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**Datasheet for the decision
of 18 May 2017**

Case Number: T 1840/14 - 3.2.08

Application Number: 05724686.0

Publication Number: 1722943

IPC: B23D35/00, B29D30/46,
B26B21/22, B26B21/40, B26B21/42

Language of the proceedings: EN

Title of invention:
SHAVING RAZORS AND OTHER HAIR CUTTING ASSEMBLIES

Patent Proprietor:
The Gillette Company

Opponent:
Edgewell Personal Care Brands, LLC

Headword:

Relevant legal provisions:
EPC Art. 123(2), 54, 56, 100(a), 100(c)
RPBA Art. 13

Keyword:

Amendments

Novelty

Inventive step

Decisions cited:

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

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Case Number: T 1840/14 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 18 May 2017

Appellant:
(Patent Proprietor)

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Decision under appeal:

Interlocutory decision of the Opposition
Division of the European Patent Office posted on
27 June 2014 concerning maintenance of the
European Patent No. 1722943 in amended form.

Composition of the Board:

Chairman C. Herberhold
Members: M. Alvazzi Delfrate
P. Schmitz

Summary of Facts and Submissions

- I. By its decision posted on 27 June 2014 the opposition division found that European patent No. 1 722 943, in amended form according to auxiliary request 2 then on file, and the invention to which it related met the requirements of the EPC.
- II. The appellant (patent proprietor) lodged an appeal against that decision in the prescribed form and within the prescribed time limit.
- III. Oral proceedings before the board of appeal were held on 18 May 2017. At the end of the oral proceedings the requests were as follows:

The appellant requested that the decision under appeal be set aside and that the patent be maintained on the basis of the set of claims of the main request filed with the statement of grounds of appeal, the description as granted and the figures as granted. As an auxiliary measure it requested that the figures as granted be replaced by the figures as originally filed. As a further auxiliary measure it requested that the patent be maintained on the basis of one of auxiliary requests 1 to 3 filed with the statement of grounds of appeal, or auxiliary requests 4 to 7 filed with letter of 7 April 2017.

The respondent (opponent) requested that the appeal be dismissed.

- IV. Claim 1 of the main request reads as follows:

"A shaving razor blade unit (16) comprising:

a housing (20) having a primary guard (22) at a front of said housing and a primary cap (24) at an upper surface at a back of said housing, one or more primary shaving blades (22) between said primary guard and said primary cap, a rear wall (506) at the back of said housing;

a trimming blade (504) mounted at the back of said housing having a trimming cutting edge (536);
characterised by

a trimming cap provided by said rear wall and its lower terminating surface at said back of said housing; and

a trimming comb guard (602) at said back of said housing including spaced guard segments, wherein the distance between the primary guard and primary cap, measured in a plane tangential thereto, is greater than the distance between the trimming guard and the trimming cap, measured in a plane tangential thereto."

The auxiliary requests do not play a part in this decision.

V. The following documents played a role for the present decision:

D5: US -B- 6,276,061;
D12: WO -A- 2005/011930;
D13: US -A- 1,272,816; and
D16: US -A- 4,901,437.

VI. The arguments of the appellant can be summarised as follows:

Article 123(2) EPC

All the features of claim 1 were disclosed in the application as originally filed. In particular, a trimming cap provided by the rear wall and its lower terminating surface at the back of the housing was disclosed on page 4, lines 26-28. It was implicit in the claim that the trimming blade was exposed in the gap between the cap and the guard, an arrangement well known to the person skilled in the art. Thus, these features, which were explicitly disclosed on page 4, were implicitly present also in the claim. It was true that claim 1 did not mention the skin protection projections and the fact that the blade carrier was made of metal with the trimming blade welded onto it, which were also disclosed on page 4. However, these features had no link with the fact that the rear wall formed a cap for the trimming blade. Hence, their omission did not contravene the requirements of Article 123(2) EPC.

Nor were these requirements contravened by the replacement of the original drawings with formal drawings, since this did not add any information changing the subject-matter of the patent.

Novelty

D12 was relevant solely to the issue of novelty. This document did not disclose a comb guard with spaced guard segments. Ribs 54 were not part of the guard because they extended between cap and guard and covered the blade. Hence, the guard was not a comb guard. In any event, the ribs could not be regarded as guard segments. Nor were the portions of the guard between the ribs to be considered as spaced guard segments

because they were not spaced segments but portions of a single surface. Thus, the subject-matter of claim 1 was novel.

Inventive step

D5 represented the closest prior art. However, D5 did not disclose that the shaving razor blade unit comprised a trimming cap and a trimming guard in the claimed geometry, let alone a comb trimming guard. In any event the person skilled in the art had no reason to provide the unit of D5 with a trimming comb guard. This type of comb guard had been used in the past, as shown by D13, but for a completely different function, namely for a first rough cut of a wiry beard. It was not obvious to use this type of guard to facilitate the removal of debris for a trimming blade, as in the patent in suit. Thus, it was not obvious to arrive at the unit of claim 1 starting from D5.

