

Internal distribution code:

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

**Datasheet for the decision
of 29 May 2008**

Case Number: T 0624/06 - 3.2.04

Application Number: 95110484.3

Publication Number: 0691100

IPC: A47L 15/42

Language of the proceedings: EN

Title of invention:

Household appliance of the built-in type

Patentee:

Indesit Company S.p.A.

Opponents:

Miele & Cie. KG
BSH Bosch und Siemens Hausgeräte GmbH

Headword:

-

Relevant legal provisions (EPC 1973):

EPC Art. 100(a), 111(1)

Keyword:

"Remittal (no)"
"Inventive step (no)"

Decisions cited:

T 0133/87

Catchword:

-



Case Number: T 0624/06 - 3.2.04

D E C I S I O N
of the Technical Board of Appeal 3.2.04
of 29 May 2008

Appellant I:
(Opponent I)

Miele & Cie. KG
Schutzrechte/Verträge
Carl-Miele-Straße 29
D-33332 Gütersloh (DE)

Appellant II:
(Opponent II)

BSH Bosch und Siemens Hausgeräte GmbH
Postfach 830101
D-81701 München (DE)

Respondent:
(Patent Proprietor)

Indesit Company S.p.A.
Viale Aristide 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 21 April 2006
rejecting the opposition filed against European
patent No. 0691100 pursuant to Article 102(2)
EPC.

Composition of the Board:

Chairman: M. Ceyte
Members: C. Scheibling
T. Bokor

Summary of Facts and Submissions

I. By its decision dated 21 April 2006 the Opposition Division rejected the oppositions. On 26 April 2006 Appellant I (opponent I) filed an appeal and paid the appeal fee simultaneously. On 24 May 2006 Appellant II (opponent II) filed an appeal and paid the appeal fee simultaneously. The statements setting out the grounds of appeal were respectively received on 21 August 2006 (Appellant I) and 31 August 2006 (Appellant II).

II. The patent was opposed on the grounds based on Article 100(a) EPC 1973 (lack of novelty and inventive step).

III. The following documents played a role in the present proceedings:

D2: DE-U-89 12275

D5: US-A-3 619 592

D7: DE-U-77 03900

D11: Extract of catalogue Zanussi: "Domotechnica 1993", pages 1, 82 and 83

IV. Oral proceedings took place on 29 May 2008 before the Board of Appeal.
After Appellant I had presented the original catalogue from which D11 was taken, the Respondent acknowledged that D11 was part of the prior art.

Both Appellants requested that the decision under appeal be set aside and that the patent be revoked. Appellant I

further requested that the case be remitted to the department of first instance.

They mainly argued as follows:

D11 discloses the features of the preamble of claim 1 of all requests, and additionally shows three spy-lights to indicate "SALT", "ON" and "END". Starting from D11, the problem to be solved by the invention was to control the operative condition of the machine without opening the door. The same problem was already solved by D2 as well as by D7, by providing elements for transmitting the light emitted from the luminous signalling devices towards the front of the door. The additional requirement that these elements should comprise mirrors was common general knowledge and the use of mirrors for reflecting the light emitted by a signalling device was taught by D5.

The Respondent (patentee) contested the arguments of the Appellants. He submitted inter alia that he was not in favour of remitting the case to the first instance, but not opposed to it either. He contended that identifying the problem already implied an inventive step.

Furthermore, the aim of the design of D11 was to completely hide the control panel and therefore a skilled person would have refrained from modifying the front panel of this machine by adding luminous devices as taught by D2 or D7. These citations relate to refrigerators, which do not run different operational phases and thus, cannot suggest indicating the reached operational phase. In these citations the luminous devices are not comprised in the edge of the door. Additionally, D11 solely teaches to indicate one

operational condition and not the operational phase reached yet.

Finally, none of the cited documents discloses elements comprising mirrors or prisms or other polyhedrons for optically reflecting the light.

