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**Datasheet for the decision
of 9 November 2018**

Case Number: T 1330/15 - 3.2.04

Application Number: 10002985.9

Publication Number: 2201881

IPC: A47L9/24, A47L9/16, A47L9/10,
A47L9/28

Language of the proceedings: EN

Title of invention:
Hand held vacuum cleaner

Patent Proprietor:
Aktiebolaget Electrolux

Opponent:
BSH Hausgeräte GmbH

Headword:

Relevant legal provisions:
EPC Art. 76(1), 56
RPBA Art. 13(3)

Keyword:
Late-filed request - admitted (yes)
Inventive step - (yes)

Decisions cited:

T 0457/02

Catchword:



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Case Number: T 1330/15 - 3.2.04

D E C I S I O N
of Technical Board of Appeal 3.2.04
of 9 November 2018

Appellant:
(Opponent)

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81739 München (DE)

Respondent:
(Patent Proprietor)

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Representative:

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Decision under appeal:

**Decision of the Opposition Division of the
European Patent Office posted on 27 April 2015
rejecting the opposition filed against European
patent No. 2201881 pursuant to Article 101(2)
EPC.**

Composition of the Board:

Chairman A. de Vries
Members: J. Wright
C. Heath

Summary of Facts and Submissions

- I. The appellant-opponent lodged an appeal, received 29 June 2015, against the decision of the opposition division posted on 27 April 2015 rejecting the opposition filed against European patent No. 2201881 pursuant to Article 101(2) EPC. The appeal fee was paid on the same date. The statement setting out the grounds of appeal was filed on 7 September 2015.
- II. Opposition was filed against the patent as a whole and based *inter alia* on Article 100(a) with Article 56 EPC (lack of inventive step) and 100(c), added subject matter vis-à-vis an earlier application as filed. The opposition division held that the patent as granted met all requirements of the EPC. *Inter alia*, they found the subject matter of the patent did not extend beyond the content of its earlier parent application D0, WO2004/069021, and that the subject matter of claim 1 involved an inventive step having regard to the following documents, amongst others:
- E1 : EP0788757 A
E2 : EP1070478 A
E3 : EP1279362 A
E8 : US6108864 A
D5 : DE7508476 U
D9 : JP 10-127541 A
D11: US 2002/148070 A
D12: US2002/121000 A
- III. Oral proceeding before the Board were duly held on 9 November 2018.
- IV. The appellant-opponent requests that the decision under appeal be set aside and that the patent be revoked.

The respondent-proprietor requests that the decision under appeal be set aside and that the patent be maintained on the basis of the claims of the main request as filed during oral proceedings before the Board, in the alternative that the patent be maintained in amended form in accordance with claims according to one of auxiliary requests I to IV, all filed with the reply to the appeal on 19 January 2016.

- V. Claim 1 according to the main request (which is as granted) is worded as follows:

"Shaft part (10) arranged to secure a hand held vacuum cleaner (11) having a housing (20) comprising a motor-fan unit (22), a dust container (31), and an inlet channel (27), said shaft part (10) comprising a handle (16), a floor nozzle (12), and a tube passage (15) connecting the floor nozzle (12) with the inlet channel (27) of the hand held vacuum cleaner (11) characterised by that the shaft part (10) comprises one or several batteries (18)."

- VI. The appellant-opponent argued as follows:

Claims 7 and 8 of the patent as granted added subject matter vis-à-vis the parent application D0. The main request deletes these claims but should not be admitted because it is very late filed.

The subject matter of claim 1 lacks inventive step starting from E3 on its own because E3 discloses all features of claim 1, when considering the broad meaning of the word "comprises". Furthermore, starting from E3, seen with or without E2 and combined with the teachings of any of D11, D5, D12 and E1 or with D5, D12 and E1

when combined with D11, claim 1 lacks inventive step. Likewise, the same arguments apply when starting from E8 or E9 and combining their teaching with the above combination documents.

VII. The respondent-proprietor argued as follows:

The main request overcomes the added subject matter objection, since granted claims 7 and 8 are deleted, so it should be admitted into the proceedings even though it is late filed.