As to the further inventive-step attack starting from D16 it had been submitted too late in the proceedings and should be disregarded.

In any event the unit of D16 was substantially different from the claimed one. The curved blade of D16 was not used for trimming but for shaving concave skin surfaces on different body parts, such as armpits. The claimed unit differed from the razor of D16 not only by the provision of a comb guard but also by a number of other features, such as the distance between the caps and the guards. The prior art did not render it obvious to provide the razor unit of D16 with these distinguishing features.

Thus, the subject-matter of claim 1 involved an inventive step.

VII. The arguments of the respondent can be summarised as follows:

Article 123(2) EPC

According to claim 1 the razor blade unit had a trimming cap provided by the rear wall and its lower terminating surface at the back of said housing. This feature was disclosed on page 4, lines 26-28, of the application as originally filed, but only in combination with other features which were omitted in claim 1. The passage on page 4 further stated that (a) the cap defined the exposure for the trimming blade, (b) whose cutting edge was exposed in the gap between the trimming cap and the trimming guard. Moreover, the unit described on page 4 also comprised (c) skin protection projections and (d) a blade carrier made of metal with the trimming blade welded onto it. There was no disclosure of a trimming cap and trimming guard without these features. Hence, their omission in claim 1 was an unallowable intermediate generalisation that infringed Article 123(2) EPC.

Moreover, during examination, the originally filed drawings had been replaced by formal drawings. Since in the original drawings it was impossible to see where exactly within the blackened areas the leading lines for reference numerals 30 and 32 in Figure 1 and 518, 20, 520, 32, 512, 542 and 544 in Figure 3 ended, the formal drawings provided additional information, thus contravening Article 123(2) EPC.

Novelty

D12 was prior art under Article 54(3) EPC and disclosed all the features of claim 1. In particular, the razor unit depicted in Figures 2, 5 and 6 exhibited ribs 54 which were connected to the trimming guard and acted as skin flow control elements, thus providing a combing action. Hence, the trimming guard could be considered as a trimming comb guard, with the portions of the guard forming spaced guard elements separated by the ribs. Alternatively, said guard elements could also be seen in the ribs themselves. Therefore, the subject-matter of claim 1 lacked novelty in view of D12.

Inventive step

If novelty of the main request were acknowledged, the case should be remitted to the opposition division, because no decision had been taken by the opposition division on inventive step of the patent as granted.

In any event, the subject-matter of claim 1 lacked inventive step when starting from the closest prior art D5. It was clear to the person skilled in the art that the razor of D5 comprised also a trimming guard and a trimming cap. Hence, the sole distinguishing feature was that the trimming guard was a comb guard with spaced guard segments. The problem solved starting from D5 could be seen as being to provide a shaving effect like that of the prior-art razors. Since comb guards were well known in the art, for instance from D13, it was obvious to solve this problem according to claim 1.

In the alternative, inventive step could be assessed also starting from D16. This line of attack was to be

taken into account since it had already been considered by the opposition division in its decision.

Also in this case the only distinguishing feature of the claimed razor unit was the provision of a trimming guard, i.e. the guard corresponding to the curved blade of D16, in form of a comb guard. The other features were to be seen in the drawings of D16. Also in this case, the provision of a trimming guard in the form of a comb guard was rendered obvious by D13.

Therefore, the subject-matter of claim 1 did not involve an inventive step.

Reasons for the Decision

1. Main request - Article 123(2) EPC

1.1 Claim 1

All the features of claim 1 are disclosed in the application as originally filed. In particular, the feature that the razor blade unit has a trimming cap provided by the rear wall and its lower terminating surface at the back of said housing is disclosed on page 4, lines 26-28.

It is true that said passage further states that (a) the cap defines the exposure for the trimming blade, (b) whose cutting edge is exposed in the gap between the trimming cap and the trimming guard. However, in every razor the edge of the blade has to be exposed, in order to be able to cut. When, as is the case with the trimming blade of claim 1, the blade is provided with a

guard and a cap (which by definition precede and follow the blade during shaving), said guard and cap form between them the gap where the edge of the blade is exposed. Thus, features (a) and (b) are implicit in claim 1.

By contrast, the features pertaining to (c) the skin protection projections and (d) the blade carrier being made of metal with the trimming blade welded on it, which are also disclosed on page 4, are neither explicitly recited nor implicit in claim 1. However, these features have no structural or functional link with the fact that the rear wall forms a cap for the trimming blade. Hence, claim 1 has not been amended in a way representing an unallowable intermediate generalisation. Therefore, it complies with the requirements of Article 123(2) EPC.