The Respondent requested that the decision under appeal be set aside and that the patent be maintained on the basis of one of the sets of claims according to the main request or the first to fourth auxiliary requests, respectively filed as auxiliary requests 2A, 2B, 2C, 3 and 4 with letter dated 29 April 2008 or according to the fifth auxiliary request filed during the oral proceedings.

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

"1. Dishwashing machine of the built-in type, comprising a cabinet (6) housing a spraying arm of the machine and a frontal door (7), where on an edge (10) of the door (7) at least one luminous signalling device (12) is provided, in particular a spy-light, indicating a determined operational condition of the dishwashing machine (15), said luminous signalling device (12) resulting, with the door (7) closed, hidden and protected by a surface (9, 4) extending substantially parallel to the edge (10) of the door (7) in which said luminous signalling device (12) is provided,
characterised in that
one or more elements (16) are provided for transferring the light emitted from one or more luminous signalling device (12) towards the front of the door (7), so as to allow the control of the operational condition of the dishwashing machine (15) indicated by the luminous

signalling device (12) without having to open the door and running the risk that said spraying arm causes a spray of hot water striking the user or adjacent cabinets, said luminous signalling device (12) indicating the point reached of a determined operative phase from among those provided in the range of an operative cycle of the dishwashing machine."

Claim 1 of the first auxiliary request differs from claim 1 of the main request in that the last sentence of characterising part of the claim ("said luminous ... machine") is replaced by the following: "said luminous signalling device (12) indicating abnormal operational conditions of the dishwashing machine, such as the lack of detergent, the lack of salt in a softener, the blocking of the spraying arm, the non heating of the washing water."

Claim 1 of the second auxiliary request differs from claim 1 of the main request in that the characterising part of the claim additionally comprises the following features: "and/or indicating abnormal operational conditions of the dishwashing machine, such as the lack of detergent, the lack of salt in a softener, the blocking of the spraying arm, the non heating of the washing water."

Claim 1 of the third auxiliary request differs from claim 1 of the second auxiliary request in that the first sentence of characterising part of the claim ("one or more elements ... the front of the door (7)") is replaced by the following: "one or more elements (16) are provided able to optically reflect and/or transmit and/or convey the light emitted by one or more luminous

signalling device (12) provided on said upper edge of the door (7) towards the front of the door (7)"

Claim 1 of the fourth auxiliary request differs from claim 1 of the second auxiliary request in that the first sentence of characterising part of the claim ("one or more elements ... the front of the door (7)") is replaced by the following: "one or more elements (16) are located between said edge (10) of the door and said surface (9, 4) parallel to said edge, said one or more elements being able to optically reflect and/or transmit and/or convey the light emitted by one or more luminous signalling device (12) provided on said upper edge of the door (7) towards the front of the door (7)"

Claim 1 of the fifth auxiliary request differs from claim 1 of the second auxiliary request in that the first sentence of characterising part of the claim ("one or more elements ... the front of the door (7)") is replaced by the following: "one or more elements (16) are located between said edge (10) of the door and said surface (9, 4) parallel to said edge, said one or more elements being able to optically reflect the light emitted by one or more luminous signalling device (12) provided on said upper edge of the door (7) towards the front of the door (7)" and in that the following features have been added "said elements (16) comprise systems of mirrors and/or prisms or other polyhedrons, the faces of which are shaped based on the angles apt at transferring the luminous radiation coming from at least one luminous signalling device (12) towards the frontal wall of the door".

Reasons for the Decision

1. The appeals are admissible.
2. *Remittal:*

When a new document is filed during the opposition appeal proceedings, the question arises whether the case is to be remitted to the department of first instance. In the present case D11 was not taken into consideration by the Opposition Division, because it was regarded as late filed. However, this citation discloses a "totally hidden" built-in dishwasher mentioned as prior art in the introductory part of the patent specification. This document therefore illustrates the prior art acknowledged in the patent specification. Consequently, it was not necessary to remit the case to the department of first instance, so that this document could be examined at two levels of jurisdiction.

