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D E C I S I O N
of 15 March 1995

Case Number: T 0810/93 - 3.2.3

Application Number: 89108820.5

Publication Number: 0348653

IPC: E03C1/06

Language of the proceedings: EN

Title of invention:
Shower cubicle with control centralising column

Patentee:
CESANA S.p.A.

Opponent:
Kermi GmbH,

Headword:
-

Relevant legal provisions:
EPC Art. 111(1)

Keyword:
"New citations - matter referred back"

Decisions cited:
T 0047/94

Headnote/Catchword:
-



Case Number: T 0810/93 - 3.2.3

D E C I S I O N
of the Technical Board of Appeal 3.2.3
of 15 March 1995

Appellant:
(Opponent)

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Representative:

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Respondent:
(Proprietor of the patent)

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Representative:

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Decision under appeal:

Decision of the Opposition Division of the
European Patent Office dated 5 July 1993 rejecting
the opposition filed against European patent
No. 0 348 653 pursuant to Article 102(2) EPC.

Composition of the Board:

Chairman: C. T. Wilson
Members: J. B. F. Kollar
L. C. Mancini

Summary of Facts and Submissions

- I. European patent No. 0 348 653 was granted on the 2 May 1991 on the basis of application No. 89 108 820.5 filed on 17 May 1989.

The single independent Claim 1 was in the following form:

"1. Shower cubicle comprising a shower base (12) a peripheral frame (16, 18) side walls (17, 19) comprising a door and designed to enclose at least two contiguous sides of said cubicle and at least one water sprinkler (24, 28, 29) connected, via a mixing unit or separate taps (23), to pipes (21, 22) supplying hot and cold water, said shower cubicle, in at least one corner (13) of the shower base (12) comprising an upright column (20) supporting said sprinkler (24, 28, 29) characterized in that said column (20) is in the form of hollow member housing pipes (21, 22, 25) supplying hot and cold water, as well as the mixed water, and mixing unit or the control taps (23); control taps for said mixing unit being operable from inner and outer sides of said column, the sprinkler (24, 28, 29) on the cubicle frame being oriented towards the inside of the cubicle in a direction facing away from the door panel (19) of the peripheral frame (16, 18) and a thermometer (26) indicating the temperature of the mixed water having the display located on the outside of the cubicle."

- II. Notice of opposition was duly filed requesting the revocation of the patent on the ground that its subject-matter did not involve an inventive step. In the course of the opposition proceedings the following documents were cited:

D1: DE-A-3 400 962,
D2: DE-A-2 707 622
D3: DE-A-3 137 406,
D4: DE-B-2 717 648,
D5: EP-A-0 178 453,
D6: EP-A-0 035 044,
D7: DE-A-3 329 830,
D8: FR-A-2 375 858,
D9: GB-A-776 064,
D10: DE-A-3 600 945.

III. By a decision dispatched on the 5 July 1993, the Opposition Division rejected the Opposition. Comparing features of Claim 1 (see the feature analysis at pages 5 and 6, section II.2 of the decision) with the cited prior art the Opposition Division held that none of the cited documents D1 to D10 disclosed features (g) or (i), which enable a user to manually set the water temperature before entering the shower cubicle. The Opposition Division came to the conclusion that it would not be obvious for a person skilled in the art to combine the teachings of documents D1 to D10 and to thereby arrive at the invention of Claim 1.

IV. Notice of Appeal was lodged against this decision on 6 September 1993 with a Statement of Grounds of Appeal and with payment of the prescribed fee. In his Statement the Appellant (Opponent) requested that the contested decision be set aside and the patent revoked in its entirety. In support the Appellant introduced into the appeal proceedings a new document, US-A-2 527 852, hereinafter referred to as D11, and argued, inter alia, that the subject-matter of Claim 1 lacked an inventive step in view of the disclosure of this document.

- V. In a letter received 6 May 1994 the Respondent (Patentee) considered document D11 to be not harmful either to the novelty or to the inventive step of the patent. He requested that the patent be maintained as granted and that the appeal be dismissed.
- VI. In a submission received on 21 September 1994 the Appellant introduced into the appeal proceedings a further document, US-A-1 785 636, hereinafter referred to as D12. It was then argued, inter alia, that the subject-matter of Claim 1 lacked an inventive step in view of the disclosure of this document in combination with D11.
- VII. Oral proceedings are subsidiarily requested by both parties.

Reasons for the Decision

1. The appeal is admissible.
2. *Newly Cited Prior Art*
 - 2.1 The Board has given careful consideration to the newly cited prior art, documents D11 and D12, and, while not at this stage formally admitting these documents into the proceedings, considers them sufficiently relevant to justify the Board exercising its discretion under Article 111(1) EPC to refer the matter back to the Opposition Division to consider the whole matter afresh, including the admissibility of these late filed documents.
 - 2.2 Since appeal proceedings are not and have never been meant to be a mere continuation of first instance

proceedings by other means the Board deliberately refrains from making any further comments on the merits of the case, so as not to inhibit the freedom of the Opposition Division in dealing with the opposition beyond observing that the features (g) and (i), stated in the contested decision to be not disclosed in the prior art documents, D1 to D10, do appear to be disclosed in this late-filed prior art. Moreover, in the Board's view it is neither necessary nor appropriate to appoint any oral proceedings in the present case in spite of the subsidiary requests of both parties, (see T 0047/94 of 16 January 1995, not to be published).

Order

For these reasons it is decided that:

1. The decision in issue is set aside.
2. The case is remitted to the Opposition Division for further examination of the opposition.

The Registrar:



N. Maslin

The Chairman:



C. T. Wilson

