

Internal distribution code:

- (A) Publication in OJ
(B) To Chairmen and Members
(C) To Chairmen
(D) No distribution

**Datasheet for the decision
of 2 October 2007**

Case Number: T 1134/05 - 3.2.04

Application Number: 97115615.3

Publication Number: 0829221

IPC: A47L 15/50

Language of the proceedings: EN

Title of invention:

Dishwashing machine with improved hydraulic circuit

Patentee:

Indesit Company S.p.A.

Opponent:

Arçelik Anonim Sirketi

Headword:

-

Relevant legal provisions:

EPC Art. 100(c), 123(2)

Keyword:

"Amendments - added subject-matter (all requests) (yes)"
"Features taken from drawings"

Decisions cited:

T 0169/83

Catchword:

-



Case Number: T 1134/05 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 2 October 2007

Appellant: Arçelik Anonim Sirketi
(Opponent) Ankara Asfalti Uzeri E5, Tuzia
TR-34950 Istanbul (TR)

Representative: Zinsinger, Norbert
LOUIS. PÖHLAU. LOHRENTZ
Merianstrasse 26
D-90409 Nürnberg (DE)

Respondent: Indesit Company S.p.A.
(Patent Proprietor) Viale Artistide Merloni, 47
I-60044 Fabriano (AN) (IT)

Representative: Dini, Roberto
Metroconsult S.r.l.
Via Sestriere 100
I-10060 None (Torino) (IT)

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 4 July 2005
rejecting the opposition filed against European
patent No. 0829221 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: A. de Vries
T. Bokor

Summary of Facts and Submissions

I. The Appellant (Opponent) lodged an appeal, received 1 September 2005, against the decision of the Opposition Division posted 4 July 2005 to reject the opposition, and simultaneously paid the appeal fee. The statement setting out the grounds was received 11 November 2005.

II. Opposition was filed against the patent as a whole and based on Article 100(c) as its subject-matter extended beyond the content of the application as filed, and on Article 100(a) together with Articles 52(1), 54 and 56, for lack of novelty and inventive step.

The Opposition Division held that the grounds for opposition under Article 100 EPC did not prejudice the maintenance of the patent as granted.

III. The Appellant (Opponent) requested that the decision under appeal be set aside and the patent be revoked in its entirety.

The Respondent (Proprietor) requested that, as main request, the appeal be dismissed, or, in the alternative, that the patent be maintained on the basis of any of 1st to 4th auxiliary requests, all filed with letter dated 24 August 2007, or alternatively, on the basis of any of the 5th to 8th auxiliary requests, offered to be filed and explained with the above letter of 24 August 2007.

IV. Oral proceedings were duly held before this Board on 2 October 2007.

- V. The wording of claim 1 (the sole independent claim) of the requests is as follows :

Main Request

1. "Dishwashing machine comprising a wash tub (1), at least a basket (2) suitable to slide in said tub (1) and capable of taking at least two different height positions, a fluid feed duct (7,7',7") ending in a hydraulic feed intake (6,6',6") located on a wall of said tub (1), a sprayer element (3) borne by said basket (2) and a tubular element (4,4',4") borne by said basket (2), wherein a first end of said tubular element (4,4',4") is connected with said sprayer (3) and a second end of said tubular element (4,4',4") has a connecting element (5,5',5"), said connecting element being also a tubular element having a body portion (8) in which the flow moves vertically and at least one outlet (11,11',11") connected with the second end of said tubular element (4,4',4") and at least two horizontally disposed inlet portions (9,10; 9',10'; 9",10") that can be selectively coupled during usage with said hydraulic feed intake (6,6',6"), a flow deviating device (12,12',12") being provided in said connecting element (5,5',5"), between said inlets (9,10; 9',10'; 9",10") and said outlet (11,11',11"), which is capable of maintaining at least two alternative operating positions due to the pressure exerted by the wash fluid supplied by said hydraulic feed intake (6,6',6") said flow deviating device comprising a shutter element (12,12',12") moving only in said body portion (8) and proper in use to obstruct the inlet (9,10; 9',10'; 9",10") not being coupled with said

hydraulic fed intake (6,6',6") and in that means are provided (13A,13B; 13A',13B'; 13A",13B") located in said body portion (8) and proper to hinder the passage of said shutter element (12,12',12") through said inlets (9,10; 9',10'; 9",10") along a substantially horizontal axis."

First Auxiliary Request

Claim 1 is as in the main request but for the insertion of "vertically disposed" before "body portion" in line 12 and replacement of "a" by "their" in the final line.

Second Auxiliary Request

Claim 1 is as in the main request but for the insertion of "vertically disposed" before "body portion" in line 12, and reformulation of the final line to read "and along a substantially horizontal *direction*" (italics added by the Board indicate the relevant changes).

