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**Datasheet for the decision
of 20 July 2011**

Case Number: T 2365/09 - 3.2.06

Application Number: 03017542.6

Publication Number: 1389642

IPC: D06F 37/26

Language of the proceedings: EN

Title of invention:
Laundry treatment machine

Patentee:
WHIRLPOOL CORPORATION

Opponent:
Molnia, David

Headword:
-

Relevant legal provisions:
EPC Art. 54, 56
RPBA Art. 13(1)

Relevant legal provisions (EPC 1973):
-

Keyword:
"Novelty - yes"
"Inventive step - yes"
"Late-filed document - not admitted"

Decisions cited:
-

Catchword:
-



Case Number: T 2365/09 - 3.2.06

D E C I S I O N
of the Technical Board of Appeal 3.2.06
of 20 July 2011

Appellant: Molnia, David
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Decision under appeal: Decision of the Opposition Division of the
European Patent Office posted 9 October 2009
rejecting the opposition filed against European
patent No. 1389642 pursuant to Article 101(2)
EPC.

Composition of the Board:

Chairman: M. Harrison
Members: G. de Crignis
K. Garnett

Summary of Facts and Submissions

- I. The opposition filed against European patent No. 1 389 642, was rejected by the opposition division by way of its decision posted on 9 October 2009.

Claim 1 reads as follows:

"Laundry treatment machine, more especially a washing machine or a laundry drier, comprising a drivable drum (10) which accommodates laundry and is rotatably mounted in a container (20) integral with the housing, wherein the container is provided with an elastic sleeve (30), covering the transition from the front opening (22, 23) of the container to the housing opening (36), around the filler opening (12) of the drum (10) and wherein a laundry rejector (40) is attached in this transitional region in the region of the top dead centre of the drum (10), characterised in that the laundry rejector (40) with a rigid mounting part (41) is attached to the front opening (22, 23) of the container (20) and carries an elastic rejector part (42), which is introduced into the filler opening (12) of the drum (10) so as to form a gap (13), and in that the sleeve (30) has, in the region of the laundry rejector (40), a receiving means (35) which is directed towards the housing opening (36), provides space for and receives the mounting part (41) of the laundry rejector (40) and permits the insertion of the rejector part (42) into the filler opening (12) of the drum (10)."

- II. On 9 December 2009 the appellant (opponent) filed an appeal against this decision and paid the appeal fee. In the statement setting out the grounds of appeal,

received at the European Patent Office on 9 February 2010, arguments were made with reference to the following documents:

A1 WO-A-02/12612

A2 US-A-2 941 390,

which documents were already cited during the opposition proceedings. Additionally, documents

A5 US-A-6 256 823 and

A6 US-A-5 582 039

were submitted in relation to arguments under the heading of inventive step.

III. With its communication of 5 April 2011 annexed to a summons to oral proceedings, the Board mentioned in particular, in regard to novelty, that the interpretation of claim 1 as well as the disclosure of A1 concerning where the sleeve and laundry rejector were attached, were matters of importance. In regard to A6, the Board stated that this did not appear sufficiently relevant for its introduction into the proceedings.

In the appellant's submission of 20 June 2011, arguments were brought forward in respect of lack of novelty and inventive step with regard to

A4 JP-A-10 211382

B1 Patent Abstract of A4

B2 English translation of A4,

and also with regard to novelty in view of A5.

IV. Oral proceedings were held on 20 July 2011.

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

respondent requested that the appeal be dismissed.

V. The arguments of the appellant may be summarised as follows:

The subject-matter of claim 1 was not novel over the disclosure in A1. A1 disclosed a washing machine having a diverter at the top-dead-centre (TDC) of the drum. Figure 1 of A1 disclosed a sleeve member which was attached to the front cover member of the container via a clamping device 2. The projection present in the clamping device represented a rigid mounting part and was to be inserted into the diverter which was part of the sleeve. Concerning the meaning of the terms "rigid" and "elastic", such terms were relative and could thus be read onto A1.

