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D E C I S I O N
of 31 August 2004

Case Number: T 0255/03 - 3.2.4

Application Number: 95100876.2

Publication Number: 0669097

IPC: A47L 15/00

Language of the proceedings: EN

Title of invention:

Washing machine with water recovery arrangement

Patentee:

Electrolux Zanussi S.p.A.

Opponent:

BSH Bosch und Siemens Hausgeräte GmbH

Headword:

-

Relevant legal provisions:

EPC Art. 56
EPC R. 71(2)

Keyword:

"Inventive step (yes)"

Decisions cited:

T 0570/91, T 1040/93

Catchword:

-



Case Number: T 0255/03 - 3.2.4

D E C I S I O N
of the Technical Board of Appeal 3.2.4
of 31 August 2004

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 posted 23 December 2002
rejecting the opposition filed against European
patent No. 0669097 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
M. Aúz Castro

Summary of Facts and Submissions

I. By its decision dated 23 December 2002 the Opposition division rejected the opposition. On 19 February 2003 the Appellant (Opponent) filed an appeal. The appeal fee was paid on 20 February 2003. The statement setting out the grounds of appeal was received on 23 April 2003.

II. The patent was opposed on the grounds based on Article 100(a) EPC (54 and 56 EPC) EPC.

III. Claim 1 of the main request reads as follows:

"1. Washing machine with water recovery arrangement, comprising a wash tank (1) capable of being supplied with fresh mains water through a normally closed water supply circuit (8) adapted to be opened by programme control means of the machine to perform operating cycles comprising at least a washing phase and/or at least a rinsing phase, said water recovery arrangement being capable of storing in a volumetric metering reservoir the water from at least one of said phases for reuse during a subsequent cycle, said water recovery arrangement comprising a pipe with a pump controlled by said programme control means being adapted to deliver water from the tank into said reservoir, characterized in that the wash tank (1,4) is provided with water filtering means (5), the wash tank being connected with drain means (6) upstream of the filtering means (5), the drain means being separate from said water supply circuit (8-14), said pipe (14) branching off the wash tank in correspondence of a portion thereof located downstream of said filtering means (5), and said reservoir (11) forms a part only of

said water supply circuit (8-14) so as to be substantially flushed by the flow of the fresh water delivered into the wash tank (1, 4) each time that said water supply circuit is opened."

IV. The following documents played a role in the appeal proceedings:

E1: DE-A-39 36 989

E2: DE-U-81 10 994

V. Oral proceedings before the Board took place on 31 August 2004.

The Respondent (Patentee) who was duly summoned, informed the Board with letter of 12 August 2004 that he would not attend these oral proceedings. Pursuant to the provisions of Rule 71(2) EPC the proceedings were continued without him.

The Appellant mainly argued that the feature of claim 1 of the patent in suit which reads as follows: "said reservoir (11) forms a part only of said water supply circuit (8-14) so as to be substantially flushed by the flow of the fresh water delivered into the wash tank (1, 4) each time that said water supply circuit is opened." was unclear, since it could be interpreted as meaning either that the reservoir does not form the entire water supply circuit or that the reservoir is exclusively part of the water supply circuit and thus, is not part of the water drain circuit. Furthermore, the terms "upstream" and "downstream" were unclear since the water flow direction is not clearly defined

in claim 1. Consequently, for assessing inventive step, the unclear features had to be disregarded, and therefore, the subject-matter of claim 1 would only differ from the machine according to E1 in that it further comprises filtering means. However, the subject-matter of claim 1 would not involve an inventive step having regard to E1 taken in combination with E2, which discloses suitable filtering means.

The Appellant requested that the decision under appeal be set aside and that the patent be revoked.

In his written submissions, the Respondent disputed the views of the Appellant and argued that several features of claim 1 in suit were not disclosed in E1, in particular the feature that the reservoir (11) forms a part only of said water supply circuit, which had to be understood as meaning that the reservoir is a part only of the water supply circuit and not of the water drain circuit. Moreover, E2 was not concerned with the problem to be solved by the invention and did not give any information about a water recovery reservoir and the corresponding specific hydraulic circuit. Furthermore, E2 referred to a dishwasher where the filtering means were quite different from those of a washing machine referred to in E1. Therefore, a skilled person would not have used the filtering means known from E2 in a machine according to E1 and even if he had contemplated such a combination, he would not have arrived at a machine as claimed in the patent in suit.

The Respondent requested that the appeal be dismissed.

Reasons for the Decision

1. The appeal is admissible.
2. *Interpretation of claim 1*
 - 2.1 Claim 1 comprises the following feature: "the wash tank (1, 4) is provided with water filtering means (5), the wash tank being connected with drain means (6) upstream of the filtering means (5)."

Thus, it is clear for a person skilled in the art, that the drain means are directly connected to the wash tank, and that therefore, in the meaning of the patent in suit, the term "drain means" designates the whole of the piping which leads from the tank to the drain and not only the drain pump and the pipe downstream thereof.

Furthermore, the term "upstream" in connection with the filtering means and the drain means indicates that the water flows from the wash tank into the drain means without passing through the filtering means (i.e. by-passing the filtering means) and this irrespectively of the water flow direction. Moreover, in the present case, since the aim of the drain means is to convey the water from the wash tank to waste, and not in the reverse direction, the water flow direction is clearly defined.

- 2.2 Furthermore, claim 1 comprises the following feature: "said reservoir (11) forms a part only of said water supply circuit (8-14)."

The appellant argued that it was unclear whether this means that the reservoir is only one part of the water supply circuit (i.e. does not form the whole water supply circuit) or that the reservoir forms part only of the water supply circuit (i.e. is not part of the water drain circuit).

