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Veröffentlichungs-Nr. / Publication No / N° de la publication : 97654

Bezeichnung der Erfindung: Hair drying apparatus
Title of invention:
Titre de l'invention :

Klassifikation / Classification / Classement : A45D 20/06

ENTSCHEIDUNG / DECISION

vom / of / du 21 November 1989

Anmelder / Applicant / Demandeur :

Patentinhaber / Proprietor of the patent / Titulaire du brevet : RACCAH Edward Rex

Einsprechender / Opponent / Opposant : BRAUN AG

Stichwort / Headword / Référence :

EPÜ / EPC / CBE Articles 56, 104(1) EPC

Schlagwort / Keyword / Mot clé : "Inventive step (denied)" - "Apportionment of costs (denied)"

Leitsatz / Headnote / Sommaire

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Case Number : T 632/88 - 3.2.2

D E C I S I O N
of the Technical Board of Appeal 3.2.2
of 21 November 1989

Appellant : (Opponent)
BRAUN AG
Postfach 1120
D-6242 Kronberg im Taunus (DE)

Representative :

Respondent : (Proprietor of the patent)
RACCAH Edward Rex
Southern Leigh Blackberry Lane
Lingfield, Surrey (GB)

Representative :
Kings Patent Agency Limited
73 Farringdon Road
London, EC1M 3JB (GB)

Decision under appeal :
Decision of the Opposition Division of the European Patent Office dated 14 November 1988 rejecting the opposition filed against European patent No. 97654 pursuant to Article 102(2) EPC.

Composition of the Board :

Chairman : G. Szabo
Members : R. Gryc
C. Holtz

Summary of Facts and Submissions

I. European patent No. 97654, comprising seventeen claims, was granted to the Respondent on 7 January 1987 on the basis of European patent application No. 82 902 455. 3 filed on 13 August 1982. Claim 1 as granted reads as follows:

"Hair drying apparatus having a body unit, air impelling means to draw air through the body from an inlet and to expel same through an outlet nozzle and a gas heating means to heat the air during passage from the inlet to the outlet, characterised by the apparatus comprising a cylindrical body (1) with an air inlet (2) at one end and an electric motor in said end driving an air impeller (3), the gas heating means comprising a gas burner (4) with a heat radiating assembly (6, 7) positioned directly within the air flow and in the body (1), an air outlet nozzle (5) at the other end of the body, a housing (9) connected with the body and containing an electric power source (8c) to drive the electric motor, a gas valve (8a) and electric switch (8b) mounted in the housing (9) operable by a manual trigger (8), a liquid gas reservoir (c) within the housing (9) said housing forming a hand-grip, a gas duct feeding the burner from the gas container (c) through the gas valve (8a), and means (8e) to ignite or initiate combustion within the burner."

II. The Appellant filed an opposition and requested the revocation of this patent on the grounds of lack of novelty and/or an inventive step in view of eleven documents, the most relevant of which being Japanese patent

(1) JP-A-44 717

III. After the opposition had been rejected by decision of 14 November 1988 of the Opposition Division, the Appellant (Opponent) lodged an appeal on 14 December 1988 and paid the relevant fee simultaneously.

In his statement of grounds filed on 31 January 1989 the Appellant cited two new documents and contended that most of the essential features of Claim 1 were already known from document (1) and that the remaining ones were only skilled measures of general knowledge known from the two new cited documents. He requested oral proceedings as an auxiliary measure.

IV. The Respondent (Patentee) disagreed and replied that in the apparatus known from document (1) the air flow is not a direct linear one but a complex tortuous one.

In response, the Appellant filed a new document

(2) JP-U-45 28331

and held that it anticipates totally the subject-matter of present Claim 1.

Preparations for oral proceedings were made during August 1989. In a letter dated 21.8.1989, the Respondent stated that he would not attend these proceedings.

V. In a communication dated 27 September 1989, the Board informed the parties that it regarded the Japanese document (2) to be particularly relevant and that it would be considered even though it was submitted late. Moreover, the Board pointed out that if Claim 1 were to be interpreted so as to mean that the burner may not be positioned within the air flow, its subject-matter would lack an inventive step in the light of the teachings of

both Japanese documents (1) and (2). It also invited the Patentee/Respondent to submit comments, amendments or any subsidiary requests before the end of October.

The Respondent did not comment on any substantial issues or file any amendments in reply to the Communication from the Board, but confirmed that he would not attend the oral proceedings.

VI. Oral proceedings took place on 21 November 1989 in the absence of the Respondent despite the fact that he had been duly summoned according to Rule 71(1) EPC.

VII. The Appellant requests that the impugned decision be cancelled and the patent be revoked.

Moreover, on the ground that the audience might have been avoided if the Respondent had clearly indicated what appropriate action he intended to take following the Communication of the Board, the Appellant requests an apportionment of the costs incurred as a result of the oral proceedings.

The Respondent requests, by implication, that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.

2. **Late filed citation (2):**

Since Claim 1 as granted has not been amended, citation (2) should have been introduced earlier into the proceedings, i.e. during the opposition period. It is thus deemed not to

have been submitted in due time within the meaning of Article 114(2) EPC. Nevertheless, due to its high degree of relevance, this citation cannot be disregarded and will be considered by the Board of its own motion (cf. Article 114(1) EPC).

3. Interpretation of Claim 1

The substance of Claim 1 in its form as granted calls for closer consideration before a decision can be reached on the question of patentability of its subject-matter.

