

APPEAL SUBMISSIONS NO. 2

FOR:

SharkNinja France, SAS, registered with the Nanterre Trade and Companies Register under number 882 149 552 and having its registered office at c/o Emergence 121 rue d'Aguesseau, 92100 Boulogne-Billancourt, represented by its current legal representative,

SharkNinja Europe Limited, having its principal place of business at 3150 Century Way, Thorpe Park, Leeds LS15 8 ZB, United Kingdom, in the person of its current legal representative,

Appellants

Represented by SCP AUGUST & DEBOUZY ET ASSOCIES, in the person of Maître Grégoire DESROUSSEAUX, assisted by Maître Martin BRION, Avocats au Barreau de Paris, 6-8 avenue de Messine - 75008 Paris, Tel: 01 45 61 51 80 - Fax: 01 45 61 51 99 - Palais P438

Dyson Technology Limited, a company incorporated in England with its principal place of business at Tetbury Hill, Malmesbury, Wiltshire SN16 0RP, United Kingdom, represented by its Director and Chief Legal Officer,

Respondent

Represented by SELARL Lexavoué, in the person of Maître Matthieu Boccon-Gibod, Avocat au Barreau de Paris, 89 quai d'Orsay - 75007, Tél. 01 39 07 21 21 - Fax. 01 39 07 21 22 - Palais C2477

and T 1540/14 (not entirely unambiguous patent documents) summarise the case law.

76. French case law adopts a similar definition of the skilled person, which it considers to ^{be41} :
the technical field in which the problem to be solved by the invention covered by the patent arose.

In this respect, the person skilled in the art ^{has42} :

the technical knowledge needed to find solutions to the problems posed by the invention.

He is neither a person without professional skills, nor an expert, ^{but43} :

an average specialist in the technical sector to which the invention belongs, with the theoretical and practical knowledge and experience that can normally be expected of a professional in the field concerned.

Here we're talking about hair care appliances.

77. The person skilled in the art is an engineer working in the field of hair care appliances such as hair dryers or styling appliances.

This means that he or she has average and general knowledge and skills in the field of hair care appliances.

It must be assumed that he has knowledge of general mechanics.

This is also the position of the delegate of the President of the Court of First Instance in his order of 19 September 2023, namely:

It should be remembered that the person skilled in the art is the person skilled in the technical field in which the problem that the invention, which is the subject of the patent, is intended to solve arises (Cass. Com., 20 November 2012, appeal no. 11-18.440). In this case, the person skilled in the art is an engineer experienced in the design of household electrical products for hair care, with knowledge of general mechanics.⁴⁴

At first instance, although Dyson had not given a definition of a person skilled in the art, the delegate of the President of the Court of First Instance ^{noted45} that :

Dyson does not formulate any definition of a person skilled in the art in its pleadings, appearing to refer to the definition adopted by the decision of the Munich Landgericht of 4 May 2023, according to which "a person skilled in the art (...) is a mechanical engineer with several years of experience in the design of electronic hair care products such as hair dryers or curling irons (...)".

78. While the parties and the delegate of the President of the Court of First Instance agreed on the definition of a person skilled in the art at first instance, Dyson added in its submissions on appeal that :

One could usefully add "in fluid mechanics" because of the implementation of the Coanda effect duly recalled in the description "⁴⁶,

This addition to the knowledge of a person skilled in the art, which is necessary for Dyson's argument on the interpretation of the claims and for the study of the validity of EP'234, is not admissible, as it must be considered that a person skilled in the art has no specific knowledge of fluid mechanics, nor knowledge of the Coanda effect.

⁴¹ Cass. com. 20 November 2012, appeal no. 11-18440, in exhibit no. JP3.

⁴² CA Paris, 16 February 2018, no. 15/16413, in exhibit no. JP4.

⁴³ TGI Paris, 30 June 2017, no. 16/00811 (upheld on appeal), in exhibit no. JP5.

⁴⁴ Order of 19 September 2023, paragraph 16.

⁴⁵ Order of 19 September 2023, paragraph 15.

⁴⁶ Dyson appeal n°1, page 63.

In this respect, on the one hand, fluid mechanics is not included in the "general mechanics" specific to the general knowledge of the person skilled in the field of capillary devices as defined at first instance by the parties.

On the other hand, although the Coanda effect is mentioned in the description of EP'234, it does not belong to the technical field of the invention of EP'234, i.e. the field of hair care appliances.

This is clear from the documents communicated by Dyson which are specific to technical fields unrelated to the technical field of the invention, namely jet engine nozzles and ballistics.

These are technical fields unrelated to that of the patent.

