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D E C I S I O N
of 21 November 1994

Case Number: T 0729/91 - 3.2.4

Application Number: 85305748.7

Publication Number: 0172020

IPC: A45D 20/16

Language of the proceedings: EN

Title of invention:
Wall-mounted hair dryer

Patentee:
Panache Promotions (Proprietary) Limited

Opponents:
01) Elite S.r.l.
02) Electrostar Schöttle GmbH & Co.
03) Hendon International Hotel & Leisure Products Limited
04) Aliseo Diffusion S.A.

Headword:

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Relevant legal provisions:
EPC Art. 54(2), 56, 116

Keyword:
"Monthly magazine describing invention sent to a library few days before priority date"
"Evidence from librarian"
"Balance of probabilities"
"Publication available to the public (yes)"
"Inventive step (no)"

Decisions cited:
T 0381/87

Catchword:

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Case Number: T 0729/91 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 21 November 1994

Appellant: Panache Promotions (Proprietary) Limited
(Proprietor of the patent) Canary Road
Athlone, Cape Province (SA)

Representative: Magwick, Paul Roland
Ladas & Parry
Altheimer Eck 2
80331 München (DE)

Respondent I: Elite S.r.l.
(Opponent 01) Via Montale, 32
I-20030 Milano (IT)

Representative: De Nova, Roberto
JACOBACCI-CASETTA & PERANI S.p.A.
Via Visconti di Modrone, 7
I-20122 Milano (IT)

Respondent II: Electrostar Schöttle GmbH & Co.
(Opponent 02) Stuttgarter Str. 36
73262 Reichenbach an der Fils (DE)

Representative: Kohler Schmid & Partner
Patentanwälte
Ruppmannstraße 27
70565 Stuttgart (DE)

Respondent III: Hendon International Hotel & Leisure
(Opponent 03) Products Limited
Pembroke House
Campsbourne Road, Hornsey
London N8 7PE (GB)

Representative: Warren, Keith Stanley
Baron & Warren

18 South End, Kensington
London W8 5BU (GB)

Respondent IV: Aliseo Diffusion S.A.
(Opponent 04) 10, Chemin des Buissons
CH-2726 Saignelegier (CH)

Representative: Nithardt, Roland
Cabinet Roland Nithardt
15, Rue Edouard Verdan
CH-1400 Yverdon (CH)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office dispatched 23 July 1991 revoking European patent No. 0 172 020 pursuant to Article 102(1) EPC.**

Composition of the Board:

Chairman: C. Andries
Members: M. Ceyte
J-C. De Preter

Summary of Facts and Submissions

- I. The Appellant is Proprietor of European patent No. 0 172 020. Claim 1 as granted reads as follows:

"A wall-mounted hair dryer comprising:
a casing (12) having a cold air intake (24) and a heated air outlet, the casing containing an electric heating element (40) and an impeller driven by an electric motor (58) for drawing in air through the intake (24) and expelling air heated by the heating element (40) through the outlet; a flexible air hose (32) having one end communicating with the outlet and another end having a handle (34) terminating in a discharge outlet (36) for directing heated air at a user; means for detachably securing the handle (34) against the casing (12); and switching means (46) for connecting mains power to the motor (54) and the heating element (40) when the handle (34) is detached from the casing (12) by the securing means and for disconnecting the motor (54) and the heating element (40) from mains power when the handle (34) is secured to the casing (12), characterized by further comprising: a timer (56) arranged to switch off the hair dryer (10) after a predetermined period of operation; first and second shaver power outlets (28, 30) mounted on the casing (10); a transformer (80) having an input for receiving mains power, a first output connected to the first outlet (28) for supplying power at mains voltage, and a second output connected to the second outlet (30) for supplying power at half mains voltage; and current limiting means (82) for preventing the first and second outlets (28,30) from

supplying more than a predetermined limiting current sufficient to power a shaver."

Granted Claims 2 to 5 are dependent on Claim 1.

II. The patent was opposed by the Respondents (Opponents 01 to 04) on the grounds of lack of patentability. The following state of the art was i.a. relied upon:

D13: British Standard Specification for 2-pin reversible plugs and shaver socket outlets, BS 4573:1970.

III. In the opposition proceedings, the Opponent 04 submitted an Affidavit signed by a librarian, named Arlene Glenda Fanarof, and dated 6 March 1991, in which the following was stated:

"I am employed by the South African Library, Queen Victoria Street, Cape Town, as head of its Information Department.

