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**Datasheet for the decision
of 22 November 2013**

Case Number: T 0455/10 - 3.2.04

Application Number: 03011972.1

Publication Number: 1340443

IPC: A47J37/06

Language of the proceedings: EN

Title of invention:
Electric heating plate

Patent Proprietor:
WIK Far East Ltd.

Opponent:
Tsann Kuen (China) Enterprises Co. Ltd.

Headword:

Relevant legal provisions:
EPC Art. 54, 56

Keyword:
Novelty - main request (yes)
Inventive step - main request (yes)

Decisions cited:

Catchword:



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Case Number: T 0455/10 - 3.2.04

**D E C I S I O N
of Technical Board of Appeal 3.2.04
of 22 November 2013**

Appellant: Tsann Kuen (China) Enterprises Co. Ltd.
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Decision under appeal: **Decision of the Opposition Division of the
European Patent Office posted on 17 December
2009 rejecting the opposition filed against
European patent No. 1340443 pursuant to Article
101(2) EPC.**

Composition of the Board:

Chairman: A. de Vries
Members: J. Wright
T. Bokor

Summary of Facts and Submissions

- I. By its written decision dated 17 December 2009 the opposition division rejected the opposition against the patent No. EP1340443. On 24 February 2010 the appellant (opponent) filed an appeal against the decision and paid the appeal fee simultaneously. The statement setting out the grounds of appeal was received on 27 April 2010.
- II. Opposition was filed against the patent as a whole and based on Article 100(a) EPC (lack of novelty and inventive step) having regard to the following documents among others:
E1: US 3,632,982
E2: JP 10-000160 and its English (machine) translation
E6: US 1,733,450
E8: US 2,198,645
E9: US 2,198,647
E11: US 2,840,684
- III. Summons to oral proceedings with preliminary observations of the Board were issued on 2 October 2013. With a letter dated 15 November 2013, the appellant (opponent) informed the Board that he would not attend the oral proceedings scheduled for 22 November 2013 and requested continuation of the proceedings in writing. The oral proceeding before the Board were held as scheduled in the absence of the appellant.
- IV. The appellant (opponent) requests that the decision under appeal be set aside and the patent be revoked.
- The respondent (patentee) requests that the appeal be dismissed (main request), or in the alternative, that

the decision under appeal be set aside and the patent be maintained in amended form on the basis of any of the auxiliary requests 1 to 3 filed by letter dated 27 September 2013.

V. Claim 1 according to the respondent's main request (as granted) reads as follows:

"Electric heating plate (11) with first and second cooking surfaces (20, 21) on opposite sides thereof and with an integral electric heating element (52) arranged between said first and second cooking surfaces (20, 21), wherein said heating plate (11) is cast about the heating element (52), said heating plate (11) has a smooth cooking surface (20) and a ribbed cooking surface (21), and wherein said heating element (52) is embedded in said heating plate (11), and said heating element (52) includes first and second heating element parallel legs (53, 54) that extend through said heating plate (11) and said heating element legs (53, 54) being embedded in one of said rib portions (72, 73) of said heating plate (11)."

VI. The appellant (opponent) mainly argues as follows:

The decision was wrong in finding claim 1 new with respect to E1 and E2. In E1 the metal plate 38 serving as work surface is optional and can be removed. The underlying heating plate 28 with two ribs in which the heating element 39 are embedded then provides a second surface suitable for cooking on in addition to smooth cooking surface 33.

In E2, the cooking surface 13, uppermost in figure 3, is "*leicht geriffelt*", not ribbed. Since "smooth" is a term having different meaning in different technical

areas the cooking surface 13 can be considered to be a smooth surface. The other cooking surface 13' shown uppermost in figure 4, is provided with widely spaced ribs 15 with heating element legs embedded therein.

Claim 1 also does not involve an inventive step starting from either E1 or E2. The only difference between claim 1 and E2 identified by the opposition division was that the heating plate claimed has a smooth cooking surface.

The term "smooth cooking surface" is not clearly defined, neither in E2 nor in the patent, making it unsuitable as a basis for novelty or inventive step.

VII. The respondent (patentee) mainly argues as follows:

Claim 1 as granted is new with respect to E1 because E1 only discloses a single cooking surface 33 and new with respect to E2 because E2 does not disclose a smooth cooking surface.

Claim 1 as granted involves an inventive step because, starting from E2, neither E2 nor any other cited document suggests replacing the lower heating surface 13' of E2 with a smooth cooking surface or placing the heater element 16 of E2 in the ribs 14.

