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Datasheet for the decision of 5 May 2020

Case Number: T 0695/16 - 3.2.07

Application Number: 12164862.0

Publication Number: 2607267

IPC: B65D83/22

Language of the proceedings: EN

Title of invention:
Sprayhead for a spray device

Applicants:
Unilever PLC, a company registered in England and Wales under company no. 41424
Unilever N.V.

Headword:

Relevant legal provisions:
EPC Art. 84, 111(1), 113(1), 116(1)
EPC R. 42(1)(e)
RPBA 2020 Art. 11, 12(2), 12(8)

Keyword:
Claims - support in the description (yes)
Appeal decision - remittal to the department of first instance (yes)

Decisions cited:

Catchword:

Europäisches Patentamt
European Patent Office
Office européen des brevets

Beschwerdekammern

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Case Number: T 0695/16 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 5 May 2020

Appellant: (Applicant 1)	Unilever PLC, a company registered in England and Wales under company no. 41424 Unilever House 100 Victoria Embankment London EC4Y 0DY (GB)
Appellant: (Applicant 2)	Unilever N.V. Weena 455 3013 AL Rotterdam (NL)
Representative:	Whaley, Christopher Unilever PLC Unilever Patent Group Colworth House Sharnbrook Bedford, Bedfordshire MK44 1LQ (GB)
Decision under appeal:	**Decision of the Examining Division of the European Patent Office posted on 26 October 2015 refusing European patent application No. 12164862.0 pursuant to Article 97(2) EPC.**

Composition of the Board:

Chairwoman	A. Beckman
Members:	K. Poalas
	R. Cramer

Summary of Facts and Submissions

I. The applicants (appellants) lodged in due time and in due form an appeal against the decision of the examining division refusing European patent application 12 164 862.0.

II. In its decision, the examining division held that claim 1 filed on 17 December 2013 as the applicants' main request and also claim 1 filed on 4 September 2015 as the applicants' auxiliary request do not meet the requirements of Article 84 EPC and of Rule 42(1)(e) EPC.

III. In their statement setting out the grounds of appeal the applicants requested

that the decision under appeal be set aside and that the case be remitted to the examining division, preferably for granting a patent on the basis of the set of claims filed as main request during the examination proceedings and auxiliary, for granting a patent on the basis of the set of claims filed as auxiliary request during the examination proceedings and re-filed with the statement setting out the grounds of appeal.

The applicants also requested that oral proceedings be arranged in the event that the Board intends to refuse their main request.

With their submission dated 7 February 2020 the applicants requested as main request that the decision under appeal be set aside and that the case be remitted

to the examining division for further prosecution.

IV. The applicants' line of argument contesting the decision of the examining division will be dealt with in detail in the reasons for the decision.

V. Claim 1 of the main request reads as follows:

"A sprayhead (1) suitable for use with an aerosol container (2), said sprayhead (1) comprising:
a chassis (3) capable of firm attachment to an aerosol container (2);
a rotatable circular collar (4) located largely around and in close proximity to the chassis (3);
a spray channel (8) and associated actuator button (39), said spray channel (8) being designed to pass through a central aperture (13) in the chassis (3) and being connectable to the central valve stem of an aerosol container (2) with which the sprayhead (1) is designed to be used; and
an over-cap (42) sitting over the chassis (3) and the spray channel (8)
wherein the circular collar (4) is rotatable between a first position in which a holding feature (33D) of the collar (4) interacts with a holding feature (15D) of the chassis (3) and a second position; the sprayhead (1) being inoperable when the circular collar (4) is in its first position and operable when the circular collar (4) is in its second position; the holding features (33C, 33D, 15C, 15D) providing rotational resistance to movement between the first and second positions; the circular collar (4) further comprising a projection which interacts with a non-rotating feature to produce an audible signal when the circular collar (4) is rotated to and from its first position and to and from its second position, characterised in that the

non-rotating feature which interacts with the projection from the circular collar (4) to produce audible signals on rotation of the circular collar (4) is a feature on the inner surface of the over-cap (42)".

In view of the decision taken by the Board, there is no need to reproduce claim 1 of the auxiliary request.

VI. The examining division argued substantially as follows:

The characterising portion of claim 1 clearly defines the subject-matter for which protection is sought and therefore claim 1 fulfills the requirements of the first part of Article 84 EPC (clarity).

On the other hand, nowhere in the description can be found a detailed description (in terms of a representation, or example) of the "projection" of the circular collar or of its position. The same applies to the "non-rotating" feature of the inner surface of the over-cap. Moreover, the description is completely silent concerning how and where these two features interact to produce audible signals. For these reasons, the verbatim repetition of the characterising feature of claim 1 on lines 22-24 of page 8 of the originally filed description can not be considered the detailed description of at least one way of carrying out the invention and the requirements Rule 42(1)(e) EPC are thus not fulfilled.

Because the description merely discloses the invention as claimed (Rule 42(1)(c) EPC), but does not describe the invention claimed (Rule 42(1)(e) EPC), it is considered that the scope of the claims is broader than is justified by the extent of the description and

drawings, therefore, the claims are not supported by the description contrary to the requirements of the second part of Article 84 EPC (support).

