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File Number: T 358/90 - 3.2.3

Application No.: 83 303 054.7

Publication No.: 0 095 903

Title of invention: Portable toilet having a holding tank spout

Classification: E03D 5/01

D E C I S I O N  
of 27 January 1992

Applicant: Thetford Corporation

Opponent: Sanitation Equipment Ltd.

Headword:

EPC Article 56

Keyword: "Inventive step - (yes)"  
"Technical field - remote"

Headnote



Case Number : T 358/90 - 3.2.3

**D E C I S I O N**  
of the Technical Board of Appeal 3.2.3  
of 27 January 1992

**Appellant :**  
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**Representative :**  
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**Respondent :**  
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**Representative :**  
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**Decision under appeal :** Interlocutory decision of the Opposition Division  
of the European Patent Office dated 5 March 1990  
concerning maintenance of European patent  
No. 0 095 903 in amended form.

**Composition of the Board :**

**Chairman :** C.T. Wilson  
**Members :** K.W. Stamm  
J.H. van Moer

## Summary of Facts and Submissions

- I. European patent No. 0 095 903 was granted on 20 January 1988 with thirteen claims in response to European patent application No. 83 303 054.7, filed on 26 May 1983.
- II. A Notice of Opposition was filed on 17 October 1988, requesting revocation of the patent on the grounds of lack of inventive step.

The Opponent alleged prior use according to documents

- (A) four photographs of a "Potpourri" toilet, and
- (B)-(G) documents intended to date that alleged prior use.

He referred also in particular to the following documents:

- (D1) US-A-4 215 445 (1980; Portable toilets)
- (D2) US-A-4 125 207 (1978; Chain saw servicing kit)
- (D3) US-A-1 417 951 (1922; Emergency gasoline can)
- (D4) US-A-1 761 477 (1930; Can spout)
- (D5) US-A-2 022 343 (1935; Pouring means for canisters)
- (D6) US-A-2 430 147 (1947; Revoluble can spout)
- (D7) US-A-2 816 695 (1957; Can spout)
- (D8) US-A-2 842 289 (1958; Construction of pouring spout)

- III. The proprietor of the patent submitted the following amended Claims:

Main request:

"1. A portable toilet comprising a holding tank (14) having a discharge outlet (36) on the exterior of the holding tank through which the contents of the holding tank are emptied and closure means (38) for opening and closing the discharge outlet, and a seat section (12) separably disposed on the holding tank (14) characterised in that the discharge outlet comprises an elbow spout (36) rotatably mounted as a separate piece in an aperture (52) in the wall (58) of the holding tank (14) for rotation over a range of positions including a dispensing position pointing away from the tank, means being provided for maintaining a sealed relationship between the discharge spout (36) and the aperture (52) during rotation of the discharge spout over said range of positions."

Auxiliary request:

"1. A portable toilet comprising a holding tank (14) having a discharge outlet (36) on the exterior of the top wall (58) of the holding tank through which contents of the holding tank are emptied and closure means (38) for opening and closing the discharge outlet, and a seat section (12) separably disposed on the holding tank (14) with the outlet (36) being received between the holding tank (14) and the seat section (12), characterised in that the discharge outlet comprises an elbow spout (36) rotatably mounted as a separate piece in an aperture (52) in the wall (58) of the holding tank (14) for rotation when the seat section is separated from the holding tank, over a range of positions including a storage position and a dispensing position, the spout (36) in the storage position being received in a storage cavity (58, 60) between the seat section and the holding tank and in the dispensing position pointing away from the holding tank,

means being provided for maintaining a sealed relationship between the discharge spout (36) and the aperture (52) during rotation of the discharge spout over said range of positions."

III. In its decision of 25 January 1990, issued on 5 March 1990, the Opposition Division maintained the patent in amended form according to the auxiliary request. The subject-matter of Claim 1 relating to the main request was regarded as obvious having regard to documents A and (2).

IV. The Appellant (Proprietor) filed a Notice of Appeal received on 26 April 1990 and paid the appeal fee at the same time. The Statement of Grounds was filed on 28 May 1990. The Appellant is of the view that the subject-matter of Claim 1 according to the main request underlying the contested decision involves an inventive step. The main arguments of the Appellant are summarised as follows:

- (a) The problem of splashing had been accepted as unavoidable when portable toilets are used and no suggestion whatsoever in the prior art had realised that it was even possible to solve this problem. The difficulty of this problem is caused by the fact that when the holding tank is tipped, the mixture of liquid and solid waste discharges from the tank like a shot from a gun, causing intermittent rushes of waste that result in uncontrolled splashing if not properly directed.
- (b) Gasoline tanks and holding tanks of portable toilets are not simply comparable since the properties of homogeneous free-flowing liquids on the one hand, and those of a mixture of liquid and solid wastes on the other are too different from each other.

