

Internal distribution code:

- (A) [-] Publication in OJ
- (B) [-] To Chairmen and Members
- (C) [-] To Chairmen
- (D) [X] No distribution

**Datasheet for the decision
of 4 February 2025**

Case Number: T 1722/23 - 3.2.07

Application Number: 10796244.1

Publication Number: 2512761

IPC: B26B21/40

Language of the proceedings: EN

Title of invention:

RAZOR CARTRIDGE WITH NON-CUTTING ELEMENT

Patent Proprietor:

The Gillette Company LLC

Opponent:

Edgewell Personal Care Brands, LLC

Headword:

Relevant legal provisions:

EPC Art. 54, 56

RPBA 2020 Art. 12(6)

Keyword:

Novelty - main request (no) - auxiliary request 6 (no)
Late-filed auxiliary requests 1 to 5 - should have been
submitted in first-instance proceedings (yes) - admitted (no)
Inventive step auxiliary request 7 - (yes)

Decisions cited:

T 0868/20, T 0141/20

Catchword:



Beschwerdekammern
Boards of Appeal
Chambres de recours

Boards of Appeal of the
European Patent Office
Richard-Reitzner-Allee 8
85540 Haar
GERMANY
Tel. +49 (0)89 2399-0

Case Number: T 1722/23 - 3.2.07

D E C I S I O N
of Technical Board of Appeal 3.2.07
of 4 February 2025

Appellant:
(Patent Proprietor)

The Gillette Company LLC
One Gillette Park
Boston, MA 02127 (US)

Representative:

Hoyng Rokh Monegier B.V.
Rembrandt Tower, 30th Floor
Amstelplein 1
1096 HA Amsterdam (NL)

Appellant:
(Opponent)

Edgewell Personal Care Brands, LLC
1350 Timberlake Manor Parkway
Chesterfield, MO 63017 (US)

Representative:

dompatent von Kreisler Selting Werner -
Partnerschaft von Patent- und Rechtsanwälten mbB
Deichmannhaus am Dom
Bahnhofsvorplatz 1
50667 Köln (DE)

Decision under appeal:

**Interlocutory decision of the Opposition
Division of the European Patent Office posted on
14 July 2023 concerning maintenance of the
European Patent No. 2512761 in amended form.**

Composition of the Board:

Chairman A. Cano Palmero
Members: S. Watson
M. Millet

Summary of Facts and Submissions

- I. Appeals were filed by both the patent proprietor and the opponent within the prescribed period and in the prescribed form against the decision of the opposition division to maintain European patent 2 512 761 in amended form on the basis of auxiliary request 7.
- II. In preparation for oral proceedings the board gave its preliminary opinion in a communication pursuant to Article 15(1) RPBA, dated 2 October 2024, according to which the appeals of both parties were likely to be dismissed.
- III. Both parties responded to the board's preliminary opinion, the opponent with submissions of 20 December 2024 and the patent proprietor with submissions of 4 January 2025.
- IV. Oral proceedings before the board took place on 4 February 2024.

At the conclusion of the proceedings the decision was announced. Further details of the oral proceedings can be found in the minutes.

- V. The final requests of the parties are as follows.

The patent proprietor requests that

- the decision under appeal be set aside and
- the patent be maintained in amended form on the basis of the set of claims according to the main request or one of auxiliary requests 1 to 6; filed with the patent proprietor's statement of grounds of appeal; or

- that the opponent's appeal be dismissed (*i.e.* that the patent be maintained on the basis of auxiliary request 7); or
- that the patent be maintained in amended form on the basis of the set of claims according to one of auxiliary requests 8 to 14 filed with the patent proprietor's reply to the opponent's appeal.

The opponent requests that

- the decision under appeal be set aside and
- the patent be revoked in its entirety.

VI. The following documents are referred to in this decision:

D1: US 2006/0277759 A1
D2: WO 95/29043 A1
D7: US 6,161,288 A
D13: WO 97/37818 A1
D13a: WO 92/17322 A1
D14: US 5,426,851 A
D22: US 5,802,721.

