. Therefore, claim 1 is novel in the light of the guides of figure 11(b) (bevelled edges), figure 4 (bendable edges), and figure 8 (pivotable edges) of D8, since there the lateral edges are only sometimes, but not always bent or inclined. Moreover, D8 does not disclose "symmetrical" lateral

edges. A switchable inlet port is nowhere addressed by D8. Rather, the lateral edges of D8 are designed to oscillate and figures 4 and 8 of D8 show only idealised snapshots. D2, see figures, does not disclose a suction inlet port window matching with the suction inlet port of the vacuum cleaner. Therefore, claim 1 of the auxiliary request 4 is novel over D8 and D2.

As for inventive step, the problem formulated by the opposition division is based on advantageous technical differences of claim 1 over D8. The belated submissions of the appellant opponent are not proof to the contrary. Thus, claim 1 of the auxiliary request 4 also involves an inventive step.

Reasons for the Decision

1. The appeal is admissible.
2. Admission of main- and auxiliary requests 1 to 4
 - 2.1 The requests accompanying the letter of 6 April 2017 are filed after issuance of the summons and their admission is thus subject to the discretion of the Board under Article 13(1) and (3) RPBA.
 - 2.2 As to the subject-matter of the newly filed requests, the Board notes that independent claim 1 of the main and auxiliary requests 1 to 4 corresponds to claim 1 as upheld by the opposition division. Having regard to the new dependent claims of the respective requests, the Board concurs with the appellant proprietor that granted claim 5 was indeed objected to for insufficiency of disclosure, cf. grounds of opposition, and the opposition division's communication of

14 October 2011. On the face of it, a part of the features of granted claim 5 have been removed and appear in new, separate dependent claims. These claim amendments thus have been occasioned by an opposition ground, in accordance with Rule 80 EPC. In particular, the amendments to claim 2 (of the main and auxiliary requests 1 to 3) concern features of granted claim 5 or originally filed claim 4. Further dependent claims correspond to features of the dependent claims as granted. As for the auxiliary request 4, all dependent claims correspond to granted dependent claims, and granted claim 5 has been incorporated in full.

- 2.3 In summary, with respect to the set of claims as upheld, the present amendments concern newly filed dependent claims only and comply with Rule 80 EPC. These new claims are based on the features of dependent claim 5 as granted corresponding to originally filed claim 4. Thus, the nature of the amendments and how they relate to the originally filed claims is immediately apparent to the appellant opponent and to the Board, and the questions of extended subject-matter and insufficiency of disclosure can readily be discussed with little or no investigative effort.

Therefore, since the Board or the other party can reasonably be expected to deal with these issues without adjournment of the oral proceedings, the Board exercised its discretion to admit the main- and auxiliary requests 1 to 4 into the proceedings.

3. Amendments main- and auxiliary requests 1 to 3

- 3.1 The subject-matter of dependent claim 5 as granted is based on claim 4 as originally filed. However, in the main- and auxiliary requests 1 to 3 in claim 2 which

partly corresponds to granted claim 5 or original claim 4, features of those claims have been moved into one or more new separate dependent claims, see above. Thus, the question has to be answered, whether and if so which features of these claims can be separated (or omitted) from their original context without adding subject-matter that is not directly and unambiguously derivable for the skilled person from the application as filed.

3.2 In particular, the appellant proprietor argues that two feature groups of the original claim 4 were not functionally or structurally linked, viz., that the length of the elliptical profile is shorter than that of the guide and, on the other hand, that no gap is left between the profile and the guide. Thus it could be derived from figure 2 of the original application, that the "length" of the elliptical profile referred to in original claim 4 should be considered as its vertical extension (i.e. height) shown in cross sectional view. The specification of a certain profile length in original claim 4 thus was independent from any gap between guide and profile at either end, cf. figure 3 of the application. Finally, since the profile's shape was claimed as being circular or equilateral rectangular without any further structural limitations, see claims 6 and 7 as filed, this must apply also to the elliptical shape. For this reason alone the elliptical shape of the profile was not necessarily linked to any other features.

