

CANDIDATE'S ANSWER

C, EQE 2017

Notice of Opposition

The following submissions are filed in combination with the enclosed Form 2300

A1

A1 (EP2394232) the opposed patent was filed on 7 April 2011 and claims priority from EP10223223(P1) which was filed on 8.4.10 and from EP11117055(P2) which was filed on 28.3.11.

Effective dates of claims

Claim 1,2,3 when dependent on claim 1 (shorthand = 3(1)) and 4 were first disclosed in P1, the effective date of these claims is therefore the filing date of P1 [8.4.10], A89EPC. It does not matter that P1 was later withdrawn A87(3) EPC.

The subject matter of claims 5,6 and 7 was first disclosed in P2. The s.m (shorthand for subject matter throughout) was not contained in the priority document P1, and the paragraphs containing the s.m i.e. Corkscrew element with a disk. ([15] to [18]) are only found in P2, not in P1. Therefore the first disclosure of s.m of claims 5,6 and 7 is P2, and the effective date of these claims is therefore the filing date of P2, 28.3.11, A89EPC, A88(3) EPC (G3/93 – not entitled to priority date of P1). It does not matter that P2 was later withdrawn A87(3) EPC.

Documents Relied Upon

A2, A3, A5 and A6 were all published before the earliest priority date (filing date of P1) of A1, and therefore A2, A3, A5 and A6 are all documents according to A54(2) EPC and A56 EPC for all claims 1-7.

A4 is a review of a wine fair. The wine fair disclosure happened 25-27 March 11, between the earliest priority date P1 and the second priority date P2. Therefore, the disclosure was public before the effective date of C5, C6 and C7 and is prior art according to A54(2) EPC and A56 EPC for these claims.

The wine fair is prior art according to A54(1) EPC. It happened in Portugal, Oporto on 25-27/3/11. The fair was open to the general public, hence the wine and available exhibitions at the fair have been made available to the public in the sense of A54(1) EPC, A54(2)EPC, T1085/92.

Evidence concerning the wine fair is provided in A4 (the referral to A4_f throughout this opposition is a referral to the wine fair itself rather than the review). Further evidence concerning the circumstances of the disclosure (exactly what was disclosed to whom, exact location) will be provided at a later stage.

Throughout, [n] is used to indicate paragraph number of particular citation in that document.

A4_{sale} refers to the corkscrew as described in A4 (col 2 line 39-43) and sold at the fair A4_f, hence having the disclosure date of the fair and being relevant to the same claims (5,6,7) as A54(2) EPC prior art.

Objections under A100(c) EPC.

During prosecution of A1, claim 3 was amended to be dependent on claim 2 ("claim3(2)") as well as on claim 1. This amendment has introduced subject matter into A1 which extends beyond the content of the application as filed, contrary to A123(2) EPC.

The amendment introduces an embodiment of a corkscrew with a polyethylene housing with 2 side arms and ridges on the straight portion which engage the side arms. There is no disclosure of the side arm embodiment in combination with a polyethylene housing in the application as filed. Paragraphs 13+14 describe the side arm embodiment, which does not include a polyethylene housing, and the application

specifically recites that the housing 1 is metal [13] which provides the necessary structural support [17]. Therefore, the newly added dependency introduces subject matter which extends beyond the content of the application as filed.

As such claim 3(2) does not have an effective date.

Objections under A100(a) EPC

- Claim 1 (independent)
A56 EPC using A6 with A2

A6 is the closest prior art because it relates to the same technical field of devices for removing corks (A6, title and [1], A1, title and [6]) and is directed to the same purpose of providing a rotatable element corkscrew with improved ease of use for the user (A6, [2]) having though a housing for protection (A6 [5], A1 [7]).

Although many of the annexes disclose corkscrews, A6 is the only one dedicated to the same purpose and provides the most number of structurally similar features (it is the only document which discloses a element with both a straight and spiral section A6 [4], A1 (claim 1) in combination with a housing with an enclosed chamber A6 [5], A1 [7], claim 1) and therefore represents the most promising starting point (G-VII, 5.1).