In particular, it should be clearly determined to which substantive(s) (burner and heat radiating assembly or radiating assembly alone) the past participle "positioned" refers (cf. column 6, lines 12, 13 of the patent specification).

Although, in the three embodiments represented on Figures 1, 3 and 6, the burner is positioned within the air flow, the description (cf. column 2, lines 2-7) does not exclude that it may also be remotely located out of the air flow. Moreover, since Claim 12, which depends on Claim 1, states explicitly that the burner is located outside the air flow, the above mentioned participle "positioned" is to be interpreted as referring only to the heat radiating assembly and not to the burner, the location of which being not restricted in Claim 1.

4. Novelty

After having examined all the citations covered by the international search report as well as those introduced in the course of the further proceedings, the Board is satisfied that none of them discloses a hairdrying

apparatus comprising in combination all the features described in Claim 1 as granted.

Since the Appellant disputed novelty with respect to citations (1) and (2), it should be pointed out that the subject-matter of Claim 1 is distinguished:

- From the dryer according to citation (1) at least by the provision of a cylindrical tubular body with an air inlet at one end and an outlet nozzle at the other end; and,

- from the apparatus according to citation (2) at least by the location of its heat radiating assembly within the air flow.

Therefore, the subject-matter as set forth in Claim 1 is novel with respect to the prior art brought to the consideration of the Board.

5. The state of the art closest to the invention

The Board considers that late filed citation (2) describes the state of the art closest to the subject-matter of Claim 1 as granted.

This document discloses a hair drying apparatus comprising all the characteristics of the precharacterising portion of Claim 1 as well as most of the essential features of the characterising part of the claim, the heating of the air being obtained inside the body of said known apparatus by means of the passage of the flow of air along a heated partition wall.

Therefore, among all the documents opposed to the patent, this prior art presents the highest degree of similarity of structure with the apparatus according to Claim 1.

6. Problem and Solution

In the above mentioned closest state of the art, the heat radiating assembly comprises only the heated partition wall between the air duct and the combustion chamber and the air is heated only by passing along this wall. Such a means for exchanging heat may not be very effective for heating the flow of air properly. Moreover, no specific means are provided to operate the gas valve and the electric switch.

Therefore, in respect of the prior art disclosed in citation (2) the technical problem to be solved has been (1) to improve the heating of the air flow inside the body of the hair drying apparatus and (2) to specify means which can be used to operate manually the gas valve as well as the electric switch.

To solve this problem, the patent Claim 1 proposes essentially to position the heat radiating assembly directly within the air flow instead of laying it alongside and to provide the drying apparatus with a manual trigger to operate the valve and the switch.

The Board is satisfied that the aforementioned problem is solved by these additional features. The new arrangement and the means provided for the stated purposes act separately without any interaction with each other.

7. Inventive step

It belongs to the general knowledge of the person skilled in the art that the larger the heat exchanging surfaces in contact with the air flow and the more air brought into contact with these surfaces, the better the heat exchange and thus the heating of the air flow.

Moreover, it is already known from document (1) to heat an air flow in the body of a hair dryer by means of a wind channel incorporating a heat resisting heater positioned within the air flow (cf. the figure of the citation).

Consequently, the man skilled in the art would have found in this citation a corroboration of his knowledge and a hint for positioning the heat radiating assembly of his hair drying apparatus at a place inside the body where the sweeping by the air flow is the more important, i.e. within the air flow according to the invention.

The simple choice of such a location for the heat radiating assembly inside the hair dryer cannot therefore alone imply an inventive step.

As far as the provision of a manual trigger is concerned, it is common knowledge and usual to operate a hand hair dryer with such a means as it is already taught, for example, also in citation (1) which describes the use of a push button. The incorporation of such means is simple and is also obvious.

Therefore, in comparison with the state of the art known from citations (1) and (2) taken in combination and from common general knowledge, the subject-matter of Claim 1 of the opposed patent is not to be considered as involving an inventive step in the meaning of Article 56 EPC for the person skilled in the art and thus it cannot be patented in application of Article 52(1) EPC.

8. **Apportionment of costs** (Article 104 EPC).

Although, as held in T 10/82, "Opposition admissibility/-BAYER", OJ EPO 1983, 407, late submission of information about intended non-attendance at oral proceedings may be a

reason for a different apportionment of costs under Article 104(1), the Board finds the circumstances of the present case different. The oral proceedings were requested only by the Appellant. Already in August the Respondent had stated that he would not attend the oral proceedings in a letter responding to the Appellant's newly cited document (2). Further, the Board indicated its provisional view in its communication of 27 September 1989. The fact that the Respondent did not file any substantial comments was a further indication that he did not intend to pursue the matter on his part. The Appellant thus had the opportunity to reassess the situation and to decide whether or not oral proceedings would really be necessary. Had he withdrawn his request only to find later that the Respondent had filed comments which warranted oral proceedings, he could have requested such proceedings again at that later stage, in which case there might have been reasons for apportionment. Finally, Article 104(1) lays down the main rule that each party shall bear his own costs. Thus, the fact that the Appellant won his case in substance does not in itself constitute such reasons of equity as are required under this Article.

The Board, therefore, finds no reason to grant the request for apportionment.

Order

For these reasons, it is decided that:

1. **The decision under appeal is set aside.**

2. The European patent No. 97654 is revoked.

3. The request for an apportionment of costs is rejected.

The Registrar: The Chairman:

S. Fabiani G. Szabo

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