I annex hereto, marked "AGF", photocopies of the front cover and the un-numbered page between pages 78 and 80 of the August 1984 issue of the publication **HOTELIER & CATERER**. These photocopies have been taken from the South African Library's copy of the publication.

The front cover bears a rubber stamp impression indicating that the South African Library's copy of the publication was received by the library on 9 August 1984.

Publications received by the South African Library are generally available to the public as of the date of receipt."

The publication "Hotelier & Caterer", August 1984, was referred to as document D23 in the decision of revocation.

- IV. The Opposition Division revoked the European patent in a decision posted on 23 July 1991.
- V. On 23 September 1991 the Appellant filed a Notice of Appeal against this decision and paid the appeal fee. A written statement setting out the grounds of appeal was filed on 22 November 1991.
- VI. The Appellant requested that the decision under appeal be set aside and that the patent be maintained as granted.

By a letter dated 1 April 1992, he further requested "oral proceedings in the situation that the Appeal Board considers their only option is to refuse the appeal immediately".

The Appellant's arguments as set forth in his Statement of Grounds of Appeal can be summarised as follows:

The essence of the present invention is a wall-mounted hair dryer having dual safety shaver outlets. The hair dryer is activated by removing the handle attached to a discharge outlet of the hose and deactivated when the handle is replaced. A timer will deactivate the unit if the handle is not replaced after a predetermined time.

The hair dryer incorporates two outlets for shavers which are powered through a transformer. One outlet is powered at the mains voltage and the other is powered at half of the mains voltage. A current limiting means prevents the outlets from supplying more than a predetermined limiting current sufficient to power a shaver. The idea that such a dual purpose piece of equipment was desirable is not found in any prior art disclosure nor apparent from any combination thereof.

Document D13 only states that the shaver socket outlets shall incorporate a current limiting device which shall not be a fuse. It is clear from the text that this current limiting device does not limit the current drain to substantially that of an electric shaver. Claim 1 of the patent under appeal specifically states that the current is limited to that sufficient to power a shaver. Furthermore, it is observed that the standard specifically states that the device covered by the standard should be marked by engraving "NOT for use in bathroom" (emphasis in the standard). Thus, it is clear that this standard would not suggest the present invention to one skilled in the art.

In addition evidence provided by the Opponent 04 contains no indication of the actual date by which the publication D23 was available to the public.

- VII. The above submissions were contested by the Respondents. They requested that the appeal be dismissed.

- VIII. In a communication dispatched on 7 July 1994, the Board expressed its preliminary view that on the evidence

filed it was highly likely that the publication D23 arrived at the library on 9 August 1984 and was actually available to the public before the priority date of the European patent (13 August 1984). It was therefore to be presumed in the absence of any relevant evidence to the contrary that this publication was comprised in the state of the art according to Article 54(2) EPC.

The Board also held that all the features of Claim 1 were known from the magazine D23 save the provision of a transformer and current limiting means (not shown). However, since the wall mounted hair dryer disclosed in this publication is equipped with two shaver outlets, one of which being at half mains voltage (AC 110V) the provision of a transformer appears to be mandatory for reducing the mains voltage to 110V. Furthermore, document D13, which is a British Standard Specification for shaver sockets outlets, stipulates that such outlets **shall** incorporate a current limiting device.

The Board therefore came to the conclusion that the subject-matter of Claim 1 did not apparently involve an inventive step.

- IX. Although the parties (including the Appellant) were invited to file observations on the Board's communication, the Appellant failed to do so.

Reasons for the Decision

1. The appeal complies with Articles 106 to 108 and Rule 64 EPC and is admissible.

2. The main question to be decided in this appeal is whether or not the publication D23 formed part of the state of the art within the meaning of Article 54(2) EPC.

2.1 Publication D23 is a periodical magazine published monthly, intended for hoteliers and caterers and which can be bought to the unitary price of "R 2.00 (Excl. GST)" in South Africa. In accordance with the evidence brought forward in the case, a copy of this periodical magazine was received by the indicated library on 9 August 1984, thus before the priority date (13 August 1984) of the patent in suit.

On arrival in the library this copy was date-stamped with the date of receipt. Thus, on the evidence filed, the Board has no reason to doubt that this publication was actually received by the library on 9 August 1984.