Additionally, the subject-matter of claim 1 lacked novelty with respect to each of A4 and A5. Although an objection of lack of novelty with respect to A4 and A5 had not been raised in the grounds of appeal, this ground of objection and the arguments in respect thereof were highly relevant and should thus be admitted into the proceedings.

A4 disclosed a washing machine having all the features defined in claim 1. In particular, Figures 3 and 5 showed an annular rib which was a part of the sleeve forming the connection to the tub, whereby the rib functioned as a rejector and was positioned around the whole circumference and thus also at TDC. The fold 24, by stopping short of the rib 25, formed a receiving means in the sleeve. Due to its position away from the rib 25 and its attachment to the tub, space for the

mounting part was provided and insertion of the rib into the drum was permitted. A rigid mounting part was formed by the thick lower part of the sleeve close to the tub and the elastic rejector part was provided by the thinner upper part.

A5 also disclosed a washing machine provided with all the features defined in claim 1. An annular rib 64, thereby being present at TDC, extended into the drum from the inner face of the flexible sleeve and functioned to deflect water and clothes from movement between stationary and rotatable drums 25 and 30 (see col. 4, l. 44 - 57). Hence, the rib acted as a laundry rejector and it was attached to the front opening of the container by a rigid part, which was the part engaged by the groove on the forward face of the container 25. The rib 64 was elastic. The folds 60 and 61 formed a receiving means, since they provided space for the rigid mounting part and allowed the rib 64 to project into the drum.

Concerning inventive step, A1 represented the closest prior art. It disclosed a washing machine with a laundry rejector located at the top of the gasket in order to prevent the laundry loaded in the drum from contacting the gasket. When starting from A1, and considering features Fd, Ff(a) and Ff(c) - as specified in the feature analysis in the grounds of appeal (see "Reasons" 2.2 *infra*) - as being the features distinguishing it from the washing machine defined in claim 1, the objective problems to be solved were, on the one hand to avoid laundry being trapped between the rotating drum and the fixed container, and on the other hand to allow a simpler installation of the rejector

means which had no technical effect but was merely an alternative arrangement.

The solution provided by features Fd, Ff(a) and Ff(c) was obvious to a skilled person in view of A5. The terms "elastic" and "rigid" were only relative and thus applied also to the corresponding parts in the sleeve and rib of A5, which elastic and rigid parts would thus replace those in A1. The direction of the whole receiving means in A5, as formed by the folds of the sleeve, extended towards the housing opening; Figures 2 and 3 showed that this receiving means permitted the insertion of the rejector part, i.e. the rib, into the filler opening of the drum and left a gap all around. Hence, the skilled person would merely extend the rejector in A1 so as to act in the same way as the rejector rib in A5 as required by feature Fd, whereby the other features Ff(a) and Ff(c) were simply an alternative known from A5, but which provided no technical effect. The same argument applied when starting from A1 and combining this with the teaching of A4.

A4 or A5 could alternatively be considered as the closest prior art starting point and the skilled person would then arrive at the subject matter of claim 1 based on the teaching of A1.

Additionally, starting from A1 as the closest prior art, the skilled person would combine this with the teaching of A2 to arrive at the subject-matter of claim 1 without requiring an inventive step, since the rejector in A2 was attached to the container at its opening, and projected into the drum with a clearance forming a gap.

The attachment of the rejector to the inside of the container in A2, rather than the outside, was of no relevance since no distinguishing feature of this type was defined in claim 1.

VI. The arguments of the respondent may be summarised as follows:

The subject-matter of claim 1 was novel. All the features of the characterising portion of claim 1 which were specified as features Fa to Ff by the appellant were novel with regard to A1. In particular, Figure 1 of A1 showed that the clamping device attached the sleeve door gasket to the front cover of the housing but not to the front opening of the container such as claimed in the patent in suit. Accordingly, the diverter of A1 was located on the rim of the gasket closest to the front cover and thus farthest from the filling opening of the drum. Hence, the diverter was not introduced into the filler opening of the drum, rather it faced outwards towards the washing machine door. Hence, A1 also did not disclose receiving means of the sleeve which permitted the insertion of the rejector part into the filler opening of the drum. Additionally, A1 did not disclose any rigid mounting part of the rejector because the diverter and the pocket in which the elastic metal wire was inserted were both made of an elastic material.

