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**Datasheet for the decision  
of 28 July 2016**

**Case Number:** T 2032/12 - 3.3.10

**Application Number:** 05708077.2

**Publication Number:** 1844795

**IPC:** A61L9/03

**Language of the proceedings:** EN

**Title of invention:**

DIFFUSER FOR VOLATILE SUBSTANCES WITH MULTIPLE FRAGRANCES

**Patent Proprietor:**

Zobeles España, S.A.

**Opponent:**

S.C. Johnson & Son, Inc.,

**Headword:**

**Relevant legal provisions:**

EPC Art. 100(c)

**Keyword:**

Respondent restricted to subject-matter to which the Appellant  
had no objections

**Decisions cited:**

**Catchword:**



**Beschwerdekammern**  
**Boards of Appeal**  
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Case Number: T 2032/12 - 3.3.10

**D E C I S I O N**  
**of Technical Board of Appeal 3.3.10**  
**of 28 July 2016**

**Appellant:** S.C. Johnson & Son, Inc.,  
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**Decision under appeal:** **Decision of the Opposition Division of the  
European Patent Office posted on 18 July 2012  
rejecting the opposition filed against European  
patent No. 1844795 pursuant to Article 101(2)  
EPC.**

**Composition of the Board:**

**Chairman** P. Gryczka  
**Members:** J. Mercey  
F. Blumer

## **Summary of Facts and Submissions**

- I. The Appellant (Opponent) lodged an appeal against the decision of the Opposition Division rejecting the opposition against European patent No. 1 844 795.
- II. Notice of Opposition had been filed by the Appellant requesting revocation of the patent as granted in its entirety on the grounds of Articles 100(a) and (c) EPC.
- III. The Opposition Division held that the subject-matter of granted claim 1 did not extend beyond the content of the application as filed and that the subject-matter of independent claims 1 and 15 was novel, and involved an inventive step.
- IV. At the oral proceedings before the Board, held on 28 July 2016, the Respondent (Proprietor of the Patent) filed an auxiliary request, corresponding to auxiliary request 2 filed on 23 April 2012 before the Opposition Division, and withdrew its main request, namely the patent as granted.
- V. This auxiliary request comprises 18 claims, the two independent claims, namely claims 1 and 13, reading as follows:

"1. Vaporizer device of multi-fragrance volatile substances, comprising a plug (1) for its connection to the electric mains, wherein the device incorporates two or more liquid fragrances in which respective wicks (2) are immersed, the device having two or more resistance elements (3) located in correspondence with the wicks (2) which when actuated, by means of a manual pushbutton (4) or automatically in accordance with a pre-established program, diffuse the fragrances through

a casing (5) in a sequential or combined manner during predetermined intervals of time, characterized in that it incorporates a single container (6) which comprises:

- a body (7) provided with two or more independent receptacles (8) which hold the different fragrances,
- two or more wicks (2), each one housed in a receptacle (8),
- a lid (9) which seals the body (7) and renders the receptacles (8) independent, said lid having openings (10) in correspondence with the positions of the wicks (2) for the egress and vaporization of the fragrance by actuation of respective resistance elements (3) located in opposition to said openings (10),
- a printed circuit (20) mounted inside the casing (5), the printed circuit (20) incorporating the resistance elements (3) and a programmable controller which controls the sequence of actuation of the resistance elements (3),
- the single container (6) has a housing (25) which holds an encoded board (26) which contains vaporization parameters associated with the combination of fragrances of the container, and the printed circuit (20) has a detector (27) in correspondence with the encoded board (26) which reads said vaporization parameters and transmits them to the programmable controller to trigger the vaporization of fragrances in accordance with said parameters
- so that said single container (6) permits a combination of fragrances to be supplied in origin without the possibility for the user of substituting in said single container one of the fragrances or combining them with others."

"13. Container of multi-fragrance volatile substances characterized in that it comprises:

- a body (7) provided with two or more independent receptacles (8) which hold the different fragrances,
- two or more wicks (2), each one housed in a receptacle (8),
- a lid (9) which closes the body (7) and renders the receptacles (8) independent, said lid having openings (10) in correspondence with the positions of the wicks (2) for the egress and vaporization of the fragrance by actuation of respective resistance elements (3) located in opposition to said openings (10), and
- a seal (11) which covers the openings (10) in the non-operative condition of the vaporizer device,
- a housing (25) which holds an encoded board (26) which contains vaporization parameters associated with the combination of fragrances of the container (6)
- so that said single container (6) permits a combination of fragrances to be supplied in origin without the possibility for the user of substituting in said single container one of the fragrances or combining them with others."

VI. The Appellant indicated at the oral proceedings before the Board that it had no objections to the subject-matter of this auxiliary request.

VII. The Appellant requested that the decision under appeal be set aside.

The Respondent requested that the decision under appeal be set aside and the patent be maintained on the basis of its sole request, filed as auxiliary request during oral proceedings before the Board.

VIII. At the end of the oral proceedings, the decision of the Board was announced.

## **Reasons for the Decision**

1. The appeal is admissible.

2. *Amendments (Articles 100(c) EPC)*

2.1 During the oral proceedings before the Board, the Appellant no longer maintained its only objection under Article 100(c) EPC to the granted claims, namely that there was no basis in the application as filed for the vaporizer device of granted claim 1 without a seal (11), the subject-matter of claim 1 of the present sole request also not defining such a seal.

The Board holds that since original claim 1 defines the vaporizer as having a seal when it is in the non-operative situation, then a vaporizer in the operative situation, namely when evaporating fragrances, wherein the seal must be removed, is also implicitly disclosed, such that this ground for opposition pursuant to Article 100(c) EPC is not justified.

2.2 The Board also has no objections under Article 100(c) EPC to the subject-matter of any of the granted claims. Since the subject-matter of the claims of the sole request differs from that of the granted claims by virtue of incorporation of the subject-matter of granted dependent claims into the two granted independent claims only, said amendments do not result in subject-matter extending beyond the content of the application as filed.

2.3 Thus, independent claim 1 differs from granted claim 1 by virtue of the additional features:

- a printed circuit (20) mounted inside the casing (5), the printed circuit (20) incorporating the resistance elements (3) and a programmable controller which controls the sequence of actuation of the resistance elements (3); and
- the single container (6) has a housing (25) which holds an encoded board (26) which contains vaporization parameters associated with the combination of fragrances of the container, and the printed circuit (20) has a detector (27) in correspondence with the encoded board (26) which reads said vaporization parameters and transmits them to the programmable controller to trigger the vaporization of fragrances in accordance with said parameters,

basis for said features being found in granted claims 6 and 13, respectively.

2.4 Independent claim 13 differs from granted claim 15 by virtue of the additional feature:

a housing (25) which holds an encoded board (26) which contains vaporization parameters associated with the combination of fragrances of the container (6),

basis for said feature being found in granted claim 21.

2.5 Dependent claims 2 to 12 and 14 to 18 correspond to granted claims 2 to 5, 7 to 12, 14, and 16 to 20, respectively.



3. *Substantive matters*

The Appellant had no objections to the maintenance of the patent in amended form according to the sole request. In view of the prior art cited in these proceedings, the Board also sees no reason to raise its own objections under Article 114(1) EPC against the patentability of the claimed subject-matter, such that the patent may be maintained in this amended form.

**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 the sole request, filed as auxiliary request during oral proceedings before the Board, and a description yet to be adapted.

The Registrar:

The Chairman:



C. Rodríguez Rodríguez

P. Gryczka

Decision electronically authenticated