VII. Independent claim 3 of the main request reads as follows:

"A razor cartridge (10) comprising:
two or more razor blades (12), each of said razor blades having a cutting edge (13);
at least one non-cutting element (14) disposed between two of said razor blades (12),
a frame (15) provided with a plurality of slots (15 a,b,c,d,e) or openings for receiving said razor blades (12) and said non-cutting element(s) (14),
characterized in that the non-cutting element (14) and razor blades (12) are each disposed in a separate slot

or opening (15a,b,c,d,e); wherein a rinse-through gap is provided before and after said at least one non-cutting element, each rinse-through gap permits water to enter one side of the rinse-through gap and push hair clippings through to an other side of the rinse-through gap; and

wherein the non-cutting element comprises an upper surface with at least one feature selected from the group consisting of a plurality of projections defining at least one open slot, protrusions, elongated filaments, nubs, fins, waves, curves, depressions, hair-like elements, one or more hook-like structures, one or more lubricating strips, one or more foams, one or more exfoliation materials, one or more shaving aid materials, one or more comb-like features having a plurality of teeth, any of the aforementioned spaced apart or interconnected, constant or variable in dimensions, or any combinations thereof."

VIII. Independent claim 3 of auxiliary request 6 reads as follows:

"A razor cartridge (10) comprising:
two or more razor blades (12), each of said razor blades having a cutting edge (13);
at least one non-cutting element (14) disposed between two of said razor blades (12),
a frame (15) provided with a plurality of slots (15 a,b,c,d,e) or openings for receiving said razor blades (12) and said non-cutting element(s) (14),
characterized in that the non-cutting element (14) and razor blades (12) are each disposed in a separate slot or opening (15a,b,c,d,e); wherein a rinse-through gap is provided before and after said at least one non-cutting element; and

wherein the non-cutting element comprises an upper surface with at least one feature selected from the group consisting of a plurality of projections defining at least one open slot, protrusions, elongated filaments, nubs, fins, waves, curves, depressions, hair-like elements, one or more hook-like structures, one or more lubricating strips, one or more foams, one or more exfoliation materials, one or more shaving aid materials, one or more comb-like features having a plurality of teeth, any of the aforementioned spaced apart or interconnected, constant or variable in dimensions, or any combinations thereof; and wherein the non-cutting element is arranged to manage hair by orienting or aligning hairs and/or controlling hair flow, which is fed across a razor blade."

IX. Independent claim 1 of auxiliary request 7 reads as follows (amendments shown with respect to claim 1 of the main request):

"A razor cartridge (10) comprising:
two or more razor blades (12), each of said razor blades having a cutting edge (13), each cutting edge facing in the same direction;
at least one non-cutting element (14) disposed between two of said razor blades (12), a frame (15) provided with a plurality of slots (15 a,b,c,d,e) or openings for receiving said razor blades (12) and said non-cutting element(s) (14), characterized in that the non-cutting element (14) and razor blades (12) are each disposed in a separate slot or opening (15a,b,c,d,e);
and wherein the non-cutting element comprises an upper surface having an upper surface with at least one feature selected from the group consisting of a plurality of projections defining at least one open slot, protrusions, elongated filaments, nubs, fins,

waves, curves, depressions, hair-like elements, one or more hook-like structures, one or more lubricating strips, one or more foams, one or more exfoliation materials, one or more shaving aid materials, one or more comb-like features having a plurality of teeth, any of the aforementioned spaced apart or interconnected, constant or variable in dimensions, or any combinations thereof;
and wherein a rinse-through gap is provided before and after said at least one non-cutting element."