3.3 However, the Board shares the appellant opponent's view that, following from a contextual reading of the original description on page 3, lines 25 to 28 (as published), the skilled reader would first and foremost understand that it is the longitudinal length of the

profile that is meant and which must fulfill a certain requirement when the profile is mounted in the recesses provided on both sides of the elongated guide: the profile length must be shorter than the guide, so that no gap is left between the profile and the guide after the profile has been mounted. Thus, a clear functional and structural relationship between the profile length and mounting of the profile on both sides of the guide without any remaining gap is originally disclosed. This is also in accordance with the disclosure of figure 3, where protrusions on both sides are shown from below, which in figure 2 are indicated as "recesses 12" in cross sectional view, and the elliptical profile 3 has been inserted so that no gap has been left between profile 3 and guide 2.

3.4 Following from the above, the Board concludes that, notwithstanding the profile could also be shaped circular or as an equilateral rectangle, cf. claims 6 and 7 as filed, once an elliptical profile is specified in the application as filed, it is invariably disclosed in conjunction with other features. In particular, the close functional and structural relationship between profile length, guide length, and the avoidance of a gap between profile and guide when mounted, can therefore not be separated. Hence, the omission of this feature from claim 2 of the main and auxiliary requests 1 to 3 (and its placement in a separate dependent claim) results in an unallowable intermediate generalization of an originally disclosed specific combination of features, thus adding subject-matter in contravention of Article 123(2) EPC.

3.5 Therefore the main- and auxiliary requests 1 to 3 cannot be allowed for reasons of extended subject-matter.

4. Amendments - auxiliary request 4

The original disclosure of auxiliary request 4 has not been contested. In particular, dependent claims 2 and 3 of auxiliary request 4 correspond to granted claims 5 and 6, which in turn are based on claims 4 and 5 as filed.

5. Sufficiency of disclosure - auxiliary request 4

5.1 The appellant opponent argues that the wording of claims 4 and 5 (cf. then granted claims 7 and 8) did not teach how the described circular and equilateral profiles, respectively, had to be arranged in the brush of claim 1 referred to, and which function it should serve.

However, as indicated in the Board's written communication the Board holds that, based on the embodiment of an elliptical profile in the application as filed, cf. page 3, last paragraph and figures 2 to 4, the skilled person is given a clear and complete teaching how to put a profile of the guide of the claimed vacuum cleaner brush into practice. The Board adds that, based on his common general knowledge about profiles and his understanding of the elliptical profile embodiment the skilled person recognizes immediately that this teaching applies irrespective of whether the profile is elliptical, circular, or rectangular. Consequently, the Board finds the disclosure sufficiently clear and complete to carry out the claimed invention at the date of filing.

The opponent appellant's argument as regards the reference of claims 4 and 5 to claim 1 rather constitutes a clarity objection not open to decision

for the Board, as also has been found by the opposition division under point 3.1 of its decision, cf. Enlarged Board of Appeal decision G 3/14.

Absent any further comment from the appellant-opponent, who at the oral proceedings stated it would rely on its written submissions, the Board sees no reason to change its opinion in this regard.

Insofar as the appellant-opponent also (belatedly) refers to first instance submissions in relation to then granted claim 5, now claim 2, the Board is of the solid conviction that the embodiment on specification paragraph [0008] in combination with figures 2 and 3 (see also point 3.3 above) is disclosed in sufficiently clear and complete detail, such that the skilled person would have no difficulty in carrying it out.