Concerning the arguments with regard to lack of novelty of claim 1 with regard to A5, these arguments should not be admitted into the proceedings. Although A5 was filed together with the grounds of appeal, only arguments concerning lack of inventive step were

presented in connection with this document. Hence, any objection with regard to lack of novelty concerned arguments which were not presented in accordance with Article 12(2) of the Rules of Procedure of the Boards of Appeal (RPBA).

Similarly, the arguments concerning lack of novelty with regard to document A4 should also not be considered admissible since no arguments at all had been filed with the grounds of appeal in regard to A4.

Further, the objections based on A4 and A5 were not *prima facie* highly relevant. A5 did not disclose any TDC (top-dead-centre) location of a laundry rejector or any receiving means for a laundry rejector.

Similarly, A4 also did not disclose any receiving means in the sense of claim 1, which required that the receiving means should be directed towards the housing opening and provide space for and receive the mounting part of the laundry rejector while permitting insertion of the rejector part into the filler opening of the drum.

With regard to inventive step, the skilled person would not be led to consider a combination of the features of A1 and A5, since these disclosed incompatible rejector means. Moreover, neither of these documents disclosed receiving means in the sense of the patent in suit. The neck portion in A1 identified as receiving means by the appellant when referring to the narrow hollow part of the rejector shown in Figure 4 and its extension on one side did not permit insertion of the elastic rejector part into the filler opening of the drum and it could

not be combined with the annular rib of A5 which acted as a laundry rejector. A5 merely disclosed a bellows to seal the stationary container tub of the washer to the washing machine panel containing the door opening.

The same arguments as applied to a possible combination of A1 with A5 applied equally to the combination of A1 with A4.

Reasons for the Decision

1. The appeal is admissible.
2. Main request - Novelty
 - 2.1 A1 discloses a laundry treatment machine in the form of a front-loader washing machine, having the features of the preamble of claim 1 (see e.g. Fig. 3 and page 3, lines 16 to 23). This was also undisputed between the parties and the Board finds no reason to conclude otherwise.
 - 2.2 The features of the characterising portion of claim 1 were subdivided into features Fa to Ff(c) in the grounds of appeal by the appellant as follows:
 - Fa: "the laundry rejector with a rigid mounting part";
 - Fb: "is attached to the front opening of the container";
 - Fc: "and carries an elastic rejector part";
 - Fd: "which is introduced into the filler opening of the drum so as to form a gap";
 - Fe: "the sleeve has, in the region of the laundry rejector, a receiving means";
 - Ff(a): "which is directed towards the housing opening,";

Ff(b): "provides space for and receives the mounting part of the laundry rejector";

Ff(c): "and permits the insertion of the rejector part into the filler opening of the drum."

- 2.3 The respondent considered the diverter (i.e. the rejector of claim 1) in A1 to be represented exclusively by the pocket of the sleeve forming the door gasket whereas the Board concludes - consistent with the view of the appellant and consistent with the strength of the diverter and its function - that the diverter in A1 may indeed be considered as including the W-shaped projection (see e.g. Figures 1 and 2) of the clamping device and the water pipe with the nozzle (see e.g. Figures 1 and 4 and e.g. page 5, line 25 to page 6, line 8). Merely because A1 itself denotes part 5 as being a "diverter", does not detract from the fact that the projection 6 and nozzle 19 both provide integral reinforcement of same, and thus may also be considered as being part of the diverter. It follows that the diverter is provided with a rigid mounting part (in the form of the W-projection of the clamping device) as required in feature Fa, and that this feature is therefore disclosed in A1.