Reasons for the Decision

1. The appeal is admissible
2. *Request for the continuation of the proceedings in writing*

The appellant merely declared in its letter of 15 November 2013 (see point III above) that he would

not attend the oral proceedings but otherwise did not provide any other reasons in support for its request for continuing the proceedings in writing, and the Board saw no compelling reasons to delay the proceedings any further. Therefore, the Board decided not to cancel the appointed oral proceedings, pursuant to Article 15(3) Rules of Procedure of the Boards of Appeal (RPBA).

3. *Background*

The invention relates to an electrically heated cooking plate having two cooking surfaces for different cooking styles, see specification, paragraphs [0001] and [0002]. A main aim of the invention is to improve this concept by heating cooking surfaces more rapidly, specification paragraph [0009].

4. *Respondent's main request, claim 1 as granted*

4.1 Interpretation of "ribbed portions"

Claim 1 claims a heating plate having *inter alia* a heating element and a ribbed cooking surface. It further defines that the heating element legs (53, 54) [are] embedded in one of said rib portions (72, 73) of said heating plate (11).

Although the claim does not explicitly define how or whether the ribbed cooking surface relates to "ribbed portions", the specification paragraph [0028] and figure 7 discloses a heating plate having a ribbed surface 21 uppermost, evidently the surface where cooking takes place. This paragraph (column 6 lines 37 to 40) also specifies: "*the heating element leg 53 is embedded in a portion of the heating plate 11 that*

forms a rib 72 of the cooking surface 21; and the heating element leg 54, in rib 73". Thus the Board interprets the "ribbed portions (72, 73)" in which the heating element legs are claimed to be embedded, as comprised in the ribs which form the ribbed cooking surface as claimed.

4.2 Novelty with respect to E1

4.2.1 E1 discloses a reversible electric griddle 28 which can be slotted flush into the top of a cooking hob (cook top 10). On one side it has a griddle (cooking) surface 33 on the other additional kitchen work surface. When the griddle is not needed it can be turned over so that the griddle surface is concealed. In this orientation a sheet metal panel 38 is uppermost. The panel 38 provides the additional kitchen work surface, see column 2, line 70 to column 3, line 1 and figure 4.

4.2.2 The question of novelty vis-a-vis E1 hinges on whether, as argued by the appellant, the panel 38 is optional and can be removed to expose the underlying ribbed surface of the heating plate as a second (ribbed) cooking surface.

4.2.3 The Board finds no indication in E1 that the sheet metal panel 38 is optional. Indeed its removal is contrary to the stated principle object of the invention of E1 to provide a work surface as well as a cooking surface, column 1, lines 35 to 40. Therefore the sheet metal panel 38 is neither intended to be removed nor optional. Consequently the Board concludes that the concealed surface of the heating plate, opposite to the surface 33, is not a cooking surface. The arguments of the appellant pertaining to the presence of ribs on the surface and the heating or

surface properties of the concealed surface making it suitable for cooking and are therefore irrelevant.

4.2.4 Thus the Board confirms the finding of the opposition division that E1 does not disclose a second cooking surface as claimed. Therefore the Board holds the subject matter of claim 1 to be novel with respect to E1.

4.3 Novelty with respect to E2

4.3.1 It is common ground that E2 discloses an electric heating plate 2 with first and second cooking surfaces. A first cooking surface 13 is shown uppermost in figures 2 and 3. When the heating plate is inverted, a second cooking surface 13' is uppermost, see figures 1 and 4 and paragraph 26. In figures 2 and 3 the upper surface is shown to have parallel, narrow and slightly raised parts 14, which are identified in E2's English translation as ribs, paragraph 26. The second cooking surface 13' is shown in figures 2 and 4 and described in paragraph 26 as having hemispherical hollows 15 for cooking octopus dumplings. Embedded in the plate is a heating element 16, see figures 2, 3 and 4.

4.3.2 The appellant would have the first cooking surface 13 a smooth cooking surface and the second cooking surface 13' a ribbed cooking surface, arguing that the terms "smooth" and "ribbed" are not well-defined and open to interpretation.

4.3.3 The Board disagrees. In the present context of cooking plates these two terms have fairly well defined meanings for the skilled person. A ribbed cooking surface, in his understanding, will have ribs, as is also borne out by the description of the present

patent, see e.g. specification paragraph [0002] describing ribbed cooking surfaces as being used for grilling, and the prior art example E11 cited in specification paragraph [0007]. This contrasts these surfaces from those qualified as "smooth" which is generally used to describe cooking surfaces without major projections or texture, i.e. surfaces that are generally flat. Indeed in specification paragraph [0002] and following paragraphs, the non-ribbed surface is described as flat.

4.3.4 In this normal understanding of the terms the skilled person does not see the surface 13 of the E2 plate as smooth but rather as ribbed. Thus the longitudinal raised parts 14 identified in the translation as "ribs" would be understood as such. The skilled person would therefore view the cooking surface 13 as a ribbed cooking surface, made up of ribs 14. Thus the Board concludes that the first cooking surface 13 is not a smooth cooking surface but a ribbed cooking surface. Similarly, the skilled person would not consider the surface 13' with hemispherical hollows to be a ribbed surface in the normal sense of the term as also used in the patent. In particular he would not identify the ridges separating the hollows 15 as cooking surface ribs in the usual meaning of the term.