A6 discloses a device for removing corks ([4] corkscrew, which is known to be a device for removing corks from A1 [2], where “a cork is removed” by a corkscrew)

comprising a housing providing an enclosed chamber (structure 1, [4], which “forms an enclosed chamber” clearly from [5] which recites different embodiments can “also” form an enclosed chamber), having a generally cylindrical shape ([6] “cylindrical shape is preferred”); and

rotatable cork extraction element ([4] “central element”, which is used for turning into the cork [9] which is then removed so the central element is a “cork extraction” element – also see [8] “extraction” of the cork. The element is inserted by

“turning” it [9], therefore is rotated and hence rotatable spiral elements are rotated A1 [2])

wherein the rotatable cork extraction element comprises at least a straight portion ([4] central element comprises straight part 3)

having a handle ([4] handle 4 is “attached to the straight part”) attached to it,

and a spiral cork engaging portion ([4] element comprises helical part 2. A helical element is a spiral element – see A1[2]. The helical part is inserted into the cork [9] A6, and therefore engages with the cork. Therefore, helical part 2 is “spiral cork engaging portion”. Is a ‘portion’ as is part of the central element).

Claims 1 is distinguished from A6 as A6 does not disclose that the spiral cork engaging portion (helical part 2) that at least 2 different pitch sizes. A6 is silent on the pitch of the helical part.

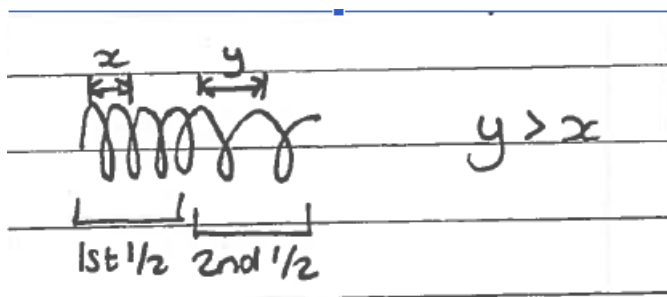
The effect is this distinguishing feature is that the extraction element can strongly hold the cork without originating too much pressure the bottle’s neck, which means that the cork is more stable during extraction [10] A1 and the likelihood of the cork breaking during extraction is reduced [11] A1.

The objective technical problem is therefore how to reduce the likelihood of breaking the cork during extraction.

The person skilled in the art (SKP hereon in) would have consulted A2 as it is in the same technical field of a device for removing a cork from a bottle (A2, [1]) which is where the skilled person would be looking for solutions to the problem (T 176/84 G-VII,3).

The solution to the objective technical problem given in A2, which discloses using a rotatable cork extraction element with a spiral cork engaging portion ([8] A2, hollow piercing element is spiral, and is a ‘piercing’ element hence pierces i.e. engages with the cork. It is evident that if the element is spiral it must be rotated to enter the cork

and therefore is rotatable) having at least two different pitch sizes ([9], the spiral has 'fewer turns in the upper half'. If there are fewer turns in one half than the other, it is implicit that the distance between each turn is greater in the half with fewer turns.



Therefore, the spiral element in A2 has different distances between adjacent turns. A1 [10] recites pitch size = distance between adjacent turns, and so A2 discloses a spiral with two different distances between adjacent turns → two different pitch sizes.)

A2 teaches the skilled person that having different pitch sizes “reduces the possibility of breaking the cork while pulling it” [9] A2, therefore the feature solves the OTP.

Therefore the SKP faced with the OTP would apply the teaching of A2 to A6. There is no hindrance in doing this, as A6 recites that cork extraction can be optimised by “modifying existing shapes” of the helical element [1], hence it is clearly a possibility. A6 also teaches that stability whilst removing the corn is important [9] A6.

The central element (hence helical part) in A6 is made of metal ([8]) and the spiral needle is made of metal in A2 ([9]) so the skilled person would not see any problem in adding the different pitches of spiral into the metal part of A6.

Therefore the SKP would apply the teaching of A2 to A6 to solve the OTP and adjust the helical part of A6 to have two different pitch sizes, and therefore would arrive at the subject matter of claim 1.

Claim 1 therefore lacks an inventive step over A6 in combination with A2 and contravenes A54 EPC.

Claim 2 (dependent on claim 1)

A56 EPC using A5 with A2 and A6

Claim 2 is dependent on claim 1.

A5 is the closest prior art because it is in the same technical field as A1 (a bottle opener to remove a cork A3 [1], A1 title and [1]) and relates to the same purpose of providing a bottle opener with arms to push down to reduce the force required to remove the cork. (A5 [7], A1 [14]).