- X. Independent claim 4 of auxiliary request 7 reads as follows (amendments shown with respect to claim 3 of the main request in appeal proceedings):

"A razor cartridge (10) comprising:
two or more razor blades (12), each of said razor blades having a cutting edge (13);
at least one non-cutting element (14) disposed between two of said razor blades (12),
a frame (15) provided with a plurality of slots (15 a,b,c,d,e) or openings for receiving said razor blades (12) and said non-cutting element(s) (14), characterized in that the non-cutting element (14) and razor blades (12) are each disposed in a separate slot or opening (15a,b,c,d,e); ~~wherein a rinse-through gap is provided before and after said at least one non-cutting element, each rinse-through gap permits water to enter one side of the rinse-through gap and push hair clippings through to an other side of the rinse-through gap; and~~
wherein the non-cutting element comprises an upper surface with ~~at least one feature selected from the group consisting of a plurality of projections defining at least one open slot, protrusions, elongated filaments, nubs, fins, waves, curves, depressions, hair-~~

~~like elements, one or more hook like structures, one or more lubricating strips, one or more foams, one or more exfoliation materials, one or more shaving aid materials, one or more comb-like features having a plurality of teeth, any of the aforementioned spaced apart or interconnected, constant or variable in dimensions, or any combinations thereof."~~

XI. The wording of the independent claims of auxiliary requests 1 to 5 and 8 to 14 is not relevant to this decision so it is not reproduced here.

XII. The arguments of the parties relevant for the decision are dealt with in detail in the reasons for the decision.

Reasons for the Decision

Appeal of the patent proprietor

1. *Main request - claim 3 - novelty (Article 54 EPC)*

1.1 The opposition division found that the subject-matter of claim 3 of the then auxiliary request 5 (now main request) was not novel with respect to the disclosure of document D7, figure 73 (see decision under appeal, point II.32.3).

1.2 The patent proprietor contested this finding and argued that the feature referred to as f2) in the decision under appeal was not disclosed in document D7, figure 73, as the opposition division had incorrectly interpreted the term "rinse-through gap".

1.3 Feature f2) reads as follows:

"each rinse-through gap permits water to enter one side of the rinse-through gap and push hair clippings through to the other side of the rinse-through gap".

According to the patent proprietor, a rinse-through gap would be understood by the skilled person to refer to a gap which extends through the razor cartridge itself.

In figure 73 of document D7 there was no indication that the gaps provided before and after the non-cutting element extended through the cartridge, therefore, the skilled person would not understand the gaps disclosed in D7, figure 73 as being "rinse-through" gaps.

In addition, the patent proprietor argued that the gaps in D7, figure 73 did not permit water to enter one side of the rinse-through gap and push hair clippings through to an other side of the rinse-through gap.

1.4 The board however agrees with the reasoning of the opposition division and the arguments of the opponent that the term "rinse-through gap" as set out in feature f2) is not limited to gaps which extend through the razor cartridge, and that document E7, figure 73 shows feature f2) for the following reasons.

1.4.1 The patent proprietor has not convincingly shown that the skilled person understands the term "rinse-through gap" to refer exclusively to gaps which extend through the whole cartridge, rather than referring to gaps through which water can be flushed.

The patent proprietor referred to passages of document D1 (paragraphs [0010] and [0036]) which disclose that rinse-through gaps extend through the razor cartridge.

Document D1 is a patent document, not a handbook or text book. It discloses only that rinse-through gaps in document D1 should be understood as extending through the razor cartridge, not that the term "rinse-through gap" is understood by the skilled person to refer exclusively to gaps which extend through the razor cartridge.

The board is therefore of the view that feature f2) must be interpreted broadly as a gap which can be rinsed-through with water.

- 1.4.2 As the opponent argues, if the razor cartridge of D7, figure 73 is held at an angle under running water, water enters from one side of each gap before and after the non-cutting element 1045 and runs lengthways through the gaps flushing out hair clippings at the other side of the gap (see also decision under appeal, point II.32.3, which refers to a left and right side).
- 1.4.3 The patent proprietor argued in its written submissions of 4 January 2025 that the skilled person would not understand the recess in D7, figure 73 as a rinse-through gap because it had only one open side. It was therefore impossible for the water to push the hair clippings from one side of the gap to the other side, as the water and hair clippings entered and exited from the same side. The patent proprietor also referred to common dictionary definitions and argued that if water was run through the gap in the manner suggested by the opponent, the water would run from one end to another

end of the gap, as the term "side" would be understood to refer to the longer boundaries of an area.