Third Auxiliary Request

Claim 1 is as in 1st auxiliary request but for a replacement of "moving" by "sliding" in the 9th line from below, which now reads "... a shutter element (12,12,12') *sliding* ..." (italics added by the Board to indicate the change).

Fourth Auxiliary Request

Claim 1 is as in 2nd auxiliary request but for a replacement of "moving" by "sliding" in the 9th line from below, which now reads "... a shutter element (12,12,12') *sliding* ..." (italics added by the Board to indicate the change).

Fifth to eighth auxiliary requests

Claim 1 adds to claim 1 of the 1st to 4th auxiliary requests respectively the features of claim 2 as granted.

VI. The Appellant argued as follows :

The only possible basis for the amendments is the figures.

However, most flow within the intermediate portion must have a considerable horizontal component, and the area where flow might be substantially vertical is limited. In figures 3 and 5 in fact no point can be identified where it is vertical. The flow deviating device thus moves through areas where the flow is not vertical, and its movement is therefore not limited to those areas or parts where flow is vertical as required by the claim.

From various passages it is clear that the flow deviating device, ball or shutter, is constrained to move up and down between chokes. The latter are arranged to stop the ball or shutter from further vertical movement. The grid prevents horizontal movement of the ball through the outlet, not an inlet.

Thus hindering ball or shutter movement along a horizontal axis also has no support in the figures.

These arguments apply to all the requests.

VII. The Respondent argued as follows :

The first two amendments are intended to clarify how the shutter element moves inside the body, while the third amendment serves to clarify what happens outside that body portion.

Vertical flow is mentioned only in so far as it helps define movement of the shutter, which is up and down between the chokes. It refers to flow in the portion if shutter or outlet were absent and should be read broadly as "having a vertical component". Read thus and in context it allows the skilled person to identify one of the invention's important central elements, namely that portion of the body where the shutter element's mainly vertical movement takes place.

Hindering along a horizontal axis is meant by way of a desired end result. The shutter element is prevented by the chokes from moving through inlets which are horizontally oriented; therefore the chokes ultimately prevent horizontal movement of the shutter element.

The further amendments in the auxiliary requests are intended as further clarification.

Reasons for the Decision

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

The invention concerns a dishwasher with a height adjustable basket. The basket mounts a tubular connecting element which connects the sprayer on the basket to a supply pipe in the wall of the tub at two different possible heights of the basket. The connecting element has a flow deviating device comprising a shutter element, which may take the form of a ball or deflector element, located between inlets and outlet and which under pressure from the flow from one inlet seals the other in cooperation with hindering means in the form of smaller diameter chokes.

3. *Allowability*

In deciding the question of allowability of amendments under Article 123(2) EPC the Board, following well-established practice (see e.g. the decisions cited in the Case Law of the Boards of Appeal, fifth edition, December 2006 - hereinafter the CLBA - section III.A.2), must consider whether the amendments in question are *directly and unambiguously* derivable from the application as filed. Where amendments concern features added from drawings, such an addition can only be said to be *directly and unambiguously* derivable from the filed application provided their structure and function is *clearly, unmistakably and fully derivable* from the drawings by the skilled person and *not at odds with the*

other parts of the disclosure, see the decisions cited in the CLBA, section III.A.1.3, in particular T 169/83 (OJ EPO 1985, 193).

3.1 *Main Request*

3.1.1 Granted claim 1 (main request) is based on claim 1 as filed, amended in particular by adding the following features (additions indicated in italics by the Board):

a. the tubular element *has a body portion in which the flow moves vertically*

b. the flow deviating device moves *only in said body portion*

c. means are located *in said body portion* to hinder passage of said shutter element through said inlet *along a substantially horizontal axis*

3.1.2 Before addressing the issue of allowability, the Board must first construe the amendments in question. It does so by giving the terms in which the amendments are worded their usual meaning as understood by the skilled person drawing upon his common general knowledge and when reading the terms in their proper context.

(a) The claims are directed to a dish-washer as a concrete object. Such entities are habitually defined in terms of *actual* structure and functions. The Board thus reads any references to flow as referring to the flow *actually* occurring within the connector *as defined in the claim*, when that connector is put to use.

(b) The Board also has no reason to read the terms "vertical" and "horizontal" used in the amendments other than in their normal, usual sense. Thus, *vertical flow* is flow which moves in a substantially vertical direction. An *axis* that is *horizontal* is substantially so. In both cases the skilled person should be able to readily recognize whether a given flow or axis is in essence vertical or horizontal.

