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**Datasheet for the decision
of 19 June 2019**

Case Number: T 0672/18 - 3.2.01

Application Number: 08805181.8

Publication Number: 2210038

IPC: F21S13/12, F21V35/00, F23D3/16,
A47G33/00

Language of the proceedings: EN

Title of invention:
CANDLES AND CANDLE HOLDERS

Patent Proprietor:
Barrett, Michael
Murphy, Michael

Opponents:
GRAZIANI s.r.l.
Duffy & Scott Candlemakers Limited

Headword:

Relevant legal provisions:
EPC Art. 83, 56

Keyword:

Sufficiency of disclosure - (yes)

Inventive step - (yes)

Decisions cited:

Catchword:



Beschwerdekammern

Boards of Appeal

Chambres de recours

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Case Number: T 0672/18 - 3.2.01

D E C I S I O N
of Technical Board of Appeal 3.2.01
of 19 June 2019

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Appellant: Murphy, Michael
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Decision under appeal: Interlocutory decision of the Opposition
Division of the European Patent Office posted on
26 January 2018 concerning maintenance of the
European Patent No. 2210038 in amended form.

Composition of the Board:

Chairman G. Pricolo
Members: S. Mangin
A. Jimenez

Summary of Facts and Submissions

- I. The appeals were filed by the proprietors (appellants) as well as by opponents 1 and 2 (respectively appellants 1 and 2) against the interlocutory decision of the opposition division finding that, on the basis of the auxiliary request 1, the patent in suit (hereinafter "the patent") met the requirements of the EPC.
- II. The opposition division decided that the subject-matter of auxiliary request 1 (corresponding to the main request in appeal proceedings) involved an inventive step in view of D15 in combination with D19 or the skilled person's knowledge.
- III. Oral proceedings before the Board took place on 19 June 2019.
- IV. The appellants (opponents 1 and 2) requested that the decision under appeal be set aside and that the patent be revoked.

The respondents (patent proprietors) having withdrawn their appeal during oral proceedings requested that the appeals of the opponents be dismissed.

- V. The appellants relied on the following documents:
 - D5/D15: US 2530288
 - D19: GB 753059
 - D32: US 7096623
 - A1: US2002/0080604
 - A2: Brochure "Crisa Home Décor 2004"
 - A3: Brochure "Crisa Home Décor 2003"

VI. claim 1 in the form as maintained by the opposition division reads as follows:

- 1.1 A candle holder arrangement comprising a candle holder (10) and a candle (20), and an outer cylinder (30),
- 1.2 the candle holder (10) comprising a body (11) having a mouth (12), a base (14) and sides (16) that connect the mouth (12) to the base (14), the mouth (12) comprising an opening (13) arranged to receive a candle (20) and at least a portion of the sides (16) tapering inwardly from the mouth (12) towards the base (14), wherein an inward most point of the tapered portion (16c) of the sides (16) defines an aperture (15) having a size which is less than that of the widest part of the candle (20)
- 1.3 such that the unburnt candle (20) is retained within the candle holder (10) prior to burning,
characterised in that
- 1.4 the unburnt candle (20) has a top (24), a base (26) and sides (21) connecting the top (24) to the base (26), wherein at least a portion of the sides (21) taper inwardly from the top (24) to the base (26) of the candle (20) and
 - 1.4.1 the tapered portion of the sides (21) of the candle (20) corresponds to the tapered portion of the sides (16) of the candle holder (10)
 - 1.4.2 prior to and after insertion of the candle (20) into the candle holder (10) and
 - 1.4.3 is retained within the candle holder (10) solely by the tapered portion (16c) of the sides (16) of the candle holder (10),
- 1.5 wherein a reduction in the outer circumference of the candle (20) during burning causes the candle (20) to fall through the aperture (15).

- 1.6 wherein the candle holder (10) comprises a lip (18) extending transversely away from the candle holder (10),
- 1.7 wherein the candle holder (10) is provided in the outer cylinder (30), the outer cylinder (30) comprising a cylindrical body (31) having a mouth (32) and a base (34), the mouth (32) comprising a first opening (33) and the base (34) comprising a second opening (35),
- 1.8 the lip (18) sitting on the mouth (32) of the outer cylinder (30).