1.2 Drawings

During examination of the patent application the originally filed drawings were replaced by formal drawings.

It is true that in the original drawings the leading lines for reference numerals 30 and 32 in Figure 1 and 518, 20, 520, 32, 512, 542 and 544 in Figure 3 end in the blackened areas. However, it is still possible, also knowing from the original description and the further originally filed drawings the elements to which the numerals refer, to establish to which parts said lines should lead. The formal drawings thus do not add any additional information which could lead to an extension of subject-matter of the patent beyond the content of the application as originally filed.

Thus, also in this respect there has been no violation of the requirements of Article 123(2) EPC.

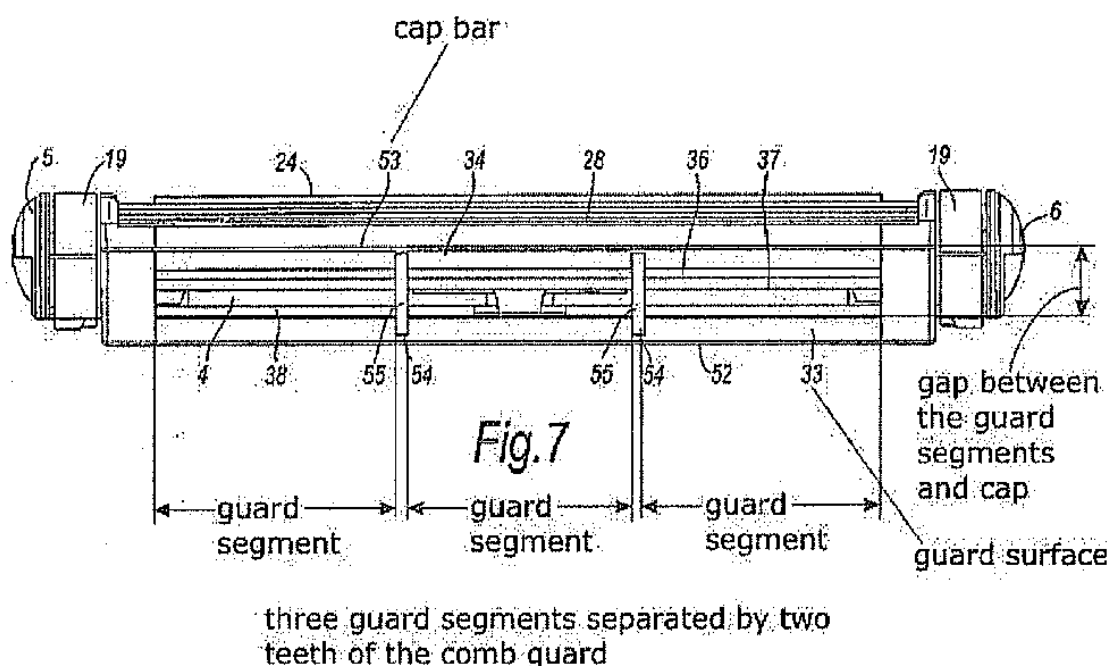
2. Novelty

D12 is prior art under Article 54(3) and (4) EPC 1973 relevant to the issue of novelty. It is undisputed that D12 discloses, in particular in Figures 2, 5 and 6, a shaving razor blade unit comprising a housing (main frame 2) having a primary guard (first guard surface 26) at a front of said housing and a primary cap (first cap surface 29) at an upper surface at a back of said housing, primary shaving blades (blades 7, 8, 9) between said primary guard and said primary cap, a rear wall (cap bar 53) at the back of said housing. The unit further comprises a trimming blade (auxiliary blade 36) mounted at the back of said housing having a trimming cutting edge (37), a trimming cap (second cap surface 34) provided by said rear wall and its lower terminating surface at said back of said housing. The drawings clearly show that the distance between the primary guard and primary cap, measured in a plane tangential thereto, is greater than the distance between the trimming guard (second guard surface 33) and the trimming cap (34), measured in a plane tangential thereto (see also page 9, lines 12-21).

The unit shown in the drawings also exhibits two ribs 54 which extend over the blade 36 and blade edge 37 between the second guard and cap surfaces 33, 34.

The respondent argued that, in view of the skin flow control action of ribs 54 (page 11, lines 22-27), the guard bar 52 was to be regarded as a trimming comb guard. Furthermore, the portions of the guard between the ribs were to be regarded as spaced guard segments

(see hereafter the reproduction from the respondent's letter of 18 April 2017 of Figure 7 of D12 with additional comments). Alternatively, such spaced guard segments could be seen in the ribs themselves.



The Board does not agree. Even if ribs were considered as projections of the guard bar, which could thus be seen as a comb guard, said ribs cannot be regarded as guard segments, because they do not precede the blade, as is the function of a guard, but rather cover it.