2.2 In her Affidavit the Librarian stated that publications are "generally available to the public as of the date of receipt". There is thus no absolute certainty that this was done for the particular publication D23.

However, as stated in the decision T 381/87 (OJ EPO 1990, 213) where the deciding Board was faced with a similar problem of availability to the public of an article in a technical magazine, the EPO must decide what happened having regard to the available evidence on the balance of probabilities, i.e. it must decide what is more likely than not to have happened (cf. point 4.4 of the Reasons for the Decision).

In the present case, it is, in the Board's view, clearly much more likely that the publication D23 was available to the public as from the date of receipt (9 August 1984) not to mention the following days before the priority date (13 August 1984). In the absence of evidence to the contrary, the Board accepts that what in fact happened was that what the Librarian stated would "generally" happen.

2.3 It is observed that no arguments have been provided by the Appellant against these reasons which were dealt with in the Board's communication dated 7 July 1994. The Board therefore sees no reason to modify its provisional opinion.

2.4 For these reasons, the Board concludes that publication D23 was available to the public before the priority date of the patent in suit and is thus, according to Article 54(2) EPC, comprised in the state of the art.

3. *Novelty*

Having reviewed the documents which are in the proceedings, the Board is satisfied that none of them discloses a hair dryer having all the features defined in Claim 1. Therefore the subject-matter of Claim 1 is novel within the meaning of Article 54 EPC. As novelty is not in dispute, no more detailed discussion is necessary.

4. *Inventive step*

In the Board's view, publication D23 clearly represents the nearest prior art. The wall-mounted hair dryer,

called "Panache HD2121", shown in this publication discloses most of the features of Claim 1. In particular, this wall-mounted hair dryer has dual shaver outlets. As marked on the casing, one outlet is supplied with 220V and the other with 110V. According to the symbols engraved on the casing, the hair dryer is activated by removing the handle attached to a discharge outlet of the hose and deactivated when the handle is replaced. The feature that a timer is arranged to switch off the hair dryer is also disclosed, since it is stated the depicted hair dryer includes as safety features built into the unit, "electronic timing device pre-set for 25- minute cut-out".

Thus as stated in the Board's communication, the hair dryer according to Claim 1 differs from that of publication D23 in the first place by virtue of the provision of a transformer (not shown in publication D23). However, the wall-mounted hair dryer of publication D23 is provided with two shaver outlets, one of which being supplied at half main voltage (110V). Any skilled person would be aware that in this case a transformer is necessary for reducing the mains voltage to 110V. Thus the provision of a transformer represents merely an indispensable and obvious constructional measure, which has no inventive merits.

A further distinguishing feature is the provision of current limiting means for preventing the first and second shaver plugs from supplying more than a predetermined limiting current sufficient to power a shaver.

In publication D23 it is expressis verbis stated that an "Automatic cut-out switch on shaver plugs prevents shorting if faulty shaver is plugged in. Automatic restart". Thus the disclosed cut-out switch has apparently the same safety function as the claimed current limiting means. Moreover the casing of the depicted hair dryer bears the mention "AC 0.1A". This indication appears to corroborate the presence of a current limiting device which would prevent more than a predetermined current, that is 0.1A, from being drawn from the sockets. In any case, document D13 which is a "British Standard Specification for 2-pin reversible plugs and shaver socket outlets" states that sockets outlets "shall incorporate a current limiting device". The provision of such a feature therefore does not involve an inventive step.

It is observed that the Respondent did not file any observations to refute the arguments on lack of inventive step contained in the Board's communication. The Board therefore sees no reason to modify its previous provisional opinion.

5. For the reasons stated above, in the Board's judgment, the subject-matter of granted Claim 1 does not involve an inventive step contrary to the requirements of Article 56 EPC.

As a party's request must be decided as a whole, granted Claims 2 to 5 must share the fate of Claim 1. The appeal against the decision of the Opposition Division revoking the patent must, therefore, be dismissed.

6. Since the Appellant has requested oral proceedings "in the situation that the Appeal Board considers their only option is to refuse the appeal **immediately**" (emphasis added) there is, in the Board's view, no pending request for oral proceedings on the part of the Appellant, after the Board's communication of 7 July 1994, particularly since also in this respect no counter-arguments have been brought forward by the Appellant on the Board's provisional statement relating to oral proceedings.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

N. Maslin

C. Andries