The respondent's argument that the clamping device was disclosed in A1 as an elastic spring or plastic wire and thus could not be defined as a rigid mounting part is unconvincing. The clamping device has to have a certain elasticity in order to enable its mounting, yet it may be formed of a metal wire (see page 4, lines 5 to 7), which is as such relatively rigid. Additionally, it certainly confers the necessary rigidity to the elastic rubber pocket of the sleeve in order to

guarantee the desired function (see e.g. page 5, lines 25 to 27). Hence, it constitutes a rigid mounting part even though it also has a certain elasticity as well. Indeed, the terminology in feature Fa does not exclude the rigid mounting part itself having some elasticity.

2.4 The respondent also argued that the diverter of A1 was attached only to the sleeve directly and to the front cover member of the housing indirectly via the entire axial extent of the sleeve, whereas according to claim 1 the laundry rejector should be attached to the front opening of the container. The Board however considers - in accordance with the view of the appellant - that with regard to the function of the diverter, the only meaningful interpretation can be that in A1 the sleeve is attached via the clamping device to the front cover member of the container (tub), since otherwise no deflection or diverting of the laundry would be possible having regard to the position of the diverter on the sleeve. Although the front cover member 3 in Figures 1 and 2 of A1 is not further specified as belonging to either the container or to the housing, the latter would be technically improbable and thus not applicable, not least since sealing of the door to the gasket would be all but impossible if the respondent's interpretation were to be accepted. Although the member 2 clamps the outer end of the seal to a flange of the front cover member, such an attachment is not excluded by claim 1. Thus feature Fb is disclosed in A1.

2.5 Additionally, feature Fc is disclosed in A1. This feature requires the rigid mounting part of the laundry rejector to carry an elastic rejector part. The

diverter in A1 is constituted by an elastic rubber pocket 4 in which a W-shaped projection of the clamping device (and a nozzle) is inserted. Also, in accordance with page 5, lines 3 to 5, the pocket wraps the projection "tightly" and thus the projection "carries" the pocket. Hence, the elastic rubber pocket constitutes the elastic rejector part and the W-shaped projection of the clamping device constitutes the rigid mounting part. In the absence of any qualification of the term "elastic" or "rigid" in the patent, the term "elastic" is applicable to the pocket portion of the diverter.

2.6 However, no disclosure of feature Fd could be found in A1. The diverter in A1 is located on the rim of the gasket which is closest to the front cover (of the container), whereas feature Fd requires that the laundry rejector is introduced into the filler opening of the drum so as to form a gap. This gap, which can only reasonably be interpreted to correspond to gap 13, is shown in Figure 1 of the patent in suit as a gap between the drum and the rejector part of the laundry rejector. In A1 it is however not possible to establish unambiguously how far the rejector extends towards the drum since this is neither described nor shown in any Figure. In particular, in Figure 4, where the nozzle opening 20 points towards the drum (see e.g. page 6, lines 5 to 8), the axial extent of the rejector is not shown in relation to the drum. The same applies to Figure 1. Likewise, although page 5, lines 11 to 23 discusses the function of the diverter as diverting laundry into the drum, it does not specify that the diverter necessarily projects into the drum. Hence, this feature is not disclosed in A1.

- 2.7 Although such feature alone is sufficient to establish novelty of the subject-matter of claim 1, the further features of claim 1 are also considered below for the purpose of later consideration of inventive step.
- 2.8 Concerning feature Fe, the neck portion of the elastic rubber pocket forming the diverter in A1 (see Figure 4) and even the slanting surface below the neck extending to the right (in Figure 4) are integral parts of the sleeve and can thus be considered to be a receiving means as generally defined by feature Fe. Accordingly also feature Fe is known from the disclosure in A1.
- 2.9 When following such designation of the receiving means in A1, which is the only interpretation in this regard given by the appellant, the direction of this neck portion and the right slanting surface of the pocket extend essentially vertically downwards and thus, together, are directed towards the central lower edge of the sleeve member. Hence, feature Ff(a) which requires the receiving means to be directed towards the housing opening is another feature distinguishing the claimed subject-matter from the disclosure in A1, since, even when considering the neck and slanted portion to be the receiving means, this is not directed towards the housing opening.
- 2.10 Concerning feature Ff(b), which requires the receiving means to provide space for and to receive the mounting part of the laundry rejector, the neck portion of the diverter shown in Figure 4 of A1 provides the space for and receives the projection 6 of the clamping device,

which projection represents the mounting part of the laundry rejector. Hence, feature Ff(b) is known from A1.