As to the portions of the guard bar indicated by the respondent as "guard segments" in the reproduction of Figure 7, they are portions of a single continuous surface from which ribs 54 protrude, so that they cannot be regarded as "spaced segments" of the guard.

Therefore, the subject-matter of claim 1 is novel.

3. Inventive step

3.1 Request to remit the case to the opposition division

The respondent argued that, if novelty of the main request were acknowledged, the case should be remitted to the opposition division. However, not only did the opposition division assess inventive step when examining auxiliary request 2 then on file, but its findings were based on features that are also present in the current main request. Hence, the Board did not see any reason justifying such a remittal.

3.2 Inventive step from D5

It is common ground that D5 represents a reasonable starting point for the assessment of inventive step of claim 1. Figure 1 of D5 shows a shaving razor blade unit comprising a housing having a primary guard (6) at a front of said housing and a primary cap (5) at an upper surface at a back of said housing, primary shaving blades (3) between said primary guard and said primary cap, a rear wall at the back of said housing and a trimming blade (4) mounted at the back of said housing having a trimming cutting edge. Figure 3a, albeit schematic, shows that, during trimming, portions of the unit preceding and following the trimming blade are also in contact with the skin. Hence, the person skilled in the art understands that the unit of D5 is also provided with a trimming cap and a trimming guard, whose distance, given the proportions in the drawings and the trimming function of the trimming blade, is smaller than the distance between primary cap and primary guard. However, D5 does not disclose that the

trimming guard is a comb guard including spaced guard segments.

It is undisputed that the person skilled in the art could have provided the trimming blade of D5 with a comb guard as known in the art, for instance from D13. However, the question to be considered to assess inventive step is whether he would indeed have done so.

Starting from D5, the Board agrees with the problem formulation of the appellant, i.e. to facilitate the removal of debris during trimming. This problem arises due to the reduced distance between trimming cap and guard and is solved by means of the spaced guard segments, thanks to the fact that the spacing between the segments eases the removal of debris (see paragraph [0019] of the patent in suit). By contrast, the problem formulated by the respondent, namely providing a shaving effect as in some prior-art razors, is less convincing because it already points to the solution, i.e. using the prior-art arrangement of the comb guard.

In any event, D13 does not render it obvious to use a trimming comb guard in the razor of D5. D13 uses the comb guard in combination with a blade for the first cut of a stiff wiry beard, a second cut being performed by another blade without comb guard (page 2, lines 52-80). Hence, without the knowledge of the present invention, the person skilled in the art would have had no reason to use the comb guard for the trimming blade of D5, which is to be designed for the proper trimming of sideburns and similar operations (column 1, lines 21-27).

Therefore, the subject-matter of claim 1 involves an inventive step starting from D5.

3.3 Inventive step starting from D16

3.3.1 The appellant argued that the further inventive-step attack submitted by the respondent starting from D16 should be disregarded.

It is true that this attack was submitted at an extremely late stage in appeal (towards the end of the oral proceedings). However, it was already considered by the opposition division in its decision and also addressed by the appellant itself in the statement of grounds. Hence, the Board considered that, despite the lateness of this submission, the parties were in position to deal with this objection and decided to admit the further attack into the proceedings (Article 13 RPBA).

3.3.2 D16 discloses a shaving razor blade unit comprising a housing having a first guard at a front of said housing (on the left in Figure 5) and a first cap at an upper surface at a back of said housing, and two straight shaving blades (30, 32) between said first guard and said first cap. The razor unit further comprises a curved shaving blade (28) mounted at the back of said housing between a second cap and a second guard.

However, contrary to the respondent's opinion, the presently claimed razor unit differs from that of D16 not only by the provision of a comb guard but also by the distance between the primary guard and primary cap, measured in a plane tangential thereto, being greater than the distance between the trimming guard and the trimming cap, measured in a plane tangential thereto. The latter feature is neither directly and unambiguously derivable from the drawings, which are of

a purely schematic nature and show similar distances between the caps and the guards, nor disclosed in the description.

Nor was it obvious to arrange the guard and caps in D16 with distances as in claim 1. The curved and the straight blades of D16 are intended for shaving different body surfaces, such as armpits (the curved surface) and face or legs (the straight blades). Thus, they are not to be used as primary and trimming blades as in the patent in suit and there would be no obvious reason to choose the distances between caps and guards as in the patent.

Furthermore there was no reason to provide the curved blade of D16, intended for shaving concave surfaces such as armpits, with the comb guard of the D13 blade, intended for a first shaving cut of a wiry beard.

3.4 Therefore, the subject-matter of claim 1 involves an inventive step (Article 56 EPC).

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 following documents:

- claims 1 to 7 of the main request filed with the statement of grounds of appeal

- description as granted

- figures as granted.

The Registrar:

The Chairman:



N. Schneider

C. Herberhold

Decision electronically authenticated