The subject matter of claim 1 involves an inventive step. Starting from E3, E3/E2, E8 or E9, the skilled person would not combine any of these starting documents with the teachings of D11 or with D5, D12 and E1, with or without further combination with D11, since none of these combination documents disclose shafts for attaching hand held vacuum cleaners, thus none disclose a solution to the problem of extending the running time of a hand held vacuum cleaner when attached to a shaft.

Reasons for the Decision

1. The appeal is admissible.
2. Background

The patent relates to an elongated shaft part 10 in which a hand held vacuum cleaner 11 can be removably arranged. When so arranged, the hand-held vacuum cleaner can be used as a stick type cleaner (see published patent specification, paragraph [0007] and [0008] with figures 1 and 3). Such an arrangement is

known as such from E3 (see published patent specification, paragraph [0005]).

According to the invention (see specification paragraph [0017] and claim 1) additional energy is supplied by means of batteries in the shaft part. In this way the cleaner can be used as a stick cleaner for cleaning larger surfaces.

3. Admissibility of the main request

3.1 The main request was filed at the oral proceedings before the Board. 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.

3.2 In the present case, in the grounds of appeal (see page 13, foot note and referenced notice of opposition point 2.2.7), the appellant-opponent disputes that there is a basis for granted claims 7 and 8 in the parent application D0. This was the appellant-opponent's sole objection against the impugned decision's positive finding (cf. reasons 11 and 12) on added subject matter, Article 100(c) EPC.

The present main request deletes granted claims 7 and 8, renumbers granted claim 9 as claim 7 and changes its back-reference accordingly.

It is immediately clear that the deletion of the objectionable claims removes the issue of added subject-matter thus narrowing the scope of discussion without raising any new issues.

As the number of contentious issues is reduced it is thus also reasonable to expect the appellant-opponent to be able to deal with this request without adjournment. Therefore, the Board decided to admit the amendments based on the main request, pursuant to Articles 13(1) and 13(3) RPBA with Article 114 (2) EPC.

4. Main request, claim 1, inventive step

4.1 Interpretation of the claim

4.1.1 Claim 1 is directed to a "[s]haft part arranged to secure a hand held vacuum cleaner...characterised in that the shaft part comprises one or several batteries".

According to the first claim feature, at most, the hand held vacuum cleaner can be secured to the shaft, but when so secured it does not become a part of the shaft. Therefore, the shaft as claimed does not include the hand held vacuum cleaner or its component parts.

4.1.2 In accordance with well established jurisprudence (see CLBA, II.A.6.2) in drafting patent claims, legal certainty normally requires the word "comprising" to be interpreted to mean "include" or "comprehend" (see for example T 457/02, reasons 4.3). The Board sees no

reason to depart from this interpretation of comprising and thus its conjugate "comprises" in the characterising feature of claim 1. Thus, here "comprises" means "include/comprehend", rather than being attributed the different broader meaning (with which the Board is not familiar) of associated with or positioned close to as the appellant-opponent has suggested it should. Consequently, the characterising feature of claim 1 "the shaft part comprises one or several batteries" means that the shaft part (which as already explained is distinct from the hand held vacuum cleaner) includes one or several batteries, not that the shaft part is associated with or near to one or several batteries so might be said to "comprise" any batteries located in the hand-held vacuum cleaner, as the appellant-opponent has reasoned.

4.2 The impugned decision considered lack of inventive step starting from E3 as the closest prior art. In the Board's view, this document is a good starting point for examining inventive step because it appears to disclose all the features of the preamble of claim 1 as granted.

4.3 In particular, E3 discloses (see abstract and figures 1 and 10) a shaft part (caddy 15 with parts 51, 59 and 19) arranged to secure a hand held vacuum cleaner 1. E3 also discloses (see paragraph [0022] with figure 1) that the hand-held vacuum cleaner has a housing 5 comprising a motor-fan unit (column 6, lines 55 to 58), a dust container (column 6, lines 54 to 55), and an inlet channel 10 (column 6, lines 53 to 54).

Furthermore, the shaft part 51 has a handle (figure 10, handle portion 59), a floor nozzle 19, and a tube passage 112 connecting the floor nozzle 19 with the

inlet 10 - whether a channel or not) of the hand held vacuum cleaner (see column 8, lines 25 to 35 and figures 1 and 2c).