In fact, Dyson explicitly acknowledges this in its conclusions no. 1 when it states "the invention is [...] pioneering" and "the Coanda effect which is novel in the field, as shown by the mass of prior art discussed by the defendants where this effect has never even been contemplated"⁴⁷.

On this point, it should be noted that the French Supreme Court defines a person skilled in the art in relation to the problem posed, but certainly not in relation to the solution. It is completely inconsistent for Dyson to claim that

- the invention would be a *breakthrough invention* because of the novel use of the Coanda effect and
- in the same breath, that this effect would be part of the general knowledge of the person skilled in the art.

79. Finally, a patent booklet on the Coanda effect from 1934 and a thesis entitled "Application des techniques de contrôle des écoulements au pilotage des projectiles: Contrôle fluide d'un projectile gyrostabilisé de 155 mm par effet Coanda", does not constitute proof that the teaching of these documents, in particular to maintain that the Coanda effect would be within the general knowledge of the person skilled in the art.

In this respect, it is for Dyson to ^{prove}⁴⁸ that these documents are included in the elements constituting the general knowledge of the person skilled in the art as defined above and not merely to assert that

The Coanda effect is part of the general knowledge of a person skilled in the art of mechanics: see, for example, Dyson Part No. 30.

: Extract from the doctoral thesis (Mechanics) of Michael Zeidler defended on 8 July 2015 recalling that:

"Discovered in 1935, the Coanda effect characterises the ability of a fluid jet to remain attached along a curved wall. The jet, placed tangentially to a curved surface, is deflected by the wall and generates significant forces".

The Court will note that Mr Henri Coanda, an aeronautical engineer and pioneer of the jet engine, was the holder of French patent no. 792.754 applied for on 8 October 1934 for a process and device for diverting a stream of fluid penetrating another fluid (Dyson exhibit no. 31 [Henri Coanda patent no. 792.754](#)).

80. In fact, there is no reason why these elements should be considered as part of the general knowledge of a person skilled in the art of hair care appliances.

These are not general mechanical manuals relating to the field of

⁴⁷ Dyson appeal n°1, page 63.

⁴⁸ EPO Examination Guidelines G-VII-3.1 "It is therefore only necessary to prove (for example by quoting a manual) that something is part of the general knowledge of the person skilled in the art when this allegation is contested".

hair care products, but technical documents⁴⁹ relating to very specific fields that are particularly far removed from that of the invention.

Even if fluid mechanics were considered to be within the knowledge of a person skilled in the art, which the appellants dispute, the Coanda effect, which is a very specific element of fluid mechanics, would not be included in the general knowledge of fluid mechanics, given the very specific fields of application mentioned by Dyson and in any event unrelated to that of hair care appliances.

The Coanda effect and fluid mechanics should therefore be excluded from the general knowledge of the person skilled in the art.

The person in question is an engineer in the field of household electrical products and is more particularly specialised in hair dryer systems.

He has a good knowledge of general mechanics in relation to the technical field in question, as the appellants maintained at first instance and as the delegate of the President of the Court of First Instance held in his order.

However, contrary to what Dyson maintains for the first time on appeal, this person skilled in the art has no particular knowledge of fluid mechanics or the Coanda effect, since :

- **this knowledge does not belong to the field of the invention, i.e. that of hair care appliances, which Dyson acknowledges;**
- **the documents communicated by Dyson relate to technical fields that are particularly remote from that of the invention;**
- **Dyson provides no evidence that they are within the general knowledge of the skilled person.**

2.5.3 THE INVENTION OF CLAIM 1

81. As granted, claim 1 of EP'234 relates in particular to an accessory having an outlet (feature (c)) comprising at least one slot (feature (f)) which extends substantially from one end of the accessory to the other (feature (g)).

This slot is partly defined by the external surface of the accessory (feature (h)).

Finally, the characterising part (feature (i)) relates to the accessory outlet designed to direct the emitted fluid tangentially around the external surface of the accessory.

As explained ^{below}⁵⁰, this feature relates exclusively to the direction of the flow when it is emitted, but in no way to the flow of the fluid after it is emitted, the Coanda effect or the automatic winding of the hair on the accessory.

None of these latter features is claimed in claim 1 of EP'234, and since these effects cannot be obtained over the entire scope of the claim, they should be disregarded.

82. Consequently, the accessory of claim 1 of patent EP'234 is a hairdressing accessory which operates by emitting a tangential flow of air orthogonal to the external surface of the accessory at its outlets.

⁴⁹ EPO Examination Guidelines G-VII-3.1 "An isolated publication (e.g. a patent specification, but also the contents of a trade journal) cannot normally be regarded as forming part of the general knowledge of a person skilled in the art (cf. [I 475/88](#))".

⁵⁰ See Section 2.5.8 below.