2.11 Concerning the final feature Ff(c), which requires the receiving means to permit the insertion of the rejector part into the filler opening of the drum, no such feature can be found in A1 since, as has been stated above, it cannot be established that the rejector part can be inserted into the drum at all.

2.12 Concluding, the subject-matter of claim 1 of the patent in suit differs from the disclosure in A1 via the features Fd, Ff(a) and Ff(c) and hence, it is novel.

3. Admittance of late-filed documents

3.1 According to Article 13(1) of the Rules of Procedure of the Boards of Appeal (RPBA), it lies within the discretion of the Board to admit any amendment to a party's case after it has filed its grounds of appeal. Although A4 was not discussed in relation to any objection at all in the grounds of appeal, but merely mentioned in a list of documents considered by the opposition division, and although A5 was only mentioned with respect to an objection of lack of inventive step, the Board decided to admit these documents into the proceedings together with the objections and arguments based thereon, since consideration of these objections and arguments was not particularly complex and the interpretation of claim 1 had indeed been a matter involving extensive discussion based on arguments not filed originally with the response to the grounds of appeal, resulting in a conclusion being reached (with regard to novelty in respect of A1) which was somewhat

different than that reached by the opposition division in terms of which features were found to be novel.

A6 was however not admitted into proceedings, as explained below.

3.2 Main Request - claim 1 - novelty over A5

A5 discloses a front loading washing machine (title). The main issue of the disclosure is the sealing gasket or bellows which extends from the stationary drum to the front panel (title, col. 1, l. 55 - 63). This bellows prevents water within the rotating drum from escaping between the drum and the enclosure and allows simple replacement/attachment. The bellows comprises an annular body portion terminating in first and second fastening means, the first fastening means provides an axially extending rib having opposed first and second surfaces and engagable with one of the side walls of the first channel; and the second fastening means provides an annular axially extending rib having opposed first and second surfaces and engagable with one of the sidewalls of a second channel and a radially extending lip engagable with the door whereby the stationary drum is sealed to the front panel of the washing machine. The bellows may be provided with a series of convolutions in the form of steps at the bottom and folds at the top to direct any water that has escaped from the stationary drum or the rotating drum to a suitable drain or otherwise return the water to the drums (col. 4, l. 44 - 49).

Concerning the presence of a diverter, column 4, lines 53 - 57 reads:

"A small annular rib 64, extends rearwardly from the outer corner of convolution 59. In the upper area of the bellows, as mounted, this rib 64 functions to deflect water and clothes from movement between stationary and rotatable drums 25 and 30."

Figures 1 and 2 show the annular rib 64 which was identified by the appellant as being a rejector means. The appellant argued that the folds 60, 61 of the bellows 44 formed a receiving means in accordance with feature Ff(a), Ff(b) and Ff(c). However, these folds 60, 61 do not form a receiving means for any rejector, since the folds are located entirely remote from the rejector (i.e. the rib 64). The appellant's argument that these folds in the sleeve, and their position, provide space for and receive the mounting part in accordance with Ff(b) and that they permit insertion of the rejector part into the filler opening of the drum in accordance with Ff(c) is unconvincing, due to their location axially spaced from the rejector itself, whereby these folds have no influence on any positioning of the rib 64 or its mounting (which is via a radial extension thereof), to the container rim. In this regard it should be noted that feature Fe also requires that the sleeve should have a receiving means "in the region of the laundry rejector". Thus, at least features Ff(b) and Ff(c) are not disclosed in A5.