However, when interpreting the claims of a patent a skilled person should rule out interpretations which are illogical or which do not make technical sense. He should try to arrive at an interpretation which is technically sensible and takes into account the whole of the disclosure of the patent.

In the present case, the interpretation according to which the reservoir does not form the whole water supply circuit would not make any sense from a technical point of view and thus, has to be rejected.

Furthermore, claim 1 also comprises the following feature "the wash tank being connected with drain means (6) upstream of the filtering means (5), the drain means being separate from said water supply circuit (8-14)" which implies that the reservoir, which according to any possible interpretation, is part of the water supply circuit cannot also be part of the drain means, since the drain means are said to be separate from the water supply circuit.

This is confirmed by figure 1 and the description of the patent where it is indicated:

- column 2, lines 30 to 32 that "the portion of the sump 4 situated upstream of the filter 5 is

connected with a pipe 6 associated to a drain pump 7",

- column 3, lines 31 to 33 that "pump 7 is operated in view of delivering to the drain, through pipe 6, the water collected in the sump 4",
- column 4, lines 6 to 11 that "conduit 14 connects with the sump 4 downstream of filter 5 ... this enables only filtered water ... to be recovered and temporarily stored in the reservoir 11."

Therefore, in the meaning of the patent in suit, the feature in question has to be interpreted as meaning that the reservoir forms part only of the water supply circuit and not part of the water drain circuit.

- 2.3 In the expressions "said pipe (14) branching off the wash tank in correspondence of a portion thereof located downstream of said filtering means (5)", "downstream" indicates that the pipe is connected to the tank via the filtering means, i.e. that water which flows from the one to the other always passes through the filtering means.

3. *Novelty*

- 3.1 The Board is satisfied that none of the cited prior art documents discloses all the features of claim 1 of the patent in suit. Indeed, during the oral proceedings the Appellant withdrew his objection of lack of novelty.

4. *Inventive step*

4.1 E1 is considered to be the closest prior art document.

In the washing machine disclosed therein, the water from an operating phase can be stored in a volumetric metering reservoir for re-use during a subsequent cycle. The reservoir, however, forms part not only of a water supply circuit of the machine but also of a water drain circuit of the machine itself, so that the reservoir is contaminated by dirty water at the end of each operating cycle.

4.2 Therefore, the technical problem to be solved by the present invention is to propose a washing machine with a water recovery arrangement which improves hygienic and scale-formation problems (see patent in suit, column 1, lines 53 to 57). This problem is in essence solved by the following features stated in the characterising part of claim 1:

- the wash tank is provided with water filtering means,
- the wash tank is connected with drain means upstream of the filtering means,
- the drain means are separate from said water supply circuit,
- said pipe branches off the wash tank in correspondence of a portion thereof located downstream of said filtering means,

- said reservoir forms a part only of said water supply circuit.

4.3 This problem is neither identified nor addressed by the cited documents (E1 and E2) and therefore there is no incentive for a skilled person to combine the teaching of said documents in order to solve the posed problem.

4.4 The Appellant argued that a person skilled in the art would solve this problem by providing filtering means as disclosed in E2 and thus would arrive at the subject-matter of claim 1 of the patent in suit.

The Board cannot agree to this reasoning.

Indeed, E2 discloses a filtering system to be installed in the sump of a washing tank. However, E2 does not disclose a volumetric metering reservoir, in which water from an operating cycle can be stored for re-use during a subsequent cycle. Thus, no teaching is provided by E2 as to how contamination and scale formation could be reduced in such reservoir. There is also no disclosure or suggestion of a volumetric metering reservoir which is exclusively part of the water supply circuit, as stated in the characterising part of claim 1.

More precisely, the Appellant argued that a skilled person would provide the machine according to E1 with a perforated wash drum and a surrounding wash tank so that a sump could be provided in the wash tank (as disclosed in E2) in order to install the filtering means therein.

The Board cannot agree to this reasoning either. Once a person skilled in the art has chosen a starting point (in the present case E1), he is bound afterwards by that choice (T 570/91, section 4.4). The choice of the starting point (in the present case a washing machine provided with a watertight drum), made in the knowledge of the respective benefits and drawbacks of the type of machine concerned, defines the framework of further development (within this particular type of machine). A change of type of machine during the further development of the consciously chosen type, to another type, which was previously known but had not been chosen (a machine with a perforated drum surrounded by a wash tank), can only be seen as the result of an ex-post-facto analysis (T 1040/93, sections 5.1 and 5.2).

Furthermore, in the present case it would not be sufficient for a skilled person to change the type of drum system of the washing machine according to E1 and to provide it with filtering means to arrive at a machine as claimed in claim 1 of the patent in suit. He would also be obliged to completely modify the hydraulic circuit, to such an extent, that except the pumps and the reservoir no other part of the core of the machine originally disclosed in E1 would remain unchanged.

However, such modifications cannot be obvious for a person skilled in the art, because said modifications would be so extensive that it would be uncertain whether or not the resulting machine would still be able to carry out the washing process taught by E1.

Finally, the washing method disclosed in E1, foresees that the used water is always pumped back into the said reservoir (to measure the recovered quantity of water in order to optimise the subsequent washing sequences) before being pumped to waste. Consequently, the reservoir would still be part of the drain means (this however would be contrary to the provisions of claim 1 of the patent in suit) and thus, the thereby resulting machine would not disclose all the features of the subject-matter of claim 1 of the patent in suit.

Consequently, the subject-matter of claim 1 of the patent in suit involves an inventive step.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

G. Magouliotis

M. Ceyte