4.3.5 No heating elements are located in the ribs making up the ribbed portions of the ribbed cooking surface 13, nor has this been argued by the appellant (opponent). This is evident from the fact that, see figures 2 and 3, the heating element 16 runs mainly *perpendicular* to the ribs 14 and below the ribbed cooking surface 13. In the light of the Board's interpretation of claim 1, see section 3.1 above, E2 thus does not disclose heating element parallel legs embedded in a rib portion of the

heating plate. That the heating element 16 is shown in figures 2 and 4 to be embedded in the plate in the material separating rows of hemispheric hollows is irrelevant, as the skilled person in any case does not identify this material as ribs and the corresponding surface 13' as ribbed.

- 4.3.6 The Board concludes that E2 does not disclose an electric cooking plate having a smooth cooking surface, nor does it disclose the feature of heating element legs embedded in one of the rib portions of the heating plate. It thus confirms the finding of the impugned decision in this respect, see reasons page 3, 4th complete paragraph. The Board therefore holds claim 1 to be new with respect to E2.

4.4 Inventive step

4.4.1 Starting from E1

The appellant (opponent) states claim 1 to lack inventive step with respect to E1, without giving reasons, see grounds for appeal page 10, 3rd paragraph and page 12, third paragraph. In the Board's view, the skilled person would not consider modifying the single sided cooking plate of E1 to a double sided one as this goes against E1's central teaching and stated principle object, see above, reasons point 3.2.1. The Board concludes that claim 1 involves an inventive step when considering E1 alone.

4.4.2 Starting from E2 with E6, E8, E9 or E11

It is common ground that E2 represents the closest prior art. The Board has found the plate of granted claim 1 to differ from this prior art in the two

features identified in section 3.3.8 above, thus confirming the impugned decision's finding at page 5, last paragraph.

- 4.4.3 Having a smooth surface in addition to a ribbed surface allows the plate to be used for griddling as well as grilling, see specification paragraph [0002]. The technical effect of embedding the element in the ribs of the plate on the other hand is that the cooking surface heats up quickly. The Board views these two effects to be unrelated and the two differing features are thus seen to address different partial problems that can be considered independently of one another. Focusing on the embedded feature and its associated effect, the corresponding (partial) objective technical problem can then be formulated as follows, see also specification paragraph [0009]: how to modify the electric heating plate of E2 to make it heat up more rapidly.
- 4.4.4 Of the remaining documents E6, E8, E9 and E11 cited by the appellant (opponent) in arguing the claim to lack inventive step (see appeal grounds page 12, second paragraph), only E11 appears of some relevance in that it discloses an electric heating plate with an embedded (electric) heating element.
- 4.4.5 E11 discloses, see e.g. figure 2, a two-sided plate with a smooth upper surface 27 and opposing ribbed surface with ribs 28. This document proposes a solution to the problem of rapid heating, see column 3, lines 59 to 66 and figures 2, 4 and 5, which involves making the heating plate (wall 26) forming the cooking surfaces thin and disposing the heating element (37) in a thickened part (19) of a perimeter wall (10) disposed around the cooking surfaces. This solution is

alternative to that of providing the heating element in the ribs, and E11 teaches away from the claimed solution. Thus, if the skilled person were to consider E11 when faced with the problem of rapid heating in a plate as in E2 he would not arrive at a plate as defined in granted claim 1. The Board therefore holds that the subject matter of claim 1 is not obvious and so involves an inventive step, Article 56 EPC.

4.4.6 Consequently, it is irrelevant for the present decision whether or not it would be obvious for the skilled person to arrive at the first identified differing feature of claim 1 with respect to E2, namely that of providing a smooth cooking surface.

4.4.7 In his grounds of appeal, page 12, last paragraph, the appellant (opponent) makes reference to documents and arguments contained in his notice of opposition of 5 March 2008. None of these arguments meets the requirements of Article 12(2) RPBA, which are, inter alia, that the statement of grounds of appeal and the reply contain a party's complete case and that they set out clearly and concisely why it is requested that the decision under appeal be reversed amended or upheld. As notified to the parties in a communication of 5 August 2013, the Board has disregarded these documents and arguments in the appeal, Articles 12(2) and (4) RPBA.

5. The Board therefore confirms the impugned decision of the opposition division to reject the opposition, Article 101(2) EPC. Thus there is no need for the Board to consider the respondent's auxiliary requests.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:



G. Magouliotis

A. de Vries

Decision electronically authenticated