Also, the annular rib 64 is found by the Board not to be "attached in the region of the top dead centre of the drum". Instead its attachment and its location extends over the entire circumference of the drum. In this regard it should be noted that a location in the region of the "top dead centre" in the context of

claim 1 is found by the Board to relate to an identifiable region and does not mean an attachment over the entire circumference, since an attachment over the whole circumference would make this terminology of the claim meaningless. Although the appellant argued that only claim 4 provided such a limitation to the angular extent of the rejector, the Board is unconvinced by this argument, since nowhere can an indication be found that an attachment in the region of the top dead centre should imply an attachment over the entire circumference; claim 4 merely seems to express that the rejector part can have more than merely a minimal angular extent at the top dead centre location.

Additionally, the Board can find no disclosure of a rigid mounting part in accordance with feature Fa, not least since the relative rigidity/elasticity of the mounting parts and the rib are not specified. Merely because an inwardly directed annular rib 65 is held (see e.g. Fig. 3) between two flanges of the container, and is provided with a further axial step 71, does not imply that the rubber rib and step constitute a rigid mounting part. Indeed, the attachment of the sleeve to the container at this location appears more dependent on a frictional connection, without implying any particular characteristics of rigidity in the rib and step.

Accordingly, the subject-matter of claim 1 is not anticipated by A5.

3.3 Main Request - claim 1 - novelty over A4

A4 also discloses a front loading type washing machine (Figure 2). It includes a rib 25 which attaches the stationary container via a folded section 23 to the housing 8. The rib 25 is considered as a laundry rejector by the appellant. However, as also explained in regard to A5, no receiving means can be identified which would provide space for and receive a mounting part of the rib while permitting insertion of the rejector part into the filler opening of the drum, since the folds 23 identified by the appellant as being a receiving means are axially spaced with respect to the annular rib 25. Accordingly, the subject-matter of claim 1 is novel over the disclosure in A4.

In the same way as explained with regard to A5, neither the formation of the rib 25 as part of the sleeve 12, nor the attachment of the sleeve to the container 3 equates with features Fa and Fc of claim 1. Additionally, as also the case with A5, the annular rib 25 does not constitute a laundry rejector attached at the region of the top dead centre, since it is also attached over its whole circumference to a circumferential flange of the container.

3.4 In regard to the late-filing of A6 and its possible admittance into proceedings, the Board had already indicated in its preliminary opinion that A6, which concerns a top-loading washing machine, did not appear to be sufficiently relevant for it to be admitted into proceedings. A6 had been used in combination with A1 in relation to an attack against inventive step, and the Board had commented that the structure of the A6

machine was largely incompatible with the machine structure of A1. No written or oral arguments were supplied in response to that opinion and thus the Board finds no reason to alter its preliminary opinion. A6 was thus not admitted into the proceedings.

4. Inventive step - starting from A1
 - 4.1 Both parties agreed that A1 can be considered as representing the closest prior art. As already set out under point 2 above, the subject-matter of claim 1 differs from the disclosure in A1 by the features Fd, Ff(a) and Ff(c).
 - 4.2 When starting from A1, the objective technical problem to be solved cannot be identified by taking these distinguishing features together since feature Fd concerns the position of the laundry rejector in relation to the drum whereas features Ff(a) and Ff(c) concern the receiving means.
 - 4.3 Feature Fd:
 - 4.3.1 Starting from A1, which discloses a diverter of unknown axial positioning with respect to the drum opening, the objective problem solved by feature Fd, according to which the rejector part is introduced into the filler opening of the drum to form a gap, is to reduce the probability that laundry gets caught between the rotating drum and the non-rotating container.
 - 4.3.2 A5 discloses a front-loading washing machine as set out under point 3.3 above. Although A5 discloses a diverter in the form of annular rib 64 which has the purpose of