Reasons for the Decision

1. The decision is issued in written proceedings without oral proceedings.

According to Article 12(8) RPBA 2020 (previous Article 12(3) RPBA 2007), the Board may, subject to Article 113 and 116 EPC, decide the case at any time after filing of the statement of grounds of appeal.

Given the findings and the order of the decision, the applicants' auxiliary request for oral proceedings in the event that the Board was minded not to allow the main request that the case be remitted to the examining division for further prosecution on the basis of its main request, is no longer relevant.

The case is ready for decision on the basis of the applicants' written submissions and the decision under appeal.

For this reason, the issuing of the decision in written procedure without oral proceedings is in compliance with the requirements of Articles 113(1) and 116(1) EPC.

2. *Support by the description - Article 84 EPC*

2.1 According to Article 84 EPC the claims shall define the matter for which protection is sought. The claims shall be clear and concise and be supported by the

description.

2.2 According to Rule 42(1)(e) EPC the description shall describe in detail at least one way of carrying out the invention claimed, using examples where appropriate and referring to the drawings, if any.

2.3 In the impugned decision the examining division accepts that claim 1 is clear and concise, see chapter 3.5, second paragraph of the impugned decision. On the other hand, it considers that neither the figures nor the description of the preferred embodiment describe in detail at least one way of carrying out the invention and that claim 1 is not supported by the description, see chapter 3.3 and chapter 4.1, last paragraph of the impugned decision.

2.4 The examining division argues that although there exists in the description a verbatim repetition of the characterising feature of claim 1, see chapter 3.5 of the impugned decision, due to the fact that "nowhere in the description can be found a detailed description (in terms of a representation, or example) of the "projection" of the circular collar or of its position" and also of "the "non-rotating feature" of the inner surface of the over-cap" the requirements of Article 84 EPC and Rule 42(1)(e) EPC are not met, see chapter 4.1 of the impugned decision.

2.5 The Board notes that the features claimed in the characterising part of claim 1, namely feature a (the **projection** of the circular collar), feature b (the **non-rotating feature** of the inner surface of the over-cap) and their interrelation are indisputably clear to the person skilled in the art, see chapter 3.5, second paragraph of the impugned decision. This means that

their structural form, their function and their interrelation are clear to the person skilled in the art. It is further undisputed that there exists in the description at least a verbatim repetition of the characterising features of claim 1, see chapter 3.5 of the impugned decision. This means, that said features, clearly defined in claim 1, are also disclosed, obviously also in a clear manner, in the description, supporting thereby the wording of claim 1. Due to this fact, the scope of the claims is not broader than is justified by the extent of the description, as argued by the examining division, see last paragraph of chapter 4.1 of the impugned decision.

2.6 What the examining division considers as the "missing link" between claim 1 and the description, said "missing link" rendering claim 1 as not being supported by the description, is the lack of denomination of the characterising features a and b of claim 1 in the figures and in the text of the description referring to the example presented therein.

2.7 The Board considers that since the features a and b are per se clear to the person skilled in the art, see chapter 3.5, second paragraph of the impugned decision, a specific denomination of said features in the part of the description directed to the specific embodiment depicted in the figures is not mandatory.

2.8 Furthermore, the Board concurs with the applicants that any reading of the description and viewing of the figures must be done with the knowledge that the features a and b are present and that these features interact to produce audible signals. Under these circumstances the person skilled in the art would recognise the relevant features in the figures, having

thereby a detailed description of them, including their location and their shape.

2.9 The Board sees no reason for not following the applicants' argument that figures 4 and 8, viewed in the light of the other figures and the whole originally filed application, show two sail-like non-rotating feature(s) projecting radially inward from the inner wall of the skirt 48 of the upper body 42, *i.e.* from the inner surface of the over-cap (feature b) and a small, upright, rectangular projection from the circular collar at the outer wall of the bridge element 30 (feature a) that must interact therewith to produce the audible signal(s). The Board cannot recognise in figure 4 that the radial projection from the outer wall of the bridge element 30 does not extend beyond from the knurled outer wall 28 of the circular collar 4, as argued by the examining division.

2.10 Accordingly, the sprayhead depicted in the figures meets the requirements of Rule 42(1)(e) EPC in that one way of carrying out the invention claimed is illustrated.

3. *Conclusions*

3.1 The Board concludes from the above that the requirements of Article 84 EPC and Rule 42(1)(e) EPC are met. Therefore, the findings of the examining division and the reasoning underlying the impugned decision cannot be upheld by the Board.

3.2 Consequently, the decision under appeal is to be set aside. However, since the decision under appeal only deals with the issue of clarity, and the primary object of the appeal proceedings is to review the decision

under appeal (Article 12(2) RPBA 2020), the Board following the corresponding applicants' request considers that special reasons for a remittal are present (Article 11 RPBA 2020) and finds it appropriate to remit the case to the examining division for further prosecution in accordance with Article 111(1) EPC.

Order

For these reasons it is decided that:

1. The appealed decision is set aside.

2. The case is remitted to the examining division for further prosecution on the basis of the main request filed on 17 December 2013.

The Registrar: The Chairwoman:

G. Nachtigall A. Beckman

Decision electronically authenticated