VII. The appellants' (opponents) arguments can be summarised as follows:

Sufficiency of disclosure - Article 100(b) in combination with Article 83 EPC

Opponent 1 is of the opinion that a reduction in the outer circumference of the candle does not take place. In the present invention the candle is deformed by the pressure of the liquid wax.

Opponent 1 is also of the opinion that the feature M1.5 "a reduction in the outer circumference of the candle (20) during burning causes the candle (20) to fall through the aperture (15)" defines the invention in terms of a result to be achieved which is not allowable according to the guidelines F-IV, 4.10.

Inventive step - Article 56 EPC

Starting from D5/D15, the subject-matter of claim 1 differs from D5/15 in that: "the candle holder (10) is provided in the outer cylinder (30), the outer cylinder (30) comprising a cylindrical body (31) having a mouth (32) and a base (34), the mouth (32) comprising a first

opening (33) and the base (34) comprising a second opening (35), the lip (18) sitting on the mouth (32) of the outer cylinder (30)" (corresponding to features M1.7 and M1.8 of claim 1).

The effect of the above distinguishing features is that the candle holder may be correctly positioned in a manner that avoids tilting, and that direct contact with the candle holder may be avoided during the handling, thereby enhancing safety both during and after burning of the candle when the candle holder is hot.

The objective technical problem to be solved in light of D5/D15 can therefore be considered as how to modify the candle and candle holder arrangement of D5/D15 to enhance safety during handling.

The skilled person would combine the teaching of D5/D15 with the teaching of A1-A3, D19 or D32 to arrive at the subject-matter of claim 1.

VIII. The respondents' (proprietors) arguments can be summarised as follows:

Sufficiency of disclosure - Article 100(b) in combination with Article 83 EPC

The reduction in the diameter of the candle comes from the deformation of the soften candle, whereby the outer edges of the candle fold up relative to the center of the candle.

Moreover the invention is sufficiently disclosed as paragraph [0070] of the patent discloses the dimensions of the candle. The proprietors note that it is simple to determine whether the desired result is achieved, as

this only requires verifying that the tapered candle placed in the tapered candle holder falls through the aperture after being burnt.

Inventive step - Article 56 EPC

D5/D15 not only fails to disclose features 1.7 and 1.8 but also features 1.4.1, 1.4.2, 1.4.3 and 1.5 of claim 1. Moreover the skilled person starting from D5/D15 would not consider documents A1-A3, D19, or D32 and even if he would, he would not arrive to the subject-matter of claim 1.

Reasons for the Decision

1. The appeals are admissible
2. Sufficiency of disclosure - Article 100(b) EPC in combination with Article 83 EPC.

In this respect the Board follows the decision of the opposition division. The invention is disclosed in a manner sufficiently clear and complete to be carried out by a skilled person in the art.

The Board cannot follow the argument of the appellant (opponent 1) that "a reduction in the outer circumference of the candle does not happen". The appellant's submissions are not such to cast doubts on the functioning of the present invention as explained by the proprietors, according to which the weight of the wax causes the softened candle to deform thereby causing a reduction of the outer circumference of the candle. Thus the Board is satisfied that a reduction in the outer circumference of the candle will take place,

enabling the candle to fall through the aperture of the candle holder.

The patent specification provides sufficient information for the skilled person to be able to put the invention into practice:

- The candle holder is depicted on figures 1 and 2 and described in paragraphs [0057]-[0064].
- The candle is depicted on figure 4 and described in paragraphs [0069]-[0070].
- The cylinder is depicted on figures 6 and 7 and described in paragraph [0074].

In particular dimensions are given for the candle holder in paragraph [0062] and for the candle in paragraph [0070].

Furthermore, determining whether the expected result is achieved is rather straightforward, as it only requires verifying that the tapered candle placed in the tapered candle holder falls through the aperture after burning.

The appellant (opponent 1) further referred to the Guidelines for examination F-IV, 4.10, which deals with the clarity and interpretation of claims rather than insufficiency of disclosure and is thus not pertinent.

3. Inventive step - Article 56 EPC

The Board considers that the subject-matter of claim 1 involves an inventive step in view of D5/D15 in combination with A1-A3, D19 or D32.