A5 discloses:

a device for removing a cork ([3] bottle opener used to remove a cork [1]) comprising a housing ([3] support element 5 contains therefore houses the central element) and a rotatable cork extraction element ([3] cork engaging element is used to remove the cork ([5] hence extract it, and in use is “turned” [5] hence is rotatable) which comprises a straight portion ([3] straight section 2) having a handle ([3] attached to a handle 3) attached to it and a spiral cork engaging portion ([3] helical section 1 → helical is spiral A1 [2]) which is inserted into the cork [7] A5 hence engages) with cork and has

a device comprising: two toothed side arms ([3] side arms 7 (clearly 2 from Figure 1) which each have [3] toothed part 6, therefore the side arms are toothed), coupled to a housing ([3] collar 5a serves as a support for the toothed part of the arms, hence the arms are “coupled” to the collar 5a. Collar 5a is part of supporting element 5 [3], which surrounds the engaging element see [3] and Figure 1, and therefore can be seen to house the element – is a housing) wherein the straight portion ([3] cork engaging element has a straight section 2) comprises ridges ([3] ridges 4 on the “latter” section (i.e. the straight section as this is the latter section mentioned in the previous sentence) that engage the side arms ([5] “ridges 4 engage the toothed side arms 7”).

A5 does not disclose i) that the spiral has at least two different pitch sizes or ii) that the housing provides an enclosed chamber having a generally cylindrical shape.

The effect and OTP solved b i) are discussed above as how to reduce the likelihood of the cork breaking during removal.

The effect of ii) is to protect the user from inadvertently trapping their finger (A1 [7]) and the OTP is how to provide a safer corkscrew to protect the user's fingers.

The effects of i) and ii) are unrelated to one another and do not produce a synergistic effect. The two objective technical problems solved by features i) and ii) can therefore be handled as individual problems using separate combinations of prior art (GL G-VII, 5.2, 6 + 7).

First Difference

The solution of the first partial objective technical problem (OTP) is the same as for claim 1.

Second Difference

The SKP faced with OTP would turn to A6 as it relates to the same technical field of removing a cork (A6, title), where the SKP would be looking T 176/84.

A6 discloses a housing with a enclosed cylindrical chamber having a cylindrical shape ([4] structure 1, cylindrical [6], with enclosed space [5]).

A6 teaches that this solves the problem of minimising risk to user ([6]). Therefore SKP motivated to include this feat. in A5 to solve OTP.

The SKP would have no hindrance in applying the teaching as both A5 + A6 have cork engaging elements made of metal (A5 [6] and A6 [8] and the housing of A6 could therefore be included in A5 by SKP without inventive concept st. skilled person would arrive at sm of C2.

Claim 2 therefore lacks an inventive step over A6 in combination with A2 and A5 and contravenes A56 EPC.

Claim 3 dependent on claim 1

Article 56 EPC: using A6 with A2

Claim 3 is dependent on claim 1.

A6 remains the closest prior art for the reasons already given for claim 1.

As well as the specific features of claim 1 described above, A6 also discloses that the housing is made of polyethylene ([5] structure 1 (housing as explained in C1 analysis) “is preferably made of polyethylene”).

Thus, claim 3(1) differs from A6 by the same features as for claim 1, so claim 3 therefore lacks an inventive step over A6 in combination with A2 for the same reasons as for claim 1, therefore claim 3(1) contravenes A56 EPC.

Claim 3(2)

Does not have an effective date and is attacked under A100(c) EPC above.

Claim 4 dependent on claim 1

Lack of inventive step: using A6 with A2 and A3.

Claim 4 is dependent on claim 1.

A6 remains the closest prior art for the reasons already given for claim 1.

Claim 4 is distinguished from A6 in that A6 does not disclose:

- i) a spiral cork engaging portion having at least 2 different pitch sizes; and
- ii) the handle is in the shape of a flower.

The effect of feature i) is discussed above in C1 to provide a more stable cork during extraction and the OTP solved by feature i) is to reduce the likelihood of the cork breaking during removal.

The effect of feature ii) is that the handle is more ergonomically adapted which results in a better grip of the handle (A1 [12]). An OTP solved by feature ii) is therefore how to provide a handle with a better grip.

The effects provided by features i) and ii) are unrelated to one another and do not produce a synergistic effect. The two objective technical problems defined for features i) and ii) can therefore be handled as individual problems using separate combinations of prior art (GL G-VII, 5.2, 6 + 7).

First Difference

The solution of the first partial objective technical problem is the same as for claim 1.

Second Difference

The SKP would turn to A3, which is in the same technical field of A1 of removing a cork from a bottle (A1, title, A3 [4] – “remove a cork from a champagne bottle) which is where the skilled person would be looking to solve the OTP T176/84, GVII,3.

A3 discloses that the handle of a device for removing corks is in the shape of a flower ([9] A3, the handle is “clover-shaped” and has 3 or 4 lobes – hence is the same shape as the flower shaped handle which has a “plurality of lobes” A1 [12], and as such the handle in A3 is also flower-shaped).