- 5.2 In conclusion the Board is satisfied that the requirements of Article 100(b) EPC are fulfilled.
- 6. Novelty - auxiliary request 4
 - 6.1 Interpretation of claim 1
 - 6.1.1 Having regard to the guide inside and along the claimed brush, the appellant opponent firstly argues that the features "lateral edges, which are bent in a convex or in a concave form or which are straight inclined" in their broadest meaning should be interpreted as somewhat inclined edges on both sides of the guide. These edges near the brush base serve as suction stream guides. Thus, two vertically extending side walls with slightly bevelled portions at their edges, the latter forming the suction inlet in close vicinity to the brush base, would already fall within the meaning of

claim 1. Secondly, if "bent or inclined lateral edges" were meant to be understood as referring to the walls themselves, which would then need to be bent or inclined, claim 1 did not stipulate that these walls had to be permanently bent or inclined. Even if the walls might be understood to be rigid or stiff, the claim wording did not exclude that they might be switchable to a bent or straight inclined position, e.g. as in case of a switchable floor nozzle.

6.1.2 However, construing the claim wording with a mind willing to understand, the (symmetrical) "lateral edges" of the guide, are considered to be at least parts or portions of the respective guide side walls by the Board. As argued by the appellant proprietor, claim 1 requires that these wall parts "are" bent or straight inclined. In other words, the lateral edges of the guide, i.e. the relevant wall portions, are invariably, that is, always bent or inclined. It is common ground that this implies material stiffness or rigidity. As further argued by the appellant proprietor, vertical side walls with bevelled edges along the brush base cannot be considered a technically meaningful interpretation of the claimed variant of "straight inclined lateral edges" of the guide. Rather, claim 1 requires that the opposed side wall parts are themselves (symmetrically) inclined at an angle, but not their geometrical shape in cross section.

This understanding of claim 1 is also consistently supported by the description, see in particular the symmetrical lateral edges of the guide in figures 2 and 4. In this particular embodiment, the entire side walls constitute the "lateral edges" of the guide, which are bent in a convex form (in cross sectional view). There is no indication whatsoever for the skilled person

throughout the specification, that the inherent material property of the guide's lateral edges could be other than always being bent (or straight inclined).

6.2 Document D8

6.2.1 The appellant opponent argues that the bevelled end portions of the vertically arranged side walls of the guide embodiment ("Blende 11") shown in figure 11 (b) and, during use of the vacuum cleaner brush, also the embodiments shown in figures 4 and 8, deprived claim 1 of novelty, cf. D8, paragraph bridging pages 8 and 9, the figures, and the corresponding description on pages 10 (figure 4: "Einwärtsbiegen"), and 11, 12 (figure 8: "schwenkbar gehalten"), and 13 (figure 11:"andere Blendenform Fig. 11(b)").

However, interpreting the wording of claim 1 as above, the subject-matter of claim 1 is seen to differ from arrangement shown in figure 11(b) of D8 in that the guide has lateral edges formed by side wall portions which are bent or straight inclined themselves As regards the embodiments of figures 4 and 8, the lateral edges are clearly bendable or pivotable, i.e. sometimes bent or inclined depending on the developed vacuum. Consequently, the subject-matter of claim 1 differs from the figure 4 and 8 embodiments in that the lateral edges of the guide are always bent or straight inclined, see again the interpretation of claim 1 above.

The argument of the appellant opponent that claim 1 may also encompass a switchable suction inlet port is unconvincing, since D8 nowhere addresses switchable floor nozzles. As also stated by the appellant proprietor, it may be inferred from D8, page 10, last

paragraph, or page 12, first paragraph, that figures 4 and 8 do not concern a switchable suction inlet indeed. Rather, the walls dynamically bend or pivot in reaction to the developed vacuum and return to their vertical, unbent and uninclined position when not in use. Consequently, these embodiments fail to disclose directly and unambiguously permanent, inherent sidewall curvature or inclination in the sense of claim 1 as understood by the Board.