3.1 The parties agree that the closest prior art represented by D5/D15 does not disclose the following features of claim 1:

- M 1.7: "the candle holder (10) is provided in the outer cylinder (30), the outer cylinder (30) comprising a cylindrical body (31) having a mouth (32) and a base (34), the mouth (32) comprising a first opening (33) and the base (34) comprising a second opening (35)", and;
- M1.8 "the lip (18) sitting on the mouth (32) of the outer cylinder (30)"

While the proprietors consider that there are further distinguishing features (M1.4.1, M1.4.2, M1.4.3 and M1.5), there is no need to discuss here whether this is effectively the case, as the Board considers that the two undisputed distinguishing features M1.7 and M1.8 already lead to the subject-matter of claim 1 being inventive for the reasons given below.

- 3.2 The effect of these two differences is that the candle holder may be handled without risk of burning (see paragraph [0030] of the patent). Accordingly, the technical problem to be solved, is how to modify the candle and candle holder arrangement of D15 to enhance safety during handling. This was not disputed by the parties.

The opponents cited documents A1-A3, D19 and D32 to be combined with the teaching of D5/D15 for arriving at the subject-matter of claim 1.

- 3.3 The Board considers the subject-matter of claim 1 involves an inventive step in view of D5/D15 in combination with A1 for the following reasons:

- 3.3.1 In A1, paragraph [0007], the object of the invention is to devise a lamp which is usable both for light sources with open flame and for electrically operated light

sources, and which is manufacturable in one piece and whose emitted color and decoration can be changed in a quick and simple manner.

The device may be composed of an inner cylinder and an outer cylinder, both cylinders being open at the top and at the bottom (A1, paragraph [0009]). The two hollow bodies are joined by a rim to form only one piece (A1, paragraphs [0012],[0014], [0029], [0036], figures 1 and 2). The lamp is composed of a shorter inner hollow body arranged axially parallel inside the outer hollow body and does not need any base since the function thereof is taken on by the lower part of the longer outer hollow body (A1, paragraph [0012]).

3.3.2 While paragraph [0041] of document A1 discloses "the double-shell design of this lamp has the further advantage that the outer glass cylinder remains cool and can be touched with the hand even after a long operating time just as the decoration which is inserted in the annular hollow space", the skilled person would not combine the teaching of document D5/D15 with the teaching of document A1 to arrive at the subject-matter of claim 1.

Firstly because the lamp in A1 is directed to a lamp manufactured in one piece, either because made from plastics using a very simple mold, for example by injection molding (A1, paragraph [0015]), or because made from two hollow bodies of glass that are fused together (A1, paragraph [0014]). In contrast thereto, the candle arrangement of claim 1 comprises two clearly distinct elements: the candle holder (10) and the cylinder (30).

Secondly because A1 specifically teaches that the inner hollow body is shorter than the outer hollow body thereby elevating the candle holder. This configuration is contrary to the teaching of D15/D5, which requires

the candle holders (24) to be normally in contact with the upper face of the plate (21) (D5/D15, column 3, l. 22-25).

3.3.3 It is to be noted that paragraph [0002] of document A1 disclosing "In all these lamps, the glass cylinder is removably put or pushed onto a base and, in the case of the lamps having an open flame, serves as a wind protection and, in all these lamps, as a protection against contact as well as for the scattering of the light" refers to the prior art. The glass cylinder and the base referred to in this paragraph are not further defined. Thus this passage fails to indicate how the protection against contact should be achieved.

3.3.4 Furthermore claim 1 of the main request requires that "the lip of the candle holder sits on the mouth of the outer cylinder".
The Board takes the view that this wording can only be read as implying that the candle holder and the cylinder are two distinct elements which are not permanently secured together. Indeed, in its most usual meaning, the term "sits" does not imply a fixed connection (i.e. such as a person sitting on a chair). This reading is moreover supported by the disclosure in the description of the patent in suit, where the relationship between the candle holder and the cylinder is described as follows:

- paragraph [0030], "In use, the lip or protrusions of the candle holder may rest on the mouth of the outer cylinder to position the candle holder within the outer cylinder."

- paragraph [0074], "In use, the candle holder 10 is placed in the outer cylinder 30 such that the outwardly extending lip 18 of the candle holder 10

abuts the mouth 32 of the outer cylinder 30, as shown in figure 7."

- paragraph 78, "In use, the candle holder 10 may be placed directly in the opening 42 such that the lip 18 abuts an edge of the opening 42.

Alternatively, the candle holders 10 may first of all be placed in the outer cylinder 30, such that the ledge 36 of each outer cylinder 30 abuts an edge of the opening 42."