preventing clothes moving between the drum and the container (see column 4, lines 53 to 57), it would not be obvious for a skilled person to adapt the diverter of A1, which is located in the region of the top dead centre of the drum (and not all around the circumference) so that this should extend to the left (in the Figure 4 view) and thus into the drum. The continuous annular rib of the diverter in A5 is simply an alternative form of diverter, so whilst it might perhaps be obvious to replace the diverter in A1 completely by an annular rib, there is no teaching to extract an isolated characteristic of the rib in A5 (i.e. its extension into the opening of the drum to form a gap) and apply that isolated characteristic to the arrangement in A1. When considering the arrangement in Figure 4 of A1, although it may only require an axial lengthening of the left side of the diverter of possibly only several millimetres or possibly centimetres (the actual amount however being unknown), nothing indicates to a skilled person that such a measure should be taken, it being noted that the stiffness of the rejector in A1 would also be reduced by this measure (unless further measures were taken to counteract this), which would therefore in itself be disadvantageous. In this regard, it may also be noted that the purpose of the rejector in A1 (see e.g. page 5, lines 19 to 20) is to reduce contact and friction between the laundry and the door gasket, rather than acting to prevent laundry being caught between the drum and container.

- 4.3.3 Hence, when starting from the washing machine and the diverter shown in A1, and trying to solve the above objective problem, the skilled person does not get any

suggestion from the teaching of A5 to introduce the rejector part into the filler opening of the drum so as to form a gap. For this reason alone, the subject-matter of claim 1 involves an inventive step when starting from A1 and combining this with the teaching of A5.

4.4 The same reasoning applies when starting from A1, and trying to solve the same problem having regard to the teaching of A4, since the diverter in A4 is also formed by an annular rib.

4.5 There is therefore no reason to consider the distinguishing features Ff(a) and Ff(c) further in relation to inventive step, although as already stated *supra* in regard to novelty, these features are not present in the machines of A4 and A5.

4.6 The appellant also argued that a skilled person would arrive at the subject-matter of claim 1 when starting from A1 by combining this with the teaching of A2.

4.6.1 Starting with the same problems as identified above when starting from A1, the skilled person is not taught a solution thereto when considering A2, since the rejector (deflector 82) in A2 is not located on a sleeve at all as in A1, nor even on the outside of the container as in A1, but instead is located on an inner surface of the container. Also, the rejector in A2 is a rigid laundry rejector. Thus, even if only for this reason the teachings of A1 and A2 represent distinct alternative solutions for which there is no teaching for the skilled person towards a combination to arrive at the features of claim 1.

Contrary to the appellant's argument on this matter, it is irrelevant in regard to a possible combination of A1 and A2 that the claim itself does not define the side of the container opening on which the rejector is located, because the reason why the skilled person has no teaching to make such a combination is that the starting point A1 has a rejector on the opposite side of the container to that shown in A2.

4.6.2 Due to the distinct nature of A1 and A2, the same reasoning applies also to a combination of A1 and A2 when starting from A2 as the closest prior art starting point.

5. Inventive step - starting from A4 or A5

In the alternative, the appellant considered it appropriate to start from A4 or A5 as the closest prior art and combining this with the teaching of A1, although no specific arguments were made as to why such a combination would lead a skilled person to the subject-matter of claim 1 without using inventive skill. However, the Board notes that the annular rib 64 and the bellows 44 which are disclosed therein as functioning to deflect water and clothes from movement between stationary and rotatable drums are quite distinct in design and position/location from the claimed diverter and the receiving means adapted thereto. As already explained *supra*, A5 contains no clear and unambiguous disclosure of a receiving means, nor any indication concerning the rigidity of the annular rib attachment to the container, and additionally a top-dead-centre position of the laundry

rejector is not disclosed. Hence, A5 is neither directed to the same purpose or effect as the invention nor is it related to the same or a similar problem. As already explained in relation to the combination of A1 and A5, the solutions provided in each of these documents are merely alternative and indeed distinct ways of achieving laundry diversion at different points, and which do not provide any teaching for selecting individual characteristics of one any using these in another type of diverter.

6. The subject-matter of claim 1 thus involves an inventive step in regard to the cited prior art and the arguments brought forward by the parties based thereon.
7. Since no further objections were raised by the appellant, the Board thus finds no reason to overturn the decision of the opposition division.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar

The Chairman

M. Patin

M. Harrison