- 1.4.4 The skilled person would however not interpret the term "side" so narrowly that it refers only to the edges of a gap, in particular the longer edges. The skilled person is aware that the term "side", in the context of the present case, could have a number of technically sensible meanings including that of the two opposite parts of a whole, referred to by the opposition division as the left and right side.

The description and drawings of the contested patent do not contain any information which would lead the skilled person to a different interpretation of the feature. The patent proprietor considered that figures 5J, 6, 7 and 8 of the patent disclosed the rinse-through gap. The opponent was of the view that the figures do not clearly disclose a gap extending through the cartridge.

In any case, irrespective of whether the figures show a gap which extends through the cartridge, there is no indication in these figures or the description that a rinse-through gap is to be exclusively understood as a gap which extends completely through the razor cartridge.

- 1.5 The patent proprietor has therefore not convincingly shown the incorrectness of the decision on this point, and the main request is not allowable.

2. *Auxiliary requests 1 to 5 - admittance into the appeal proceedings (Article 12(6) RPBA)*

2.1 Auxiliary requests 1 to 5 were filed for the first time with the patent proprietor's statement of grounds of appeal and are an amendment to the patent proprietor's case.

2.2 According to Article 12(6), second sentence, RPBA requests which should have been submitted during the opposition proceedings should not be admitted into the appeal proceedings, unless the circumstances of the case justify their admittance.

2.3 In the present case, the patent proprietor did not contest that the auxiliary requests are an amendment, but argued that it was not possible to submit the requests during the opposition proceedings. This was because the objection using figure 73 of document D7 was raised for the first time at the oral proceedings before the opposition division and led to a change of opinion of the opposition division.

Although the patent proprietor did not dispute that it had been allowed to react to the change of opinion (by filing new auxiliary request 5 during the oral proceedings), it argued that it was only given a single opportunity to amend and it was not possible to adequately react due to time zone differences between the patent proprietor and its representatives. Further, the patent proprietor argued that it was only with the written decision that it was able to address the opposition division's reasoning.

2.4 The board finds that the patent proprietor could and should have submitted auxiliary requests 1 to 5 during the opposition proceedings.

2.5 In its annex to the summons to oral proceedings, the opposition division gave its preliminary opinion that the feature of rinse-through gaps before and after the non-cutting element (referred to in the annex as feature f1) was disclosed in D7, figure 76, as well as in documents D13 and D14 (see annex to the summons to oral proceedings, points 13.3.1, 13.3.3 and 13.3.4).

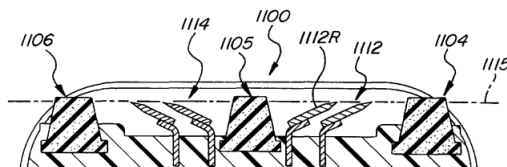
2.5.1 The patent proprietor was therefore aware, prior to the oral proceedings before the opposition division, of the opposition division's opinion on this point and were in a position to formulate arguments against this opinion, and also to draft auxiliary requests which would overcome the objection.

The patent proprietor did file four new auxiliary requests in reaction to the preliminary opinion with its submissions of 23 February 2023, prior to the oral proceedings before the opposition division. None of the requests contained an amendment to this feature.

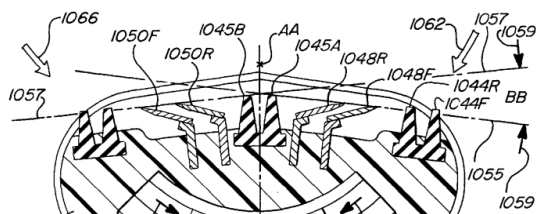
2.5.2 There was no change in the opinion of the opposition division at the oral proceedings relating to the rinse-through gap. The change in opinion arose when the opponent cited a new embodiment (D7, figure 76) showing the presence of a slot in the upper surface of the non-cutting element (see decision under appeal, point II. 26.3).

The board cannot see any structural features relating to the "rinse-through gaps" in figure 76 which are not present in figure 73, as can be seen in the comparison

of the relevant parts of figures 73 and 76 of document D7 below:



D7, figure 73



D7, figure 76

2.5.3 Due to the change of opinion relating to the upper surface feature of the non-cutting element, the opposition division found that the subject-matter of claim 3 of then auxiliary request 5 was not novel with respect to the disclosure of D7, figure 76.