A3 also teaches that this feature solves the OTP as it “results in a better grip of the handle”.

There is no hindrance to applying the teaching to applying the teaching of A3 to A6. The handle in A3 is metal (A3, [8]) and the handle in A6 can be metal ([5]-structure can be metal and [7] handle can be made from the same materials as structure).

A6 discloses that the handle “may be of any shape as long as it can accommodate a central element and provide an abutment for the spring”. The handle in A3 accommodates a central element [6] and see Figure 1 and is suitable for a spring to abut against.

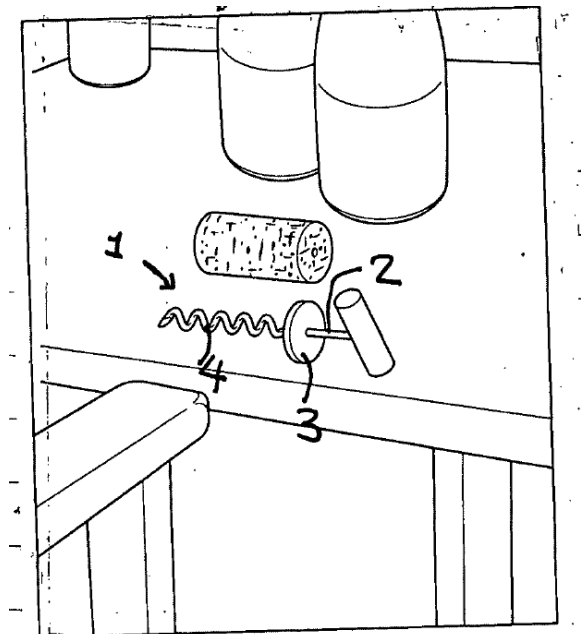
Therefore the skilled person would apply the teaching of A3 to A6 solve to OTP and would replace the handle of A6 with a flower shaped handle, thereby arriving at the feature ii).

Accordingly claim 4 lacks an inventive step over A6 in combination with A2 and A3 and contravenes A56 EPC.

Claim 5 [Independent]

Lack of novelty over public disclosure at a wine fair A4_F A54(2) EPC

It is submitted that the disclosure at the wine fair disclosed the following features. Attached below is a picture of the device as disclosed at the fair, labelled accordingly for analysis.



A4_F photo of corkscrew as shown and sold at fair 25-28.3.11

A4_F discloses:

A cork extraction element (1 - the device is a 'corkscrew' A4, col 2, l39, and it is known CGK that the helical element of a corkscrew is inserted into a cork to remove it A1, [2], therefore 1 is clearly a cork extraction element

comprising a straight portion (A4_F (2) evidently straight) having an attached disc (A4_F (3) – is a “plate like element” as per A1 [16] therefore (3) is a disc – clearly attached to a straight portion (2))

and a spiral portion (A4_F (4) – is a spiral/helical shape A1, [2], shaped the same as spiral portion in A6 (2 – Figure [4]) having a friction reducing coating (A4, column 2, l43 – polyfluorocarbon coating is a friction reducing coating see A2 [6]).

The visible features of an object at an exhibition are made available to the public T 1085/92. Therefore all of the above features marked with reference numerals were undoubtedly visible and disclosed on the date of the fair and are prior art.

We submit that as this was an exhibition the producers were selling objects, and the corkscrew was sold (A4, l42).

GL 7.2.1 recites that if an object is sold to a member of the public, the buyer acquires unlimited possession of any knowledge which may be obtained from the device, even if the features cannot be ascertained from an external examination of the device but only on further analysis. These features are nonetheless considered made available to the public.

Therefore although the polyfluorocarbon coating might not be visible from the outside, it was nonetheless made available to the public by virtue of the sales of the corkscrew. This applies irrespective of whether there is reason for analysing the device. GL G-IV, 7.2.1.

We will provide a sample product of the corkscrew and proof of sales made. It is further likely that advertising material disclosing the coating was available at the fair,

which we will provide as further evidence. The conditions will help to ascertain the conditions set out in GL G, IV, 7.2.

Therefore all of the features of C5 are disclosed by and the sale of the corkscrew, evidence supported by A4_F and A4, and claim 5 lacks novelty over the sale of the corkscrew of A4 and contravenes A 54 (1), (2) EPC.

Claim 6: dependent on claim 5.

A4_{sale} (the corkscrew as displayed and sold at the fair) is the closest prior art as it relates to the same technical field of a cork extraction element (A1 [1], A4_{sale} shown in A4, col 2, line 39, is a cork extraction element as explained in relation to C5), and A4_{sale} is directed to the same purpose of providing a spiral cork extraction element with a disc and friction reducing coating (A4, disc (3) and coating col 2, line 43), A1 paragraph [16] and [17].

