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**Datasheet for the decision
of 11 September 2009**

Case Number: T 0955/08 - 3.5.05

Application Number: 01938023.7

Publication Number: 1266490

IPC: H04L 12/28

Language of the proceedings: EN

Title of invention:

A remote assistance and management system for household appliances in particular gas boilers for heating purposes

Patentee:

MERLONI TERMOSANITARI S.p.A.

Opponent:

Vaillant GmbH

Headword:

Boiler/MERLONI

Relevant legal provisions:

EPC Art. 69, 106, 107, 108, 123(3)

EPC R. 71(3)

Relevant legal provisions (EPC 1973):

EPC Art. 84

EPC R. 29(6)

Keyword:

"Extended protection (yes)"

"Clarity (no)"

Decisions cited:

-

Catchword:

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Case Number: T 0955/08 - 3.5.05

D E C I S I O N
of the Technical Board of Appeal 3.5.05
of 11 September 2009

Appellant: MERLONI TERMOSANITARI S.p.A.
(Patent Proprietor) Viale Aristide Merloni, 45
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Representative: Nuzzo, Federica
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Via Giardini 474/M
I-41100 Modena (IT)

Respondent: Vaillant GmbH
(Opponent) Berghauser Strasse 40
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Representative: -

Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 21 December 2007
revoking European patent No. 1266490 pursuant
to Article 101(3)b EPC.

Composition of the Board:

Chairman: D. H. Rees
Members: A. Ritzka
G. Weiss

Summary of Facts and Submissions

- I. This appeal is against the decision of the opposition division dispatched 21 December 2007 to revoke the European patent 1 266 490. The decision was based on the reason that claim 1 as amended during the opposition proceedings did not comply with the provisions of Article 123(3) EPC.
- II. Notice of appeal was submitted on 21 February 2008. The appeal fee was paid on the same day. The statement setting out the grounds of appeal was submitted on 18 April 2008.

The appellant requested that the decision under appeal be set aside and the patent be maintained as amended.

- III. A copy of the statement setting out the grounds of appeal was transmitted to the respondent with letter dated 27 May 2008. The board did not receive any submission in reaction to this letter.
- IV. In a communication accompanying summons to oral proceedings scheduled for 30 July 2009 the board stated its assumption that the appeal was based on

claims:

1 to 7 filed with letter of 19 December 2005;

description:

pages 2 to 4 of the patent specification;

drawings:

figure 1 of the patent specification.

The board gave its preliminary view that claim 1 did not comply with the provisions of Articles 123(3) EPC and 84 EPC 1973.

- V. With letter of 28 July 2009 the appellant's representative announced that she would not attend the hearing on 30 July 2009.
- VI. The board informed the parties with communication of 29 July 2009 per facsimile that the oral proceedings was cancelled and that the debate was closed.
- VII. Claim 1 reads as follows:

"A remote assistance and management system for household appliances (1) of various typologies with energy from the electricity mains, in particular boilers, the said system being of the kind designed to allow the remote communication of a plurality of data regarding the functioning of the aforementioned apparatus towards the exterior from the domestic environments in which they are installed and to permit the household appliances (1) to receive the remote signals from outside, the said household appliances being designed to modify one or more of its functioning status as a result of the reception of the said signals from one or more external entities such as a user (2) and a statistics database (5) all connected together and with the household appliances (1) by a plurality of remote connections (A), all the said connections being bi-directional, characterised in that a technical assistance system (3) and a data traffic management processing centre (4) belong to the said external

entities, and that the data traffic management processing centre (4) maintains a hierarchical position of superiority in relation to the a [sic] technical assistance system (3), the said higher position in the hierarchy granting the said management processing centre the power to delete or modify the signals sent to the household appliances (1) by the technical assistance centre (3): in fact, via the connection A3, this latter transmits all the data sent out by the boiler itself to the data traffic management processing centre."

Reason for the Decision

1. *Admissibility*

The appeal complies with the provisions of Articles 106 to 108 EPC (see Facts and Submissions, point II). Therefore it is admissible.

2. *Basis for the appeal*

The appellant requested that the patent be maintained as amended without further specifying on which documents the appeal was based.

The board stated in its communication accompanying summons to oral proceedings on which documents the appeal was assumed to be based (see Facts and Submissions, point IV). The appellant did not object to this statement, therefore the board considers these document to be the basis for the appeal.