The patent proprietor then filed a new auxiliary request 5 during the oral proceedings (the main request in these proceedings). This request, which contained a feature from the description relating to the rinse-through gap, was admitted by the opposition division as a legitimate reaction to the new objection and subsequent change of opinion (see minutes of oral proceedings before the opposition division, page 6, third paragraph and decision under appeal, point II. 30.3).

The opposition division found, however, that the request did not overcome the lack of novelty objection (minutes, page 7, third paragraph).

2.5.4 It is not apparent from the minutes of the oral proceedings before the opposition division that the patent proprietor only received one single opportunity to amend its requests (see minutes, page 5, second to fifth paragraphs).

The patent proprietor also did not request a longer interruption or postponement of the oral proceedings, in order to formulate further requests.

It is established case law that the minutes are the only means of ascertaining what actually occurred during the oral proceedings before the opposition division (see Case Law of the Boards of Appeal, 10th edition 2022 (CLB), III.C.7.10.3). As no request to correct the minutes was made the board can only conclude that the patent proprietor was not limited to a single opportunity to submit a new request.

2.6 Regarding the further argument made by the representative that time zone differences limited communication between the representative who was present at the oral proceedings and the patent proprietor, so that the opportunity to react was restricted, the board notes that modes of communication between a party and its representative are generally regarded as within the internal sphere of the party concerned.

In any case, the board cannot see any circumstances particular to the present case which would warrant the admittance of additional auxiliary requests for the first time with the statement setting out the grounds of appeal.

2.7 The patent proprietor also argued that it was only with the decision under appeal that it became aware that the opposition division had re-defined the claimed feature as simply a "gap".

2.7.1 The board does not see that the opposition division changed its interpretation of the feature. In the preliminary opinion in the annex to the summons, the opposition division referred only to figure 76 in document D7 and gave its opinion that this figure showed rinse-through gaps before and after the non-cutting element (see annex to the summons, point 13.3.3, fourth sentence). The opposition division was therefore clearly of the view that the existence of a gap was sufficient to disclose a rinse-through gap.

2.8 The patent proprietor also argued that for reasons of procedural economy a patent proprietor could not be expected to file auxiliary requests to counter all objections, or permutation of objections raised. This would constitute an undue burden on the opposition division and the other parties. The patent proprietor referred to decision T 141/20 in this regard (see Reasons 5.4).

However, in T 141/20, the opposition division had not considered the objection in question as prejudicial to the maintenance of the patent. Further, the auxiliary requests being considered by the board were of lower ranking than the request on which the patent had been maintained, such that even if they had been submitted in the opposition proceedings, they would not have been considered in the decision under appeal (see T 141/20, headnote).

In the present case, the patent proprietor has submitted new auxiliary requests for the first time in appeal proceedings in response to the disclosure of a feature which the opposition division found persuasive. Also, the auxiliary requests are higher ranking requests than the version which the opposition division found to meet the requirements of the EPC.

There is therefore no contradiction with the decision in T 141/20 as the circumstances of the case are quite different.

- 2.8.1 The patent proprietor also referred to decision T 868/20 in support of its argument that the board should exercise its discretion and admit auxiliary requests 1 to 5.

However, the circumstances in the present case are again different. In T 868/20 the opposition division changed its opinion regarding novelty of a product-by-process claim. The patent proprietor did not file any new requests in the oral proceedings before the opposition division in reaction to this change of opinion (see T 868/20, Reasons 3.1.1). The competent board in the case found that there was no change to the subject-matter of the appeal (see T 868/20, Reasons 3.1.2).

In contrast, in the present case the patent proprietor did file a new request at the oral proceedings and the subject-matter has changed as features from the description have been added to the claims.

The admittance of auxiliary requests 1 to 5 would require the board to consider these requests for the first time in appeal proceedings, against the purpose

of appeal proceedings as set out in Article 12(2) RPBA, or the board would have to remit the case to the opposition division for further prosecution, which would be detrimental to procedural economy.