- V. In a letter received on 17 April 1991 the Respondent (Opponent) stated that "he withdraws the Opposition".
- VI. The Appellant requests by implication to set the decision aside and to maintain the patent according to the main request of the contested decision.

**Reasons for the Decision**

- 1. The appeal is admissible.
- 2. As regards Claim 1 according to the main request of the contested decision, the following is to be observed:

2.1 Amendment

Claim 1 forms a combination of granted Claims 1 and 3 plus the features "and a seat section (12) separably disposed on the holding tank (14)" and "including a dispensing position pointing away from the tank" which are clearly disclosed by Figure 9. The requirements of Articles 123(2) and (3) EPC are met.

2.2 Novelty

None of the mentioned documents describes all the features of Claim 1 according to either request. Novelty has not been contested so that further discussion of this question is not necessary.

2.3 Prior art, problem and solution

The prior art part of Claim 1 relates to document (D1) which deals with improvements concerning in the first

place the provision of additional chambers for chemicals such as deodorants and for toilet tissue paper. The discharge spout for the holding tank section was located in the top wall in inclined position near the level of fluids determined by a valve (46). The objective problem to be solved is thus to improve the discharge of the holding tank. The solution to this problem is defined by the subject-matter of Claim 1, in particular the claimed provision of a rotatable elbow-spout, which allows an easier discharge and avoids splashing.

2.4 Inventive step

2.4.1 The skilled person starting from document (D1) and taking account of the disclosure of document (A), would be taught to use a separate "hose adapter", not provided for in document (D1).

A comparison of these toilets in respect of their discharge conditions would, moreover, rather result in the statement that the solution in document (D1) appeared superior to the one according to (A), since (D1) needs only one part in a better position for easy discharge (inclination) and forms a compact tank with a minimum of parts.

The skilled person would, therefore, not have been led by the solution of (A) to further improve the spout in (D1) to arrive at the subject-matter of Claim 1.

2.4.2 Document (D2) relates to a "chain saw servicing kit", a technical field remote from that of portable toilets. Reference to such a remote technical field is carefully to be analysed when considering anticipation of the invention. The decisive question is whether the person

skilled in the special art of portable toilets would be expected to refer to the technical field of chain saws servicing equipment according to document (D2), since there too, containers are suggested. The Board is of the view expressed in many earlier decisions e.g. T 176/84, OJ 1986, 050, namely that the state of the art to be considered when examining for inventive step includes the state of any relevant art in neighbouring fields and/or a broader general field of which the specific field is part, that is to say any field in which the same problem or one similar to it arises and of which the person skilled in the art of the specific field must be expected to be aware.

In the present case, this is not clearly so: discharging the content of a portable toilet does not lead the person skilled in this art to the field of filling the tank of a chain saw by means of a special kind of container.

It follows from the above that document (D2) is to be disregarded when assessing inventive step of the subject-matter of Claim 1.

- 2.4.3 Documents (D3) to (D8) disclose rotatable spouts mounted on containers for liquids such as oil, soaps, food stuff such as vegetable oils or lighter fluids. It is clear that none of these documents refers to the special field of waste-water related to portable toilets. The discharge of the containers disclosed in these documents generally means likewise a filling operation requesting normally a narrow final ending following the discharge aperture of the container as such. As regards the hydraulic properties, it is clear that they present practically ideal homogeneous conditions.

Therefore the spouts described in the mentioned documents are to be understood as related to liquids having well defined properties, and presuppose technical conditions not comparable to the ones given by portable-toilets. Thus, it is not plausible to expect the person concerned with the problem of discharging waste-water-solid mixtures having peculiarly variable hydraulic and material properties to turn to a technology comparably much less problematic using well defined liquids such as vegetable oil, gasoline or lighter fluids - and without any splashing-avoiding tendency.

These documents also would not therefore give the person skilled in the art any indication as to how to arrive at the solution given in Claim 1.

- 2.4.4 The main effect of the invention is easy operation of the discharge of the holding tank avoiding splashing. It is accepted, as the Appellant submits, that this effect did not even constitute a known design problem of a portable toilet as such but rather that splashing was regarded as a condition to be accepted as inevitable in the special field, or possibly to be counteracted by means of special equipment, such as a hose for example. It is correct that the available documents give no evidence proving the opposite.

Hence, the solution according to Claim 1 in question necessitated an idea not obvious to a skilled person and thus the claimed subject-matter is to be regarded as involving an inventive step.

**Order**

**For these reasons, it is decided:**

1. The decision under appeal is set aside.
2. The case is remitted to the Opposition Division with the order to maintain the patent on the basis of the main request of the contested decision.

**The Registrar:**



**N. Maslin**

**The Chairman:**



**C.T. Wilson**

*Su*

*JVM*  
4-3-92