Although remittal was requested by Appellant I, Article 111(1) EPC 1973 establishes no absolute right for the parties to have all matters raised in appeal proceedings examined by two successive instances; on the contrary it leaves to the Board of Appeal to decide, in the light of the circumstances of the case, whether or not to remit it to the department of first instance, see e.g. T 133/87, point 2 of the reasons.

For these reasons, the Board in exercising its discretion under Article 111(1) EPC 1973 decided not to remit the case to the department of first instance for further prosecution.

3. *Inventive step - main request:*

3.1 D11 is the closest prior art, since it relates like the claimed invention to a built-in dishwashing machine of the "totally hidden type". This dishwasher comprises a cabinet housing a spraying arm of the machine and a frontal door, where on an edge of the door three luminous signalling devices (top of page 82) are provided, in particular spy-lights, indicating a determined operational condition of the dishwashing machine, such as "SALT", "ON", "END", the luminous signalling devices are, when the door is closed, hidden and protected by a surface extending substantially parallel to the edge of the door in which said luminous signalling devices are provided.

The luminous indication "END" is indicative of a point reached of a determined operative phase from among those provided in the range of an operative cycle of the dishwashing machine.

3.2 The dishwasher according to claim 1 differs from that known from D11 in that:

one or more elements are provided for transferring the light emitted from one or more luminous signalling device towards the front of the door, so as to allow the control of the operational condition of the dishwashing machine indicated by the luminous signalling device without having to open the door.

The claimed feature "without ... running the risk that said spraying arm causes a spray of hot water striking the user or adjacent cabinets" is a non-technical, unclear feature and is thus to be disregarded when examining inventive step.

- 3.3 The problem to be solved by the invention can be seen in making it possible to control the operative conditions of the dishwasher without having to open the door (see patent specification, paragraph [0007]).

This problem is not specific to built-in dishwashers but also occurs with other built-in household appliances of the "hidden" type such as refrigerators. Consequently, in the present case the skilled person would not only look for suggestions in the specific technical field of built-in dishwashers but also in the broader technical field of built-in household appliances.

- 3.4 The Respondent considered that identifying the above mentioned problem would already imply an inventive activity.

This cannot be accepted, since the problem the invention seeks to solve was already known from D2 which relates to refrigerators comprising a control panel which is hidden when the door is closed. Reference is made to page 3, lines 3 to 10 of D2 where it is stated that in order to control the luminous signals without having to open the door it was known to provide light conducting elements for transferring the light emitted by the luminous signals towards the front of the door.

- 3.5 D2 teaches to provide light transmitting elements which are bent around the door so that the luminous signals are visible in the interstice between the door and the surface extending parallel to the edge of the door (page 3, third paragraph; Figure 4).

Accordingly, it would have been obvious for a skilled person to apply the teaching of D2 to a dishwasher according to D11 in order to control the operative conditions of the machine without having to open the door.

3.6 The Respondent contended that a skilled person would have not considered the technical field of built-in refrigerators.

However, a skilled person would, as well as considering the state of the art in the specific technical field of the invention, look for suggestions in the neighbouring field of built-in refrigerators because the same or similar problems as in the field of built-in dishwashers play a role and also because the skilled person in the field of built-in dishwashers can be expected to know the field of built-in refrigerators. Household appliance manufacturers normally offer both built-in dishwashers and refrigerators.

He also argued that there would be no reason for a skilled person to modify a dishwasher according to D11. However, this dishwasher suffers from the drawback mentioned in the contested patent and therefore it would be normal behaviour for a skilled person to try to alleviate it.

The Respondent further argued that it would be against the design concept of a machine of the "fully hidden" type to put luminous signals on the front of the door. This cannot be accepted either. D2 does not teach to provide the front of the door with luminous signalling devices, but to provide them in the interstice between the door and the surface parallel to the edge of the

door. Thus, the design of the front part of the door would not be modified.

He also argued that in D2 the luminous signalling devices are not located on the edge of the door. This is correct; nevertheless the claim does not contain the limitation that the light must be on the edge. The teaching of D2 is to be seen in providing light transmitting elements to convey the signal from a place where they are hidden, towards the front of the door, as claimed.