2.9 In conclusion, auxiliary requests 1 to 5 should have been filed during opposition proceedings. As no circumstance of the present case justify their admittance, they are not admitted pursuant to Article 12(6), second sentence, RPBA.

3. *Auxiliary request 6 - claim 3 - novelty (Article 54 EPC) - document D7, figures 75, 76 and 77*

3.1 Claim 3 of auxiliary request 6 differs from the current main request (auxiliary request 5 in the decision under appeal) in that feature f2) has been deleted and the feature referred to as feature h) in the decision under appeal has been introduced.

Feature h) reads as follows:

"wherein the non-cutting element is arranged to manage hair by orienting or aligning hairs and/or controlling hair flow, which is fed across a razor blade."

3.2 The opposition division found that the subject-matter of claim 3 of auxiliary request 6 lacked novelty with respect to document D7, figures 75 to 77 (see decision under appeal, point II.37.3).

3.3 The patent proprietor argued that feature h) was not present in the razor cartridges shown in figures 75 to 77 of document D7 as the non-cutting element in these razor cartridges was positioned behind the cutting blades and therefore could not orient or align hairs or

control hair flow, which is fed across a razor blade. In these embodiments it was the outer guards which controlled or managed hairs before they were fed across a cutting blade.

- 3.4 The board however agrees with the reasoning of the opposition division that the claim does not exclude that the hairs may already be partially cut, nor does it require that the hairs are oriented immediately before being cut. The central non-cutting element in D7, figure 75, will manage hairs or control hair flow, which is fed across the blades oriented away from a cutting direction, these blades then cut these hairs on the return stroke.

- 3.4.1 The patent proprietor argued that the opposition division's interpretation of this feature was unreasonable and not technically sensible.

The claim wording, according to the patent proprietor, requires that the hair which is managed or controlled and which is fed across a razor blade, has to be understood as hair which is then immediately cut by the said razor blade.

The board is however of the view that the skilled person would not interpret the feature in this limited manner. The functional feature of the claim only requires that the non-cutting element is arranged to manage or control hair which is fed across a razor blade. The non-cutting element in D7, figures 75 to 77 demonstrates this function.

- 3.5 The patent proprietor has therefore not convincingly shown the incorrectness of the decision on this point, and auxiliary request 6 is not allowable.

Appeal of the opponent

4. *Auxiliary request 7 (maintained version) - claims 1 and 4 - inventive step (Article 56 EPC) - D13/D13a/D14 with D22/D2*

4.1 The opposition division found that the subject-matter of claims 1 and 4 of auxiliary request 7 was inventive in view of either document D13/D13a or D14 as closest prior art in combination with the teaching of document D22 or D2. The opposition division reasoned that it was not apparent why the skilled person would combine the teaching of D13/D13a with that of D22, and D13/D13a taught away from introducing the skin engaging member as in D22, since it teaches to put the member in advance of the shaving blades, whereas in D13/D13a the blunt edge is to be put either between two blades or after both (decision under appeal, II.43.3).

4.2 It appears to be common ground between the parties that all the features of claims 1 and 4 are found in document D13/D13a with the exception of the feature referred to as feature g3) in the decision under appeal, which reads, "*wherein the non-cutting element comprises an upper surface with one or more comb-like features having a plurality of teeth*".

4.3 The opponent argued however that as documents D13/D13a and D22 all deal with closeness of shave with sufficient comfort for the user, the skilled person would combine the teaching of documents D13/13a and D22.

Further, as document D13/D13a taught to place the blunt blade as the second blade, and document D22 taught to

place the non-cutting element in front of a blade, the skilled person would place the non-cutting element of D22 in the second position of D13/D13a, so that it was disposed between two blades, as required by claims 1 and 4 of auxiliary request 7.

4.4 In the board's view, however, even if it can be agreed that the skilled person could consider the combination of teaching of D13/D13a and D22, the combination would not arrive at the subject-matter of claims 1 and 4 of auxiliary request 7 for the following reasons.