6.2.2 The Board adds that it is further doubtful whether D8 discloses "symmetrical" lateral edges of the guide, as is also required by claim 1 of the patent. As argued by the appellant proprietor, the drawings of figures 4 and 8 show an idealised "snapshot" of the side walls only. D8 provides elastically bendable (figure 4) or spring biased pivotable (figure 8) side walls, which are designed to oscillate, i.e., to exhibit a random arrangement during use. In so doing, an air vortex is created, which enables dust and dirt to be removed even from recesses in the floor surface, cf. D8, page 10, last paragraph, and page 12, lines 4 to 8. The feature of symmetrical edges is therefore also not directly and unambiguously disclosed in D8.

6.2.3 Therefore, the Board considers the subject-matter of claim 1 of auxiliary request 4 to be novel over the disclosure of D8.

6.3 Document D2

Document D2, see figures, in any event does not disclose that the guide ("Gleitsohle 3") comprises an upper portion with a suction inlet port window being an opening with a width matching to that of the suction inlet port of the vacuum cleaner. Contrary to the

appellant opponent's view, such a matching width of an inlet port window of an upper portion of the guide ("Gleitsohle 3") cannot be directly and unambiguously derived from the cross sectional views shown in figures 1 and 2 of D2. This is irrespective of whether or not the wording of claim 1 also encompasses connecting web portions as shown, e.g., in figure 1 of D2, where a web portion connects the sidewalls ("Saugmundkanten 5, 5') of the guide ("Gleitsohle 3") and rests on a pivot axis.

Therefore, claim 1 of the auxiliary request 4 is also novel in the light of D2.

6.4 In conclusion the Board holds that claim 1 of auxiliary request 4 complies with the requirements of Article 54 EPC.

7. Inventive step - auxiliary request 4

7.1 With a submission of 18 July 2013, i.e. beyond the period foreseen by Article 12(1)(b) RPBA, and thus belatedly, the appellant opponent briefly addresses the issue inventive step of claim 1 for the first time in the appeal proceedings, but without any substantiated argument, cf. page 5, point 3. During the oral proceedings before the Board, the appellant opponent further argued that, starting from D8 or D2, no technically meaningful objective problem could be formulated. Thus, no functional advantages over these prior art disclosures were achieved and, therefore, claim 1 of the auxiliary request 4 did not involve an inventive step.

Without prejudice to the question of admission under Article 13(1) and (3) RPBA of the appellant opponent's

late filed submissions, the Board however takes a different view. Under point 3.4 of the impugned decision the opposition division found that, the objective problem underlying the distinguishing features of claim 1 over D8 of symmetrical lateral edges which are bent in convex or concave form or which are straight inclined is to achieve a uniform distribution of suction power across the brush head. However, the appellant opponent did not bring forward any argument to prove that the opposition division was wrong when formulating this technical problem, that is, as to why the problem cannot be deduced in the light of the (advantageous) technical effects achieved by the features of claim 1. Nor is it self-evident that this finding might be in error: symmetry and shape of the permanent edges must surely contribute to uniform suction power. Thus, as argued by the appellant proprietor, the Board accepts that differentiating features of claim 1 vis-à-vis D8 indeed provide technical advantages.

- 7.2 In this regard the Board notes that the burden of proof for lack of inventive step of claim 1 lies with the appellant opponent. Absent any substantiated argument as to why this finding might be wrong, the Board sees no reason to deviate from the first instance position on inventive step. It therefore confirms the opposition division's finding that claim 1 of auxiliary request 4 fulfills the requirements of Articles 52(1) and 56 EPC.
8. In conclusion the Board finds that the patent can be maintained in amended form according to the auxiliary request 4. Hence the appellant proprietor's auxiliary requests 5 to 19 need not be considered by the Board.

9. The Board is satisfied that the description and drawings need no particular adaptation in the light of the final allowable wording of the claims. This was also not disputed by the appellant opponent.

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 as amended in the following version:

Claims

1-5 of the auxiliary 4 as filed with letter dated 6 April 2017,

Description and **Figures** as in the patent specification.

The Registrar:

The Chairman:



N. Maslin

A. de Vries

Decision electronically authenticated