A4_{sale} discloses a polyfluorocarbon coating (A4, line 43 – this can be ascertained by further analysis and the buyer has unlimited possession of any knowledge obtained from the object therefore this has been disclosed GL, G-IV, 7.2.1).

A4_{sale} does not disclose that the coating is polybacchus. Polybacchus (PBC) is a type of polyfluorocarbon, see A2, [6], but disclosure of the generic does not anticipate the specific (G-VI, 5).

The difference (that the coating is PBC) between A4_{sale} and claim 6 has the effect of improving the extraction of synthetic corks (A1, [18]) by minimising friction when inserting the extraction element (A1, [17]).

The objective technical problem is therefore how to adapt A4_{sale} to have the desired properties for improving the extraction of a synthetic cork.

The skilled person faced with the OTP would have consulted A2 as it relates to the neighbouring technical field of removing corks from bottles (A2, [1], title) which the skilled person would be looking to for solutions. T176/84, GVII, 3.

A2 discloses using a coating on a spiral portion of PBC ([6] discloses PBC, friction layer is on the needle [8] which can be spiral [9], claim 3 dep on claim 2).

A2 further discloses that PCB is a “particularly good material for achieving the necessary properties” [6] for synthetic corks [5].

Therefore the SKP faced with the OTP would include the teaching of A2 in A4_{sale}.

There is no hindrance to doing this, since both A2 and A4_{sale} disclose polyfluorocarbons ([6] A2 and col 2, l43 A4) and PBC is a type of polyfluorocarbon so the SKP could simply choose the PBC as the type of polyfluorocarbon used on A4_{sale} with no technical difficulty.

Therefore the SKP faced with the OTP would apply teaching of A2 to A4_{sale} and choose the type of polyfluorocarbon to be PBC, therefore arriving at the subject matter of C5.

Therefore C5 lacks an inventive step over A4_{sale} in combination with A2 and contravenes A56 EPC.

Claim 7 (dep on C6)

Article 56 EPC using A4_{sale} with A2

Claim 7 is dependent on C6.

A4_{sale} is the closest prior art for the reasons given in relation to C6 (+C5).

C7 is distinguished from A4_{sale} as A4_{sale} does not disclose that:

i) the layer is PBC which ii) extends over a third to at most two thirds of the spiral portion starting at the extraction tip.

i) the effect of the feature i) is to provide a cork screw adapted for synthetic corks as given above.

The effect of ii) is to facilitate extraction whilst reducing cost (A1[18]).

The OTP of i) is how to adapt extraction of synthetic corks.

The OTP of ii) is how to facilitate extraction of a cork whilst keeping costs of manufacturing low.

The effects produced by i) and ii) are unrelated to one another and do not produce a synergetic effect. The two objective problems defined for features i) and ii) can therefore be handled as individual problems.

In applying the teaching of A2 to A4_{sale} to solve the problem of i) the skilled person would learn that the solution to the problem relating to ii) is also given in A2, which discloses:

the coating extends over 1/3 to at most 2/3 of the spiral portion ([5] friction layer covers 'at least the tip and the lower half' of the needle. "At least the lower half" means half way is an end point, and a disclosure of an end point covering 1/2 the needle falls within the range of 1/3 to 2/3 of the claim, and therefore destroys the novelty of the range GL G-IV, 8.

the coating is applied to the spiral portion (A2: claim 3 dep on claim 2) starting from the extraction tip ([C5] covers at least the tip and the lower portion)

A2 teaches that PBC is expensive so the consideration is brought to the attention of the SKP.

Furthermore A4_{sale} is “simple” (A4, I40) and SKP would always be minded to reduce costs.

Therefore SKP would be lead to apply teaching of A2 to A4_{sale} and would apply a PBC coating from the tip to half way up the element, hence arriving at the sm of C7.

Therefore C7 lacks an inventive step over A4_{sale} in combination with A2 and contravenes A56 EPC.

Examination Committee II: Paper C - Marking Details - Candidate No

Category		Max. possible	Marks	
			Marker 1	Marker 2
General	General	12	10	10
Claim 1	Claim 1	20	19	19
Claim 2	Claim 2	20	19	19
Claim 3	Claim 3	10	7	7
Claim 4	Claim 4	12	10	10
Claim 5	Claim 5	6	6	6
Claim 6	Claim 6	11	11	11
Claim 7	Claim 7	9	6	6
Total			88	88

Examination Committee II agrees on 88 points and recommends the grade PASS