4.5 In the claimed invention, the non-cutting element must be disposed between two razor blades, whereby each razor blade and the non-cutting element must be disposed in a separate slot or opening.

4.5.1 The opponent argued that the skilled person would replace the blunt blade of D13/D13a, which is in its own slot and between two blades, with the comb-like element of D22.

The board however agrees with the arguments of the patent proprietor that the skilled person would not simply replace the blunted blade with such a comb-like element as it would be contrary to the teaching of D13/D13a to use a narrow skin-contact, non-cutting element.

In the opponent's view, document D13/D13a also taught that the blunt blade element could have "quite a different form from the blade members" (D13a, page 2, lines 17 to 19). Therefore the disclosure of D13/D13a was not limited to a blunt blade member with a narrow skin-contacting surface.

However, in the board's view, the core teaching of document D13/D13a is to provide a non-cutting member which has a very narrow area of contact with the skin so that it applies a similar pressure to that of the blades but is rounded so that it does not penetrate hairs or scrape the skin (D13a, paragraph bridging pages 1 and 2).

The passage of D13/D13a which suggests that the non-cutting element may have a quite different form than the other razor blades cannot be seen as meaning that any form at all may be used. The skilled person understands that whichever form is used, it must still present a narrow surface which applies a pressure similar to a blade.

Document D22 on the other hand discloses that the comb-like element is intended to pull the hairs causing them to be extended from the skin before being cut through by the blade (D22, column 1, lines 60 to 65).

The skilled person would thus not consider directly replacing the non-cutting element of document D13/D13a with an element which provides exactly the opposite function.

- 4.6 Document D22 discloses two options for placing the comb-like element in the razor head, either before the blades as shown in figure 3, or between blades as shown in figure 4.
- 4.6.1 The opponent argued that the skilled person would not choose to place the element in front of the blades, as D13/D13a already discloses a guard with fins at that location. Therefore, they would place the comb-like

element between the blades of D13/D13a, as shown in figure 4 of D22.

- 4.6.2 However, if the comb-like element is placed in the position shown in figure 4, then it is not placed in its own separate slot or opening as figure 4 shows that the comb-like element is mounted on, or immediately adjacent to, the blade.

On this point, the opponent referred to column 6, lines 23 to 29 of document D6 which disclosed that any of the skin engagement surface members (*i.e.* blades and comb-like elements) may be mounted resiliently using spring fingers. The opponent argued that if the members were mounted resiliently using spring fingers, they must each be mounted in a separate slot. Therefore, the disclosure of D22 was not limited to the comb-like element being attached to the blade.

- 4.6.3 The board however agrees with the patent proprietor that the passage on column 6 of document D22 does not require that each individual member is resiliently mounted in its own slot, but merely that the members may be resiliently mounted. The blade/comb-like element combination in figure 4 could be resiliently mounted without each element being mounted separately.

- 4.6.4 Therefore, the combination of the teaching of D22 with D13/D13a does not lead to the subject-matter of claims 1 and 4 as the comb-like element will not be placed in its own slot or opening between two blades.

- 4.7 No further arguments in relation to the combinations document D13/D13a with document D2, or document D14 with document D22 or D2 were made, so that the subject-matter of claims 1 and 4 is considered to be inventive

in view of any combination of D13/D13a or D14 with D22 or D2.

4.8 The opponent has therefore not convincingly demonstrated that the decision under appeal was incorrect on this point. No further objections were raised against auxiliary request 7.

5. *Conclusion*

As the patent proprietor's main request and auxiliary request 6 were found not allowable and auxiliary requests 1 to 5 were not admitted, the appeal of the patent proprietor must be dismissed.

The opponent's objection of lack of inventive step of the subject-matter of claims 1 and 4 was found not to prejudice the maintenance of the patent in the amended form according to auxiliary request 7, found by the opposition division to meet the requirements of the EPC. The opponent's appeal must therefore also be dismissed.

Order

For these reasons it is decided that:

The appeals are dismissed.

The Registrar:

The Chairman:



G. Nachtigall

A. Cano Palmero

Decision electronically authenticated