3. *Article* 123(3) EPC

3.1 Amendments

Claim 1 differs from claim 1 as granted in replacing the term "boiler" by "household appliance", in adding "the said higher position in the hierarchy granting the said management processing centre the power to delete or to modify the signals sent to the household appliances by the technical assistance centre: in fact, via the connection A3, this latter transmits all the data sent out by the boiler itself to the data traffic management processing centre" and in cancelling "the boiler can be equipped with a electronic card which can contain data storage means."

3.2 Boiler

The appellant argued that, as amended claim 1 was still directed to a remote assistance and management system for household appliances of various "typologies" with energy from the electricity mains, in particular boilers, the scope of claim 1 did not change. The scope of claim 1 was confined to a remote assistance and management system suitable for household appliances which might include in particular boilers but were not limited to boilers. Moreover, claim 1 did not refer to the internal functioning of the boiler, it only referred to the communication between a boiler and other parts of the system. Moreover, replacing the boiler by the household appliance was based on paragraph [0013] of the patent specification, which indicated that the example was non-limiting.

These arguments do not convince the board.

The board notes that, in general, the addition "in particular" may be interpreted in the sense that the feature following "in particular" is only optional, thus not limiting a claim. However, in the present case, claim 1 as granted specifies various functions of the specific embodiment "boiler", even though it is merely claimed as "in particular", whereas the general terms "household appliance" and "apparatus" are neither further specified nor mentioned in the specifying part of claim 1.

According to Article 69(1) EPC the extent of protection conferred by a European patent shall be determined by the claims. Thus, the wording of the claim limits its scope. According to the second sentence of Article 69(1) EPC the description and drawings shall be used to interpret the claims.

According to the Protocol on the Interpretation of Article 69 EPC, the article should be interpreted as combining a fair protection for the patent proprietor with a reasonable degree of legal certainty for third parties.

In the present case, although claim 1 as granted referred in the statement designating the subject-matter of the invention to a remote assistance and management system for household appliances of various typologies with energy from the electricity mains, in particular boilers, the limiting features only referred to a boiler.

The description states that the preferred embodiment disclosed with reference to Figure 1 is provided as a non-limiting example, see page 3, lines 16 to 20 of the application as filed, corresponding to paragraph [0013] of the patent specification. However, this passage does not refer to specific details, in particular the boiler is not mentioned. In the board's judgement, this passage does not specifically imply alternatives to the boiler.

Moreover, the general description preceding the description of the preferred embodiment recites the wording of claim 1 and, thus, specifies the remote assistance and management system for household appliances of various typologies with energy from the electricity mains, in particular boilers, using limiting features referring to a boiler only. The skilled person would understand from the disclosure that the remote assistance and management system for household appliances of various technologies with energy from the electricity mains, in particular boilers, is suitable for a household appliance being a boiler.

Although it remains unclear why the application and claim 1 refer to a remote assistance and management system for household appliances of various typologies with energy from the electricity mains, in particular boilers, rather than to a remote assistance and management system for boilers with energy from the electricity mains, the technical content of the application is considered to be unambiguous. Unspecified household appliances are only mentioned in the discussion of the prior art, i.e. not as being part

of the invention. The description of the invention is not considered to provide any basis for a system for a household appliance which is not a boiler.

The applicant is responsible for drafting the application and in particular for the final version of the claims, Rule 71(3) EPC. Even if claim 1 included more limitations than necessary having regard to the disclosure of the application, respect for legal certainty for third parties requires that the negative consequences, i.e. a narrower scope, must be at the expense of the patentee.

Thus, the scope of claim 1 as granted is considered to be confined to a remote assistance and management system suitable for household appliances where the household appliance consists of a boiler. Replacing "boiler" in the granted claim by "household appliance" during the opposition procedure does not comply with the provisions of Article 123(3) EPC.

3.3 Electronic card

Claim 1 was further amended by deleting "the boiler can be equipped with a [sic] electronic card which can contain data storage means". The deleted feature implied that the boiler is adapted to receive and contact an electronic card, even if the electronic card is only optionally inserted. This feature was limiting and deleting it also does not comply with the provisions of Article 123(3) EPC.

4. *Article 84 EPC 1973*

Claim 1 was further amended by adding "in fact, via the connection A3, this latter transmits all the data sent out by the boiler itself to the data traffic management processing centre". The feature "the connection A3" lacks an antecedent in the claim. Moreover, it is undefined, as the reference sign A3 can not be used as a defining and distinguishing characteristic in a claim, Rule 29(6) EPC 1973. Thus, claim 1 is not considered to be clear, contravening Article 84 EPC 1973.

5. There being no further requests, the appeal has to be dismissed.

Order

For these reasons, it is decided that:

The appeal is dismissed.

Registrar:

Chairman:

K. Götz

D. H. Rees