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**Datasheet for the decision
of 22 July 2008**

Case Number: T 0814/05 - 3.2.03

Application Number: 01120603.4

Publication Number: 1288580

IPC: F24C 15/16, F24C 7/06

Language of the proceedings: EN

Title of invention:
Cooking oven

Applicant:
Whirlpool Corporation

Opponent:
-

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56

Relevant legal provisions (EPC 1973):
-

Keyword:
"Novelty (yes)"
"Inventive step (yes)"

Decisions cited:
-

Catchword:
-



Case Number: T 0814/05 - 3.2.03

D E C I S I O N
of the Technical Board of Appeal 3.2.03
of 22 July 2008

Appellant: WHIRLPOOL CORPORATION
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Michigan 49022 (US)

Representative: Guerci, Alessandro
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 17 February 2005
refusing European application No. 01120603.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: U. Krause
Members: C. Donnelly
K. Garnett

Summary of Facts and Submissions

- I. The appeal lies from the decision of the examining division, posted on 17 February 2005, to refuse European Patent application No. 01 120 603.4. In its decision the examining division held that the subject-matter of claim 1 as originally filed was not new with respect to EP-A-1201998 (D1) which was considered to form part of the prior art under Article 54(3) EPC. In a communication dated 22 June 2004, the examining division had also indicated that the subject-matter of claim 1 as originally filed lacked an inventive step in view of a combination of DE-U-8508617 (D2) and GB-2152790 (D3).

- II. The applicant (hereinafter "the appellant") filed a notice of appeal on 26 April 2005 and paid the fee the same day. In the grounds of appeal, dated 9 June 2005, the appellant filed amended claims 1 to 6 and requested that the impugned decision be set aside and a patent granted on the basis of these amended claims.

- III. In a communication pursuant to Article 110(2) EPC, dated 14 February 2007, the board indicated that although the subject-matter of claim 1, filed on 9 June 2005, appeared to meet the requirements of Articles 54 and 56 EPC, there were still some outstanding issues to be resolved with respect to the form of claim 1, the dependent claims and the description. In particular, it was pointed out that these issues could have implications for the clarity of the claimed subject-matter.

With letter of 11 June 2007, the appellant filed a new set of amended claims 1 to 4, as well as amended description pages 1 to 5 and sheet 2/2 of the drawings.

In a further communication pursuant to Article 110(2) EPC, dated 27 September 2007, the board indicated that claims 1 and 2 of 11 June 2007 did not meet the requirements of Article 84 EPC.

In its response of 30 January 2008 the appellant filed a new set of amended claims 1 to 3 together with amended pages 3 and 4 of the description.

The documents under consideration for the grant of a patent are therefore the following:

- claims 1 to 3 as filed with letter of 30 January 2008;
- description page 6 as originally filed, description pages 1, 2 and 5 as filed with letter of 11 June 2007, description pages 3 and 4 as filed with letter of 30 January 2008;
- drawing sheet 1/2 as originally filed, drawing sheet 2/2 as filed with letter of 11 June 2007.

IV. Claim 1 filed with letter of 30 January 2008 reads:

"Cooking oven comprising a cavity (12), a separating and insulating plate (18) which can be inserted horizontally in the cavity (12) in order to split it in two sub-cavities (12b,12c), each side wall (12a) of the cavity (12) being provided approximately in the centre

and attached to the external face (K) thereof, with a twin radiant heating element (40) comprising a metal flat housing (42) containing two heating elements (44) such that each sub-cavity has at least a heating element on its side-wall."

Reasons for the Decision

1. *Basis for the amendments, Article 123(2)*

Claim 1 of 30 January 2008 is based on claims 1 and 2 together with the description, page 4, lines 18 to 20 as originally filed. Thus, the requirements of Article 123(2) EPC are met.

2. *Novelty, Article 54(3) EPC*

The application was filed directly at the EPO on 29 August 2001 and the designation fees for the contracting states DE, ES, FR, GB, IT and SE were paid on 1 September 2003.

D1 was filed directly at the EPO on 26 Oct 2000 and published on 2 May 2002. On 16 Oct 2002 the designation fees for DE, ES, FR, GB, IT and SE were paid. Hence, D1 fulfils the requirements to be considered as prior art under Article 54(3) EPC for all the designated states of the application.