The shaft part has no power source (see paragraph [0025]). Therefore, the shaft does not comprise (in the sense of "include" - see above) one or several batteries. Thus, in the Board's view, the subject matter of claim 1 differs from E3 by this feature.

- 4.4 In the light of the above, the appellant-opponent's argument that E3 discloses all the features of claim 1, rendering it not novel and therefore not inventive, is moot.
- 4.5 According to well established jurisprudence (see CLBA I.D. 4.3.1, and 4.3.2), the boards take the approach that the technical problem addressed by the invention must be formulated so that it does not contain pointers to the solution or partially anticipate the solution and should normally start from the problem described in the patent.
- 4.5.1 In the present case, the patent (see published patent specification, paragraph [0017]) explains that, with the hand-held vacuum cleaner mounted to the shaft part for use as a normal stick cleaner, the technical effect of the differing feature (shaft comprises a battery/batteries) is to supply "additional energy" [to the fan and the brush roll in the floor nozzle], so that "larger surfaces" can be cleaned. In other words the batteries in the shaft part extend the running time of the vacuum cleaner when it is mounted to the shaft with a floor nozzle. Therefore, in the Board's opinion, consistent with the above approach, the objective technical problem can be formulated as: how to extend

the running time of the hand held vacuum cleaner of E3 when it is mounted to a shaft with a floor nozzle for use as a stick cleaner (cf. grounds of appeal, page 14, second paragraph).

4.5.2 In their grounds of appeal, the appellant-opponent has alternatively proposed (cf. grounds of appeal, page 17, penultimate paragraph and page 19, first paragraph) a pair of partial problems based on the same differing feature, namely providing installation space for an additional energy source and providing the additional energy source. In the Board's view, by explicitly mentioning an additional energy source and the need to place it somewhere, these partial problems point to the claimed solution of providing one or several [additional] batteries and putting them in the shaft. Therefore, they are unsuitably formulated.

4.6 The Board holds that, starting from E3, none of the combination documents D11, E2, E5, D12 and E1 proposed by the appellant-opponent provide a solution to the objective technical problem developed above (extending running time), nor do they disclose the differing technical features. Therefore, faced with this problem, the skilled person would not, as a matter of obviousness, combine E3 with any of these teachings. Furthermore, since none of the documents disclose the differing feature (a shaft part, to which a hand held vacuum cleaner can be attached, comprising a battery/batteries), their combined teachings would not lead to the subject matter of the claim.

4.6.1 D11 discloses (see abstract, paragraph [0079] and figure 1) a stick type vacuum cleaner having a floor nozzle 4 with a brush 3. A tubular element 27, referred to as a "hand-holder", extends from the floor nozzle 4.

A shaft 5 with handle 28 fits into the hand-holder 27.

The vacuum cleaner (see paragraph [0092] with figures 3, 10 and 11 and paragraphs [0154] and [0199] with figures 19, 23, 24, 32 and 33) has batteries 49, 143 which can be located in the foot nozzle 4 and/or in the "hand-holder" 27. D11 is silent as to any advantage of having the batteries so located. Rather, D11 merely says that this provides a "cordless/easy-to-use" vacuum cleaner. Therefore, tasked with the objective technical problem (extending running time), the skilled person finds no solution in D11, so they would not combine the teachings of E3 and D11, as a matter of obviousness.

4.6.2 Even if the skilled person were to combine the teachings of E3 and D11 (the Board considers they would not, see above), the combination would not lead to the characterising feature of claim 1.

4.6.3 The appellant-opponent has argued that the vacuum cleaner of D11 can be used in a hand-held mode by manipulating the short "hand-holder" 27 without fitting the handle 5. The Board holds this not to be so, since the vacuum cleaner is for cleaning floors, with its carpet sweeping brush (cf. paragraph [0099]) and floor crawling nozzle (cf. claims 8, 13, 14) and the stumpy "hand-holder" appears unsuitable for manipulating the cleaner. That said, whether the batteries 49 are located in the foot nozzle 4, the "hand-holder" 27 or both, they are not located in the detachable shaft of the handle 5 (cf. figures 11, 24 and 32). Therefore, there is no disclosure of a battery powered vacuum cleaner (hand-held or not) which can be secured to a further [shaft] part comprising its own [additional] batteries to extend running time. Thus, the combined

teachings of E3 and D11 would not result in a shaft part as claimed comprising a battery/batteries.