The alternative verbs used to the verb "to sit": "to rest", "to abut" and "to be placed" clearly demonstrate that the candle holder and the cylinder are not permanently joined in the present invention.

Furthermore paragraph [0028] of the patent specification foresees two alternatives to the hollow cylinder: "For example, the candle holder may be placed in a bottle such that the lip sits on the mouth of the bottle to hold the candle holder in place".

"Alternatively, the candle holder may be placed in a candle stand of the type often used in a church such that the lip sits on the periphery of an opening for the candle holder in the candle stand".

While these two alternatives are not within the scope of claim 1, they further support the fact that the verb "to sit" in claim 1 is used in its most usual sense. In the two above alternatives, it is clear that the verb "to sit" does not mean that the candle holder and the bottle or the the candle stand should be permanently secured like it is foreseen in document A1. On the contrary, in the patent, the user should be able to place and remove the candle holder either on the mouth of a cylinder, the mouth of a bottle or on the periphery of an opening in a candle stand.

- 3.3.5 So even if the skilled person would combine the teaching of D5/D15 with the teaching of A1, he would not arrive to the subject-matter of claim 1, which requires that "the lip of the candle holder sits on the mouth of the outer cylinder".
- 3.4 The Board further considers that claim 1 involves an inventive step in view of D5/D15 in combination with A2 "Home Décor 2004" or A3 "Home Décor 2003".
- 3.4.1 A2 and A3 are brochures of ornamental products. On page 23, of the brochure A2 a "Pilaster Hanging votive set" is shown and on page 18 of the brochure A3 a "candle craft Set" is shown, wherein a candle is placed in a inner cylinder vase, hanging in another wider and longer outer cylinder vase. Contrary to the present invention, both vases are closed at their bottom ends. The inner cylinder vase holds a candle and the outer cylinder vase holds decorative elements such as pebbles, dried fruits or dried leaves.
- 3.4.2 First of all the skilled person starting from D5/D15 and looking to enhance the safety of the candles holders would not look into these two brochures dealing with the aesthetic aspect of vases and candles. Secondly should the skilled person nevertheless combine the teaching of D5/15 with the teaching of A2 or A3, they would not arrive to the subject-matter of claim 1 requiring a candle holder and a cylinder both being open at their top and bottom ends. The inner and outer cylinder vases in "Pilaster Hanging votive set" in A2 and the "candle craft Set" in A3 are closed. The skilled person would never envisage an opening in the inner cylinder as the candle would then fall onto the decoration contained in the outer vase. Similarly the skilled person would never envisage an opening in the

outer cylinder as the decoration contained in the outer cylinder would fall outside the vase.

3.5 The Board concurs with the opinion of the opposition division regarding the combination of D5/D15 with D19. In particular the skilled person would not combine the teaching of D5/D15 with D19 as the tube (36) on figure 18 is used to elevate the candle and not to provide a safer handling of the candle. Moreover the candle holder is placed over the tube on figure 18 of D19 and not within the tube as required by claim 1. There is no incentive for the skilled person to depart from this configuration and instead of placing the candle holder over the tube to place it within the tube. Without foreknowledge of what matter constitutes the alleged invention, the skilled person would not place the candle holder 24 of D5/D15 within the tube of D19.

3.6 Finally the Board considers that the subject-matter of claim 1 involves an inventive step starting from D5/D15 in combination with D32.

3.6.1 D32 deals with a decorative floral display comprising a container designed to hold floral stems as well as one or more candles. On figure 2, the decorative floral display comprises an open ended cylinder to host a candle. This candle holder is open at the top and bottom end to enable to fill the base with water and to allow a candle to be inserted (D32, column 4, lines 7-11).

3.6.2 Thus there is no incentive for the skilled person to look into D32, dealing with a different problem, namely to add water in the container for the flowers. Moreover the candleholder (19) of figure 2 is designed to host a candle. This candleholder (19) is not foreseen to hold

another candle holder. And in D32 the residues of the burned candle are not suppose to fall in the water where the flower stem are placed.

4. Opponents 1 and 2 limited their inventive step attacks to the ones discussed above. None of them being conclusive, the Board concludes that the appealed decision is thus to be confirmed.

Order

For these reasons it is decided that:

The appeals are dismissed

The Registrar:

The Chairman:



A. Pinna

G. Pricolo

Decision electronically authenticated