The third embodiment disclosed in this document (see in particular figure 4 and the description, paragraph 10) comprises:

-a cooking oven comprising a cavity (12), a separating and insulating plate (18) which can be inserted horizontally in the cavity (12) in order to split it in two sub-cavities (12b,12c), wherein each side wall of the cavity is provided attached to the external face with heating elements such that each sub-cavity has at least a heating element on its side-wall.

There is no indication in D1 of:

-each side wall of the cavity being provided approximately in the centre and attached to the external face thereof, with a twin radiant heating element comprising a metal flat housing (42) containing two heating elements such that each sub-cavity has at least a heating element on its side-wall.

In other words, D1 does not describe or suggest the arrangement of a twin radiant heating element contained in a housing. D1 only speaks of embodiments with four separate heating elements (paragraph 7, line 6; paragraph 10, line 31) which may be configured as per figure 5 and none of which is positioned centrally.

Hence, the subject-matter of claim 1 is new with respect to D1.

3. *Novelty, Article 54(2) EPC and Inventive step, Article 56 EPC*

As D1 is prior art under Article 54(3) EPC it cannot be taken into consideration for the purposes of assessing inventive step (Article 56, second sentence).

The impugned decision does not contain any detailed reasoning concerning inventive step. Section 2 of the facts and submissions makes a reference to the fact that claim 1 as filed is not inventive in the light of DE-U-850681 (presumably DE-U-8508617 (D2) cited in the search report is meant) and GB-A-2152790 (D3). A further statement is made to the effect that the dependent claims are considered "not to extend beyond a skilled persons (sic) routine task". The communication of the examining division dated 22.06.2004 states that dependent claims 2-4 are routine for a professional faced with the problem of designing a splittable oven.

However, D2 makes no mention of heating elements of any kind fitted in the side walls of the oven cavity and is primarily concerned with the design of a heated bottom-plate which can be inserted at different levels in the main oven cavity to form two oven cavities of different volumes. D3 concerns a microwave oven which is fitted with additional heating elements consisting of tungsten-halogen lamp arrangements generating infra-red radiation, one of which may be fitted in a side-wall of the cavity. D3 makes no mention of the additional heating arrangement being used in conjunction with a split-level oven cavity and is not concerned with the problems posed by such split-level configurations. The remaining documents in the search report, EP-A-253 278 (D4) and NL-A-8104739 (D5) relate essentially to the same type of arrangement as that described in D2. Neither mentions the presence or possible use of heating elements in the side-walls of the oven cavity which may be split into two cavities of varying volumes by the insertion of a heated bottom plate. Figure 1 of

D5 appears to show that the bottom heating element 16 is attached to the external face of the cavity wall.

In summary none of the cited documents forming part of the prior art under Article 54(2) EPC disclose or suggest the features wherein:

-each side wall of the cavity is provided approximately in the centre and attached to the external face with a twin radiant heating element comprising a metal flat housing containing two heating elements such that each sub-cavity has at least a heating element on its side-wall.

These features solve the objective technical problem of heating each cavity of a split-level oven whilst simplifying manufacture.

Hence, the subject-matter of claim 1 meets the requirements of Articles 54 and 56 EPC also with respect to documents D2 to D5.

4. *Dependent claims*

Dependent claims 2 and 3 specify further preferred embodiments of the apparatus according to claim 1 and, thus, also meet the requirements of Article 56 EPC.

5. *Description*

The board is of the opinion that the description still needs to be adapted to the amended claims. In particular, it is considered confusing to maintain references to embodiments for which the figures have

been deleted and which have nothing to do with the invention as now claimed.

Order

For these reasons it is decided that:

1. The impugned decision is set aside.
2. The case is remitted to the examining division with the order to grant a patent on the basis of:
 - claims 1 to 3 as filed with letter of 30 January 2008;
 - drawing sheet 1/2 as originally filed and drawing sheet 2/2 as filed with letter of 11 June 2007; and
 - a description to be adapted, based on pages 1, 2 and 5 as filed with letter of 11 June 2007, pages 3 and 4 as filed with letter of 30 January 2008 and description page 6 as originally filed.

Registrar:

Chairman:

A. Counillon

U. Krause