(c) Feature (c) is somewhat ambiguous in its formulation in that it is unclear whether "along a horizontal axis" refers to the inlets, or rather reflects on the hindering action itself. In first instance it adds information of the inlets' orientation (so that passage through the *horizontal* inlets is hindered). However, in an equally reasonable alternative reading it is seen to specify that movement of the shutter element through the inlets is hindered *while (or by) hindering its movement along a horizontal axis.*

3.1.3 It is common ground that the above amendments have no literal basis in the filed application. Rather, as is argued by the Respondent, their basis must be sought in figures 3 to 5, which show different embodiments of the connecting element in cross-section.

3.1.4 In figure 3, see in particular description page 5, line 18, to page 5, line 3, and figure 4, see page 8, line 21, to page 9, line 1, the main connector body 8 has upper and lower inlets 9 and 10, and, intermediate these two, an outlet 11; all are horizontally oriented. The shutter element is in the form of a ball 12, 12'

constrained to move vertically in an upright segment of the tubing between narrow diameter chokes 13A, 13A', 13B, 13B'. It is shown in its upper position at choke 13A, 13A' blocking fluid flow towards the upper inlet which it deflects through outlet 11, see page 7, lines 1 to 4.

In figure 5, see page 10, line 28, to page 11, line 10, chokes and ball are replaced by a hinged rocker element or deflector 12" located directly opposite the outlet 11" which pivots between an upper position (shown in the figure) resting against a stop near the top of the outlet.

- 3.1.5 These figures do not provide any detail of flow patterns. Nevertheless, general flow patterns within the connector when in use can be inferred from the relative arrangement of inlets, outlet, intermediate portion, and shutter element shown in the figures. Thus, in the region opposite outlet 11, 11', 11" flow must move round towards the horizontal outlet as it arrives from one of the inlets and is therefore predominantly horizontal. Ball 12,12" or rocker element 12" partially or wholly located in front of the outlet 11, 11', 11" further acts to deflect flow in this direction. In figure 5 this deflection, with the rocker element positioned at a relatively shallow angle will be more marked. The small vertical distance between outlets and inlet, as well as the slope of the body outer wall towards the outlet (figure 3 and 4), also point towards the flow in other regions of the connector having an important horizontal component, which may decrease as it moves round the lower or upper bend leading from the inlet but will again increase as it nears the outlet.

3.1.6 From the above it follows firstly that it is difficult if at all possible to identify with certainty in the figures any portion of the connector body where, when the connecting element is in use, the flow will be vertical in the usual sense of the word, i.e. substantially vertical. Feature (a) therefore cannot be derived *clearly, unmistakably and fully* from the drawings.

3.1.7 Feature (b) is defined in relation to feature (a) and therefore also does not find support in the drawings. In any case, ball 12, 12' and rocker element 12" move across or in a region of mainly horizontal flow, namely opposite the outlet (see above), in contradiction to feature (b). For this reason alone feature (b) has no basis in the drawings.

3.1.8 The unclear formulation of amendment (c) noted above means that, in first instance, this amendment is not *clearly* and *unmistakably* derivable from the drawings and thus fails to meet at least two of the conditions mentioned above in section 3.1 for allowability of features taken from drawings. Even if the Board were to make allowance for two possible alternative interpretations, the second of these does not find full support in the drawings.

In figures 3 and 4 ball 12, 12' indisputably moves up and down in the (in use) vertical portion of the connector tubing between chokes 13A,13A' and 13B,13B' (even if the flow does not). The chokes thus act to stop the ball from further *vertical* movement, rather than along a horizontal axis.

In figure 5 the stops either side of the outlet hinder the rocker element from further *pivotal* rather than horizontal movement.

None of figures 3 to 5 thus show hindering action as required by amendment (c) in its alternative interpretation.

3.2 In summary, the Board finds that none of figures 3 to 5 provide *clear, unmistakable and full* support for any of amended features (a), (b) and (c), either alone or in combination. As such support is also not apparent to the Board from any other part of the as filed application it concludes that these amendments to granted claim 1 result in subject-matter which extends beyond the content of the application as filed.

3.3 *First to eighth auxiliary requests*

Claim 1 of each of the auxiliary requests retains amendments (a), (b) and (c). Further amendments are by way of addition of further detail (the body portion is "vertically disposed"; addition of the features of claim 2) or rewording of a mainly editorial nature ("their" instead of "a" substantially horizontal axis; "direction" instead of "axis"), but in no way alter the substance of amendments (a), (b) and (c) above. For the same reasons given above, claim 1 according to each of the auxiliary requests includes subject-matter which extends beyond the content of the application as originally filed.

4. In conclusion, the ground mentioned under Article 100(c) EPC prejudices the maintenance of the patent as amended according to any of these requests.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The patent is revoked.

The Registrar

The Chairman

G. Magouliotis

M. Ceyte