The Respondent further contended that applying the teaching of D2 to a dishwasher according to D11 would not result in a machine according to claim 1 of the main request, because claim 1 requires that the luminous signalling device indicates the operative phase reached from among those provided in the range of the operative cycle of the dishwashing machine. This implies that more than one operative phase is indicated.

This point of view cannot be shared either. Claim 1 requires "at least one luminous signalling device". Thus, only one luminous signalling device can be used, and by providing a luminous signal for the "END" state of the operative cycle of the machine, D11 fulfils the claimed requirement.

3.7 Consequently, the subject-matter of claim 1 of the main request does not imply an inventive step (Article 56 EPC 1973).

4. *Inventive step - auxiliary requests:*

4.1 First auxiliary request:

In claim 1 of the first auxiliary request instead of indicating the operative phase reached from among those provided in the range of the operative cycle of the dishwashing machine, the luminous signalling device is to indicate an abnormal operational condition of the dishwashing machine such as lack of salt.

The closest prior art document D11 further discloses specific luminous signalling device for indicating a lack of salt. Accordingly, for the same reasons as given for the subject-matter of claim 1 of the main request, the subject-matter of claim 1 of the first auxiliary request does not involve an inventive step.

4.2 Second auxiliary request:

Claim 1 of this request requires that the luminous signalling device indicates the operative phase reached from among those provided in the range of the operative cycle of the dishwashing machine and/or an abnormal operational condition of the dishwashing machine such as lack of salt.

Since, as stated above, none of these two alternatives involves an inventive step, the subject-matter of claim 1 of the second auxiliary request does not involve an inventive step either.

4.3 Third auxiliary request:

Compared to claim 1 of the second auxiliary request, claim 1 of the third auxiliary request additionally requires that the one or more elements are able to optically reflect and/or transmit and/or convey the

light emitted. The light transmitting elements of D2 transmit and convey the light emitted by the luminous signalling devices. In applying the teaching of D2 to the dishwasher of D11 to solve the above technical problem, the skilled person would realise that D2 also discloses solving the additional problem of transmitting and conveying the light emitted by the luminous signalling devices and would apply this teaching to the dishwasher of D11.

Accordingly, the skilled person would arrive at the additional feature of claim of the third auxiliary request without exercising inventive skill.

4.4 Fourth auxiliary request:

Claim 1 of this request additionally requires that the one or more elements are located between the edge of the door and the surface parallel to the edge. This is also the case in D2. This additional requirement of the fourth auxiliary request cannot be seen as involving an inventive step.

Claim 1 further requests that the luminous signalling device is provided on the upper edge of the door. This is also known from the closest prior art document D11. Consequently, the subject-matter of claim 1 of the fourth auxiliary request does not involve an inventive step (Article 56 EPC 1973).

4.5 Fifth auxiliary request:

Claim 1 of this request additionally requires that the one or more elements be able to optically reflect the light emitted by the luminous signalling device and that they comprise systems of mirrors and/or prisms or other

polyhedrons, the faces of which are shaped based on the angles apt at transferring the luminous radiation coming from at least one luminous signalling device towards the frontal wall of the door.

That the faces have to be shaped based on angles apt to transmit the light in the right direction, i.e. toward the front of the door is self-evident. The mere use of a mirror system or of prisms or other polyhedrons to reflect a light beam is part of the general knowledge of a skilled person. Moreover, the skilled person would also, as a matter of fact, see from D5 that the problem of reflecting the light emitted by a signalling device would be solved by employing mirrors.

Therefore, the subject-matter of claim 1 of the fifth auxiliary request does not involve an inventive step. Under these circumstances it is superfluous to consider whether this auxiliary request filed during the oral proceedings before the Board is admissible.

Order

For these reasons it is decided that:

The decision under appeal is set aside.

The patent is revoked.

The registrar:

The Chairman:

V. Commare

M. Ceyte