4.6.4 From the above, the appellant-opponent's arguments have not convinced the Board that the subject matter of claim 1 lacks inventive step starting from E3 in the light of D11.

4.7 By the same token, the Board is not convinced by the appellant-opponent's arguments that E3 (whether or not considered with E2) combined with D12, D5 or E1 take away inventive step of claim 1, as these combination documents appear not to be more relevant than D11.

4.7.1 E2 (see abstract and figure 1) merely discloses a hand-held vacuum cleaner suitable for mounting on the shaft part of E3 (cf. E3, paragraph [0023]). It therefore offers no information on the shaft, let alone how a shaft could be modified to solve the objective technical problem (extending run-time).

4.7.2 D12 (see abstract and figure A), D5 (see claim 1 and figure) and E1 (see abstract and figure 1) all disclose stand-alone stick-type vacuum cleaners, having batteries in a shaft part (see D12, figure A batteries 1, D5, figure, battery 2 and E1, figure 1, batteries 17). None discloses a shaft for securing a hand-held vacuum cleaner, let alone indicates how such a vacuum cleaner could be provided with additional run-time extending power. Therefore, starting from E3 (with or without the disclosure of E2) and combining with any of D12, D5 and E1 (whether or not further combined with D11) would not take away inventive step of claim 1 as the appellant-opponent has argued, for the same reasons as apply to the combination of E3 with D11.

- 4.8 The Board is also of the opinion that documents E8 and D9 are not more relevant than E3 as starting documents for assessing inventive step.
- 4.8.1 E8 (see column 3, lines 59 to 65 with figures 1 to 3) discloses a portable vacuum cleaner that can be converted to a stick type vacuum cleaner by adding a handle 20 and floor nozzle 18. However, whether used as a portable or stick type vacuum cleaner, the batteries 104 are located in the portable vacuum cleaner (not the shaft part). Thus, as with E3, E8 discloses a shaft part for securing a portable vacuum cleaner that does not have its own power source (batteries).
- 4.8.2 As far as D9 can be understood, like E3 it also discloses a hand held vacuum cleaner that has a battery (see figures 1 and 4, battery 12) and that can be mounted on a shaft with a handle and a floor nozzle (see figure 7), for use as a stick-type vacuum cleaner.
- 4.8.3 Therefore neither E8 nor D9 in combination with D11, D12, D5 or E1 or with D12, D5 or E1 when combined with D11, would, as a matter of obviousness, lead the skilled person to the subject matter of claim 1 for the same reasons as apply when starting from document E3 vis-à-vis the same combination documents.
- 4.9 For the above reasons, the arguments of the appellant-opponent have not convinced the Board that the impugned decision (see reasons 31) was wrong in finding that the subject matter of claim 1 (as granted) involved an inventive step, Article 56 EPC.
5. According to established jurisprudence (see CLBA, IV.E. 2.6.4, and the decisions cited therein), a generic reference in the grounds of appeal (see appeal grounds,

page 22, first paragraph) to submissions made in opposition, is not sufficient to set out the appellant-opponent's grounds of appeal as required under Article 108, third sentence or fulfil the requirements of Article 12(2) RPBA. Effectively, the appellant-opponent only challenges the opposition division's positive finding regarding claim 1 (as granted) in respect of inventive step. As already explained, the Board finds this challenge not to be convincing.

- 5.1 The main request successfully addresses the further challenge to the decision (added subject matter of granted claims 7 and 8) by deleting them. No further objections have been raised or are apparent.

6. Furthermore, noting that the description has been brought into conformity with the amended claim set of the main request, the Board finds that the patent and the invention to which it relates now meets the requirements of the EPC. Therefore the Board concludes that the patent can be maintained in this amended form, in accordance with Article 101(3) a EPC.

Therefore, the Board need not consider the respondent-proprietor's auxiliary requests.

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 on the following basis:

Claims:

1 - 7 of the Main Request as filed during oral proceedings before the Board;

Description:

page 2 as filed during oral proceedings before the Board,
pages 3 and 4 of the published patent specification;

Drawings:

Figures 1 - 7 of the published patent specification.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated